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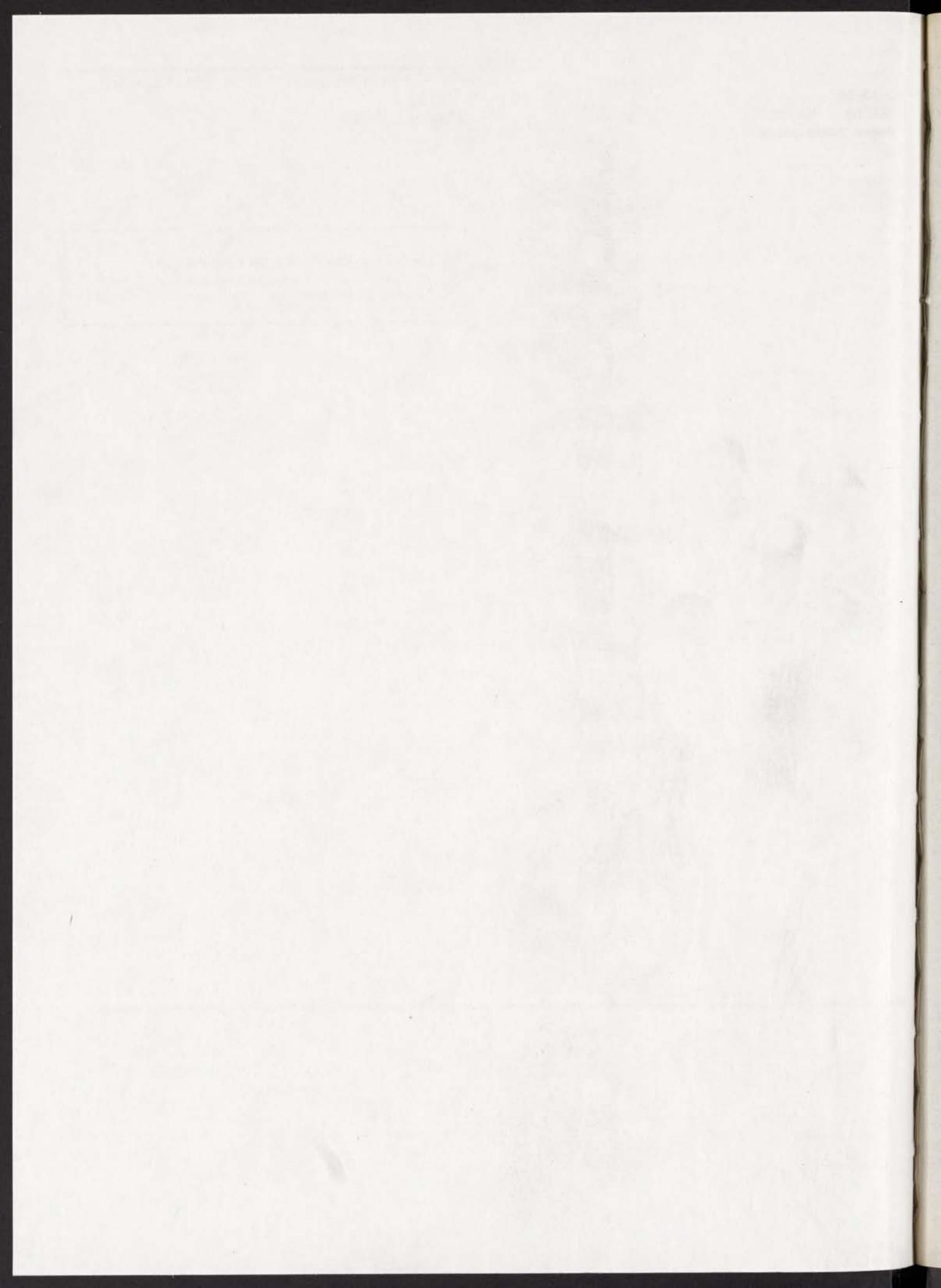
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- WHAT:** Free public briefings (approximately 3 hours) to present:
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(two briefings)

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- WHEN:** June 9 at 9:00 am
WHERE: Ralph Metcalfe Federal Building
Conference Room 328
77 West Jackson Blvd.
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Federal Register

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 93-086-2]

Cattle from Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are prohibiting the importation of Holstein steers and Holstein spayed heifers from Mexico into the United States. The incidence of tuberculosis in these cattle is significantly higher than in other breeds. Since 1991, Holstein steers and Holstein spayed heifers traced back to Mexico have accounted for more than half of the tuberculosis-infected Mexican-origin cattle identified at slaughter in the United States. This action will prevent tuberculosis-exposed Holstein steers and Holstein spayed heifers from Mexico from spreading the disease to U.S. cattle.

EFFECTIVE DATE: June 13, 1994.

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

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 92 (referred to below as the regulations) prohibit or restrict the importation of certain animals, including cattle from Mexico, to prevent the introduction into the United States of bovine tuberculosis (referred to below as tuberculosis) and other communicable diseases of livestock.

On December 22, 1993, we published in the Federal Register (58 FR 67709-67710, Docket No. 93-086-1) a proposal to amend the regulations by prohibiting the importation of Holstein and Holstein cross-bred steers and Holstein and Holstein cross-bred spayed heifers from Mexico into the United States. We proposed this action because of the disproportionately high incidence of tuberculosis in these cattle.

We solicited comments concerning our proposal for a 60-day comment period ending February 22, 1994. We received 7 comments by that date. They were from two dairies, a ranch, a veterinary medical association, a State animal health agency, a dairy industry association, and the Mexican government. Four commenters supported our proposal and one commenter suggested changes to the wording of the proposed amendment. That suggestion, plus the remarks of the two commenters who opposed the proposed rule, are discussed below.

Comment: The wording of the proposed amendment should be changed so that the amendment prohibits not only Holsteins from Mexico, but any cattle or breeds of cattle normally held in close confinement, such as Holstein dairy cattle, from any country that does not have a tuberculosis control program equivalent to that of the United States, or that has a higher incidence of tuberculosis than the United States. By singling out Mexico, the Animal and Plant Health Inspection Service (APHIS) is leaving the regulation open to being struck down as a "trade barrier" under the North American Free Trade Agreement (NAFTA).

Response: NAFTA Article 712 requires that all sanitary and phytosanitary measures be based on scientific principles and a risk assessment; our proposed rule was based on data gathered during APHIS' epidemiological investigation of the 1,090 cases of tuberculosis-infected cattle detected at slaughter in the United States during the 18-month period ending March 31, 1993. Consequently, we believe that our prohibition on the importation of certain cattle from Mexico is allowable under NAFTA. Conversely, the wide-ranging and ambiguously worded prohibition suggested by the commenter is not supported by available data and could

not be justified under NAFTA.

Therefore, we are making no changes in response to this comment.

Comment: The proposal supports the importation of tuberculosis from Mexico by allowing infected and exposed cattle to be imported from Mexico. The U.S. Department of Agriculture's current regulations and the proposed rule defy rational thinking if one is truly concerned about protecting American cattle, wildlife, and humans from tuberculosis imported from Mexico.

Response: It appears that the commenter is seeking an outright prohibition on the importation of all cattle from Mexico, although he did not offer any justification for such a ban. As we stated in the proposed rule, 713 tuberculosis-infected cattle were identified as being of Mexican origin during the 18-month period ending March 31, 1993; of those infected cattle, 67 percent were identified as Holstein or Holstein cross-bred steers or Holstein or Holstein cross-bred spayed heifers. Based on that information, we proposed to ban the importation of what appears to be the largest single source of tuberculosis-infected cattle among cattle imported into the United States from Mexico. Any actions of the type suggested by the commenter would have to be based on verifiable data and would have to be proposed as part of a separate rulemaking proceeding.

Comment: In its Fiscal Year (FY) 1993 report on the State-Federal Bovine Tuberculosis Eradication Program, APHIS stated that epidemiologic investigations involving Mexican steers have shown that approximately 67 percent of the infected imports are of the Holstein breed. APHIS has not, however, produced data indicating a similarly high incidence of tuberculosis in Holstein cross-bred cattle. In the absence of data showing that the incidence of tuberculosis in Holstein cross-bred steers and spayed heifers is at an unacceptably high level, it would not be appropriate to impose further restrictions on their importation.

Response: The breed identification information used by APHIS in preparing the FY 1993 report mentioned by the commenter placed Holstein and Holstein cross-bred cattle together in one category. Because such a high percentage of tuberculosis-infected Mexican cattle had been identified as Holstein or Holstein cross-bred cattle,

our proposal included both categories. However, animal health officials of the Mexican Government have informed APHIS that Holstein cross-bred cattle are raised under different conditions than Holstein cattle, and thus are much less likely to have a comparable rate of tuberculosis infection. According to those animal health officials, Holstein cross-bred cattle in Mexico are not raised in dairies, as are Holstein cattle, but are usually raised in pastures, often in states where no dairies are located. Given those significant environmental differences, it appears that Holstein cross-bred cattle present less of a risk than had been thought. Additionally, APHIS animal health personnel involved in conducting tracebacks of tuberculosis-infected cattle from Mexico have confirmed that Holstein cross-bred cattle do not appear to present the high level of risk presented by Holstein cattle. Therefore, in response to the comment, we have removed Holstein cross-bred steers and spayed heifers from this final rule.

Comment: In the proposed rule, APHIS stated that the importation of Holstein and Holstein cross-bred breeding cattle would not be prohibited because the tuberculosis testing required of breeding cattle appears adequate to detect infection in breeding cattle. If the testing procedure is adequate to allow the importation of breeding cattle, it seems that the procedure should also be adequate to allow the importation of steers and spayed heifers.

Response: The testing requirements for breeding cattle are different from the testing requirements for steers and spayed heifers. Under the regulations in § 92.427(c), breeding cattle offered for entry into the United States must be accompanied by a certificate stating that they have been tuberculin tested within the last 3 to 12 months. The breeding cattle are then detained at the port of entry under the supervision of the port veterinarian until tested for tuberculosis with negative results. The testing requirements for steers and spayed heifers, on the other hand, call for only one test, performed either in Mexico no more than 60 days prior to entry, or, if the importer so elects, at the port of entry. Given the large number of steers and spayed heifers imported into the United States—approximately 1 million in an average year—we cannot, as the commenter suggested, apply the same testing requirements to breeding cattle and steers and spayed heifers; APHIS simply does not have the resources to test every steer and spayed heifer offered for entry from Mexico.

Consequently, we are making no changes in response to the comment.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

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

Of the approximately 1 million Mexican cattle imported from Mexico into the United States during 1991, the most recent year for which complete data are available, we estimate that nearly 12 percent were Holstein steers (in the 1991 data, spayed heifers were counted as steers). During the same year, the U.S. cattle population totaled 99.4 million head. Thus, imported Mexican Holstein steers accounted for less than 1 percent of the total U.S. bovine population.

The total value of imported Mexican Holstein and Holstein cross-bred steers was close to \$45 million in 1991, less than one-tenth of 1 percent of the 1991 value of the U.S. live cattle inventory, which was estimated at more than \$64 billion.

Approximately 48,000 cattle feedlots were operating in the United States during 1991. Of those, 620 feedlots concentrated in western States regularly handle Mexican cattle. Approximately 67 of the feedlots handling Mexican cattle have a capacity of 1,000 head or fewer; such lots can be considered small entities. They account for less than 1 percent of all domestic feedlots. We do not expect this action to significantly affect U.S. importers because they can replace the Holstein steers and Holstein spayed heifers that they may currently import from Mexico with other breeds of feeder cattle.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings

before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This document contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 92

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

Accordingly, 9 CFR part 92 is amended as follows:

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

1. The authority citation for part 92 continues to read as follows:

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

2. In § 92.427, a new paragraph (c)(5) is added to read as follows:

§ 92.427 Cattle from Mexico

* * * * *

(c) * * *

(5) The importation of Holstein steers and Holstein spayed heifers from Mexico is prohibited.

* * * * *

Done in Washington, DC, this 9th day of May 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–11675 Filed 5–12–94; 8:45 am]

BILLING CODE 3410–34–P

9 CFR Part 92

[Docket No. 93–110–1]

Importation of Horses; Quarantine Requirements

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations concerning the importation of horses by adding Bosnia and Herzegovina, Croatia, Finland, Guinea-Bissau, the Member States of the European Union, Slovenia, The Former Yugoslav Republic of Macedonia, and

the nonrecognized areas of the former Yugoslavia (Montenegro and Serbia) to the list of countries where contagious equine metritis (CEM) exists. We are also adding Oman, Qatar, and the United Arab Emirates to the list of countries considered to be affected with African horse sickness (AHS). Outbreaks of CEM, a highly transmissible venereal disease, have been reported in Bosnia and Herzegovina, Croatia, Finland, Guinea-Bissau, Slovenia, The Former Yugoslav Republic of Macedonia, and the nonrecognized areas of the former Yugoslavia (Montenegro and Serbia). The Member States of the European Union either are affected with CEM or trade horses freely with other Member States that are affected with CEM, without testing the horses for the disease. Oman, Qatar, and the United Arab Emirates trade horses freely with other countries where AHS, a fatal viral disease, exists. This action will prohibit or restrict the importation into the United States of horses that have been in these countries. This action is necessary to protect horses in the United States from CEM and AHS. Neither disease is known to exist in the United States.

DATES: Interim rule effective May 13, 1994. Consideration will be given only to comments received on or before July 12, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 93-110-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Joyce Bowling, Staff Veterinarian, Import-Export Animals Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA, room 766, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8170.

SUPPLEMENTARY INFORMATION:

Background

The regulations concerning the importation of horses (contained in 9 CFR 92.300 through 92.326 and referred to below as the regulations) are designed to protect against the introduction into the United States of various equine

diseases such as contagious equine metritis (CEM) and African horse sickness (AHS). Neither CEM, a highly transmissible venereal disease, nor AHS, a fatal viral disease, is known to exist in the United States.

Contagious Equine Metritis

Section 92.301(c)(1) of the regulations prohibits or restricts the importation into the United States of all horses from Austria, Belgium, Czechoslovakia, Denmark, Ireland, Italy, Japan, Federal Republic of Germany, France, the Netherlands, Norway, Sweden, Switzerland and the United Kingdom (England, Northern Ireland, Scotland, Wales, and the Isle of Man) because of the existence of CEM in those countries. This section also prohibits or restricts the importation into the United States of all horses that have been in these countries within the 12 months immediately preceding their export to the United States.

We have received information from the Governments of Bosnia and Herzegovina, Croatia, Finland, Guinea-Bissau, Slovenia, The Former Yugoslav Republic of Macedonia, and the nonrecognized areas of the former Yugoslavia (Montenegro and Serbia) that there have been outbreaks of CEM in these countries. In response, we are amending § 92.301(c)(1) to add these countries to the list of countries where CEM exists. We are also adding a note to this section to explain the status of Montenegro and Serbia. The note states that Montenegro and Serbia have asserted the formation of a joint independent State entitled "The Federal Republic of Yugoslavia," but this entity has not been formally recognized as a State by the United States.

Currently, 12 European countries comprise the Member States of the European Union (EU). These countries include Belgium, Denmark, Federal Republic of Germany, France, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, and the United Kingdom. Belgium, Denmark, Ireland, Italy, Federal Republic of Germany, France, the Netherlands, and the United Kingdom are already listed in § 92.301(c)(1) as countries where CEM exists.

However, Greece, Luxembourg, Portugal, and Spain, which are considered to be free of CEM, trade freely within the EU. The Member States of the EU move horses freely without testing for CEM. Further, many countries that are affected with CEM have applied for membership in the EU. Therefore, horses imported from Member States of the EU that have been considered to be free of CEM present an

unacceptable risk that CEM could be introduced into the United States.

Therefore, we are also amending § 92.301(c)(1) to include the Member States of the EU in the list of countries where CEM exists. At the same time, we are not removing from the list individual Member States of the EU that are affected with CEM. These steps will ensure that the Member States of the EU that are affected with CEM will remain on the list whether or not they retain their EU membership. Conversely, adding the phrase "the Member States of the European Union" will ensure that new countries that join the EU will be covered immediately by these provisions.

Also, we are making two miscellaneous changes to § 92.301(c)(1) to facilitate the use of the list of countries where CEM exists. We are alphabetizing the list of countries to make them easier to read. Further, we are changing the entry for "Czechoslovakia" to the two Republics now recognized by the United States: "Czech Republic" and "Slovakia."

African Horse Sickness

Section 92.308(a)(2) of the regulations requires all horses intended for importation from Saudi Arabia, Spain, The Yemen Arab Republic, and all countries on the continent of Africa, including horses that have stopped in or transited those countries, to enter the United States only at the port of New York and be quarantined at the New York Animal Import Center in Newburgh, New York, for at least 60 days because those countries are considered to be affected with AHS.

We have received information that during the Persian-Gulf War, the Governments of Oman, Qatar, and the United Arab Emirates allowed movement of horses from other countries considered to be affected with AHS, without testing the horses for AHS. Therefore, horses imported into the United States from Oman, Qatar, and the United Arab Emirates present an unacceptable risk of introducing AHS into the United States. As a result of this increased disease risk, special efforts are necessary to determine the health of these animals.

To establish the health of horses intended for importation from Oman, Qatar, and the United Arab Emirates, we are amending § 92.308(a)(2) to add these countries to the list of countries considered to be affected with AHS. This means that horses intended for importation from Oman, Qatar, and the United Arab Emirates may enter the United States only at the port of New York and must be quarantined at the

New York Animal Import Center in Newburgh, New York, for at least 60 days. This 60-day quarantine will provide the necessary time to test or examine horses intended for importation from these countries for AHS and other communicable diseases. Only if the horses test negative and are free from clinical evidence of communicable disease, as certified by the port veterinarian, will horses from Oman, Qatar, and the United Arab Emirates be released from quarantine. This action will help ensure that AHS is not introduced into the United States.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the introduction of CEM and AHS into the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon publication in the **Federal Register**. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This interim rule has been reviewed under Executive Order 12866.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This interim rule will help protect horses in the United States from CEM and AHS. There are probably between 5.2 and 6.6 million horses in the United States. The total value of U.S. horses is about \$8 billion (\$1,430 each). A very small fraction (between 0.2 and 0.3 percent, based upon 1991 to 1992 figures) of those horses were imported into the United States.

Except for the Member States of the EU, the affected countries export very few horses to the United States. Horses imported into the United States from the Member States of the EU accounted for under 10 percent of the total U.S. horse imports in 1991 and 1992. From 1991 to 1992, the United States imported about 32 horses (less than 0.2 percent of the

total U.S. horse imports) from countries whose horses will be prohibited or restricted for the first time.

The horses imported from the affected countries tend to be higher-valued, purebred horses. These horses, worth 10 to 20 times more than the average price per horse from the rest of the world, are likely to continue to be imported despite any additional costs related to quarantine and testing. Quarantine and testing of horses has been estimated at \$4,700 for the 60-day AHS quarantine and between \$1,200 and \$1,500 for the quarantine and testing that is required for CEM.

The U.S. trade in horses is expected to be minimally changed by this rule, since some restrictions already apply to the importation of horses into the United States from most of the affected countries. All but four of the Member States of the EU are already included in the list of countries where CEM exists. Two of those four are affected with AHS and are already subject to restrictions on the importation of their horses into the United States.

We are not aware of any importers that are classified as small businesses; however, we expect the effect of the rule change to be minimal for any U.S. business, large or small.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This document contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 92

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

Accordingly, 9 CFR part 92 is amended as follows:

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

1. The authority citation for part 92 continues to read as follows:

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

2. In § 92.301, paragraph (c)(1) is revised to read as follows:

§ 92.301 General prohibitions; exceptions.

(c) (1) Except as provided in paragraph (c)(2) of this section, notwithstanding the other provisions of this part concerning the importation of horses into the United States, the importation of all horses from the following listed countries and the importation of all horses that have been in the listed countries within the 12 months immediately preceding their export to the United States is prohibited because either contagious equine metritis (CEM) exists in the listed countries or CEM exists in countries that trade horses freely with the listed countries, without testing for CEM: Austria, Belgium, Bosnia and Herzegovina, Croatia, Czech Republic, Denmark, Federal Republic of Germany, Finland, France, Guinea-Bissau, Ireland, Italy, Japan, the Member States of the European Union, The Netherlands, Norway, Slovakia, Slovenia, Sweden, Switzerland, The Former Yugoslav Republic of Macedonia, the United Kingdom (England, Northern Ireland, Scotland, Wales, and the Isle of Man), and the nonrecognized areas of the former Yugoslavia (Montenegro and Serbia).

Note: Montenegro and Serbia have asserted the formation of a joint independent State entitled "The Federal Republic of Yugoslavia," but this entity has not been formally recognized as a State by the United States.

§ 92.308 [Amended]

3. In § 92.308, paragraph (a)(2), the first sentence is amended by adding to the list of countries, in alphabetical order, the following countries: "Oman," "Qatar," and "the United Arab Emirates."

Done in Washington, DC, this 9th day of May 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94-11676 Filed 5-12-94; 8:45 am]

BILLING CODE 3410-34-P

FARM CREDIT ADMINISTRATION

12 CFR Part 612

RIN 3052-AB47

Personnel Administration

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board (Board), adopts final amendments to the regulations relating to standards of conduct for directors and employees of Farm Credit System (FCS or System) institutions, excluding the Federal Agricultural Mortgage Corporation. This action results from a reassessment of the regulations in light of the amendments to the Farm Credit Act of 1971 (1971 Act) made by the Agricultural Credit Act of 1987 (1987 Act) and the findings of a review required by section 514 of the Farm Credit Banks and Associations Safety and Soundness Act of 1992 (1992 Act). The final rule updates the regulations to reflect statutory changes and the change in focus of the FCA's regulatory oversight of personnel matters. In addition, the final rule enhances and clarifies the regulations to ensure that they fulfill the purposes of section 514 of the 1992 Act relative to the reporting of financial information and potential conflicts of interest.

EFFECTIVE DATE: The regulations shall become effective upon the expiration of 30 days after publication during which either or both houses of Congress are in session or December 31, 1994, whichever is later. Notice of the effective date will be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT:

John J. Hays, Policy Analyst, Policy Development and Planning Division, Office of Examination, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4498, TDD (703) 883-4444,

or

Dorothy J. Acosta, Assistant General Counsel, Regulatory Operations Division, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: On August 19, 1993, the FCA proposed amendments to its regulations relating to standards of conduct for directors and employees of System institutions. See 58 FR 44139. The final regulations retain much of the content of the existing and proposed regulations, but strengthen and clarify them, expanding some of the provisions and relaxing others.

The final regulations also address the concerns and suggestions received on the proposed regulations during the comment period, which expired on September 30, 1993. The FCA received seven comment letters on the proposed regulations during the comment period. Three letters were submitted by System banks, three by System associations, and one by the Farm Credit Council (FCC) on behalf of its member banks and the Federal Farm Credit Banks Funding Corporation. These comments and the FCA responses are summarized below.

In addition to comments received during the comment period, three letters were received concerning the proposed amendments that have also been considered by the FCA Board. Two comment letters pertaining to the proposed standards-of-conduct regulations were received pursuant to the FCA's request for comments on regulatory burden, published in the Federal Register on June 23, 1993. See 58 FR 34003. These comments related to reporting requirements and are similar to the comments received during the comment period for the proposed regulations. They are summarized and addressed in the Board's response to comments relating to reporting that were received during the comment period for the proposed regulations. One letter was received from an association as a followup to a meeting held in Dallas, Texas, between FCA's Board and senior management and directors and officers of FCS associations. The association expressed a concern regarding the ability to attract and retain qualified directors if they are prohibited from purchasing acquired property as proposed. The FCA received numerous comments on this prohibition and the Board's response appears later in the preamble.

General Comments

Two comments were received concerning the effective date of the amendments. The FCC urged the FCA to allow sufficient lead time between publication of the final regulations and the effective date to permit boards of directors the opportunity to consider carefully the many policy judgments that are left to their discretion by the

regulations. Another comment recommended an effective date no earlier than January 1, 1995, suggesting that existing regulations and policies would continue to provide adequate direction and control in the interim.

The Board agrees that there should be sufficient lead time to revise policies, especially in view of changes made in the final regulations in response to comments. Although the final regulations are substantially changed from the proposed regulations in response to the comments, the Board believes that with the delayed effective date the public will have ample opportunity to further review the regulations and bring any observations to the Board's attention prior to the effective date of the regulations. As always, the Board will consider requests for further clarification of or amendments to the regulations prior to or after their effective date. Consequently, the Board adopts final regulations with a delayed effective date not earlier than December 31, 1994.

One commenter stated that the proposed regulations would result in a regulatory burden and that while some improvement in clarity and flexibility is offered, the benefits do not appear commensurate with the time and cost of implementing the changes. The commenter also stated that conflicts of interest have not been properly or inadequately handled and that there is no reason to believe the proposed changes will provide any significant improvement in avoiding, handling, or reporting conflict-of-interest situations where an institution has been complying with the present regulations. According to the commenter, the proposed regulations would require substantial effort to revamp policies and procedures.

The FCA Board has not undertaken this revision of the standards-of-conduct regulations because of improper or inadequate handling or reporting of conflicts of interest. Rather, as noted earlier, the revision is intended to update the regulations to reflect statutory changes and a change in the focus of the FCA's regulatory oversight of personnel matters, as well as to respond to section 514 of the 1992 Act. While the FCA recognizes that the revamping of policies and procedures requires substantial effort, the final regulations attempt to minimize any burden by providing a delayed effective date. Also, the FCA has adjusted the proposed regulations in response to comments where it was possible to achieve its objectives by less burdensome means. The final regulations place more responsibility on

the institutions and their officers and directors for identifying possible sources of conflict and developing adequate controls, but also offer more flexibility for developing procedures that effectively address significant conflicts without imposing burdensome requirements that are ineffective in preventing conflicts of interest. While this will initially require more work, the FCA believes that it is a more effective approach to conflicts of interest and that it more appropriately reflects the focus of the responsibility for preventing conflicts of interest and the role of the FCA as regulator.

Another commenter supported four of the primary FCA policy objectives, namely: (1) Enhancing each association's accountability for sound standards-of-conduct programs; (2) maintaining high standards of conduct to ensure the proper performance of System business; (3) holding directors and employees to the same standard where the potential for conflict is the same; and (4) establishing that the internal corporate matters of devotion of time to official duties, political activity, nepotism, exchange of gifts, and improper use of official property are best left to each institution's board of directors to oversee through the implementation of a standards-of-conduct policy. However, the commenter disagreed with the proposed strict prohibition of a director purchasing property acquired by the institution through foreclosure. The Board's response to this comment is addressed in detail later in the preamble.

Section-by-Section Analysis of Comments Received

The following narrative summarizes the comments received on the various sections of the regulations during the comment period, in response to the Regulatory Burden Notice, and as a followup to the Dallas meeting, and provides the Board's response to those comments.

Section 612.2130—Definitions

While no comments were received regarding the proposed changes to this section, the FCC provided comments on the definitions in the existing regulations for "controlled entity" and "officer" and requested the FCA to define the terms "financially obligated" and "business proprietor" to clarify how the prohibitions in proposed §§ 612.2140(g) and 612.2150(h) are intended to interface.

The FCC recommended changing the definition of "controlled entity" to one similar to that used in the attribution

rules of the lending limit regulations. See 12 CFR 614.4356(a)(3). Specifically, this would increase the 5-percent threshold for control in existing regulations to a 50-percent threshold. The FCC believes that 5-percent ownership is a very stringent and perhaps unrealistic test of control, and that the term "controlling influence," without a higher threshold is perhaps too vague to be meaningful.

The Board does not believe that the definition of control in the lending limit regulations is an appropriate definition for standards-of-conduct regulations. The purpose of the definition of control in the lending limit regulations is to identify when borrowers are so related that they should be regarded as a single credit risk. The purpose of the definition of control in the standards-of-conduct regulations is to identify when an interest is so significant that if an individual were to act on a matter concerning the related party, there would be an appearance of a conflict of interest. Consequently, the FCA believes that the control threshold for standards of conduct should be much lower than the control threshold for the purposes of lending limits. Control thresholds used in regulations directed at conflicts of interest are typically much lower. For example, the Securities and Exchange Commission requires disclosure of certain transactions with the institution of individuals owning 5 percent or more of a class of the institution's stock. The Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision have similar requirements for institutions they regulate that are public companies required to register under the Securities Exchange Act of 1934. The Comptroller imposes similar disclosure requirements on all national banks when they sell their securities, whether or not they are public companies. The phrase "exercises a controlling influence" is intended as a catch-all to capture those situations in which a person does not meet the objective control tests, but for some other reason has the power to control the management of the entity's policies. This term is a common component of control definitions and has long been a component of the part 612 definition of control without causing a particular problem. The definition is used to determine when a director or officer must recuse him or herself and in the reporting provisions, both of which are direct responsibilities of directors and employees. Such persons are likely to know when they are in a position to control management of the entity's policies, and, if in doubt,

should err on the side of recusal and reporting. For the reasons stated above, no change has been made to the definition of "controlled entity."

The FCC suggested that the position of chief executive officer be added to the definition of "officer" since a number of System institutions have both a president and a chief executive officer, or a chief executive officer rather than a president. The Board adopts this suggestion and also adds specific references to chief operating officers, chief financial officers, and chief credit officers.

On a related issue, the FCC questioned whether an association's contracting with its supervising bank for a Standards of Conduct Officer would violate the joint employee provisions of § 612.2157. To clarify that it would not, unless the person otherwise satisfies the definition in § 612.2130(m), the term "Standards of Conduct Officer" is changed to the "Standards of Conduct Official" in the final regulations.

The FCC recommended that the term "financially obligated" be defined, and that prohibited "financially obligated" transactions be more clearly distinguished from business relationships that are permissible.

The final regulations define "financially obligated with" to mean having a joint legally enforceable obligation with, being financially obligated on behalf of (contingently or otherwise), having an enforceable legal obligation secured by a property owned by another, or owning property that secures an enforceable legal obligation of another. The Board's revision to §§ 612.2140(g) and 612.2150(h) responds to the request to distinguish permissible business relationships from prohibited "financially obligated with" relationships and is discussed below under those sections.

As a result of this revision, the term "business proprietor" is no longer used in the regulations and its definition has been deleted. In addition, to avoid any possible confusion relative to reporting requirements, the definition for the term "business relationship" or "transacts business" has been deleted in the final rule.

The definition of "ordinary course of business" in the final regulations has been added as described in the discussion of § 612.2140.

The definition of "family" has been clarified to spell out more specifically those persons included under the phrase "and each person having such relationships by marriage."

Section 612.2135—Director and Employee Responsibilities and Conduct—Generally

No comments were received on this section and it is adopted as proposed.

Section 612.2140—Directors—Prohibited Conduct

The Board proposed to adopt some of the specific prohibitions applicable to employees and specifically requested comments on whether these prohibitions would operate too restrictively on directors. A number of comments were received. The majority of commenters opposed the proposed prohibition in paragraph (f) of this section concerning a director's purchasing property owned by the director's institution or an institution it supervises or is supervised by during the preceding 12 months when such property was acquired through foreclosure or similar action. The FCC asserted that a strict prohibition would make it more difficult to attract or retain qualified directors and suggested that such purchases be permitted on an institution-by-institution basis depending on whether the institution has adequate controls in place to ensure that directors do not receive an advantage or favoritism over other prospective purchasers. Other commenters suggested that there are less restrictive alternatives available to avoid real or apparent conflicts of interest and ensure continued public confidence in the System. One alternative offered was a general prohibition on acquired property purchases by directors except by public auction or open competitive bidding. The commenters also disagreed that the potential for conflicts of interest is as great for directors as it is for employees.

After additional consideration of the issues in light of the public comments, the Board has concluded that a total prohibition of director purchases of acquired property may be overly restrictive. Directors of Farm Credit Banks, associations, and certain directors of agricultural credit banks, except outside directors, are required to be farmers, ranchers, or producers or harvesters of aquatic products, and as such may want to acquire additional land that becomes available in their communities. Restrictions on their ability to acquire land that becomes available for sale from the institution while they are serving as director could be a serious disincentive for a successful individual to serve as a director. On the other hand, the potential for conflict is especially serious where there is strong motivation for acquiring property

owned by the institution. Therefore, it is important that there be adequate controls in place to ensure that the director's impartiality is not impaired and that the director does not use his or her position to gain some advantage in acquiring property. The final regulations do not prohibit such acquisitions, but require that the property be purchased at public auctions or in open competitive bidding. In addition, to avoid the appearance of conflict, it is important that a director interested in acquiring such property not participate in deliberations or decisions concerning foreclosure or disposition of that property. Therefore, the final regulations prohibit a director from acquiring such property, even through public auction or competitive bidding, if he or she has participated in the decision to foreclose or dispose of the property or in establishing the terms of the sale.

The FCC recommended that there be an additional exception in paragraph (g) of this section under which an otherwise prohibited transaction would be permissible if approved by the Standards of Conduct Official. Paragraph (g) of the proposed regulations prohibited lending transactions between directors and other directors, employees or borrowers, but excepts loans between family members, loans made in an official capacity, and transactions in the ordinary course of business, as defined. The commenter recommended that the suggested approval be based upon a determination that the transaction does not present any significant risk of impairing the director's (or employee's) ability to perform his or her duties with impartiality and in compliance with regulations.

After considering the comment and the likelihood that the institutions themselves are in the best position to know what is in the ordinary course of business in the local business environment, the Board concluded that the suggestion had merit as a substitution for the ordinary course of business exception. However, the Board believes that there should be a regulatory standard against which such determinations can be evaluated that will provide a measure of uniformity among FCS institutions. The Board concluded that some relief from the prohibition is appropriate when the transaction is so insignificant in amount as not to create the appearance of a conflict in the eyes of a reasonable person or is an ordinary course of business transaction that is not on preferential terms.

Therefore, in the final regulations the proposed ordinary course of business exception has been replaced by a provision that essentially allows the Standards of Conduct Officer to grant a waiver where: (1) The amount of the transaction is so immaterial that it would not cause a reasonable person with knowledge of the relevant facts to question the impartiality or objectivity of the director in performing his or her official duties; or (2) where the transaction is in the ordinary course of business; provided the director recuses him or herself from any matter affecting the financial interest of the other party to the transaction. "Ordinary course of business" is defined to mean a transaction with a person who is in the business of offering the goods or services that are the subject of the transaction on terms that are not preferential or a transaction between two persons who are in business together that is incident to the business they conduct together. A "preferential" transaction is one that is not on the same terms as those available for comparable transactions with other persons who are not officers and directors of System institutions. The Standard of Conduct Official's determination that either of the circumstances warranting an exception exists must be documented and is subject to the recordkeeping requirements, unless the transaction falls within any materiality thresholds for various types of transactions or specific ordinary course of business guidelines established by the Board's standards-of-conduct policy. While not applicable, the Uniform Standards of Ethical Conduct for Executive Branch Employees may be useful as a resource in determining such policy guidelines.

The Board believes that this change responds to the FCC's concern that a deferral of payment may be construed as a loan and the concern that the exclusion in the proposed regulation may fail to reach transactions between an elected director (or employee) who is a borrower and an institution's outside director.

The FCC recommended that the FCA explain its rationale for prohibiting employees from being financially obligated with directors, other employees, and borrowers, but having no similar prohibition for directors.

The FCA believes there is a greater potential for conflict for employees in having these types of relationships with borrowers because employees are in a position to have a more direct influence on the institution's dealings with the borrower. Also, since directors (except outside directors) are statutorily

required to be borrower/stockholders, such a restriction could constitute an inappropriate restraint on the ability of directors to pursue their primary occupation. However, in light of the greater flexibility granted in the final regulation to define an exception to the prohibition on lending transactions, the Board believes that the institution can make appropriate distinctions in its policies to reflect the greater potential for conflict among employees and the impact of the prohibition on the ability of the director to pursue his or her primary occupation. Therefore, the final regulations make the prohibition for directors congruent with the employee prohibition by including "financially obligated with" transactions within the scope of the prohibition. See § 612.2150 for discussion of the comments on this prohibition for employees. In addition, the final regulation expands the family loan transaction exception to include any person residing in the director's household and relies on recusal to prevent conflicts of interest. Accordingly, the recusal provision in § 612.2140(a) is expanded to include any person residing in the director's household and to include a specific reference to business partners.

Section 612.2145—Director Reporting

The FCC believes the requirement to disclose the name of any relative or entity controlled by a relative that transacts business with the institution or an institution supervised by the institution is overly broad. The FCC suggested that the definition of "relative," for purposes of disclosure under §§ 612.2145(b)(1) and 612.2155(b)(1), be limited to immediate family members as defined in part 620 of this chapter. Section 620.1(e) of this chapter defines "immediate family member" to mean spouse, parents, siblings, children, mothers- and fathers-in-law, brothers- and sisters-in-law, and sons- and daughters-in-law. In addition, the FCC commented that it is extremely difficult for a director to disclose a list of borrowers with whom the director or the director's entity transacts business, since if the director is not involved in the day-to-day operations of the business, he or she will have little or no knowledge of the people who conduct business with the director's entity. Also, a director may not know that the individual or entity is a borrower. The FCC assumed that this was not the intention of § 612.2145 and that the requirement to disclose "to the best of his or her knowledge after reasonable inquiry" was designed to address this problem. However, the FCC recommended that the requirement of

"reasonable inquiry" be deleted, noting that it is difficult to know what reasonable inquiry is in any particular case. The FCC also suggested that directors be required to disclose only those business relationships with borrowers that are other than ordinary course of business relationships, unusually large transactions, ongoing contractual relationships, or transactions with nonstandard terms and conditions, or terms other than those arrived at through arm's-length negotiations. The FCC argued that any appearance of conflict would be eliminated by the knowledge that neither the director nor the borrower received special terms. The FCC also recommended that each institution be allowed the opportunity to define transactions other than in the ordinary course of business within the above parameters. The FCC also commented that it is difficult to understand how a director's position can be compromised by the mere fact that a borrower does business with the director or an entity owned by the director.

Some of the FCC's comments appear to reflect a misunderstanding of the requirements of both proposed and existing regulations. Neither the proposed regulations nor existing regulations require the reporting of transactions with borrowers. The proposed regulations merely require the disclosure of the name of any relative or any entity in which the director has a financial interest if the relative or entity transacts business with borrowers. Transacting business with borrowers is the standard that narrows the class of persons or entities a director must report. An institution could, for instance, require instead the reporting of the names of all entities in which a director or employee has a financial interest, irrespective of whether such entities transact business with borrowers. Such a requirement would require more reporting, but might be easier for the individuals required to report. The regulatory requirement is a minimum requirement. The FCA encourages boards to require sufficient reporting to permit adequate monitoring of potential conflicts.

After considering the comments on the reporting requirements, the final regulations have been modified in several ways in response to revisions to the prohibited conduct sections and in an effort to ease any unnecessary burden the proposed regulations might have entailed. The final regulations permit the institution greater flexibility to determine the applicability of the prohibition on lending transactions among directors, employees, and

borrowers and relies more heavily on recusal as a means of resolving conflicts of interest than the existing regulations or the proposed regulations. Since the FCA believes that the reporting requirements should provide the institution sufficient information for the institution to determine when recusal rather than prohibition is appropriate, an effort has been made to make the reporting requirements parallel the recusal provisions.

The final regulations do not narrow the definition of "relative" as suggested. To do so would narrow the scope of the exception from the lending and borrowing prohibition and the reach of the recusal provision. The suggested narrowing would have deleted "aunts, uncles, nephews, nieces, and grandchildren," and these relationships are often close enough that it would be unreasonable to restrict borrowing and lending between family members when such family members are borrowers. Similarly, these relationships are often close enough that it is not unreasonable to require recusal from matters affecting their interests. However, the standard for reporting the names of relatives in the final regulations is whether the individual "knows or has reason to know" that a relative or entity transacts business with the institution or a supervised institution or a borrower of such institutions. The "knows or has reason to know" standard is adopted to address concerns that "to the best of his or her knowledge after reasonable inquiry" imposes a duty to inquire, the reasonableness of which could lead to disputes. The "knows or has reason to know" standard is a common legal standard that is used to ensure that a person's assertion about the state of his or her knowledge can be challenged in circumstances in which any reasonable person would be deemed to have knowledge. The "actual knowledge" standard suggested by the FCC is not adopted because it does not allow any basis for the FCA to question a director's assertion regarding his or her subjective state of mind even in the most obvious circumstances.

The reporting requirements supporting the disclosure requirements of part 620 of this chapter have been more narrowly focused in the final regulations on information needed by the institution to make appropriate disclosures under part 620 of this chapter, and more clearly specify the information required to be reported. In addition, the final regulations also permit greater flexibility in determining the frequency of reporting for matters required to be reported, other than

matters that are required to be reported for part 620 of this chapter.

The FCC also recommended that the reporting requirement for a director or employee who becomes or plans to become involved in any relationship, transaction, or activity that is required to be reported or could constitute a conflict of interest be expanded to require the Standards of Conduct Official to determine whether such involvement is, in fact, a conflict of interest. The Board has adopted the FCC's suggestion in the final regulations and has also added a requirement that the determination specify what controls, such as recusal, are necessary to ensure that the appearance of conflict is minimized.

A commenter noted that the proposed requirement that all new directors report all matters listed in the director reporting section within 1 month after election or appointment perpetuates the present reporting redundancy involving a director candidate's disclosure. In response to this concern, the final regulations require reporting only if no disclosure was made as a director candidate under part 620 of this chapter within the preceding 180 days, as this would be considered sufficient disclosure.

Section 612.2150—Employees—Prohibited Conduct

Comments were received from the FCC regarding the prohibition against employees borrowing from, lending to, or becoming financially obligated with or on behalf of a director, employee, or agent of the employing, supervising, or a supervised institution or a borrower or loan applicant of the employing institution. The FCA also considered the appropriateness of the FCC's comments on the parallel director prohibition for the employee prohibition. The FCC recommended that there be an additional exception under which an otherwise prohibited transaction would be permissible if approved by the Standards of Conduct Official after a determination that the transaction does not present any significant risk of impairing the director's or employee's ability to perform his or her duties with impartiality and in compliance with the regulations.

The FCA concluded that the same modification that was made to § 612.2140(g) should be made to the employee prohibition. See discussion above.

Both banks that commented objected to the relaxation of the prohibition in § 612.2150(j) against employees acting as real estate agents or brokers because of a strong potential for creating

conflicts of interest, especially for staff appraisers. In addition, one commenter observed that such a relaxation would be inconsistent with the functional independence required by FCA appraisal regulations. Another commenter asserted that the phrase "for the employee's own account" is unclear and suggested substituting "intended for the employee's own or immediate family use."

In view of the commenters' concerns and assurance that the prohibition is not a particularly burdensome requirement for staff appraisers, the FCA has decided not to adopt the appraiser exception at this time. In addition, the final regulations substitute "intended for the use of the employee, a member of the employee's family, or a person residing in the employee's household" for "for the employee's own account," to clarify that the latter term was not intended to permit an employee to act as an agent or broker for commercial purposes.

Section 612.2155—Employee Reporting

The FCC commented that the scope and frequency of reports required by § 612.2155 are unwarranted, unduly burdensome, and unduly costly below the senior officer level. The FCC recommended that the FCA distinguish between senior officers and other employees in the reporting requirements. The FCC stated that, in its judgment, reports by non-senior officers when hired and biennially thereafter are fully adequate, especially since employees are required to report covered activities as they occur in the interim. They also recommended that the FCA remove the specific reporting requirements and require institutions to establish reporting procedures to ensure that relationships and activities subject to the regulations are properly disclosed and acted upon.

The FCC commented on proposed paragraph (b)(1) of this section, which requires employees to file an annual statement disclosing the name of any relative or entity controlled by relatives that transact business with the institution or any institution supervised by the institution. The concern raised was that the disclosure is to be based not only on actual knowledge, but also upon reasonable inquiry. This was considered to be unreasonably broad in view of the definition of "relative," because many such relatives may be virtual strangers to the employee in question and it is difficult to know what reasonable inquiry is in any particular case. The FCC also suggested that "relative" for purposes of disclosure be limited to immediate family members, as defined in § 620.1(e) of this chapter.

The same modifications that were made to the director reporting sections have been made to the employee reporting sections in the final regulations. Part 620 reporting requirements are focused on matters not already within the institution's knowledge and specifically restricted to employees who are subject to disclosure requirements, namely senior officers, as defined in part 620 of this chapter. The final regulations allow the institution to determine employee reporting frequency for matters not required for part 620 disclosures, but the institution must establish reporting requirements sufficient to permit the effective enforcement of the regulations and the standards-of-conduct policy. This will allow institutions to exclude certain individuals or classes of individuals from the reporting requirement based on the functions the employee performs. For instance, positions where there is a substantial degree of supervision and a low level of responsibility may make the reporting requirement unnecessary.

The FCC commented that it appears § 612.2150(d) prohibits an employee from serving as a director of an entity that transacts business with the employing or supervised institution, while § 612.2155(b)(2) requires an employee to report the name and nature of any entity in which the employee has a financial interest or on whose board the employee sits, if the entity transacts business with the employing institution. The final regulations delete the reference to entities on whose board the employee serves in the reporting requirement.

In response to an FCC recommendation on director reporting requirements, § 612.2155 is expanded to require the Standards of Conduct Official to determine whether any reported transaction or activity is, in fact, a conflict of interest and what controls are necessary to ensure that there is no appearance of a conflict of interest.

A commenter noted that for new employee reporting requirements it is unclear whether 1 month refers to the time an employment offer is extended and accepted or 1 month after the employee commences work. The final regulations have been revised to make it clear that a newly hired employee must report the required matters within 30 days after accepting an offer for employment. However, under the final regulations, the institution may establish a reasonable period for such new employees to terminate such transactions, activities, or relationships not to exceed the period provided for existing employees to terminate conduct

prohibited under the institution's policies.

The FCA believes that these changes, together with the greater flexibility in defining exceptions to prohibited lending and borrowing relationships, will enable institutions to fashion standards-of-conduct programs that are more focused on areas in which the potential for conflict is most significant without imposing ineffective, burdensome, and costly reporting requirements.

Although enhancing the disclosure of financial information and reporting of conflicts of interest was the purpose of section 514 of the 1992 Act, the experience of the FCA in implementing Uniform Standards of Ethical Conduct for Executive Branch Employees is that training employees to recognize situations that present conflicts of interest is also an effective use of resources to prevent conflicts of interest. The FCA strongly encourages each System institution to conduct effective periodic training programs to ensure that employees are informed of the requirements of the regulations and the institution's policies and are sensitive to circumstances that give the appearance of a conflict of interest. Although the FCA believes that the responsibility to avoid actual or apparent conflicts of interest rests primarily with the individual director or employee, the institution has a responsibility to develop policies and procedures that monitor compliance with the regulation and avoid the appearance of conflict. Providing guidance and training concerning appropriate and inappropriate behavior is an effective way of achieving that end.

Section 612.2157—Joint Employees

The FCC questioned the advisability of having the supervising bank's Standards of Conduct Officer contract with an association in the district to comply with these requirements on behalf of the association and be accountable to the association's board. The FCC stated that it is not clear whether this arrangement is possible since the Standards of Conduct Officer is an officer of the bank as defined in § 612.2130(m).

The Standards of Conduct Officer does not come within the definition of "officer" in § 612.2130(m), unless the individual designated to perform the duties of the Standards of Conduct Officer satisfies the definition because of other duties. Therefore, for clarity, the position is referred to in the final regulations as the "Standards of Conduct Official" rather than "Standard of Conduct Officer," but in no way is

this action intended to diminish the importance of the position. In addition, the final regulations do not require an association to contract with the bank's Standards of Conduct Official. An association may contract with the bank for these services to be performed by an individual whom the bank has designated as the bank's Standards of Conduct Official. The final regulations also include reference to an agricultural credit bank in addition to a Farm Credit Bank to provide for the situation in which an association is supervised by such a bank.

Section 612.2160—Institution Responsibilities

No comments were received on this new section and it is adopted as proposed.

Section 612.2165—Policies and Procedures

The FCC suggested that the regulations require an institution to provide a reasonable period of time for new directors and new employees to terminate transactions, relationships, and activities that are prohibited by the regulations and the institution's standards-of-conduct policies. The Board agrees with this suggestion and adds a new paragraph (b)(9) requiring a System institution to provide a reasonable period of time for new directors and new employees to terminate transactions, relationships, and activities that are prohibited. The purpose of this revision is to clarify that a new director or employee involved in a prohibited transaction prior to election or hiring is not prohibited from accepting the position. However, such persons are required to terminate any transactions subject to prohibitions within such time period as established by institution policy, beginning with the commencement of official duties, except that such period may not exceed the period established for existing directors and employees to terminate transactions, relationships, or activities prohibited by the institution's policies.

Section 612.2170—Standards of Conduct Official

In addition to changing "Officer" to "Official," as discussed above, the final regulations add a requirement that records be maintained for all determinations made by the Standards of Conduct Official and for resolution of each case reported pursuant to this part. Also, the office within the FCA designated to receive reports under part 612 is changed to the Office of General Counsel, which also receives reports relative to part 617 of this chapter.

Section 612.2180—Enforcement

No comments were received on the proposed amendments and these actions are adopted as proposed.

Sections 612.2190 Through 612.2250

The sections regarding devotion of time to official duties, political activity, nepotism, gifts or favors, and improper use of official property are removed as proposed and the topics are required to be addressed in the institution's policy established pursuant to § 612.2165. No comments were received regarding the removal of these sections.

Section 612.2260—Standards of Conduct for Agents

No comments were received regarding this section and it is adopted as proposed.

Section 612.2270—Prohibited Purchase of System Obligations

One commenter questioned the prohibition in existing regulations on bank presidents' purchasing obligations of the Farm Credit banks and the proposed extension of this prohibition to all employees who may participate in any manner in funding activities of their institution. The Board concurs that the potential for conflict in a director's or employee's purchase of System obligations that are available for purchase by the general public through members of the selling group or in the secondary market is small. Therefore, the final regulations permit such purchases under the conditions listed in § 612.2270.

List of Subjects in 12 CFR Part 612

Agriculture, Banks, banking, Conflicts of interest, Rural areas.

For the reasons stated in the preamble, part 612 of chapter VI, title 12 of the Code of Federal Regulations is revised to read as follows:

PART 612—STANDARDS OF CONDUCT

Sec.	
612.2130	Definitions.
612.2135	Director and employee responsibilities and conduct—generally.
612.2140	Directors—prohibited conduct.
612.2145	Director reporting.
612.2150	Employees—prohibited conduct.
612.2155	Employee reporting.
612.2157	Joint employees.
612.2160	Institution responsibilities.
612.2165	Policies and procedures.
612.2170	Standards of Conduct Official.
612.2260	Standards of conduct for agents.
612.2270	Purchase of System obligations.

Authority: Secs. 5.9, 5.17, 5.19 of the Farm Credit Act (12 U.S.C. 2243, 2252, 2254).

§ 612.2130 Definitions.

For purposes of this part, the following terms are defined:

(a) *Agent* means any person, other than a director or employee, who represents a System institution in contacts with third parties or who provides professional services to a System institution, such as legal, accounting, appraisal, and other similar services.

(b) A *conflict of interest* or the appearance thereof exists when a person has a financial interest in a transaction, relationship, or activity that actually affects or has the appearance of affecting the person's ability to perform official duties and responsibilities in a totally impartial manner and in the best interest of the employing institution when viewed from the perspective of a reasonable person with knowledge of the relevant facts.

(c) *Controlled entity* and *entity controlled by* mean an entity in which the individual, directly or indirectly, or acting through or in concert with one or more persons:

(1) Owns 5 percent or more of the equity;

(2) Owns, controls, or has the power to vote 5 percent or more of any class of voting securities; or

(3) Has the power to exercise a controlling influence over the management of policies of such entity.

(d) *Director* means a member of a board of directors.

(e) *Employee* means any salaried officer or part-time, full-time, or temporary salaried employee.

(f) *Entity* means a corporation, company, association, firm, joint venture, partnership (general or limited), society, joint stock company, trust (business or otherwise), fund, or other organization or institution, except System institutions.

(g) *Family* means an individual and spouse and anyone having the following relationship to either: parents, spouse, son, daughter, sibling, stepparent, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, uncle, aunt, nephew, niece, grandparent, grandson, granddaughter, and the spouses of the foregoing.

(h) *Financial interest* means an interest in an activity, transaction, property, or relationship with a person or an entity that involves receiving or providing something of monetary value or other present or deferred compensation.

(i) *Financially obligated with* means having a joint legally enforceable obligation with, being financially obligated on behalf of (contingently or otherwise), having an enforceable legal

obligation secured by property owned by another, or owning property that secures an enforceable legal obligation of another.

(j) *Material*, when applied to a financial interest or transaction or series of transactions, means that the interest or transaction or series of transactions is of such magnitude that a reasonable person with knowledge of the relevant facts would question the ability of the person who has the interest or is party to such transaction(s) to perform his or her official duties objectively and impartially and in the best interest of the institution and its statutory purpose.

(k) *Mineral interest* means any interest in minerals, oil, or gas, including, but not limited to, any right derived directly or indirectly from a mineral, oil, or gas lease, deed, or royalty conveyance.

(l) *OFI* means other financing institutions that have established an access relationship with a Farm Credit Bank or an agricultural credit bank under section 1.7(b)(1)(B) of the Act.

(m) *Officer* means the chief executive officer, president, chief operating officer, vice president, secretary, treasurer, general counsel, chief financial officer, and chief credit officer of each System institution, and any person not so designated who holds a similar position of authority.

(n) *Ordinary course of business*, when applied to a transaction, means: (1) A transaction that is usual and customary between two persons who are in business together; or

(2) A transaction with a person who is in the business of offering the goods or services that are the subject of the transaction on terms that are not preferential. Preferential means that the transaction is not on the same terms as those prevailing at the same time for comparable transactions for other persons who are not directors or employees of a System institution.

(o) *Person* means individual or entity.

(p) *Relative* means any member of the family as defined in paragraph (g) of this section.

(q) *Service organization* means each service organization authorized by section 4.25 of the Act, and each unincorporated service organization formed by one or more System institutions.

(r) *Standards of Conduct Official* means the official designated under § 612.2170 of these regulations.

(s) *Supervised institution* is a term which only applies within the context of a System bank or an employee of a System bank and refers to each association supervised by that bank.

(t) *Supervising institution* is a term that only applies within the context of

an association or an employee of an association and refers to the bank that supervises that association.

(u) *System institution* and *institution* mean any bank, association, or service organization in the Farm Credit System, including the Farm Credit Banks, banks for cooperatives, agricultural credit banks, Federal land bank associations, agricultural credit associations, Federal land credit associations, production credit associations, the Federal Farm Credit Banks Funding Corporation, and service organizations.

§ 612.2135 Director and employee responsibilities and conduct—generally.

(a) Directors and employees of all System institutions shall maintain high standards of industry, honesty, integrity, impartiality, and conduct in order to ensure the proper performance of System business and continued public confidence in the System and each of its institutions. The avoidance of misconduct and conflicts of interest is indispensable to the maintenance of these standards.

(b) To achieve these high standards of conduct, directors and employees shall observe, to the best of their abilities, the letter and intent of all applicable local, state, and Federal laws and regulations and policy statements, instructions, and procedures of the Farm Credit Administration and System institutions and shall exercise diligence and good judgment in carrying out their duties, obligations, and responsibilities.

§ 612.2140 Directors—prohibited conduct.

A director of a System institution shall not:

(a) Participate, directly or indirectly, in deliberations on, or the determination of, any matter affecting, directly or indirectly, the financial interest of the director, any relative of the director, any person residing in the director's household, any business partner of the director, or any entity controlled by the director or such persons (alone or in concert), except those matters of general applicability that affect all shareholders/borrowers in a nondiscriminatory way, e.g., a determination of interest rates.

(b) Divulge or make use of, except in the performance of official duties, any fact, information, or document not generally available to the public that is acquired by virtue of serving on the board of a System institution.

(c) Use the director's position to obtain or attempt to obtain special advantage or favoritism for the director, any relative of the director, any person residing in the director's household, any business partner of the director, any entity controlled by the director or such

persons (alone or in concert), any other System institution, or any person transacting business with the institution, including borrowers and loan applicants.

(d) Use the director's position or information acquired in connection with the director's position to solicit or obtain, directly or indirectly, any gift, fee, or other present or deferred compensation or for any other personal benefit on behalf of the director, any relative of the director, any person residing in the director's household, any business partner of the director, any entity controlled by the director or such persons (alone or in concert), any other System institution, or any person transacting business with the institution, including borrowers and loan applicants.

(e) Accept, directly or indirectly, any gift, fee, or other present or deferred compensation that is offered or could reasonably be viewed as being offered to influence official action or to obtain information that the director has access to by reason of serving on the board of a System institution.

(f) Knowingly acquire, directly or indirectly, except by inheritance or through public auction or open competitive bidding available to the general public, any interest in any real or personal property, including mineral interests, that was owned by the employing, supervising, or any supervised institution within the preceding 12 months and that had been acquired by any such institution as a result of foreclosure or similar action; provided, however, a director shall not acquire any such interest in real or personal property if he or she participated in the deliberations or decision to foreclose or to dispose of the property or in establishing the terms of the sale.

(g) Directly or indirectly borrow from, lend to, or become financially obligated with or on behalf of a director, employee, or agent of the employing, supervising, or a supervised institution or a borrower or loan applicant of the employing institution, unless:

(1) The transaction is with a relative or any person residing in the director's household;

(2) The transaction is undertaken in an official capacity in connection with the institution's discounting, lending, or participation relationships with OFIs and other lenders; or

(3) The Standards of Conduct Official determines, pursuant to policies and procedures adopted by the board, that the potential for conflict is insignificant because the transaction is in the ordinary course of business or is not

material in amount and the director does not participate in the determination of any matter affecting the financial interests of the other party to the transaction except those matters affecting all shareholders/borrowers in a nondiscriminatory way.

(h) Violate an institution's policies and procedures governing standards of conduct.

§ 612.2145 Director reporting.

(a) Annually, as of the institution's fiscal year end, and at such other times as may be required to comply with paragraph (c) of this section, each director shall file a written and signed statement with the Standards of Conduct Official that fully discloses:

(1) The names of any immediate family members as defined in § 620.1(e) of this chapter, or affiliated organizations, as defined in § 620.1(a) of this chapter, who had transactions with the institution at any time during the year;

(2) Any matter required to be disclosed by § 620.5(k) of this chapter; and

(3) Any additional information the institution may require to make the disclosures required by part 620 of this chapter.

(b) Each director shall, at such intervals as the institution's board shall determine is necessary to effectively enforce this regulation and the institution's standards-of-conduct policy adopted pursuant to § 612.2165, file a written and signed statement with the Standards of Conduct Official that contains those disclosures required by the regulations and such policy. At a minimum, these requirements shall include:

(1) The name of any relative or any person residing in the director's household, business partner, or any entity controlled by the director or such persons (alone or in concert) if the director knows or has reason to know that such individual or entity transacts business with the institution or any institution supervised by the director's institution; and

(2) The name and the nature of the business of any entity in which the director has a material financial interest or on whose board the director sits if the director knows or has reason to know that such entity transacts business with:

(i) The director's institution or any institution supervised by the director's institution; or

(ii) A borrower of the director's institution or any institution supervised by the director's institution.

(c) Any director who becomes or plans to become involved in any

relationship, transaction, or activity that is required to be reported under this section or could constitute a conflict of interest shall promptly report such involvement in writing to the Standards of Conduct Official for a determination of whether the relationship, transaction, or activity is, in fact, a conflict of interest.

(d) Unless a disclosure as a director candidate under part 620 of this chapter has been made within the preceding 180 days, a newly elected or appointed director shall report matters required to be reported in paragraphs (a), (b), and (c) of this section to the Standards of Conduct Official within 30 days after the election or appointment and thereafter shall comply with the requirements of this section.

§ 612.2150 Employees—prohibited conduct.

An employee of a System institution shall not:

(a) Participate, directly or indirectly, in deliberations on, or the determination of, any matter affecting, directly or indirectly, the financial interest of the employee, any relative of the employee, any person residing in the employee's household, any business partner of the employee, or any entity controlled by the employee or such persons (alone or in concert), except those matters of general applicability that affect all shareholders/borrowers in a nondiscriminating way, e.g. a determination of interest rates.

(b) Divulge or make use of, except in the performance of official duties, any fact, information, or document not generally available to the public that is acquired by virtue of employment with a System institution.

(c) Use the employee's position to obtain or attempt to obtain special advantage or favoritism for the employee, any relative of the employee, any person residing in the employee's household, any business partner of the employee, any entity controlled by the employee or such persons (alone or in concert), any other System institution, or any person transacting business with the institution, including borrowers and loan applicants.

(d) Serve as an officer or director of an entity that transacts business with a System institution in the district or of any commercial bank, savings and loan, or other non-System financial institution, except employee credit unions. For the purposes of this paragraph, "transacts business" does not include loans by a System institution to a family-owned entity, service on the board of directors of the Federal Agricultural Mortgage

Corporation, or transactions with nonprofit entities or entities in which the System institution has an ownership interest. With the prior approval of the board of the employing institution, an employee of a Farm Credit Bank or association may serve as a director of a cooperative that borrows from a bank for cooperatives. Prior to approving an employee request, the board shall determine whether the employee's proposed service as a director is likely to cause the employee to violate any regulations in this part or the institution's policies, e.g., the requirements relating to devotion of time to official duties.

(e) Use the employee's position or information acquired in connection with the employee's position to solicit or obtain any gift, fee, or other present or deferred compensation or for any other personal benefit for the employee, any relative of the employee, any person residing in the employee's household, any business partner of the employee, any entity controlled by the employee or such persons (alone or in concert), any other System institution, or any person transacting business with the institution, including borrowers and loan applicants.

(f) Accept, directly or indirectly, any gift, fee, or other present or deferred compensation that is offered or could reasonably be viewed as being offered to influence official action or to obtain information the employee has access to by reason of employment with a System institution.

(g) Knowingly acquire, directly or indirectly, except by inheritance, any interest in any real or personal property, including mineral interests, that was owned by the employing, supervising, or any supervised institution within the preceding 12 months and that had been acquired by any such institution as a result of foreclosure or similar action.

(h) Directly or indirectly borrow from, lend to, or become financially obligated with or on behalf of a director, employee, or agent of the employing, supervising, or a supervised institution or a borrower or loan applicant of the employing institution, unless: (1) The transaction is with a relative or any person residing in the employee's household;

(2) The transaction is undertaken in an official capacity in connection with the institution's discounting, lending, or participation relationships with OFIs and other lenders; or

(3) The Standards of Conduct Official determines, pursuant to policies and procedures adopted by the board, that the potential for conflict is insignificant because the transaction is in the

ordinary course of business or is not material in amount and the employee does not participate in the determination of any matter affecting the financial interests of the other party to the transaction except those matters affecting all shareholders/borrowers in a nondiscriminatory way.

(i) Violate an institution's policies and procedures governing standards of conduct.

(j) Act as a real estate agent or broker; provided that this paragraph shall not apply to transactions involving the purchase or sale of real estate intended for the use of the employee, a member of the employee's family, or a person residing in the employee's household.

(k) Act as an agent or broker in connection with the sale and placement of insurance; provided that this paragraph shall not apply to the sale or placement of insurance authorized by section 4.29 of the Act.

§ 612.2155 Employee reporting.

(a) Annually, as of the institution's fiscal yearend, and at such other times as may be required to comply with paragraph (c) of this section, each senior officer, as defined in § 620.1(o) of this chapter, shall file a written and signed statement with the Standards of Conduct Official that fully discloses:

(1) The names of any immediate family members, as defined in § 620.1(e) of this chapter, or affiliated organizations, as defined in § 620.1(a) of this chapter, who had transactions with the institution at any time during the year;

(2) Any matter required to be disclosed by § 620.5(k) of this chapter; and

(3) Any additional information the institution may require to make the disclosures required by part 620 of this chapter.

(b) Each employee shall, at such intervals as the Board shall determine necessary to effectively enforce this regulation and the institution's standards-of-conduct policy adopted pursuant to § 612.2165, file a written and signed statement with the Standards of Conduct Official that contains those disclosures required by the regulation and such policy. At a minimum, these requirements shall include: (1) The name of any relative or any person residing in the employee's household, any business partner, or any entity controlled by the employee or such persons (alone or in concert) if the employee knows or has reason to know that such individual or entity transacts business with the employing institution or any institution supervised by the employing institution; and

(2) The name and the nature of the business of any entity in which the employee has a material financial interest or on whose board the employee sits if the employee knows or has reason to know that such entity transacts business with: (i) The employing institution or any institution supervised by the employing institution; or (ii) A borrower of the employing institution or any institution supervised by the employing institution.

(c) Any employee who becomes or plans to become involved in any relationship, transaction, or activity that is required to be reported under this section or could constitute a conflict of interest shall promptly report such involvement in writing to the Standards of Conduct Official for a determination of whether the relationship, transaction, or activity is, in fact, a conflict of interest.

(d) A newly hired employee shall report matters required to be reported in paragraphs (a), (b), and (c) of this section to the Standards of Conduct Official within 30 days after accepting an offer for employment and thereafter shall comply with the requirements of this section.

§ 612.2157 Joint employees.

No officer of a Farm Credit Bank or an agricultural credit bank may serve as an employee of an association in its district and no employee of a Farm Credit Bank or an agricultural credit bank may serve as an officer of an association in its district. Farm Credit Bank or agricultural credit bank employees other than officers may serve as employees other than officers of an association in its district provided each institution appropriately reflects the expense of such employees in its financial statements.

§ 612.2160 Institution responsibilities.

Each institution shall: (a) Ensure compliance with this part by its directors and employees and act promptly to preserve the integrity of and public confidence in the institution in any matter involving a conflict of interest, whether or not specifically addressed by this part or the policies and procedures adopted pursuant to § 612.2165;

(b) Take appropriate measures to ensure that all directors and employees are informed of the requirements of this regulation and policies and procedures adopted pursuant to § 612.2165;

(c) Adopt and implement policies and procedures that will preserve the integrity of and public confidence in the institution and the System pursuant to § 612.2165;

(d) Designate a Standards of Conduct Official pursuant to § 612.2170; and

(e) Maintain all standards-of-conduct policies and procedures, reports, investigations, determinations, and evidence of compliance with this part for a minimum of 6 years.

§ 612.2165 Policies and procedures.

(a) Each institution's board of directors shall issue, consistent with this part, policies and procedures governing standards of conduct for directors and employees.

(b) Board policies and procedures issued pursuant to paragraph (a) of this section shall reflect due consideration of the potential adverse impact of any activities permitted under the policies and shall at a minimum: (1) Establish such requirements and prohibitions as are necessary to promote public confidence in the institution and the System, preserve the integrity and independence of the supervisory process, and prevent the improper use of official property, position, or information. In developing such requirements and prohibitions, the institution shall address such issues as the hiring of relatives, political activity, devotion of time to duty, the exchange of gifts and favors among directors and employees of the employing, supervising, and supervised institution, and the circumstances under which gifts may be accepted by directors and employees from outside sources, in light of the foregoing objectives;

(2) Outline authorities and responsibilities of the Standards of Conduct Official;

(3) Establish criteria for business relationships and transactions not specifically prohibited by this part between employees or directors and borrowers, loan applicants, directors, or employees of the employing, supervised, or supervising institutions, or persons transacting business with such institutions, including OFIs or other lenders having an access or participation relationship;

(4) Establish criteria under which employees may accept outside employment or compensation;

(5) Establish conditions under which employees may receive loans from System institutions;

(6) Establish conditions under which employees may acquire an interest in real or personal property that was mortgaged to a System institution at any time within the preceding 12 months;

(7) Establish conditions under which employees may purchase any real or personal property of a System institution acquired by such institution for its operations;

(8) Provide for a reasonable period of time for directors and employees to terminate transactions, relationships, or activities that are subject to prohibitions that arise at the time of adoption or amendment of the policies.

(9) Require new directors and new employees involved at the time of election or hiring in transactions, relationships, and activities prohibited by these regulations or internal policies to terminate such transactions within the same time period established for existing directors or employees pursuant to paragraph (b)(8) of this section, beginning with the commencement of official duties, or such shorter time period as the institution may establish.

(10) Establish procedures providing for a director's or employee's recusal from official action on any matter in which he or she is prohibited from participating under these regulations or the institution's policies.

(11) Establish documentation requirements demonstrating compliance with standards-of-conduct decisions and board policy;

(12) Establish reporting requirements, consistent with this part, to enable the institution to comply with § 620.5 of this chapter, monitor conflicts of interest, and monitor recusal compliance; and

(13) Establish appeal procedures available to any employee to whom any required approval has been denied.

§ 612.2170 Standards of Conduct Official.

(a) Each institution's board shall designate a Standards of Conduct Official who shall: (1) Advise directors, director candidates, and employees concerning the provisions of this part;

(2) Receive reports required by this part;

(3) Make such determinations as are required by this part;

(4) Maintain records of actions taken to resolve and/or make determinations upon each case reported relative to provisions of this part;

(5) Make appropriate investigations, as directed by the institution's board; and

(6) Report promptly, pursuant to part 617 of this chapter, to the institution's board and the Office of General Counsel, Farm Credit Administration, all cases where: (i) A preliminary investigation indicates that a Federal criminal statute may have been violated;

(ii) An investigation results in the removal of a director or discharge of an employee; or

(iii) A violation may have an adverse impact on continued public confidence in the System or any of its institutions.

(b) The Standards of Conduct Official shall investigate or cause to be investigated all cases involving: (1) Possible violations of criminal statutes;

(2) Possible violations of §§ 612.2140 and 612.2150, and applicable policies and procedures approved under § 612.2165;

(3) Complaints received against the directors and employees of such institution; and

(4) Possible violations of other provisions of this part or when the activities or suspected activities are of a sensitive nature and could affect continued public confidence in the Farm Credit System.

(c) An association board may comply with this section by contracting with the Farm Credit Bank or agricultural credit bank in its district to provide a Standards of Conduct Official.

§ 612.2260 Standards of conduct for agents.

(a) Agents of System institutions shall maintain high standards of honesty, integrity, and impartiality in order to ensure the proper performance of System business and continued public confidence in the System and all its institutions. The avoidance of misconduct and conflicts of interest is indispensable to the maintenance of these standards.

(b) System institutions shall utilize safe and sound business practices in the engagement, utilization, and retention of agents. These practices shall provide for the selection of qualified and reputable agents. Employing System institutions shall be responsible for the administration of relationships with their agents, and shall take appropriate investigative and corrective action in the case of a breach of fiduciary duties by the agent or failure of the agent to carry out other agent duties as required by contract, FCA regulations, or law.

(c) System institutions shall be responsible for exercising corresponding special diligence and control, through good business practices, to avoid or control situations that have inherent potential for sensitivity, either real or perceived. These areas include the employment of agents who are related to directors or employees of the institutions; the solicitation and acceptance of gifts, contributions, or special considerations by agents; and the use of System and borrower information obtained in the course of the agent's association with System institutions.

§ 612.2270 Purchase of System obligations.

(a) Employees and directors of System institutions, other than the Federal Farm

Credit Banks Funding Corporation, may only purchase joint, consolidated, or Systemwide obligations that are:

(1) Part of an offering available to the general public; and

(2) Purchased through a dealer or dealer bank affiliated with a member of the selling group designated by the Federal Farm Credit Banks Funding Corporation or purchased in the secondary market.

(b) No director or employee of the Federal Farm Credit Banks Funding Corporation may purchase or otherwise acquire, directly or indirectly, except by inheritance, any joint, consolidated, or Systemwide obligation.

Dated: May 5, 1994.

Nan P. Mitchem,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 94-11496 Filed 5-12-94; 8:45 am]

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FARM CREDIT SYSTEM INSURANCE CORPORATION

12 CFR Part 1408

Collection of Claims Owed the United States

AGENCY: Farm Credit System Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Farm Credit System Insurance Corporation (Corporation), by the Farm Credit System Insurance Corporation Board, adopts final regulations implementing the Debt Collection Act of 1982. This action provides procedures for the Corporation to administer claims owed to the United States arising from activities under Corporation jurisdiction. The Corporation is required by law to issue these regulations.

EFFECTIVE DATE: June 13, 1994.

FOR FURTHER INFORMATION CONTACT:

Philip J. Shebest, Senior Attorney, Office of General Counsel, Farm Credit System Insurance Corporation, McLean, VA 22102-0826, (703) 883-4020, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: These regulations implement the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982 (Pub. L. 97-365, 96 Stat. 1749) (31 U.S.C. 3701-3719 and 5 U.S.C. 5114). In addition, these regulations supplement the regulations published jointly by the General Accounting Office and the Department of Justice (4 CFR parts 101-105).

The proposed regulations were published on November 8, 1993, 58 FR

59215. The Corporation received no public comments. In addition, the Office of Personnel Management, on April 1, 1994, approved the proposed regulations for publication as final regulations in accordance with section 8 (1) of Executive Order 11609, as redesignated by Executive Order 12107, and 5 CFR 550.1105. As a result, the proposed regulations are being adopted in final form without any changes in the regulatory text.

List of Subjects in 12 CFR Part 1408

Government, Claims, Collection.

For the reasons stated in the preamble, part 1408 of chapter XIV, title 12 of the Code of Federal Regulations is added to read as follows:

PART 1408—COLLECTION OF CLAIMS OWED THE UNITED STATES

Subpart A—Administrative Collection of Claims

Sec.

- 1408.1 Authority.
- 1408.2 Applicability.
- 1408.3 Definitions.
- 1408.4 Delegation of authority.
- 1408.5 Responsibility for collection.
- 1408.6 Demand for payment.
- 1408.7 Right to inspect and copy records.
- 1408.8 Right to offer to repay claim.
- 1408.9 Right to agency review.
- 1408.10 Review procedures.
- 1408.11 Special review.
- 1408.12 Charges for interest, administrative costs, and penalties.
- 1408.13 Contracting for collection services.
- 1408.14 Reporting of credit information.
- 1408.15 Credit report.

Subpart B—Administrative Offset

- 1408.20 Applicability.
- 1408.21 Collection by offset.
- 1408.22 Notice requirements before offset.
- 1408.23 Right to review of claim.
- 1408.24 Waiver of procedural requirements.
- 1408.25 Coordinating offset with other Federal agencies.
- 1408.26 Stay of offset.
- 1408.27 Offset against amounts payable from Civil Service Retirement and Disability Fund.

Subpart C—Offset Against Salary

- 1408.35 Purpose.
- 1408.36 Applicability of regulations.
- 1408.37 Definitions.
- 1408.38 Waiver requests and claims to the General Accounting Office.
- 1408.39 Procedures for salary offset.
- 1408.40 Refunds.
- 1408.41 Requesting current paying agency to offset salary.
- 1408.42 Responsibility of the Corporation as the paying agency.
- 1408.43 Nonwaiver of rights by payments.

Authority: Sec. 5.58 of the Farm Credit Act (12 U.S.C. 2277a-7); 31 U.S.C. 3701-3719; 5 U.S.C. 5514; 4 CFR parts 101-105; 5 CFR part 550.

Subpart A—Administrative Collection of Claims

§ 1408.1 Authority.

The regulations of this part are issued under the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982, 31 U.S.C. 3701-3719 and 5 U.S.C. 5514, and in conformity with the joint regulations issued under that Act by the General Accounting Office and the Department of Justice (joint regulations) prescribing standards for administrative collection, compromise, suspension, and termination of agency collection actions, and referral to the General Accounting Office and to the Department of Justice for litigation of civil claims for money or property owed to the United States (4 CFR parts 101-105).

§ 1408.2 Applicability.

This part applies to all claims of indebtedness due and owing to the United States and collectible under procedures authorized by the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982. The joint regulations and this part do not apply to conduct in violation of antitrust laws, tax claims, claims between Federal agencies, or to any claim which appears to involve fraud, presentation of a false claim, or misrepresentation on the part of the debtor or any other party having an interest in the claim, unless the Justice Department authorizes the Farm Credit System Insurance Corporation, pursuant to 4 CFR 101.3, to handle the claim in accordance with the provisions of 4 CFR parts 101 through 105. Additionally, this part does not apply to Farm Credit System Insurance Corporation's premiums regulations under part 1410 of this chapter.

§ 1408.3 Definitions.

In this part (except where the term is defined elsewhere in this part), the following definitions shall apply:

(a) *Administrative offset* or *offset*, as defined in 31 U.S.C. 3701(a)(1), means withholding money payable by the United States Government to, or held by the Government for, a person to satisfy a debt the person owes the Government.

(b) *Agency* means a department, agency, or instrumentality in the executive or legislative branch of the Government.

(c) *Claim* or *debt* means money or property owed by a person or entity to an agency of the Federal Government. A "claim" or "debt" includes amounts due the Government from loans insured by or guaranteed by the United States and all other amounts due from fees,

leases, rents, royalties, services, sales of real or personal property, overpayment, penalties, damages, interest, and fines.

(d) *Claim certification* means a creditor agency's written request to a paying agency to effect an administrative offset.

(e) *Corporation* means the Farm Credit System Insurance Corporation.

(f) *Creditor agency* means an agency to which a claim or debt is owed.

(g) *Debtor* means the person or entity owing money to the Federal Government.

(h) *Hearing official* means an individual who is responsible for reviewing a claim under § 1408.10.

(i) *Paying agency* means an agency of the Federal Government owing money to a debtor against which an administrative or salary offset can be effected.

(j) *Salary offset* means an administrative offset to collect a debt under 5 U.S.C. 5514 by deductions at one or more officially established pay intervals from the current pay account of a debtor.

§ 1408.4 Delegation of authority.

The Corporation official(s) designated by the Chairman of the Farm Credit System Insurance Corporation are authorized to perform all duties which the Chairman is authorized to perform under these regulations, the Federal Claims Collection Act of 1966, as amended, and the joint regulations issued under that Act.

§ 1408.5 Responsibility for collection.

(a) The collection of claims shall be aggressively pursued in accordance with the provisions of the Federal Claims Collection Act of 1966, as amended, the joint regulations issued under that Act, and these regulations. Debts owed to the United States, together with charges for interest, penalties, and administrative costs, should be collected in one lump sum unless otherwise provided by law. If a debtor requests installment payments, the debtor, as requested by the Corporation, shall provide sufficient information to demonstrate that the debtor is unable to pay the debt in one lump sum. When appropriate, the Corporation shall arrange an installment payment schedule. Claims which cannot be collected directly or by administrative offset shall be either written off as administratively uncollectible or referred to the General Counsel for further consideration.

(b) The Chairman, or designee of the Chairman, may compromise claims for money or property arising out of the activities of the Corporation, where the claim (exclusive of charges for interest,

penalties, and administrative costs) does not exceed \$100,000. When the claim exceeds \$100,000 (exclusive of charges for interest, penalties, and administrative costs), the authority to accept a compromise rests solely with the Department of Justice. The standards governing the compromise of claims are set forth in 4 CFR part 103.

(c) The Chairman, or designee of the Chairman, may suspend or terminate the collection of claims which do not exceed \$100,000 (exclusive of charges for interest, penalties, and administrative costs) after deducting the amount of any partial payments or collections. If, after deducting the amount of any partial payments or collections, a claim exceeds \$100,000 (exclusive of charges for interest, penalties, and administrative costs), the authority to suspend or terminate rests solely with the Department of Justice. The standards governing the suspension or termination of claim collections are set forth in 4 CFR part 104.

(d) The Corporation shall refer claims to the Department of Justice for litigation or to the General Accounting Office (GAO) for claims arising from audit exceptions taken by the GAO to payments made by the Corporation in accordance with 4 CFR part 105.

§ 1408.6 Demand for payment.

(a) A total of three progressively stronger written demands at not more than 30-day intervals should normally be made upon a debtor, unless a response or other information indicates that additional written demands would either be unnecessary or futile. When necessary to protect the Government's interest, written demands may be preceded by other appropriate actions under Federal law, including immediate referral for litigation and/or administrative offset.

(b) The initial demand for payment shall be in writing and shall inform the debtor of the following:

- (1) The amount of the debt, the date it was incurred, and the facts upon which the determination of indebtedness was made;
- (2) The payment due date, which shall be 30 calendar days from the date of mailing or hand delivery of the initial demand for payment;
- (3) The right of the debtor to inspect and copy the records of the agency related to the claim or to receive copies if personal inspection is impractical. The debtor shall be informed that the debtor may be assessed for the cost of copying the documents in accordance with § 1408.7;

(4) The right of the debtor to obtain a review of the Corporation's determination of indebtedness;

(5) The right of the debtor to offer to enter into a written agreement with the agency to repay the amount of the claim. The debtor shall be informed that the acceptance of such an agreement is discretionary with the agency;

(6) That charges for interest, penalties, and administrative costs will be assessed against the debtor, in accordance with 31 U.S.C. 3717, if payment is not received by the payment due date;

(7) That if the debtor has not entered into an agreement with the Corporation to pay the debt, has not requested the Corporation to review the debt, or has not paid the debt by the payment due date, the Corporation intends to collect the debt by all legally available means, which may include initiating legal action against the debtor, referring the debt to a collection agency for collection, collecting the debt by offset, or asking other Federal agencies for assistance in collecting the debt by offset;

(8) The name and address of the Corporation official to whom the debtor shall send all correspondence relating to the debt; and

(9) Other information, as may be appropriate.

(c) If, prior to, during, or after completion of the demand cycle, the Corporation determines to collect the debt by either administrative or salary offset, the Corporation shall follow, as applicable, the requirements for a Notice of Intent to Collect by Administrative Offset or a Notice of Intent to Collect by Salary Offset set forth in § 1408.22.

(d) If no response to the initial demand for payment is received by the payment due date, the Corporation shall take further action under this part, under the Federal Claims Collection Act of 1966, as amended, under the joint regulations (4 CFR parts 101-105), or under any other applicable State or Federal law. These actions may include reports to credit bureaus, referrals to collection agencies, termination of contracts, debarment, and salary or administrative offset.

§ 1408.7 Right to inspect and copy records.

The debtor may inspect and copy the Corporation records related to the claim. The debtor shall give the Corporation reasonable advanced notice that he/she intends to inspect and copy the records involved. The debtor shall pay copying costs unless they are waived by the Corporation. Copying costs shall be

assessed pursuant to § 1402.22 of this chapter.

§ 1408.8 Right to offer to repay claim.

(a) The debtor may offer to enter into a written agreement with the Corporation to repay the amount of the claim. The acceptance of such an offer and the decision to enter into such a written agreement is at the discretion of the Corporation.

(b) If the debtor requests a repayment arrangement because payment of the amount due would create a financial hardship, the Corporation shall analyze the debtor's financial condition. The Corporation may enter into a written agreement with the debtor permitting the debtor to repay the debt in installments if the Corporation determines, in its sole discretion, that payment of the amount due would create an undue financial hardship for the debtor. The written agreement shall set forth the amount and frequency of installment payments and shall, in accordance with § 1408.12, provide for the imposition of charges for interest, penalties, and administrative costs unless waived by the Corporation.

(c) The written agreement may require the debtor to execute a confession-judgment note when the total amount of the deferred installments will exceed \$750. The Corporation shall provide the debtor with a written explanation of the consequences of signing a confession-judgment note. The debtor shall sign a statement acknowledging receipt of the written explanation. The statement shall recite that the written explanation was read and understood before execution of the note and that the debtor signed the note knowingly and voluntarily. Documentation of these procedures will be maintained in the Corporation's file on the debtor.

§ 1408.9 Right to agency review.

(a) If the debtor disputes the claim, the debtor may request a review of the Corporation's determination of the existence of the debt or of the amount of the debt. If only part of the claim is disputed, the undisputed portion should be paid by the payment due date.

(b) To obtain a review, the debtor shall submit a written request for review to the Corporation official named in the initial demand letter, within 15 calendar days after receipt of the letter. The debtor's request for review shall state the basis on which the claim is disputed.

(c) The Corporation shall promptly notify the debtor, in writing, that the Corporation has received the request for review. The Corporation shall conduct

its review of the claim in accordance with § 1408.10.

(d) Upon completion of its review of the claim, the Corporation shall notify the debtor whether the Corporation's determination of the existence or amount of the debt has been sustained, amended, or canceled. The notification shall include a copy of the written decision issued by the hearing official pursuant to § 1408.10(e). If the Corporation's determination is sustained, this notification shall contain a provision which states that the Corporation intends to collect the debt by all legally available means, which may include initiating legal action against the debtor, referring the debt to a collection agency for collection, collecting the debt by offset, or asking other Federal agencies for assistance in collecting the debt by offset.

§ 1408.10 Review procedures.

(a) Unless an oral hearing is required by § 1408.23(d), the Corporation's review shall be a review of the written record of the claim.

(b) If an oral hearing is required under § 1408.23(d) the Corporation shall provide the debtor with a reasonable opportunity for such a hearing. The oral hearing, however, shall not be an adversarial adjudication and need not take the form of a formal evidentiary hearing. All significant matters discussed at the hearing, however, will be carefully documented.

(c) Any review required by this part, whether a review of the written record or an oral hearing, shall be conducted by a hearing official. In the case of a salary offset, the hearing official shall not be under the supervision or control of the Chairman of the Farm Credit System Insurance Corporation.

(d) The Corporation may be represented by legal counsel. The debtor may represent himself or herself or may be represented by an individual of the debtor's choice and at the debtor's expense.

(e) The hearing official shall issue a final written decision based on documentary evidence and, if applicable, information developed at an oral hearing. The written decision shall be issued as soon as practicable after the review but not later than 60 days after the date on which the request for review was received by the Corporation, unless the debtor requests a delay in the proceedings. A delay in the proceedings shall be granted if the hearing official determines, in his or her sole discretion, that there is good cause to grant the delay. If a delay is granted, the 60-day decision period shall be extended by the

number of days by which the review was postponed.

(f) Upon issuance of the written opinion, the Corporation shall promptly notify the debtor of the hearing official's decision. Said notification shall include a copy of the written decision issued by the hearing official pursuant to paragraph (e) of this section.

§ 1408.11 Special review.

(a) An employee subject to salary offset, under subpart C of this part, or a voluntary repayment agreement, may, at any time, request a special review by the Corporation of the amount of the salary offset or voluntary repayment, based on materially changed circumstances such as, but not limited to, catastrophic illness, divorce, death, or disability.

(b) To determine whether an offset would prevent the employee from meeting essential subsistence expenses (costs incurred for food, housing, clothing, transportation, and medical care), the employee shall submit a detailed statement and supporting documents for the employee, his or her spouse, and dependents indicating:

- (1) Income from all sources;
- (2) Assets;
- (3) Liabilities;
- (4) Number of dependents;
- (5) Expenses for food, housing, clothing, and transportation;
- (6) Medical expenses; and
- (7) Exceptional expenses, if any.

(c) If the employee requests a special review under this section, the employee shall file an alternative proposed offset or payment schedule and a statement, with supporting documents, showing why the current salary offset or payments result in an extreme financial hardship to the employee.

(d) The Corporation shall evaluate the statement and supporting documents, and determine whether the original offset or repayment schedule imposes an undue financial hardship on the employee. The Corporation shall notify the employee in writing of such determination, including, if appropriate, a revised offset or payment schedule.

§ 1408.12 Charges for interest, administrative costs, and penalties.

(a) Except as provided in paragraph (d) of this section, the Corporation shall:

- (1) Assess interest on unpaid claims;
- (2) Assess administrative costs incurred in processing and handling overdue claims; and
- (3) Assess penalty charges not to exceed 6 percent a year on any part of a debt more than 90 days past due.

The imposition of charges for interest, administrative costs, and penalties shall

be made in accordance with 31 U.S.C. 3717.

(b)(1) Interest shall accrue from the date of mailing or hand delivery of the initial demand for payment or the Notice of Intent to Collect by either Administrative or Salary Offset if the amount of the claim is not paid within 30 days from the date of mailing or hand delivery of the initial demand or notice.

(2) The 30-day period may be extended on a case-by-case basis if the Corporation reasonably determines that such action is appropriate. Interest shall only accrue on the principal of the claim and the interest rate shall remain fixed for the duration of the indebtedness, except, as provided in paragraph (c) of this section, in cases where a debtor has defaulted on a repayment agreement and seeks to enter into a new agreement, or if the Corporation reasonably determines that a higher rate is necessary to protect the interests of the United States.

(c) If a debtor defaults on a repayment agreement and seeks to enter into a new agreement, the Corporation may assess a new interest rate on the unpaid claim. In addition, charges for interest, administrative costs, and penalties which accrued but were not collected under the original repayment agreement shall be added to the principal of the claim to be paid under the new repayment agreement. Interest shall accrue on the entire principal balance of the claim, as adjusted to reflect any increase resulting from the addition of these charges.

(d) The Corporation may waive charges for interest, administrative costs, and/or penalties if it determines that: (1) The debtor is unable to pay any significant sum toward the claim within a reasonable period of time;

(2) Collection of charges for interest, administrative costs, and/or penalties would jeopardize collection of the principal of the claim;

(3) Collection of charges for interest, administrative costs, or penalties would be against equity and good conscience; or

(4) It is otherwise in the best interest of the United States, including the situation where an installment payment agreement or offset is in effect.

§ 1408.13 Contracting for collection services.

The Chairman, or designee of the Chairman, may contract for collection services in accordance with 31 U.S.C. 3718 and 4 CFR 102.6 to recover debts.

§ 1408.14 Reporting of credit information.

The Chairman, or designee of the Chairman, may disclose to a consumer

reporting agency information that an individual is responsible for a debt owed to the United States. Information will be disclosed to reporting agencies in accordance with the terms and conditions of agreements entered into between the Corporation and the reporting agencies. The terms and conditions of such agreements shall specify that all of the rights and protection afforded to the debtor under 31 U.S.C. 3711(f) have been fulfilled. The Corporation shall notify each consumer reporting agency, to which a claim was disclosed, when the debt has been satisfied.

§ 1408.15 Credit report.

In order to aid the Corporation in making appropriate determinations regarding the collection and compromise of claims; the collection of charges for interest, administrative costs, and penalties; the use of administrative offset; the use of other collection methods; and the likelihood of collecting the claim, the Corporation may institute, consistent with the provisions of the Fair Credit Reporting Act (15 U.S.C. 1681, et seq.), a credit investigation of the debtor immediately following a determination that the claim exists.

Subpart B—Administrative Offset

§ 1408.20 Applicability.

(a) The provisions of this subpart shall apply to the collection of debts by administrative [or salary] offset under 31 U.S.C. 3716, 5 U.S.C. 5514, or other statutory or common law.

(b) Offset shall not be used to collect a debt more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known by the official or officials of the Government who were charged with the responsibility of discovering and collecting such debt.

(c) Offset shall not be used with respect to: (1) Debts owed by other agencies of the United States or by any State or local government;

(2) Debts arising under or payments made under the Social Security Act, the Internal Revenue Code of 1986, as amended, or tariff laws of the United States; or

(3) Any case in which collection by offset of the type of debt involved is explicitly provided for or prohibited by another statute.

(d) Unless otherwise provided by contract or law, debts or payments which are not subject to offset under 31

U.S.C. 3716 or 5 U.S.C. 5514 may be collected by offset if such collection is authorized under common law or other applicable statutory authority.

§ 1408.21 Collection by offset.

(a) Collection of a debt by administrative [or salary] offset shall be accomplished in accordance with the provisions of these regulations, 4 CFR 102.3, and 5 CFR part 550, subpart K. It is not necessary for the debt to be reduced to judgment or to be undisputed for offset to be used.

(b) The Chairman, or designee of the Chairman, may determine that it is feasible to collect a debt to the United States by offset against funds payable to the debtor.

(c) The feasibility of collecting a debt by offset will be determined on a case-by-case basis. This determination shall be made by considering all relevant factors, including the following: (1) The degree to which the offset can be accomplished in accordance with law. This determination should take into consideration relevant statutory, regulatory, and contractual requirements;

(2) The degree to which the Corporation is certain that its determination of the existence and amount of the debt is correct;

(3) The practicality of collecting the debt by offset. The cost, in time and money, of collecting the debt by offset and the amount of money which can reasonably be expected to be recovered through offset will be relevant to this determination; and

(4) Whether the use of offset will substantially interfere with or defeat the purpose of a program authorizing payments against which the offset is contemplated. For example, under a grant program in which payments are made in advance of the grantee's performance, the imposition of offset against such a payment may be inappropriate.

(d) The collection of a debt by offset may not be feasible when there are circumstances which would indicate that the likelihood of collection by offset is less than probable.

(e) The offset will be effected 31 days after the debtor receives a Notice of Intent to Collect by Administrative Offset (or Notice of Intent to Collect by Salary Offset if the offset is a salary offset), or upon the expiration of a stay of offset, unless the Corporation determines under § 1408.24 that immediate action is necessary.

(f) If the debtor owes more than one debt, amounts recovered through offset may be applied to them in any order. Applicable statutes of limitation would

be considered before applying the amounts recovered to any debts owed.

§ 1408.22 Notice requirements before offset.

(a) Except as provided in § 1408.24, the Corporation will provide the debtor with 30 calendar days' written notice that unpaid debt amounts shall be collected by administrative [or salary] offset (Notice of Intent to Collect by Administrative [or Salary] Offset) before the Corporation imposes offset against any money that is to be paid to the debtor.

(b) The Notice of Intent to Collect by Administrative [or Salary] Offset shall be delivered to the debtor by hand or by mail and shall provide the following information:

(1) The amount of the debt, the date it was incurred, and the facts upon which the determination of indebtedness was made;

(2) In the case of an administrative offset, the payment due date, which shall be 30 calendar days from the date of mailing or hand delivery of the Notice;

(3) In the case of a salary offset:

(i) The Corporation's intention to collect the debt by means of deduction from the employee's current disposable pay account until the debt and all accumulated interest is paid in full; and

(ii) The amount, frequency, proposed beginning date, and duration of the intended deductions;

(4) The right of the debtor to inspect and copy the records of the Corporation related to the claim or to receive copies if personal inspection is impractical. The debtor shall be informed that he/she shall be assessed for the cost of copying the documents in accordance with § 1408.7 of this part;

(5) The right of the debtor to obtain a review of, and to request a hearing, on the Corporation's determination of indebtedness, the propriety of collecting the debt by offset, and, in the case of salary offset, the propriety of the proposed repayment schedule (i.e., the percentage of disposable pay to be deducted each pay period). The debtor shall be informed that to obtain a review, the debtor shall deliver a written request for a review to the Corporation official named in the Notice, within 15 calendar days after the debtor's receipt of the Notice. In the case of a salary offset, the debtor shall also be informed that the review shall be conducted by an official arranged for by the Corporation who shall be a hearing official not under the control of the Chairman of the Farm Credit System Insurance Corporation, or an administrative law judge;

(6) That the filing of a petition for hearing within 15 calendar days after receipt of the Notice will stay the commencement of collection proceedings;

(7) That a final decision on the hearing (if one is requested) will be issued at the earliest practical date, but not later than 60 days after the filing of the written request for review unless the employee requests, and the hearing official grants, a delay in the proceedings;

(8) The right of the debtor to offer to enter into a written agreement with the Corporation to repay the amount of the claim. The debtor shall be informed that the acceptance of such an agreement is discretionary with the Corporation;

(9) That charges for interest, penalties, and administrative costs shall be assessed against the debtor, in accordance with 31 U.S.C. 3717, if payment is not received by the payment due date. The debtor shall be informed that such assessments must be made unless excused in accordance with the Federal Claims Collection Standards (4 CFR parts 103 and 104);

(10) The amount of accrued interest and the amount of any other penalties or administrative costs which may have been added to the principal debt;

(11) That if the debtor has not entered into an agreement with the Corporation to pay the debt, has not requested the Corporation to review the debt, or has not paid the debt prior to the date on which the offset is to be imposed, the Corporation intends to collect the debt by administrative [or salary] offset or by requesting other Federal agencies for assistance in collecting the debt by offset. The debtor shall be informed that the offset shall be imposed against any funds that might become available to the debtor, until the principal debt and all accumulated interest and other charges are paid in full;

(12) The date on which the offset will be imposed, which shall be 31 calendar days from the date of mailing or hand delivery of the Notice. The debtor shall be informed that the Corporation reserves the right to impose an offset prior to this date if the Corporation determines that immediate action is necessary;

(13) That any knowingly false or frivolous statements, representations, or evidence may subject the debtor to:

(i) Penalties under the False Claims Act, 31 U.S.C. 3729 through 3731, or any other applicable statutory authority;

(ii) Criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002, or any other applicable statutory authority; and, with regard to employees,

(iii) Disciplinary procedures appropriate under 5 U.S.C. chapter 75; 5 CFR part 752, or any other applicable statute or regulation;

(14) The name and address of the Corporation official to whom the debtor shall send all correspondence relating to the debt or the offset;

(15) Any other rights and remedies available to the debtor under statutes or regulations governing the program for which the collection is being made;

(16) That unless there are applicable contractual or statutory provisions to the contrary, amounts paid on or deducted for the debt, which are later waived or found not owed to the United States, will be promptly refunded to the employee; and

(17) Other information, as may be appropriate.

(c) When the procedural requirements of this section have been provided to the debtor in connection with the same debt or under some other statutory or regulatory authority, the Corporation is not required to duplicate those requirements before effecting offset.

§ 1408.23 Right to review of claim.

(a) If the debtor disputes the claim, the debtor may request a review of the Corporation's determination of the existence of the debt, the amount of the debt, the propriety of collecting the debt by offset, and in the case of salary offset, the propriety of the proposed repayment schedule. If only part of the claim is disputed, the undisputed portion should be paid by the payment due date.

(b) To obtain a review, the debtor shall submit a written request for review to the Corporation official named in the Notice of Intent to Collect by Administrative [or Salary] Offset within 15 calendar days after receipt of the notice. The debtor's written request for review shall state the basis on which the claim is disputed and shall specify whether the debtor requests an oral hearing or a review of the written record of the claim. If an oral hearing is requested, the debtor shall explain in the request why the matter cannot be resolved by a review of the documentary evidence alone.

(c) The Corporation shall promptly notify the debtor, in writing, that the Corporation has received the request for review. The Corporation shall conduct its review of the claim in accordance with § 1408.10.

(d) The Corporation's review of the claim, under this section, shall include providing the debtor with a reasonable opportunity for an oral hearing if:

(1) An applicable statute authorizes or requires the Corporation to consider

waiver of the indebtedness, the debtor requests waiver of the indebtedness, and the waiver determination turns on an issue of credibility or veracity; or

(2) The debtor requests reconsideration of the debt and the Corporation determines that the question of the indebtedness cannot be resolved by reviewing the documentary evidence; for example, when the validity of the debt turns on an issue of credibility or veracity.

(e) A debtor waives the right to a hearing and will have his or her debt offset in accordance with the proposed offset schedule if the debtor:

(1) Fails to file a written request for review within the timeframe set forth in paragraph (b) of this section, unless the Corporation determines that the delay was the result of circumstances beyond his or her control; or

(2) Fails to appear at an oral hearing of which he or she was notified unless the hearing official determines that the failure to appear was due to circumstances beyond the employee's control.

(f) Upon completion of its review of the claim, the Corporation shall notify the debtor whether the Corporation's determination of the existence or amount of the debt has been sustained, amended, or canceled. The notification shall include a copy of the written decision issued by the hearing official, pursuant to § 1408.10(e). If the Corporation's determination is sustained, this notification shall contain a provision which states that the Corporation intends to collect the debt by offset or by requesting other Federal agencies for assistance in collecting the debt.

(g) When the procedural requirements of this section have been provided to the debtor in connection with the same debt or under some other statutory or regulatory authority, the Corporation is not required to duplicate those requirements before effecting offset.

§ 1408.24 Waiver of procedural requirements.

(a) The Corporation may impose offset against a payment to be made to a debtor prior to the completion of the procedures required by this part, if:

(1) Failure to impose the offset would substantially prejudice the Government's ability to collect the debt; and

(2) The timing of the payment against which the offset will be imposed does not reasonably permit the completion of those procedures.

(b) The procedures required by this part shall be complied with promptly after the offset is imposed. Amounts

recovered by offset, which are later found not to be owed to the Government, shall be promptly refunded to the debtor.

§ 1408.25 Coordinating offset with other Federal agencies.

(a)(1) Any creditor agency which requests the Corporation to impose an offset against amounts owed to the debtor shall submit to the Corporation a claim certification which meets the requirements of this paragraph. The Corporation shall submit the same certification to any agency that the Corporation requests to effect an offset.

(2) The claim certification shall be in writing. It shall certify the debtor owes the debt and that all of the applicable requirements of 31 U.S.C. 3716 and 4 CFR part 102 have been met. If the intended offset is to be a salary offset, a claim certification shall instead certify that the debtor owes the debt and that the applicable requirements of 5 U.S.C. 5514 and 5 CFR part 550, subpart K, have been met.

(3) A certification that the debtor owes the debt shall state the amount of the debt, the factual basis supporting the determination of indebtedness, and the date on which payment of the debt was due. A certification that the requirements of 31 U.S.C. 3716 and 4 CFR part 102 have been met shall include a statement that the debtor has been sent a Notice of Intent to Collect by Administrative Offset at least 31 calendar days prior to the date of the intended offset or a statement that pursuant to 4 CFR 102.3(b)(5) said Notice was not required to be sent. A certification that the requirements of 5 U.S.C. 5514 and 5 CFR part 550, subpart K, have been met shall include a statement that the debtor has been sent a Notice of Intent to Collect by Salary Offset at least 31 calendar days prior to the date of the intended offset or a statement that pursuant to 4 CFR 102.3(b)(5) said Notice was not required to be sent.

(b)(1) The Corporation shall not effect an offset requested by another Federal agency without first obtaining the claim certification required by paragraph (a) of this section. If the Corporation receives an incomplete claim certification, the Corporation shall return the claim certification with notice that a claim certification which complies with the requirements of paragraph (a) of this section must be submitted to the Corporation before the Corporation will consider effecting an offset.

(2) The Corporation may rely on the information contained in the claim certification provided by a requesting creditor agency. The Corporation is not

authorized to review a creditor agency's determination of indebtedness.

(c) Only the creditor agency may agree to enter into an agreement with the debtor for the repayment of the claim. Only the creditor agency may agree to compromise, suspend, or terminate collection of the claim.

(d) The Corporation may decline, for good cause, a request by another agency to effect an offset. Good cause includes that the offset might disrupt, directly or indirectly, essential Corporation operations. The refusal and the reasons shall be sent in writing to the creditor agency.

§ 1408.26 Stay of offset.

(a)(1) When a creditor agency receives a debtor's request for inspection of agency records, the offset is stayed for 10 calendar days beyond the date set for the record inspection.

(2) When a creditor agency receives a debtor's offer to enter into a repayment agreement, the offset is stayed until the debtor is notified as to whether the proposed agreement is acceptable.

(3) When a review is conducted, the offset is stayed until the creditor agency issues a final written decision.

(b) When offset is stayed, the amount of the debt and the amount of any accrued interest or other charges will be withheld from payments to the debtor. The withheld amounts shall not be applied against the debt until the stay expires. If withheld funds are later determined not to be subject to offset, they will be promptly refunded to the debtor.

(c) If the Corporation is the creditor agency and the offset is stayed, the Corporation will immediately notify an offsetting agency to withhold the payment pending termination of the stay.

§ 1408.27 Offset against amounts payable from Civil Service Retirement and Disability Fund.

The Corporation may request that monies payable to a debtor from the Civil Service Retirement and Disability Fund be administratively offset to collect debts owed to the Corporation by the debtor. The Corporation must certify that the debtor owes the debt, the amount of the debt, and that the Corporation has complied with the requirements set forth in this part, 4 CFR 102.3, and the Office of Personnel Management regulations. The request shall be submitted to the official designated in the Office of Personnel Management regulations to receive the request.

Subpart C—Offset Against Salary**§ 1408.35 Purpose.**

The purpose of this subpart is to implement section 5 of the Debt Collection Act of 1982 (Pub. L. 97-365 (5 U.S.C. 5514)), which authorizes the collection of debts owed by Federal employees to the Federal Government by means of salary offsets. These regulations provide procedures for the collection of a debt owed to the Government by the imposition of a salary offset against amounts payable to a Federal employee as salary. These regulations are consistent with the regulations on salary offset published by the Office of Personnel Management, codified in 5 CFR part 550, subpart K. Since salary offset is a type of administrative offset, the requirements of subpart B also apply to salary offsets.

§ 1408.36 Applicability of regulations.

(a) These regulations apply to the following cases: (1) Where the Corporation is owed a debt by an individual currently employed by another agency;

(2) Where the Corporation is owed a debt by an individual who is currently employed by the Corporation; or

(3) Where the Corporation currently employs an individual who owes a debt to another Federal agency. Upon receipt of proper certification from the creditor agency, the Corporation will offset the debtor-employee's salary in accordance with these regulations.

(b) These regulations do not apply to the following: (1) Debts or claims arising under the Internal Revenue Code of 1986, as amended (26 U.S.C. 1 *et seq.*); the Social Security Act (42 U.S.C. 301 *et seq.*); the tariff laws of the United States; or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (e.g., travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108).

(2) Any adjustment to pay arising from an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay if the amount to be recovered was accumulated over four pay periods or less.

(3) A claim which has been outstanding for more than 10 years after the creditor agency's right to collect the debt first accrued, unless facts material to the Government's right to collect were not known and could not reasonably have been known by the official or officials charged with the responsibility for discovery and collection of such debts.

§ 1408.37 Definitions.

In this subpart, the following definitions shall apply:

(a) *Agency* means:

(1) An executive agency as defined by 5 U.S.C. 105, including the United States Postal Service and the United States Postal Rate Commission;

(2) A military department as defined in 5 U.S.C. 102;

(3) An agency or court of the judicial branch, including a court as defined in 28 U.S.C. 610, the District Court for the Northern Mariana Islands, and the Judicial Panel on Multi-district Litigation;

(4) An agency of the legislative branch, including the United States Senate and the United States House of Representatives; or

(5) Other independent establishments that are entities of the Federal Government.

(b) *Disposable pay* means, for an officially established pay interval, that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or, in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount required by law to be withheld. The Corporation shall allow the deductions described in 5 CFR 581.105 (b) through (f).

(c) *Employee* means a current employee of the Corporation or other agency, including a current member of the Armed Forces or Reserve of the United States.

(d) *Waiver* means the cancellation, remission, forgiveness, or nonrecovery of a debt allegedly owed by an employee to the Corporation or another agency as permitted or required by 5 U.S.C. 5584 or 8346(b), 10 U.S.C. 2774, 32 U.S.C. 716, or any other law.

§ 1408.38 Waiver requests and claims to the General Accounting Office.

(a) The regulations contained in this subpart do not preclude an employee from requesting a waiver of an overpayment under 5 U.S.C. 5584 or 8346(b), 10 U.S.C. 2774, 32 U.S.C. 716, or in any way questioning the amount or validity of a debt by submitting a subsequent claim to the General Accounting Office in accordance with the procedures prescribed by the General Accounting Office.

(b) These regulations also do not preclude an employee from requesting a waiver pursuant to other statutory provisions pertaining to the particular debts being collected.

§ 1408.39 Procedures for salary offset.

(a) The Chairman, or designee of the Chairman, shall determine the amount

of an employee's disposable pay and the amount to be deducted from the employee's disposable pay at regular pay intervals.

(b) Deductions shall begin within three official pay periods following the date of mailing or delivery of the Notice of Intent to Collect by Salary Offset.

(c)(1) If the amount of the debt is equal to or is less than 15 percent of the employee's disposable pay, such debt should be collected in one lump-sum deduction.

(2) If the amount of the debt is not collected in one lump-sum deduction, the debt shall be collected in installment deductions over a period of time not greater than the anticipated period of employment. The size and frequency of installment deductions will bear a reasonable relation to the size of the debt and the employee's ability to pay. However, the amount deducted from any pay period will not exceed 15 percent of the employee's disposable pay for that period, unless the employee has agreed in writing to the deduction of a greater amount.

(3) A deduction exceeding the 15-percent disposable pay limitation may be made from any final salary payment pursuant to 31 U.S.C. 3716 in order to liquidate the debt, whether the employee is being separated voluntarily or involuntarily.

(4) Whenever an employee subject to salary offset is separated from the Corporation and the balance of the debt cannot be liquidated by offset of the final salary check pursuant to 31 U.S.C. 3716, the Corporation may offset any later payments of any kind against the balance of the debt.

(d) In instances where two or more creditor agencies are seeking salary offsets against current employees of the Corporation or where two or more debts are owed to a single creditor agency, the Corporation, at its discretion, may determine whether one or more debts should be offset simultaneously within the 15-percent limitation. Debts owed to the Corporation should generally take precedence over debts owed to other agencies.

§ 1408.40 Refunds.

(a) In instances where the Corporation is the creditor agency, it shall promptly refund any amounts deducted under the authority of 5 U.S.C. 5514 when:

(1) The debt is waived or otherwise found not to be owed to the United States (unless expressly prohibited by statute or regulations); or

(2) An administrative or judicial order directs the Corporation to make a refund.

(b) Unless required or permitted by law or contract, refunds under this section shall not bear interest.

§ 1408.41 Requesting current paying agency to offset salary.

(a) To request a paying agency to impose a salary offset against amounts owed to the debtor, the Corporation shall provide the paying agency with a claim certification which meets the requirements set forth in § 1408.25(a) of this part. The Corporation shall also provide the paying agency with a repayment schedule determined under the provisions of § 1408.39 or in accordance with a repayment agreement entered into with the debtor.

(b) If the employee separates from the paying agency before the debt is paid in full, the paying agency shall certify the total amount collected on the debt. A copy of this certification shall be sent to the employee and a copy shall be sent to the Corporation. If the paying agency is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, or other similar payments, it must provide written notification to the agency responsible for making such payments that the debtor owes a debt (including the amount) and that the provisions of this section have been fully complied with. However, the Corporation must submit a properly certified claim to the agency responsible for making such payments before the collection can be made.

(c) When an employee transfers to another paying agency, the Corporation is not required to repeat the due process procedures set forth in 5 U.S.C. 5514 and this part to resume the collection. The Corporation shall, however, review the debt upon receiving the former paying agency's notice of the employee's transfer to make sure the collection is resumed by the new paying agency.

(d) If a special review is conducted pursuant to § 1408.11 and results in a revised offset or repayment schedule, the Corporation shall provide a new claim certification to the paying agency.

§ 1408.42 Responsibility of the Corporation as the paying agency.

(a) When the Corporation receives a claim certification from a creditor agency, deductions should be scheduled to begin at the next officially established pay interval. The Corporation shall send the debtor written notice which provides: (1) That the Corporation has received a valid claim certification from the creditor agency;

(2) The date on which salary offset will begin;

(3) The amount of the debt; and

(4) The amount of such deductions.

(b) If, after the creditor agency has submitted the claim certification to the Corporation, the employee transfers to a different agency before the debt is collected in full, the Corporation must certify the total amount collected on the debt. The Corporation shall send a copy of this certification to the creditor agency and a copy to the employee. If the Corporation is aware that the employee is entitled to payments from the Civil Service Retirement Fund and Disability Fund, or other similar payments, it shall provide written notification to the agency responsible for making such payments that the debtor owes a debt (including the amount).

§ 1408.43 Nonwaiver of rights by payments.

An employee's involuntary payment of all or any portion of a debt being collected under this subpart shall not be construed as a waiver of any rights the employee may have under 5 U.S.C. 5514 or any other provisions of a written contract or law unless there are statutory or contractual provisions to the contrary.

Dated May 3, 1994.

Nan P. Mitchem,

Acting Secretary to the Board, Farm Credit System Insurance Corporation.

[FR Doc. 94-11442 Filed 5-12-94; 8:45 am]

BILLING CODE 8710-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 94-AGL-16]

Modification of Class D Airspace; and Establishment of Class E Airspace; Rockford, IL, Cincinnati, OH, Jackson, MI, Saginaw, MI, Traverse City, MI, Sioux Falls, SD, and Rochester, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action modifies Class D airspace areas at Greater Rockford Airport, Rockford, IL, Cincinnati Municipal Airport Lunken Field, Cincinnati, OH, Jackson County-Reynolds Field, Jackson, MI, Tri City International Airport, Saginaw, MI, Cherry Capital Airport, Traverse City, MI, Joe Foss Field, Sioux Falls, SD, and Rochester Municipal Airport, Rochester, MN, 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 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, Air Traffic Division, System Management Branch, AGL-530, Docket No. 94-AGL-16, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 E. Devon Avenue, Des Plaines, Illinois.

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

FOR FURTHER INFORMATION CONTACT:

Angeline D. Perri, Air Traffic Division, System Management Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294-7571.

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 which 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 Greater Rockford Airport, Rockford, IL, Cincinnati Municipal

Airport Lunken Field, Cincinnati, OH, Jackson County-Reynolds Field, Jackson, MI, Tri City International Airport, Saginaw, MI, Cherry Capital Airport, Traverse City, MI, Joe Foss Field, Sioux Falls, SD, and Rochester Municipal Airport, Rochester, MN, 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 for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a

"significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

1. The authority citation for 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

* * * * *

AGL IL D Rockford, IL [Revised]

Rockford, Greater Rockford Airport, IL (lat. 42°11'46"N., long. 89°05'38"W.)
Greater Rockford ILS Localizer (lat. 42°12'36"N., long. 89°05'17"W.)
GILMY LOM (lat. 42°06'52"N., long. 89°05'55"W.)

That airspace extending upward from the surface to and including 3,200 feet MSL within a 4.4-mile radius of the Greater Rockford Airport and within 1.8 miles each side of the Greater Rockford Runway 36 ILS localizer course, extending south from the 4.4-mile radius to the GILMY LOM. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AGL OH D Cincinnati, OH [Revised]

Cincinnati Municipal Airport Lunken Field, OH (lat. 39°06'12"N., long. 84°25'07"W.)

That airspace extending upward from the surface to and including 3,000 feet MSL within a 4.1-mile radius of Cincinnati

Municipal Airport Lunken Field, excluding that airspace within the Cincinnati/Northern Kentucky International Airport, KY 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 dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AGL MI D Jackson, MI [Revised]

Jackson County-Reynolds Field, MI (lat. 42°15'35"N., long. 84°27'34"W.)

That airspace extending upward from the surface to and including 3,500 feet MSL within a 4-mile radius of Jackson County-Reynolds Field. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AGL MI D Saginaw, MI [Revised]

Saginaw, Tri City International Airport, MI (lat. 43°31'58"N., long. 84°04'47"W.)

That airspace extending upward from the surface to and including 3,200 feet MSL within a 4.8-mile radius of Tri-City International Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AGL MI D Traverse City, MI [Revised]

Traverse City, Cherry Capital Airport, MI (lat. 44°44'27"N., long. 85°34'57"W.)

That airspace extending upward from the surface to and including 3,100 feet MSL within a 4.4-mile radius of Cherry Capital Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AGL SD D Sioux Falls, SD [Revised]

Sioux Falls, Joe Foss Field, SD (lat. 43°34'53"N., long. 96°44'30"W.)

That airspace extending upward from the surface to and including 3,900 feet MSL within a 4.4-mile radius of Joe Foss Field. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AGL MN D Rochester, MN [Revised]

Rochester Municipal Airport, MN (lat. 43°54'32"N., long. 92°29'53"W.)

That airspace extending upward from the surface to and including 3,800 feet MSL within a 4.2-mile radius of Rochester Municipal Airport. This Class D airspace area

is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

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

* * * * *

AGL IL E2 Rockford, IL [New]

Rockford, Greater Rockford Airport, IL (lat. 42°11'46"N., long. 89°05'38"W.)
Greater Rockford ILS Localizer (lat. 42°12'36"N., long. 89°05'17"W.)
GILMY LOM (lat. 42°06'52"N., long. 89°05'55"W.)

Within a 4.4-mile radius of the Greater Rockford Airport and within 1.8 miles each side of the Greater Rockford Runway 36 ILS localizer course, extending south from the 4.4-mile radius to the GILMY LOM. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AGL OH E2 Cincinnati, OH [New]

Cincinnati Municipal Airport Lunken Field, OH (lat. 39°06'12"N., long. 84°25'07"W.)

Within a 4.1-mile radius of Cincinnati Municipal Airport Lunken Field, excluding that airspace within the Cincinnati/Northern Kentucky International Airport, KY, 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 dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AGL MI E2 Jackson, MI [New]

Jackson County-Reynolds Field, MI (lat. 42°15'35"N., long. 84°27'34"W.)

Within a 4-mile radius of Jackson County Reynolds Field. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AGL MI E2 Saginaw, MI [New]

Saginaw, Tri City, International Airport, MI (lat. 43°31'58"N., long. 84°04'47"W.)

Within a 4.8-mile radius of Tri-City 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 dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AGL MI E2 Traverse City, MI [New]

Traverse City, Cherry Capital Airport, MI (lat. 44°44'27"N., long. 85°34'57"W.)

Within a 4.4-mile radius of Cherry Capital Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AGL SD E2 Sioux Falls, SD [New]

Sioux Falls, Joe Foss Field, SD (lat. 43°34'53"N., long. 96°44'30"W.)

Within a 4.4-mile radius of Joe Foss Field. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AGL MN E2 Rochester, MN [New]

Rochester Municipal Airport, MN (lat. 43°54'32"N., long. 92°29'53"W.)

Within a 4.2-mile radius of Rochester 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 dates and times will thereafter be continuously published in the Airport/Facility Directory.

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Issued in Des Plaines, Illinois on May 5, 1994.

Roger Wall,

Manager, Air Traffic Division.

[FR Doc. 94-11718 Filed 5-12-94; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 94-ACE-11]

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 the Dubuque Regional Airport, Iowa; Sioux City, Sioux Gateway Airport, Iowa; Waterloo Municipal Airport, Iowa; Fort Leavenworth, Sherman Army Air Field, Kansas; Fort Riley, Marshall Army Air Field, Kansas; Hutchinson Municipal Airport, Kansas; Manhattan Municipal Airport, Kansas; Olathe, Johnson County Executive Airport, Kansas; Olathe, Johnson County Industrial Airport, Kansas; Salina Municipal Airport, Kansas; Topeka, Forbes Field, Kansas; and Topeka, Philip Billard Airport, Kansas. 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 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, Air Traffic Division, ACE-500, Docket No. 94-ACE-11, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106.

The official docket may be examined at the Office of the Assistant Chief Counsel for the Central Regional Office at the address shown above between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION:

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 which might suggest the need to modify the rule.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace areas at Dubuque Regional Airport, Iowa; Sioux City, Sioux Gateway Airport, Iowa; Waterloo Municipal Airport, Iowa; Fort Leavenworth, Sherman Army Air Field, Kansas; Fort Riley, Marshall Army Air Field, Kansas; Hutchinson Municipal Airport, Kansas; Manhattan Municipal Airport, Kansas; Olathe, Johnson County Executive Airport, Kansas; Olathe, Johnson County

Industrial Airport, Kansas; Salina Municipal Airport, Kansas; Topeka, Forbes Field, Kansas; and Topeka, Philip Billard Airport, Kansas. 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 Dubuque Regional Airport, Iowa; Sioux City, Sioux Gateway Airport, Iowa; Waterloo Municipal Airport, Iowa; Fort Leavenworth, Sherman Army Air Field, Kansas; Fort Riley, Marshall Army Air Field, Kansas; Hutchinson Municipal Airport, Kansas; Manhattan Municipal Airport, Kansas; Olathe, Johnson County Executive Airport, Kansas; Olathe, Johnson County Industrial Airport, Kansas; Salina Municipal Airport, Kansas; Topeka, Forbes Field, Kansas; and Topeka, Philip Billard Airport, Kansas, when the 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, 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 (56 FR 65645).

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace 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 for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a

regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

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

* * * * *

ACE IA E2 Dubuque, IA [New]

Dubuque Regional Airport, IA

(lat. 42°24'11" N, long. 90°42'33" W)

Within a 4.2-mile radius of Dubuque 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.

* * * * *

ACE IA E2 Sioux City, IA [New]

Sioux City, Sioux Gateway Airport, IA

(lat. 42°24'10" N, long. 96°23'04" W)

South Sioux City, Martin Field, NE

(lat. 42°27'15" N, long. 96°28'21" W)

Within a 4.3-mile radius of Sioux Gateway Airport, excluding that airspace within a 1-mile radius of the South Sioux City, Martin 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.

* * * * *

ACE IA E2 Waterloo, IA [New]

Waterloo Municipal Airport, IA

(lat. 42°33'25" N, long. 92°24'01" W)

Within a 4.3-mile radius of Waterloo 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.

* * * * *

ACE KS E2 Fort Leavenworth, KS [New]

Fort Leavenworth, Sherman Army Air Field, KS

(lat. 39°22'06" N, long. 94°54'53" W)

Within a 4-mile radius of Sherman Army Air Field, excluding that airspace within the Kansas City, MO, 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 time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ACE KS E2 Fort Riley, KS [New]

Fort Riley, Marshall Army Air Field, KS

(lat. 39°03'19" N, long. 96°45'52" W)

Junction City, Freeman Field, KS

(lat. 39°02'36" N, long. 96°50'36" W)

Within a 3.7-mile radius of Marshall Army Airfield; excluding that airspace within R-3602B and excluding that airspace within a 1-mile radius of the Junction City, Freeman 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.

* * * * *

ACE KS E2 Hutchinson, KS [New]

Hutchinson Municipal Airport, KS

(lat. 38°03'56" N, long. 97°51'38" W)

Within a 4.3-mile radius of Hutchinson 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.

* * * * *

ACE KS E2 Manhattan, KS [New]

Manhattan Municipal Airport, KS

(lat. 39°08'27" N, long. 96°40'15" W)

Within a 4.2-mile radius of Manhattan Municipal Airport, excluding that airspace within the Fort Riley, Marshall Army Airfield, KS, Class D and E airspace area and excluding that airspace within Restricted Area R-3602B. 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.

* * * * *

ACE KS E2 Olathe, Johnson County Executive Airport, KS [New]

Olathe, Johnson County Executive Airport, KS

(lat. 38°50'51" N, long. 94°44'15" W)

Within a 3.9-mile radius of Johnson County Executive 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.

* * * * *

ACE KS E2 Olathe, Johnson County Industrial Airport, KS [New]

Olathe, Johnson County Industrial Airport, KS
(lat. 38°49'54" N, long. 94°53'24" W)
Olathe, Johnson County Executive Airport, KS

(lat. 38°50'51" N, long. 94°44'15" W)
Within a 4.3-mile radius of Johnson County Industrial Airport; excluding that airspace within the Johnson County Executive Airport, KS, Class D and E airspace area and excluding that airspace bounded on the north by lat. 38°49'30" N and on the east by long. 94°56'30" 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 time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ACE KS E2 Salina, KS [New]

Salina Municipal Airport, KS
(lat. 38°47'30" N, long. 97°39'03" W)
Within a 4.9-mile radius of Salina 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.

* * * * *

ACE KS E2 Topeka, Forbes Field, KS [New]

Topeka, Forbes Field, KS
(lat. 38°57'01" N, long. 95°39'51" W)
Within a 4.6-mile radius of Forbes 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.

* * * * *

ACE KS E2 Topeka, Philip Billard Airport, KS [New]

Topeka, Philip Billard Municipal Airport, KS
(lat. 39°04'08" N, long. 95°37'21" W)
Within a 4-mile radius of Philip Billard Municipal Airport, excluding that airspace within the Topeka Forbes Field, KS, Class D and E 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 Director.

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Issued in Kansas City, Missouri, on April 28, 1994.

Clarence E. Newbern,
Manager, Air Traffic Division, Central Region.
[FR Doc. 94-11723 Filed 5-12-94; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 94-AGL-18]

Modification of Class D Airspace; Bismarck, ND, Grissom AFB, IN, Muskegon, MI, and Mansfield, OH.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action modifies Class D airspace areas at Bismarck Municipal Airport, Bismarck, ND, Grissom Air Force Base (AFB), IN, Muskegon County Airport, Muskegon, MI, and Mansfield Lahm Municipal Airport, Mansfield, OH; 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 these air traffic control towers 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, Air Traffic Division, System Management Branch, AGL-530, Docket No. 94-AGL-18, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 E. Devon Avenue, Des Plaines, Illinois.

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

FOR FURTHER INFORMATION CONTACT: Angeline D. Perri, Air Traffic Division, System Management Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294-7571.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is a final rule, and as 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 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 which might suggest the need to modify the rule.

The Rule

The amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies the Class D airspace areas at Bismarck Municipal Airport, Bismarck, ND, Grissom AFB, IN, Muskegon County Airport, Muskegon, MI, and Mansfield Lahm Municipal Airport, Mansfield, OH, 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 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. The intended effect of this action is to clarify when two-way radio communication with these air traffic control towers, 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 these Class D 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 for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a

"significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

1. The authority citation for 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

* * * * *

AGL ND D Bismarck, ND [Revised]

Bismarck Municipal Airport, ND
(lat. 46°46'26" N., long. 100°44'52" W.)

That airspace extending upward from the surface to and including 4,200 feet MSL within a 4.8-mile radius of Bismarck Municipal Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AGL IN D Grissom AFB, IN [Revised]

Grissom AFB, IN
(lat. 40°38'53" N., long. 86°09'08" W.)

That airspace extending upward from the surface to and including 3,300 feet MSL within a 4.5-mile radius of Grissom AFB. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AGL MI D Muskegon, MI [Revised]

Muskegon County Airport, MI
(lat. 43°10'10" N., long. 86°14'18" W.)

That airspace extending upward from the surface to and including 3,100 feet MSL within a 4.2-mile radius of Muskegon 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 dates and times will thereafter be continuously published in the Airport/Facility Directory.

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AGL OH D Mansfield, OH [Revised]

Mansfield Lahm Municipal Airport, OH
(lat. 40°49'17" N., long. 82°31'00" W.)
Mansfield VORTAC

(lat. 40°52'07" N., long. 82°35'27" W.)
That airspace extending upward from the surface to and including 3,800 feet MSL within a 4.4-mile radius of the Mansfield Lahm Airport, and within 1.7 miles each side of the Mansfield VORTAC 307° radial extending from the 4.4-mile radius to 4.8 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 dates and times will thereafter be continuously published in the Airport/Facility Directory.

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Issued in Des Plaines, Illinois on May 5, 1994.

Roger Wall,

Manager, Air Traffic Division.

[FR Doc. 94-11721 Filed 5-12-94; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 94-AGL-17]

Establishment of Class E Airspace Areas; Waukegan, IL, Lafayette, IN, Willoughby, OH, Mosinee, WI, and La Crosse, WI.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action establishes Class E airspace areas at Waukegan Regional Airport, Chicago/Waukegan, IL, Purdue University Airport, Lafayette, IN, Lost Nation Airport, Willoughby, OH, Central Wisconsin Airport, Mosinee, WI, and La Crosse Municipal Airport, La Crosse, WI. 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 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, Air Traffic Division, System Management Branch, AGL-530, Docket No. 94-AGL-17, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 E. Devon Avenue, Des Plaines, Illinois.

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

FOR FURTHER INFORMATION CONTACT: Angeline D. Perri, Air Traffic Division, System Management Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294-7571.

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 which might suggest the need to modify the rule.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace areas at Chicago/Waukegan, IL, Lafayette, IN, Willoughby, OH, Mosinee, WI, and La Crosse, WI. 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 Waukegan Regional Airport, Chicago/Waukegan, IL, Purdue University Airport, Lafayette, IN, Lost Nation Municipal Airport, Willoughby, OH, Central Wisconsin Airport, Mosinee, WI, and La Crosse Municipal

Airport, La Crosse, WI, 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, 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 (56 FR 65645).

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

PART 71—[AMENDED]

1. The authority citation for 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

* * * * *

AGL IL E2 Chicago/Waukegan, IL [NEW]
Chicago, Waukegan Regional Airport, IL
(lat. 42°25'20" N., long. 87°52'04" W.)

Within a 4-mile radius of the Waukegan 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 dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AGL IL E2 Lafayette, IN [NEW]
Lafayette, Purdue University Airport, IN
(lat. 40°24'44" N., long. 86°56'13" W.)

Within a 4.2-mile radius of Purdue University Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AGL OH E2 Willoughby, OH [NEW]
Willoughby, Lost Nation Airport, OH
(lat. 41°41'02" N., long. 81°23'25" W.)

Within a 4-mile radius of the Lost Nation Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AGL WI E2 Mosinee, WI [NEW]
Mosinee, Central Wisconsin Airport, WI
(lat. 44°46'42" N., long. 89°39'59" W.)

Within a 4.4-mile radius of Central Wisconsin Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AGL WI E2 La Crosse, WI [NEW]
La Crosse Municipal Airport, WI
(lat. 43°52'45" N., long. 91°15'23" W.)

Within a 4.4-mile radius of La Crosse 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 dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Des Plaines, Illinois on May 5, 1994.

Roger Wall,

Manager, Air Traffic Division.

[FR Doc. 94-11720 Filed 5-12-94; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 94-ACE-12]

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 the Cape Girardeau Municipal Airport, Missouri; Columbia Regional Airport, Missouri; Fort Leonard Wood, Forney Army Airfield, Missouri; Jefferson City Memorial Airport, Missouri; Joplin Regional Airport, Missouri; Kansas City, Richards-Gebaur Airport, Missouri; Knob Noster, Whiteman Air Force Base (AFB), Missouri; Springfield Regional Airport, Missouri; St. Joseph, Roscrans Memorial Airport, Missouri; St. Louis, Spirit of St. Louis Airport, Missouri; and Grand Island, Central Nebraska Regional Airport, Nebraska. 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 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, Air Traffic Division, ACE-500, Docket No. 94-ACE-12, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106.

The official docket may be examined at the Office of the Assistant Chief Counsel for the Central Regional Office at the address shown above between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION:

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 which might suggest the need to modify the rule.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace areas at the Cape Girardeau Municipal Airport, Missouri; Columbia Regional Airport, Missouri; Fort Leonard Wood, Forney Army Airfield, Missouri; Jefferson City Memorial Airport, Missouri; Joplin Regional Airport, Missouri; Kansas City, Richards-Gebaur Airport, Missouri; Knob Noster, Whiteman Air Force Base (AFB), Missouri; Springfield Regional Airport, Missouri; St. Joseph, Rosecrans Memorial Airport, Missouri; St. Louis, Spirit of St. Louis Airport, Missouri; and Grand Island, Central Nebraska Regional Airport, Nebraska. 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 the Cape Girardeau Municipal Airport, Missouri; Columbia Regional Airport, Missouri; Fort Leonard Wood, Forney Army Airfield, Missouri; Jefferson City Memorial Airport, Missouri; Joplin Regional Airport, Missouri; Kansas City, Richards-Gebaur Airport, Missouri; Knob Noster, Whiteman Air Force Base (AFB), Missouri; Springfield Regional Airport, Missouri; St. Joseph, Rosecrans Memorial Airport, Missouri; St. Louis, Spirit of St. Louis Airport, Missouri; and Grand Island, Central Nebraska Regional Airport, Nebraska, 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, 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 (56 FR 65645).

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

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

* * * * *

ACE MO E2 Cape Girardeau, MO [New]

Cape Girardeau Municipal Airport, MO
(lat. 37°13'31" N, long. 89°34'14" W)

Within a 4.1-mile radius of the Cape Girardeau 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.

* * * * *

ACE MO E2 Columbia, MO [New]

Columbia Regional Airport, MO
(lat. 38°49'05" N, long. 92°13'11" W)

Within a 4.3-mile radius of Columbia 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.

* * * * *

ACE MO E2 Fort Leonard Wood, MO [New]

Fort Leonard Wood, Forney Army Airfield,
MO

(lat. 37°44'31" N, long. 92°08'25" W)

Within a 4-mile radius of Forney Army Airfield. 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.

* * * * *

ACE MO E2 Jefferson City, MO [New]

Jefferson City Memorial Airport, MO
(lat. 38°35'28" N, long. 92°09'22" W)

Within a 4.1-mile radius of Jefferson City Memorial 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.

* * * * *

ACE MO E2 Joplin, MO [New]

Joplin Regional Airport, MO
(lat. 37°09'02" N, long. 94°29'54" W)

Within a 4.2-mile radius of Joplin 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.

* * * * *

ACE MO E2 Kansas City, Richards-Gebaur Airport, MO [New]

Kansas City, Richards-Gebaur Airport, MO
(lat. 38°50'39" N, long. 94°33'38" W)

Within a 4.3-mile radius of Richards-Gebaur Airport, excluding that airspace from the surface to 1,700 feet MSL bounded on the north by lat. 38°50'00" N. and on the east by long. 94°36'00" W. This Class 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.

* * * * *

ACE MO E2 Knob Noster, MO [New]

Knob Noster, Whiteman AFB, MO
(lat. 38°43'49" N, long. 93°32'53" W)
Whiteman TACAN

(lat. 38°44'09" N, long. 93°33'02" W)
Within a 4.6-mile radius of Whiteman AFB and within 1.8 miles each side of the Whiteman TACAN 185° radial extending from the 4.6-mile radius to 6.1 miles south of the TACAN. 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.

* * * * *

ACE MO E2 Springfield, MO [New]

Springfield Regional Airport, MO
(lat. 37°14'39" N, long. 93°23'13" W)

Within a 4.2-mile radius of Springfield 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.

* * * * *

ACE MO E2 St. Joseph, MO [New]

St. Joseph, Rosecrans Memorial Airport, Mo
(lat. 39°46'25" N, long. 94°54'25" W)

Within a 4.2-mile radius of Rosecrans Memorial 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.

* * * * *

ACE MO E2 St. Louis, Spirit of St. Louis Airport, MO [New]

Spirit of St. Louis Airport, MO
(lat. 38°39'43" N, long. 90°39'00" W)

Within a 4.3-mile radius of Spirit of St. Louis 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.

* * * * *

ACE NE E2 Grand Island, NE [New]

Grand Island, Central Nebraska Regional Airport, NE
(lat. 40°58'03" N, long. 98°18'31" W)

Within a 4.4-mile radius of the Central Nebraska 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.

* * * * *

Issued in Kansas City, Missouri, on April 28, 1994.

Clarence E. Newbern,

Manager, Air Traffic Division, Central Region.
[FR Doc. 94-11728 Filed 5-12-94; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71**[Airspace Docket No. 91-AWA-3]****RIN 2120-AE46****Alteration of the Denver Class B Airspace Area; CO**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; delay of effective date.

SUMMARY: On September 17, 1993, the Federal Aviation Administration (FAA) published a final rule altering the Denver, CO, Class B airspace area. On January 20, 1994, a correction to the final rule was published to correct certain airport reference point and navigational aid (NAVAID) coordinates for the new airport, and to reflect that the Denver Very High Frequency Omnidirectional Range (VOR) has been upgraded to a Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) facility. In view of further delay in the opening date of the new Denver International Airport, this action delays the rule's effective date indefinitely.

EFFECTIVE DATE: Effective May 13, 1994, the effective date of the Final Rules at 58 FR 48722, as postponed at 58 FR 60552, as corrected at 59 FR 2953, and as postponed at 59 FR 10744 (March 8, 1994), is delayed indefinitely.

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9230.

SUPPLEMENTARY INFORMATION: On September 17, 1993, the Federal Aviation Administration (FAA) published a final rule altering the Denver, CO, Class B airspace area. Subsequently, on November 17, 1993, a

delay of effective date was published and on January 20, 1994, a correction to the final rule was published to correct an error in the coordinates for the airport reference point and the supporting NAVAID for the new Denver International Airport, and to reflect that the Denver VOR has been upgraded to a VOR/DME facility. Most recently, the FAA had delayed this rule until May 15, 1994. The official opening of the Denver International Airport has now been delayed indefinitely due to the automatic baggage system difficulties.

Accordingly, the effective date of the alteration and correction of the related Class B airspace area should be delayed indefinitely. Once the opening date of the new airport is determined, the FAA will publish another rule indicating the effective date of this rule.

Because the public needs to be made aware of this delay immediately, notice and public procedure are impracticable and good cause exists for making this action effective in less than 30 days.

In consideration of the foregoing, effective May 13, 1994, the effective date of the final rule altering the Denver, CO, Class B airspace area (58 FR 48722; September 17, 1993), as delayed at 58 FR 60552 (November 17, 1993), as corrected at 59 FR 2953 (January 20, 1994), and as delayed at 59 FR 10744 (March 8, 1994), is delayed indefinitely.

Issued in Washington, DC, on May 10, 1994.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 94-11689 Filed 5-12-94; 8:45 am]

BILLING CODE 4910-13-P

14 CFR Part 71**[Airspace Docket Nos. 91-ANM-14, 91-ANM-16, 91-ANM-17, 93-ANM-1, 93-ANM-2, 93-ANM-3, and 93-ANM-5]****Establishment of Class E Airspace and Alteration of Class D and Class E Airspace Areas, VOR Federal Airways and Jet Routes**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; delay of effective date.

SUMMARY: On September 7, 9, and 10, 1993, the Federal Aviation Administration (FAA) published final rules altering the Class D airspace area in Broomfield, CO; altering the Class D airspace and establishing Class E airspace in Aurora, CO; altering Class D and Class E airspace areas in Englewood, CO; altering the Class E airspace area in Denver, CO; altering

VOR Federal airways in Colorado, Nebraska, and Wyoming; and altering jet routes in Colorado, Idaho, Kansas, Nebraska, South Dakota, Utah, and Wyoming. These actions support the new Denver International Airport airspace reconfiguration. In view of the delay in the opening date of the new Denver International Airport, this action delays the rules' effective date indefinitely.

EFFECTIVE DATE: Effective May 13, 1994, the effective date of the final rules at 58 FR 47041, 58 FR 47371, 58 FR 47372, 58 FR 47373, 58 FR 47631, 58 FR 47633, 58 FR 47635, as postponed at 58 FR 60552, corrected at 59 FR 1472, 59 FR 5080, 59 FR 6217, and as postponed at 59 FR 10743 (March 8, 1994), is delayed indefinitely.

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9230.

SUPPLEMENTARY INFORMATION: On September 7, September 9, and September 10, 1993, the Federal Aviation Administration (FAA) published final rules altering and establishing Class D and Class E airspace areas, VOR Federal airways, and jet routes to support the new Denver International Airport airspace reconfiguration. On January 11, 1994, a correction was published on Airspace Docket No. 91-ANM-14 to incorporate a recent amendment to V-220 between Grand Junction, CO, and Meeker, CO. Additionally, on February 3 and 10, 1994, corrections were published on J-54 in Airspace Docket No. 91-ANM-16 to reinstate a segment from Cherokee, WY, to Laramie, WY. Most recently, the FAA had delayed these rules until May 15, 1994. The official opening of the Denver International Airport has been delayed indefinitely due to the automatic baggage system difficulties. Accordingly, the effective date of the related final rules should be delayed indefinitely. Once the opening date of the new airport is determined, the FAA will publish another rule indicating the effective date of these rules.

Because the public needs to be made aware of this delay immediately, notice and public procedure are impracticable and good cause exists for making this action effective in less than 30 days.

In consideration of the foregoing, effective May 13, 1994, the effective date of Airspace Docket No. 93-ANM-

1 modifying the Class D airspace area in Broomfield, CO (58 FR 47041; September 7, 1993); Airspace Docket No. 93-ANM-2 modifying the Class D airspace area and establishing a Class E airspace area in Aurora, CO (58 FR 47371; September 9, 1993); Airspace Docket No. 93-ANM-3 modifying the Class D and Class E airspace areas in Englewood, CO (58 FR 47372; September 9, 1993); Airspace Docket No. 93-ANM-5 modifying the Class E airspace areas at the Denver Centennial Airport, CO, Denver, CO, and Erie, CO (58 FR 47373; September 9, 1993); Airspace Docket No. 91-ANM-14 altering VOR Federal airways in Colorado, Nebraska, and Wyoming (58 FR 47631; September 10, 1993) as corrected at 59 FR 1472 (January 11, 1994); Airspace Docket No. 91-ANM-16 altering jet routes in Colorado, Idaho, Kansas, Nebraska, South Dakota, Utah, and Wyoming (58 FR 47633; September 10, 1993) as corrected at 59 FR 5080 (February 3, 1994) and 59 FR 6217 (February 10, 1994); Airspace Docket No. 91-ANM-17 altering VOR Federal airways in Colorado and Wyoming (58 FR 47635; September 10, 1993), and as postponed at (59 FR 10743; March 8, 1994); are delayed indefinitely.

Issued in Washington, DC, on May 10, 1994.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 94-11687 Filed 5-12-94; 8:45 am]

BILLING CODE 4910-13-P

14 CFR Part 71

[Airspace Docket No. 93-ANM-20]

Alteration of Jet Route J-171; Colorado

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; delay of effective date.

SUMMARY: On January 12, 1994, the Federal Aviation Administration (FAA) published a final rule altering Jet Route J-171 from Tobe, CO, to Hugo, CO. This action accommodated the new Denver International Airport airspace reconfiguration. In view of the delay in the opening date of the new Denver International Airport, this action delays the rule's effective date indefinitely.

EFFECTIVE DATE: Effective May 13, 1994, the effective date of the Final Rule at 59 FR 1619, and as postponed at 59 FR 10744 (March 8, 1994), is delayed indefinitely.

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, Airspace and

Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9230.

SUPPLEMENTARY INFORMATION: On January 12, 1994, the Federal Aviation Administration (FAA) published a final rule altering Jet Route J-171 from Tobe, CO, to Hugo, CO, to accommodate the new Denver International Airport airspace reconfiguration. Most recently, the FAA had delayed this rule until May 15, 1994. The official opening of the Denver International Airport has been delayed indefinitely due to the automatic baggage system difficulties. Accordingly, the effective date of this jet route alteration should be delayed indefinitely. Once the opening date of the new airport is determined, the FAA will publish another rule indicating the effective date of this rule.

Because the public needs to be made aware of this delay immediately, notice and public procedure are impracticable and good cause exists for making this action effective in less than 30 days.

In consideration of the foregoing, effective May 13, 1994, the effective date of the final rule altering the Jet Route J-171, (59 FR 1619; January 12, 1994) as delayed at 59 FR 10744 (March 8, 1994), is delayed indefinitely.

Issued in Washington, DC, on May 10, 1994.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 94-11688 Filed 5-12-94; 8:45 am]

BILLING CODE 4910-13-P

14 CFR Part 91

[Docket No. 27583; Amendment No. 91-239]

Special Visual Flight Rules (SVFR); Denver, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; delay of effective date.

SUMMARY: On January 19, 1994, the Federal Aviation Administration (FAA) published a final rule to amend appendix D, part 91 of the Federal Aviation Regulations to accurately reflect the name of the new Denver, Colorado airport. In view of the delay in the opening date of the Denver International Airport, this action delays the rule's effective date indefinitely.

EFFECTIVE DATE: Effective May 13, 1994, the effective date of the Final Rule at 59 FR 2918, as corrected at 59 FR 6547, as postponed at 59 FR 10958 (March 9, 1994), is delayed indefinitely.

FOR FURTHER INFORMATION CONTACT: Ellen E. Crum, Air Traffic Rules Branch (ATP-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-8783.

SUPPLEMENTARY INFORMATION: On January 19, 1994, the Federal Aviation Administration (FAA) published a final rule intending to indicate in sections 1 and 3 of appendix D, 14 CFR part 91 that on March 9, 1994 the new Denver International Airport will open, replacing the Stapleton International Airport (Amendment No. 91-236; 59 FR 2918). In the amendment, however, the FAA inadvertently indicated that the word "Stapleton" should be replaced with the word "International." The FAA issued a correcting amendment on February 11, 1994 (59 FR 6547). Most recently, the FAA had delayed this rule until May 15, 1994. The official opening of the Denver International Airport has been delayed indefinitely due to the automatic baggage system difficulties. Accordingly, the effective date of this name change is delayed indefinitely. Once the opening date of the new airport is determined, the FAA will publish another rule indicating the effective date of this rule.

Because the public needs to be made aware of this delay immediately, notice and public procedure are impracticable and good cause exists for making this action effective in less than 30 days.

In consideration of the foregoing, effective May 13, 1994, the effective date of the final rule amending the name of the new Denver, Colorado, airport in appendix D of 14 CFR part 91 (59 FR 2918; January 19, 1994) and the final rule correction (59 CFR 6547, February 11, 1994) as postponed at 59 FR 10958 (March 19, 1994), is delayed indefinitely.

Issued in Washington, DC, on May 10, 1994.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 94-11690 Filed 5-12-94; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 27713; Amdt. No. 1597]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

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

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW.,

Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

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

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice

and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

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

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (Air).

Issued in Washington, DC on April 22, 1994.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

2. Part 97 is amended to read as follows:

§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * Effective July 21, 1994

Houston, TX, Ellington Field, VOR/DME OR TACAN RWY 4, Amdt 3
Houston, TX, Ellington Field, VOR/DME OR TACAN RWY 17R, Amdt 3
Houston, TX, Ellington Field, VOR/DME OR TACAN RWY 22, Amdt 2, Cancelled
Houston, TX, Ellington Field, VOR OR TACAN RWY 22, Amdt 2
Houston, TX, Ellington Field, VOR/DME OR TACAN RWY 35L, Amdt 3
Houston, TX, Ellington Field, ILS RWY 17R, Amdt 3
Houston, TX, Ellington Field, ILS RWY 22, Amdt 1
Houston, TX, Ellington Field, ILS RWY 35L, Amdt 3

* * * Effective June 23, 1994

Cross City, FL, Cross City, VOR RWY 31, Amdt 17
Fernandina Beach, FL, Fernandina Beach Muni, RADAR-1, Amdt 4
New Port Richie, FL, Tampa Bay Executive, VOR-A, Amdt 1A, Cancelled
West Palm Beach, FL, Palm Beach County Park, VOR RWY 15, Amdt 2
Perry, GA, Perry-Fort Valley, VOR-A, Amdt 4
Perry, GA, Perry-Fort Valley, LOC RWY 36, Orig
Perry, GA, Perry-Fort Valley, NDB RWY 36, Amdt 2
Kamuela, HI, Kamuela/Waimea-Kohala, VOR-A, Amdt 10, Cancelled
Kamuela, HI, Kamuela/Waimea-Kohala, VOR RWY 4, Amdt 11, Cancelled
Junction City, KS, Freeman Field, NDB-B, Amdt 3
Louisville, KY, Standiford Field, VOR OR TACAN RWY 29, Amdt 22
Louisville, KY, Standiford Field, NDB RWY 1, Amdt 8
Louisville, KY, Standiford Field, NDB RWY 29, Amdt 19
Louisville, KY, Standiford Field, NDB RWY 32, Amdt 15
Louisville, KY, Standiford Field, ILS RWY 1, Amdt 11
Louisville, KY, Standiford Field, ILS RWY 19, Amdt 9
Louisville, KY, Standiford Field, ILS RWY 29, Amdt 22
Louisville, KY, Standiford Field, RADAR-1, Amdt 25
Detroit, MI, Detroit Metropolitan Wayne County, ILS RWY 3L, Amdt 14
Manistee, MI, Manistee Co.—Blacker, VOR OR GPS RWY 9, Amdt 11
Manistee, MI, Manistee Co.—Blacker, VOR OR GPS RWY 27, Amdt 11
Manistique, MI, Schoolcraft County, VOR OR GPS RWY 28, Amdt 8
Harrisonville, MO, Lawrence Smith Memorial, VOR/DME RWY 35, Orig
Laconia, NH, Laconia Muni, LOC RWY 8, Amdt 9
Laconia, NH, Laconia Muni, NDB OR GPS RWY 8, Amdt 8
Portland, OR, Portland Intl, VOR/DME RWY 20, Orig
The Dalles, OR, The Dalles Muni, VOR/DME-A, Amdt 4
Amarillo, TX, Amarillo Intl, VOR RWY 22, Amdt 25
Amarillo, TX, Amarillo Intl, LOC BC RWY 22, Amdt 17

Amarillo, TX, Amarillo Intl, NDB RWY 4, Amdt 16
Amarillo, TX, Amarillo Intl, ILS RWY 4, Amdt 21
Amarillo, TX, Amarillo Intl, RADAR-1, Amdt 15
Amarillo, TX, Tradewind, NDB-A, Amdt 13
Amarillo, TX, Tradewind, VOR/DME RNAV RWY 35, Amdt 8
Moses Lake, WA, Grant County, VOR RWY 4, Amdt 5
Moses Lake, WA, Grant County, VOR RWY 14L, Amdt 10A, Cancelled
Moses Lake, WA, Grant County, VOR 1 RWY 14L, Orig
Moses Lake, WA, Grant County, VOR 3 RWY 14L, Orig
Moses Lake, WA, Grant County, VOR RWY 22, Amdt 4
Moses Lake, WA, Grant County, VOR RWY 32R, Amdt 19
Moses Lake, WA, Grant County, NDB RWY 32R, Amdt 16
Moses Lake, WA, Grant County, ILS RWY 32R, Amdt 18
Moses Lake, WA, Grant County, RNAV RWY 21, Amdt 6A, Cancelled
Moses Lake, WA, Grant County, VOR/DME RNAV RWY 22, Orig
Wenatchee, WA, Pangborn Memorial, VOR-A, Amdt 7

* * * Effective May 26, 1994

Mapleton, IA, Mapleton Muni, NDB RWY 20, Amdt 4
Baldwin, MI, Baldwin Muni, VOR/DME-A, Amdt 1
Newark, NJ, Newark Intl, VOR RWY 11, Orig
Montgomery, NY, Orange County, VOR RWY 8, Amdt 7
Montgomery, NY, Orange County, LOC RWY 3, Amdt 4
Montgomery, NY, Orange County, NDB RWY 3, Amdt 2
Red Hook, NY, Sky Park, VOR RWY 1, Amdt 5
Columbus, OH, Rickenbacker, VOR RWY 23L, Amdt 6, Cancelled
Norwalk, OH, Norwalk-Huron County, VOR-A, Amdt 5
Ravenna, OH, Portage County, VOR-A, Amdt 5
Ravenna, OH, Portage County, VOR/DME RNAV RWY 27, Amdt 2
Ashland, VA, Hanover County Muni, VOR RWY 16, Amdt 2, Cancelled
Ashland, VA, Hanover County Muni, LOC RWY 16, Orig, Cancelled
Ashland, VA, Hanover County Muni, NDB RWY 16, Amdt 1, Cancelled
Richmond/Ashland, VA, Hanover County Muni, VOR RWY 16, Orig
Richmond/Ashland, VA, Hanover County Muni, LOC RWY 16, Orig
Richmond/Ashland, VA, Hanover County Muni, NDB RWY 16, Orig
Appleton, WI, Outagamie County, VOR/DME RWY 3, Amdt 8
Appleton, WI, Outagamie County, LOC BC RWY 11, Amdt 1
Appleton, WI, Outagamie County, NDB RWY 3, Amdt 14
Appleton, WI, Outagamie County, NDB RWY 29, Orig
Appleton, WI, Outagamie County, ILS RWY 3, Amdt 16

Appleton, WI, Outagamie County, ILS RWY 29, Amdt 1
Eagle River, WI, Eagle River Union, VOR/DME RWY 4, Amdt 1
Eagle River, WI, Eagle River Union, NDB RWY 22, Amdt 5

[FR Doc. 94-11722 Filed 5-12-94; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 27741; Amdt. No. 1600]

Standard-Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

For Examination—

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

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

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

*For Purchase—*Individual SIAP copies may be obtained from:

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

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

*By Subscription—*Copies of all SIAPs, mailed once every 2 weeks, are for sale

by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

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

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria

contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

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

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (Air).

Issued in Washington, DC on May 6, 1994.
Thomas C. Accardi,
Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

2. Part 97 is amended to read as follows:

§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME,

LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * Effective June 23, 1994

Sitka, AK, Sitka, LDA/DME RWY 11, Amdt. 13
Arcata-Eureka, CA, Arcata, ILS/DME RWY 32, Orig.
Burbank, CA, Burbank-Glendale-Pasadena, LOC RWY 8, Amdt. 2, Cancelled
Burbank, CA, Burbank-Glendale-Pasadena, ILS RWY 8, Amdt. 36
Monterey, CA, Monterey Peninsula, NDB RWY 10R, Amdt. 11
Monterey, CA, Monterey Peninsula, ILS RWY 10R, Amdt. 25
Oxnard, CA, Oxnard, VOR RWY 7, Amdt. 12 Cancelled
Oxnard, CA, Oxnard, VOR/DME RWY 7, Orig.
Oxnard, CA, Oxnard, VOR RWY 25, Amdt. 8
Oxnard, CA, Oxnard, ILS RWY 25, Amdt. 8
Longmont, CO, Vance Brand, VOR/DME-A, Orig.
Lafayette, IN, Purdue University, VOR-A, Amdt. 25
Lafayette, IN, Purdue University, NDB RWY 10, Amdt. 12
Lafayette, IN, Purdue University, ILS RWY 10, Amdt. 10
Lafayette, IN, Purdue University, VOR/DME RNAV RWY 28, Amdt. 5
Sibley, IA, Sibley Muni, NDB RWY 17, Amdt. 1
Sibley, IA, Sibley Muni, NDB RWY 35, Amdt. 1
Burlington, KS, Coffey County, NDB OR GPS RWY 36, Amdt. 1
Chanute, KS, Chanute Martin Johnson, VOR OR GPS-A, Amdt. 9
Chanute, KS, Chanute Martin Johnson, VOR/DME RNAV OR GPS RWY 36, Amdt. 3
Larned, KS, Larned-Pawnee County, NDB RWY 17, Amdt. 2
Manhattan, KS, Manhattan Muni, VOR-F, Amdt. 4A, Cancelled
Manhattan, KS, Manhattan Muni, VOR/DME OR GPS-F, Orig.
Manhattan, KS, Manhattan Muni, VOR-H, Amdt. 14
Manhattan, KS, Manhattan Muni, VOR OR GPS RWY 3, Amdt. 17
Manhattan, KS, Manhattan Muni, NDB OR GPS-A, Amdt. 19
Manhattan, KS, Manhattan Muni, ILS RWY 3, Amdt. 6
Neodesha, KS, Neodesha Muni, VOR RWY 2, Amdt. 2
Parsons, KS, Tri-City, VOR RWY 13, Amdt. 4
Parsons, KS, Tri-City, NDB RWY 17, Amdt. 8
Parsons, KS, Tri-City, NDB RWY 35, Amdt. 5
Parsons, KS, Tri-City, VOR/DME RNAV RWY 17, Amdt. 5
Parsons, KS, Tri-City, VOR/DME RNAV RWY 35, Amdt. 5
Louisville, KY, Bowman Field, NDB OR GPS RWY 32, Amdt. 15
Leesville, LA, Leesville, NDB RWY 35, Orig.

Chillicothe, MO, Chillicothe Muni, NDB RWY 14, Amdt. 7
Warrenburg, MO, Skyhaven, VOR/DME-A, Orig.
Portsmouth, NH, Pease International Tradeport, VOR OR TACAN OR GPS RWY 16, Amdt. 2
Albuquerque, NM, Albuquerque Intl, VOR OR TACAN RWY 8, Amdt. 19
Albuquerque, NM, Albuquerque Intl, NDB RWY 17, Orig. Cancelled
Albuquerque, NM, Albuquerque Intl, NDB RWY 35, Amdt. 7
Albuquerque, NM, Albuquerque Intl, ILS RWY 8, Amdt. 5
Newburgh, NY, Stewart Intl, NDB RWY 9, Amdt. 8
Newburgh, NY, Stewart Intl, ILS RWY 9, Amdt. 7
New York, NY, John F. Kennedy Intl, ILS RWY 4L, Amdt. 8
Bradford, PA, Bradford Regional, VOR/DME RWY 14, Amdt. 8
Newport, RI, Newport State, VOR/DME OR GPS RWY 16, Amdt. 4 Cancelled
Newport, RI, Newport State, VOR/DME OR GPS RWY 16, Orig.
Newport, RI, Newport State, LOC RWY 22, Amdt. 7
North Kingstown, RI, Quonset State, VOR RWY 34, Orig.
Paris, TN, Henry County, SDF RWY 2, Amdt. 2A, Cancelled
Paris, TN, Henry County, ILS RWY 2, Orig.
Canadian, TX, Hemphill County, NDB RWY 4, Amdt. 3
Canadian, TX, Hemphill County, NDB RWY 22, Amdt. 3
Childress, TX, Childress Muni, VOR RWY 35, Amdt. 9
Everett, WA, Snohomish County (Paine Fld), VOR-B, Orig.
Everett, WA, Snohomish County (Paine Fld), VOR-C, Orig., Cancelled
Manitowoc, WI, Manitowoc County, VOR OR GPS RWY 17, Amdt. 14
Manitowoc, WI, Manitowoc County, VOR OR GPS RWY 35, Amdt. 13
Manitowoc, WI, Manitowoc County, ILS RWY 17, Amdt. 3
Cheyenne, WY, Cheyenne, VOR OR TACAN-A, Amdt. 9

* * * Effective May 26, 1994

Baltimore, MD, Baltimore-Washington Intl, LOC RWY 10, Orig.
Appleton, MN, Appleton Muni, NDB RWY 13, Orig.

* * * Effective May 04, 1994

Kingston, NY, Kingston-Ulster, VOR OR GPS-A, Amdt. 1

* * * Effective April 21, 1994

San Francisco, CA, San Francisco Intl, LDA/DME RWY 28R, Amdt. 4

Note: The FAA Published an Original GPS Procedure in TL 94-09 Dated April 8, 1994, Page 7, Under the Effective Date of May 26, 1994. The GPS RWY 35 Original Procedure is Hereby Rescinded.

Mount Sterling, KY, Mount Sterling-Montgomery County, NDB RWY 21, Amdt. 1 and NDB RWY 3, Amdt. 1, are Hereby Rescinded Published in TL94-8. The Procs

will be Readvertised Proposed Eff 18 Aug 94.

[FR Doc. 94-11726 Filed 5-12-94; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 27742; Amdt. No. 1601]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US

Government Printing Office,
Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

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

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports.

This amendment to part 97 contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists

for making these SIAPs effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (Air).

Issued in Washington, DC on May 6, 1994.

Thomas C. Accardi,
Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

2. Part 97 is amended to read as follows:

Effective	State	City	Airport	FDC No.	SIAP
02/01/94	FL	Tampa	Tampa Intl	4/0591	ILS RWY 18L AMDT 38A...
02/01/94	FL	Tampa	Tampa Intl	4/0593	LOC BC RWY 36R, AMDT 19A...
03/17/94	AK	Ketchikan	Ketchikan Intl	4/1335	NDB/DME-A AMDT 6A...
03/17/94	AK	Ketchikan	Ketchikan Intl	4/1336	ILS/DME-1 RWY 11 AMDT 5B...
04/21/94	OH	Akron	Akron-Canton Regional	4/1805	ILS RWY 19 AMDT 5...
04/28/94	FL	Jacksonville	Craig Muni	4/1915	ILS RWY 32, AMDT 2B...
04/28/94	LA	New Orleans	New Orleans Intl/Moisant Fld	4/1928	NDB RWY 10 AMDT 25...
04/28/94	LA	New Orleans	New Orleans Intl/Moisant Fld	4/1991	ILS RWY 10/CAT II, III AMDT 1A...
04/28/94	MI	Escanaba	Delta County	4/1916	ILS/DME RWY 9 AMDT 4...
04/28/94	MI	Escanaba	Delta County	4/1917	LOC/DME BC RWY 27 AMDT 3...
04/28/94	PA	Hazleton	Hazleton Muni	4/1877	VOR RWY 28 AMDT 8A...
04/28/94	PA	Hazleton	Hazleton Muni	4/1879	VOR RWY 10 AMDT 10A...
04/28/94	PA	Hazleton	Hazleton Muni	4/1906	LOC RWY 28 AMDT 5...

Effective	State	City	Airport	FDC No.	SIAP
04/28/94	SC	Moncks Corner	Berkely County	4/1883	NDB RWY 5 AMDT2...
04/28/94	SC	Orangeburg	Orangeburg Muni	4/1884	NDB RWY 5 ORIG...
04/28/94	SC	Summerville	Dorchester County	4/1885	NDB RWY 5 ORIG...
04/29/94	TX	Cotulla	Cotulla-La Salle County	4/1952	VOR-A AMDT 11...
05/04/94	LA	Houma	Houma-Terrebonne	4/2000	COPTER VOR/DME 117 AMDT 3...
05/04/94	LA	Houma	Houma-Terrebonne	4/2003	VOR/DME RNAV RWY 36 AMDT 4...
05/04/94	LA	Houma	Houma-Terrebonne	4/2004	NDB RWY 18 AMDT 4...
05/04/94	LA	Houma	Houma-Terrebonne	4/2005	VOR/DME RWY 30 AMDT 11...
05/04/94	LA	Houma	Houma-Terrebonne	4/2008	ILS RWY 18 AMDT 3...
05/04/94	LA	Houma	Houma-Terrebonne	4/2026	VOR RWY 12 AMDT 4...
05/04/94	LA	Thibodaux	Thibodaux Muni	2001	4/VOR-A AMDT 1...
05/04/94	NC	Rutherfordton	Rutherford County	4/2006	NDB RWY 36 AMDT 4...
05/05/94	NC	Louisburg	Franklin Co.	4/2034	VOR/DME-A ORIG...
05/05/94	SC	Orangeburg	Orangeburg Muni	4/2024	VOR RWY 5 AMDT 4...

Ketchikan**Ketchikan Intl****Alaska**

NDB/DME-A AMDT 6A . . .
Effective: 03/17/94

FDC 4/1335/KTN/ FI/P Ketchikan Intl, Ketchikan, AK. NDB/DME-A AMDT 6A . . . CHG TRML RTE to read . . . ANN R-296 (IAF) to ANN R-300 VIA 30 DME ARC ALT 6000; ANN R-300 to CMJ BRG 289 DEG (NOPT) VIA 30 DME ARC ALT 4300. This becomes NDB/DME-A AMDT 6B.

Ketchikan**Ketchikan Intl****Alaska**

ILS/DME-1 RWY 11 AMDT 5B . . .
Effective: 03/17/94

FDC 4/1336/KTN/ FI/P Ketchikan Intl, Ketchikan, AK. ILS/DME-1 RWY 11 Amdt 5B . . . CHG TRML Rte to Read . . . ANN to 30 DME ARC VIA ANN-R-296/30NM ALT 7000; ANN R-296 (IAF) to ANN R-300 VIA 30 DME ARC ALT 6000; ANN R-300 TO I-ECH LOC (NOPT) VIA 30 DME ARC ALT 4300. This Becomes ILS/DME-1 RWY 11 AMDT 5C.

Tampa**Tampa Intl****Florida**

ILS RWY 18L AMDT 38A . . .
Effective: 02/01/94

FDC 4/0591/TPA/ FI/P Tampa Intl, Tampa, FL. ILS RWY 18L AMDT 38A . . . S-ILS 18L DH 330 HAT 304 all CATS. S-LOC 18L FAF to map distances 5.1 NM. Change notes to read . . . ILS UNUSBL DH/MAP inbound. S-ILS VIS increased to RVR 5000 FOR INOP SSALR. CAT E S-LOC VIS increased to 1½ miles for INOP SSALR. This becomes ILS RWY 18L, AMDT 38B.

Tampa**Tampa Intl****Florida**

LOC BC RWY 36R, AMDT 19A . . .
Effective: 02/01/94

FDC 4/0593/TPA/ FI/P Tampa Intl, Tampa, FL. LOC BC RWY 36R, AMDT 19A . . . Delete Hold-in Lieu of Procedure Turn IAF AT SOBAY INT. Profile starts at Sobay Int. Change note to read . . . Radar and ADF Required. This becomes LOC BC RWY 36R, AMDT 19B.

Jacksonville**Craig Muni****Florida**

ILS RWY 32, AMDT 2B . . .
Effective: 04/28/94

FDC 4/1915/CRG/ FI/P Craig Muni, Jacksonville, FL. ILS RWY 32, AMDT 2B . . . Middle marker commissioned. GS ALT AT MM 235. Distance to THLD From MM 0.43. This becomes ILS RWY 32 AMDT 2C.

New Orleans**New Orleans Intl/Moisant FLD****Louisiana**

NDB RWY 10 AMDT 25 . . .
Effective: 04/28/94

FDC 4/1928/MSY/ FI/P New Orleans Intl/Moisant FLD, New Orleans, LA. NDB RWY 10 AMDT 25 . . . CHG TRML RTE RADIAL/CRS From /TBD/ VORTAC to Turtl Int from 027 to 031. This is NDB RWY 10 AMDT 25A.

New Orleans**New Orleans Intl/Moisant Fld****Louisiana**

ILS RWY 10 /CAT II, III AMDT 1A . . .
Effective: 04/28/94

FDC 4/1991/MSY/ FI/P New Orleans Intl/Moisant Fld, New Orleans, LA, ILS RWY 10/CAT II, III AMDT 1A . . . CHG TRML RTE RADIAL/CRS from /TBD/ VORTAC to Turtl Int from 027 to 031. This is ILS RWY 10 /CAT II, III Amdt 1B.

Houma**Houma-Terrebonne****Louisiana**

COPTER VOR/DME 117 AMDT 3 . . .
Effective: 05/04/94

FDC 4/2000/HUM/ FI/P Houma-Terrebonne, Houma, LA. Copter VOR/DME 117 AMDT 3 . . . CHG TRML RTES . . . /TBD/ VORTAC /IAF/ TO /TBD/ VORTAC R-121.31/5.00 DME; R-268/5.00 DME /TBD/ VORTAC CCW /IAF/ TO /TBD/ VORTAC R-121.31/5.00 DME; AND /TBD/ VORTAC R-121.31/8.00 DME. Chg final Approach CRS to 121.31. FAF to TBD R-121.31/8.00 DME. MIN ALT AT TBD R-121.31/5.00 DMC 1800 and TBD R-121.31/8.00 DME 1200. Map to TBD R-121.31/10.15 DME. CHG Name of PROC TO Copter VOR/DME 121 AMDT 3. CHG missed Approach Instructions To Read . . . Climb To 1800 VIA /TBD/ VORTAC R-121.50 to Bourg Int/16.3 DME and hold. CHG missed Approach Holding . . . Hold SE, RT, 302 IBND. This is copter VOR/DME 121 AMDT 3A.

Thibodaux**Thibodaux Muni****Louisiana**

VOR-A AMDT 1...
Effective: 05/04/94

FDC 4/2001/LA37/ FI/P Thibodaux Muni, Thibodaux, LA. VOR-A AMDT 1...CHG /TBD/ VORTAC PROC turn outbound radial to 175.72. CHG /TBD/ VORTAC PROC turn IBND radial to 355.72. CHG Final Approach CRS to 355.72 CHG MSA sector radial to 324 and 054. This is VOR-A AMDT 1A.

Houma**Houma-Terrebonne****Louisiana**

VOR/DME RNAV RWY 36 AMDT 4...
Effective: 05/04/94

FDC 4/2003/HUM/ FI/P Houma-Terrebonne, Houma, LA. VOR/DME RNAV RWY 36 AMDT 4...CHG missed approach holding to... Hold SE, RT, 302 IBND. CHG /TBD/ VORTAC radial to

Caboo WP to 122.92. CHG/TBD/
VORTAC radial to Bourg WP R-121.50.
This is VOR/DME RNAV RWY 36
AMDT 4A.

Houma

Houma-Terrebonne
Louisiana
NDB RWY 18 AMDT 4...
Effective: 05/04/94

FDC 4/2004/HUM/ FI/P Houma-
Terrebonne, Houma, LA. NDB RWY 18
AMDT 4...CHG TRML RTE from /TBD/
VORTAC to HU LOM to 088.35. CHG
missed approach instructions to read...
Climb to 1100 then climbing left turn to
1800 VIA TBD R-122 to Bourg Int/16.3
DME and hold. CHG missed approach
holding to... Hold SE, RT, 302 IBND.
CHG /TBD/ VORTAC radial to Bourg Int
to R-121.50. This is NDB RWY 18
AMDT 4A.

Houma

Houma-Terrebonne
Louisiana
VOR/DME RWY 30 AMDT 11...
Effective: 05/04/94

FDC 4/2005/HUM/ FI/P Houma-
Terrebonne, Houma, LA. VOR/DME
RWY 30 AMDT 11...CHG TRML RTE
/TBD/ VORTAC to Bourg Int to 121.50.
CHG missed approach instructions to
read... Climb to 1100 then climbing right
turn to 1800 VIA /TBD/ VORTAC R-122
to Bourg INT/TBD 16.3 DME and hold;
or when directed by ATC, climb to 1800
direct /TBD/ VORTAC. CHG missed
approach holding to... Hold SE, RT, 302
IBND. CHG /TBD/ VORTAC PROC turn,
outbound radial to R-121.50. CHG map
to TBD R-122/10.97 DME. CHG final
approach CRS to 301.50 IBND. CHG
/TBD/ VORTAC PROC turn, IBND radial
to 301.50. This is VOR/DME RWY 30,
AMDT 11A.

Houma

Houma-Terrebonne
Louisiana
ILS RWY 18 AMDT 3...
Effective: 05/04/94

FDC 4/2008/HUM/ FI/P Houma-
Terrebonne, Houma, LA. ILS RWY 18
AMDT 3...CHG TRML RTE /TBD/
VORTAC to HU LOM to CRS 088.35.
CHG missed approach instructions to
read... Climb to 1100 then climbing left
turn to 1800 VIA TBD R-122 to Bourg
INT/ 16.3 DME and hold. CHG missed
approach holding to hold SE, RT, 302
IBND. CHG /TBD/ VORTAC radial to
Bourg Int to R-121.50. This is ILS RWY
18 AMDT 3A.

Houma

Houma-Terrebonne
Louisiana

VOR RWY 12 AMDT 4...
Effective: 05/04/94

FDC 4/2026/HUM/ FI/P Houma-
Terrebonne, Houma, LA, VOR RWY 12
AMDT 4...CHG final approach CRS TO
121.31. CHG holding at /TBD/ VORTAC
to... Hold NW /TBD/ VORTAC, RT, 114
IBND, 1800 FT in lieu of PT /IAF/. CHG
missed approach instructions to read...
Climb to 1800 VIA TBD R-121.50 to
Bourg INT/TBD 16.3 DME and hold.
CHG NOPT note to read... NOPT for
arrivals on /TBD/VORTAC Airway R-
294. CHG missed approach holding to
hold SE, RT, 301.50 IBND. CHG /TBD/
VORTAC RADIAL to Bourg INT to R-
121.50. CHG MIN ALT AT TBD R-
121.50/5.00 DME 920*. This is VOR
RWY 12 AMDT 4A.

Escanaba

Delta County
Michigan
ILS/DME RWY 9 AMDT 4...
Effective: 04/28/94

FDC 4/1916/ESC/ FI/P Delta County,
Escanaba, MI. ILS/DME RWY 9 AMDT
4...Circling MDA 1100/HAA 491 CAT B.
This is ILS/DME RWY 9 AMDT 4A.

Escanaba

Delta County
Michigan
LOC/DME BC RWY 27 AMDT 3...
Effective: 04/28/94

FDC 4/1917/ESC/ FI/P Delta County,
Escanaba, MI. LOC/DME BC RWY 27
AMDT 3...Circling MDA 1100/HAA 491
CAT B. This is LOC/DME BC RWY 27
AMDT 3A.

Rutherfordton

Rutherford County
N.C.
NDB RWY 36 AMDT 4. . .
Effective: 05/04/94

FDC 4/2006/57A/ FI/P Rutherford
County, Rutherfordton, N.C. NDB RWY
36 AMDT 4. . . Missed Approach. . .
Climb to 2000 then climbing right turn
to 3000 direct RFE NDB and hold. This
becomes NDB RWY 36 AMDT 4A.

Louisburg

Franklin Co.
North Carolina
VOR/DME-A ORIG. . .
Effective: 05/05/94

FDC 4/2034/2N9/ FI/P Franklin Co.,
Louisburg, NC. VOR/DME-A
ORIG. . . Change Terminal Route
altitudes. . . From RDU VORTAC /IAF/
to 13 DME /NOPT/ 2500; from R-041
RDU VORTAC CW /IAF/ to R-072 RDU
VORTAC /NOPT/ 2500; from R-120
RDU VORTAC CCW /IAF/ to R-072
RDU VORTAC /NOPT/ 2500; from 13
DME ARC to OGOSH/RDU 18.5 DME

2000. Change minimum altitudes. . .
RDU R-072/13 2500, OGOSH 2000,
RDU R-072/21.3 1080. Change missed
approach altitude. . . Climb to 1100
then climbing right turn to 2500 VIA
RDU R-072 to OGOSH/RDU 18.5 DME
and hold. This becomes VOR/DME-A,
Orig A.

Akron

Akron-Canton Regional
Ohio
ILS RWY 19 AMDT 5. . .
Effective: 04/21/94

FDC 4/1805/CAK/ FI/P Akron-Canton
Regional, Akron, OH. ILS RWY 19
AMDT 5. . . Caution. . . OM for Akron
Fulton Intl may be received
approximately 5.0 miles north of Derby
INT/OM. Chart Akron Fulton Intl OM
subdued. This is ILS RWY 19 AMDT
5A.

Hazleton

Hazleton Muni
Pennsylvania
VOR RWY 28 AMDT 8A. . .
Effective: 04/28/94

FDC 4/1877/HZL/ FI/P Hazleton
Muni, Hazleton, PA. VOR RWY 28
AMDT 8A. . . CHG note obtain LCL
ALT on CTAF to read. . . if LCL ALT
not RCVD. Use Wilkes-Barre ALSTG &
Increase all MDAS 300'. DLT. . .
Activate MALS RWY 28-123.0; Word
Caution FM Planview. This is VOR
RWY 28 AMDT 8B.

Hazleton

Hazleton Muni
Pennsylvania
VOR RWY 10 AMDT 10A. . .
Effective: 04/28/94

FDC 4/1879/HZL/ FI/P Hazleton
Muni, Hazleton, PA. VOR RWY 10
AMDT 10A. . . CHG note obtain LCL
ALT on CTAF to read. . . if LCL ALT
not RCVD. Use Wilkes-Barre ALSTG &
Increase all MDAS 300'. DLT. . .
Activate MALS RWY 28-123.0; word
caution FM Planview. This is VOR RWY
10 AMDT 10A.

Hazleton

Hazleton Muni
Pennsylvania
LOC RWY 28 AMDT 5. . .
Effective: 04/28/94

FDC 4/1906/H2L/ FI/P Hazleton
Muni, Hazleton, PA. LOC RWY 28
AMDT 5. . . DLT. . . Wilkes-Barre
ALSTG MINS;CHG note obtain LCL
ALT on CTAF to read. . . if LCL ALT
not RCVD. Use Wilkes-Barre ALSTG &
Increase all MDAS 300'. This is LOC
RWY 28 AMDT 5A.

Moncks Corner

Berkely County

South Carolina

NDB RWY 5 AMDT 2.

Effective: 04/28/94

FDC 4/1883/50J/ FI/P Berkely County, Moncks Corner, SC. NDB RWY 5 AMDT 2. . . Terminal Route. . . VAN VORTAC to MKS NDB 135.04/26.92. This becomes NDB RWY 5 AMDT 2A.

Orangeburg

Orangeburg Muni

South Carolina

NDB RWY 5 ORIG. . .

Effective: 04/28/94

FDC 4/1884/OGB/ FI/P Orangeburg Muni, Orangeburg, SC. NDB RWY 5 Orig. . . Terminal Route. . . VAN VORTAC to OYI NDB 267.71/23.20. This becomes NDB RWY 5 Orig A.

Summerville

Dorchester County

South Carolina

NDB RWY 5 ORIG.

Effective: 04/28/94

FDC 4/1885/DYB/ FI/P Dorchester County, Summerville, SC. NDB RWY 5 ORIG. . . terminal route. . . VAN VORTAC to DYB NDB 166.76/26.22. This becomes NDB RWY 5 Orig A.

Orangeburg

Orangeburg Muni

South Carolina

VOR RWY 5 Amdt 4.

Effective: 05/05/94

FDC 4/2024/OGB/ FI/P Orangeburg Muni, Orangeburg, SC. VOR RWY 5 AMDT 4. . . terminal route. . . VAN VORTAC to EDS NDB 272.93/20.60. This becomes VOR RWY 5 AMDT 4A.

Cotulla

Cotulla-La Salle County

Texas

VOR-A AMDT 11. . .

Effective: 04/29/94

FDC 4/1952/COT/ FI/P Cotulla-La Salle County, Cotulla, TX. VOR-A AMDT 11. . . CHG ALSTG note to read. . . when LCL ALSTG not received, use Laredo Intl ALSTG. This is VOR-A Amdt 11A.

[FR Doc. 94-11727 Filed 5-12-94; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. 93F-0404]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Glyceryl Tristearate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to broaden certain specifications for the safe use of glyceryl tristearate. This action is in response to a petition filed by Hüls America, Inc.

DATES: Effective May 13, 1994.; written objections and requests for a hearing by June 13, 1994.

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

FOR FURTHER INFORMATION CONTACT: Martha D. Peiperl, Center for Food Safety and Applied Nutrition (HFS-217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9515.

SUPPLEMENTARY INFORMATION: In a notice published in the *Federal Register* of December 3, 1993 (58 FR 63995), FDA announced that a food additive petition (FAP 3A4403) had been filed by Hüls America, Inc., Turner Pl., P.O. Box 365, Piscataway, NJ 08855-0365. The petition proposed that the food additive regulations in § 172.811 *Glyceryl tristearate* (21 CFR 172.811) be amended to broaden the specifications for the acid number, saponification number, and melting point for glyceryl tristearate.

FDA has evaluated the data in the petition and other relevant material. The agency concludes that glyceryl tristearate conforming to the specifications requested by the petitioner is safe, and that the food additive regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h),

the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has determined under 21 CFR 25.24(a)(9) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.*

Any person who will be adversely affected by this regulation may at any time on or before June 13, 1994, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 172

Food additives, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 172 continues to read as follows:

Authority: Secs. 201, 401, 402, 409, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 348, 371, 379e).

2. Section 172.811 is amended by revising paragraph (b) to read as follows:

§ 172.811 Glycerol tristearate

* * * * *

(b) The food additive meets the following specifications:

Acid number	Not to exceed 1.0.
Iodine number	Not to exceed 1.0.
Saponification number	186-192.
Hydroxyl number	Not to exceed 5.0.
Free glycerol content	Not to exceed 0.5 percent.
Unsaponifiable matter	Not to exceed 0.5 percent.
Melting point (Class II) ...	69 °C-73 °C.

* * * * *

Dated: May 6, 1994.

L. Robert Lake,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 94-11745 Filed 5-12-94; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8539]

RIN 1545-A078

Application of Section 514(c)(9)(E) of the Internal Revenue Code to Partnerships in Which One or More (but not all) of the Partners Are Qualified Organizations Within the Meaning of Section 514(c)(9)(C)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the application of section 514(c)(9)(E) of the Internal Revenue Code to partnerships in which one or more (but not all) of the partners are qualified tax-exempt organizations within the meaning of section 514(c)(9)(C). These organizations include educational organizations described in section 170(b)(1)(A)(ii) and their affiliated support organizations, and qualified trusts described in section 401. The final regulations provide rules governing the application of section 514(c)(9)(E) of the Internal Revenue Code (Code). Section 514(c)(9)(E) was added to the Code by the Omnibus Budget Reconciliation Act of 1987, and was amended by the Technical and

Miscellaneous Revenue Act of 1988. The final regulations are necessary to provide affected partnerships and their partners with the guidance they need to comply with the applicable tax law.

EFFECTIVE DATE: May 13, 1994.

For dates of applicability of these regulations, see "Effective dates" under **SUPPLEMENTARY INFORMATION** in the preamble.

FOR FURTHER INFORMATION CONTACT:

Deane M. Burke at (202) 622-3080 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document amends 26 CFR part 1, which provides rules governing the application of section 514(c)(9)(E) of the Internal Revenue Code of 1986 (Code), as amended. Section 514(c)(9)(E) was added to the Code by section 10214 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203, and was amended by section 2004(h) of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647.

On June 25, 1990, Notice 90-41, 1990-1 C.B. 350, was published in the Internal Revenue Bulletin to provide interim guidance regarding the application of section 514(c)(9)(E) of the Code and to request comments. On December 30, 1992, the IRS published a notice of proposed rulemaking in the *Federal Register* (57 FR 62266) (the proposed regulations) regarding section 514(c)(9)(E). The preamble to that notice contains an explanation to the proposed rules.

The IRS received written comments on the proposed regulations, but cancelled a public hearing scheduled for March 31, 1993, because no one requested to testify. After consideration of all the public comments on the proposed regulations, the regulations are adopted as revised by this Treasury decision.

Explanation of Provisions

I. Statutory Provisions

Section 511 of the Code provides that tax-exempt organizations are generally taxable on their unrelated business taxable income. Section 514(a) provides that unrelated business taxable income includes a specified percentage of the gross income derived from debt-financed property described in section 514(b). Section 514(c)(9) provides an exception for income derived from certain debt-financed investments in real property by qualified organizations. Under section 514(c)(9)(C), qualified organizations include educational organizations described in section 170(b)(1)(A)(ii) and their affiliated

support organizations, and qualified trusts described in section 401.

If a qualified organization (QO) invests in debt-financed real property through a partnership in which one or more (but not all) of the partners are qualified organizations, the QO is eligible for the exception provided in section 514(c)(9) only if the partnership satisfies an additional requirement. Either each allocation to a partner that is a qualified organization must be a qualified allocation within the meaning of section 168(h)(6), or the partnership must satisfy the requirements of section 514(c)(9)(E). These regulations provide rules governing the application of section 514(c)(9)(E).

II. Overview of the Regulations

To satisfy the requirements of section 514(c)(9)(E), a partnership must establish that the allocation of items to any partner that is a QO cannot result in that partner having a percentage share of overall partnership income for any taxable year greater than that partner's percentage share of overall partnership loss for the taxable year for which that partner's percentage loss share will be the smallest (that partner's fractions rule percentage). This requirement, commonly referred to as the fractions rule, must be satisfied both on a prospective basis and on an actual basis for each taxable year of the partnership.

The fractions rule is applied on an overall partnership basis. Therefore, if partnership allocations to one QO partner fail to satisfy the requirements of the fractions rule, that partner, and other QO partners in the partnership, are subject to the debt-financed property rules, even if the allocations to those other QO partners would otherwise have complied with the requirements of the fractions rule.

A second requirement under section 514(c)(9)(E) is that each partnership allocation must either have substantial economic effect or (in the case of certain allocations that cannot have economic effect) otherwise appropriately comply with the requirements of the regulations under section 704(b).

For purposes of the fractions rule, overall partnership income is the amount by which the aggregate items of partnership income and gain for the taxable year exceed the aggregate items of partnership loss and deduction for the year. Overall partnership loss is the amount by which the aggregate items of partnership loss and deduction for the taxable year exceed the aggregate items of partnership income and gain for the year. In general, all items of partnership income, gain, loss, and deduction that

increase or decrease the partners' capital accounts under § 1.704-1(b)(2)(iv) are taken into account in computing overall partnership income or loss.

The proposed regulations exclude allocations of certain items—generally by disregarding those items in computing overall partnership income or loss and the partners' allocable shares of overall partnership income or loss. In some situations, however, items are disregarded only until an allocation is actually made. The purpose of the exclusions is to allow ordinary economic business allocations (such as preferred returns), to avoid technical violations arising due to the requirements of section 704(b), and to avoid foot-faults.

III. Public Comments and Clarifying Changes

A. Manner in Which the Fractions Rule Is Applied

One commentator requested clarification regarding the prospective application of the fractions rule, especially with respect to allocations that are taken into account only when an allocation is made. The final regulations clarify that a partnership generally does not qualify for the fractions rule exception for any taxable year of its existence unless it satisfies the fractions rule—both on a prospective and actual basis—for every year. The regulations also clarify that if the partnership violates the fractions rule by reason of an allocation that the regulations provide is "disregarded" or "not taken into account" until an actual allocation is made, the partnership is treated (subject to the anti-abuse rule) as violating the fractions rule only for the taxable year of that actual allocation and subsequent taxable years. The final regulations also add an example illustrating this wait-and-see approach.

B. Section 704(c) Allocations

The proposed regulations provide that tax items allocable under section 704(c) (or § 1.704-1(b)(2)(iv)(f)(4)), are not included in computing overall partnership income or loss. The final regulations clarify that those types of tax allocations may nonetheless be relevant in determining if the partnership violates the anti-abuse rule.

C. Exclusion of Reasonable Preferred Returns and Guaranteed Payments

Under the exception for reasonable preferred returns, items of income and gain allocated with respect to a reasonable preferred return for capital are disregarded in computing overall partnership income or loss for purposes

of the fractions rule. Reasonable guaranteed payments for capital or services also are disregarded. However, to qualify for the exception, the income allocation (or the deduction of the guaranteed payment) generally must not precede the making of the related cash payment.

The final regulations adopt a commentator's recommendation that the exception for reasonable preferred returns should apply not only to allocations effected with items of income or gain, but also to allocations effected with overall partnership income. In implementing this change, the regulations refer to "an allocation of what would otherwise be overall partnership income." (This technical refinement also was made to several parts of the regulation that previously referred to allocations of overall partnership income.) This is necessary because the exclusion of an allocated item from the computation of overall partnership income or loss for purposes of the fractions rule means that the item is not overall partnership income or overall partnership loss.

Although the exception for reasonable preferred returns contained in the proposed regulations applies only to those allocations made to a QO, the final regulations apply the exception to all partners. Without this change, a partnership that paid a reasonable preferred return to both its QO and taxable partners arguably could disregard the allocations to its QO partners in computing overall partnership income or loss, but at the same time, take the corresponding allocations to its taxable partners into account in computing overall partnership income or loss. Although the anti-abuse rule of the proposed regulations does not permit the excessive allocation of income or gain to the QO partners that would result if this argument were accepted, the final regulations clarify this issue. A similar change was not called for with respect to guaranteed payments because guaranteed payments to taxable partners automatically are excluded from overall partnership income or loss.

The proposed regulations generally provide that a material distribution is a return of capital if it is not attributable to the partnership's cash flow from its business operations. Concern was expressed that under this rule certain returns on capital might inappropriately be characterized as a return of capital. There also was a separate concern that this rule inappropriately implied that distributions of operating cash flow would generally not be respected as a return of capital.

To address these concerns and to reflect that capital may be returned from a number of different sources, the final regulations provide that a designation of distributions in a written partnership agreement generally will be respected in determining a partner's unreturned capital so long as the designation is economically reasonable. Although the regulations do not specify when the designation must be made, timing may be relevant in determining whether the designation is reasonable.

Some commentators characterized the cash payment requirement as a significant limitation on the exception for preferred returns and guaranteed payments. The principal objection voiced on this point is that requiring a cash payment may prevent partners from achieving their economic deal. Since real estate partnerships often lack free cash in their early years, the money partners are forced to rely on the partnership having sufficient income in subsequent years to ultimately provide them with their preferred return.

The IRS and Treasury Department are concerned that if the requirement were eliminated, partnerships might attempt to optimize their overall economics by allocating significant amounts of partnership income and gain to QOs in the form of preferred returns and guaranteed payments. It is believed that in many instances this would be a departure from the normal commercial practice followed by partnerships in which the money partners are generally subject to income tax. Taxable partners generally are not willing to bear the tax burden attributable to income allocations that precede the corresponding distribution of cash by many years. A suggestion that partnerships be required to compound allocated but unpaid amounts could exacerbate the problem. Compounding would increase the amount of undistributed income or gain allocated to the tax-exempt partners.

The final regulations retain the cash payment requirement. However, the regulations also provide more explicitly that the normal rules of accrual accounting are overridden with respect to the deduction of reasonable guaranteed payments. The deduction is delayed until the partnership taxable year in which the payment is made in cash. (Similarly, the inclusion of the guaranteed payment in the QO's income is delayed because the regulation does not change the existing rule under § 1.707-1(c) that a guaranteed payment is included in income in the same taxable year it is deducted by the partnership.) For partnerships that are concerned about the availability of

sufficient future income to ensure the payment of a preferred return, this clarification may help them use guaranteed payments to achieve greater assurance that the partnership ultimately will pay a return on capital.

D. Chargebacks and Offsets

The final regulations continue to provide exceptions for four types of chargebacks and offsets: (1) Allocations that charge back prior disproportionately large allocations (i.e., in excess of a qualified organization's fractions rule percentage) of overall partnership loss to a qualified organization, or prior disproportionately small allocations of overall partnership income to a qualified organization; (2) minimum gain chargebacks of nonrecourse deductions; (3) chargebacks of partner nonrecourse deductions (and of compensating allocations of recourse deductions to another partner); and (4) qualified income offsets. The final regulations also continue to provide that allocations of minimum gain that may be made with respect to distributions of proceeds of nonrecourse liabilities are taken into account only to the extent an allocation is actually made (to avoid technical violations of the fractions rule that would otherwise arise from including a minimum gain chargeback provision in a partnership agreement). In addition, a limited new chargeback exception (described in greater detail below) applies to allocations of minimum gain attributable to certain distributions of proceeds of nonrecourse liabilities.

A suggestion that all chargebacks be permitted without regard to whether the initial allocation was "disproportionate" was carefully considered and rejected. A principal consideration in rejecting the proposal was that it would represent a significant departure from the mechanical approach contained in the proposed regulations, which, overall, is relatively simple for taxpayers to apply and for the IRS to administer and enforce. Accordingly, the final regulations retain the basic approach of the proposed regulations, but add a number of technical and clarifying changes. In addition, two examples have been added to further clarify the operation of these provisions.

The final regulations clarify that disproportionate allocations need not be reversed in full, but may also be reversed in part. In addition, the provision requiring that an initial allocation of less than the entire overall partnership income or loss consist of a pro rata portion of each item of partnership income, gain, loss, or

deduction now excepts from the pro rata requirement nonrecourse deductions and certain other allocations relating to nonrecourse debt. Absent this change, the disproportionate chargeback provisions might have overly limited applicability, because real estate partnerships typically have borrowed on a nonrecourse basis.

One commentator accurately noted that the exception for allocations of overall partnership loss (or, more precisely, what would otherwise be overall partnership loss) that charge back disproportionately small allocations of overall partnership income to a QO partner is somewhat confusing and counterintuitive. Part of the confusion arises because the Code refers to chargebacks of disproportionately large income allocations to taxable partners. However, the equivalent approach taken in the regulations is desirable because it avoids the need to determine the analog of a fractions rule percentage for taxable partners and because it is simpler to apply to partnerships with more than one QO partner. Accordingly, an example has been added to the final regulations, as requested by the commentator, to illustrate a qualifying allocation of overall partnership loss that charges back a disproportionately small allocation of overall partnership income to a QO partner.

The final regulations revise the formula approach in the proposed regulations for determining the extent to which a minimum gain chargeback is attributable to nonrecourse deductions (or partner nonrecourse deductions) to properly interact with the § 1.704-2 regulations governing partnership minimum gain and partner nonrecourse debt minimum gain. The § 1.704-2 regulations effect minimum gain chargebacks on the basis of the partners' percentage shares of minimum gain. Accordingly, the final regulations require partnerships to determine—in a reasonable and consistent manner—the extent to which a partner's percentage share of the partnership minimum gain is attributable to nonrecourse deductions. The final regulations also provide, by way of example, a formula for determining in certain circumstances the extent to which a partner's percentage share of minimum gain is attributable to nonrecourse deductions. Although the final regulations do not explicitly so provide, a partnership that computes the extent to which minimum gain is attributable to nonrecourse deductions, also computes, by default, the extent to which minimum gain is attributable to prior distributions of proceeds of nonrecourse liabilities.

There is a limited new chargeback exception that applies if QO partners initially contribute capital used to purchase depreciable real property and are allocated the resulting depreciation deductions. If the partnership later borrows money on a nonrecourse basis (using that depreciable real property as security) and distributes the proceeds to the QO partners as a return of capital, the resulting minimum gain chargeback is permanently disregarded in computing overall partnership income or loss for purposes of the fractions rule. Without a special rule, the distribution of nonrecourse proceeds and the resulting minimum gain chargeback might cause a violation of the fractions rule in the year the minimum gain is triggered. In effect, the new exception allows the partnership to apply the general chargeback rule for nonrecourse deductions (rather than the general chargeback rule for nonrecourse distributions) even though the initial depreciation deductions allocated to the QO partners were not nonrecourse.

This new rule is narrow. It provides complete relief to partnerships only to the extent the amount of the partnership depreciation deduction for the property for the year does not exceed the overall partnership loss for the year. The reason for making this rule narrow is that chargebacks attributable to distributions of proceeds of nonrecourse liabilities may provide greater potential for manipulation than other chargebacks. Nonetheless, the new provision should provide significant relief from a problem that may be fairly common.

E. Exclusion of Partner-Specific Items of Deduction

The final regulations continue to exclude from the computation of overall partnership income or loss, certain expenditures allocated to the partners to whom they are attributable. Furthermore, in partial response to a commentator's request that certain other exceptions be added, the final regulations expand the exception for expenditures incurred in computing section 743(b) basis adjustments to generally encompass additional record-keeping and accounting expenditures incurred in connection with transfers of partnership interests. To allow proper consideration of other items that might be excepted, the final regulations also permit the list of qualifying expenditures to be expanded in the future by revenue ruling, revenue procedure, or private letter ruling.

F. Unlikely Losses and Deductions

The requirement that a loss or expenditure not be reasonably

foreseeable to qualify as unlikely has been revised in response to concerns that were voiced. To qualify as "unlikely" under the final regulations, a loss or deduction must have a low likelihood of occurring, taking into account the relevant facts and circumstances.

In addition, the final regulations clarify that the types of events described in the regulations are not per se unlikely. They merely illustrate possible situations giving rise to allocations to which the exception for unlikely losses and deductions applies (if they have a low likelihood of occurring taking into account the relevant facts and circumstances). In response to a comment, the discovery of environmental conditions that require remediation has been added to the illustrative list of potential relevant events.

Contrary to a commentator's request, the final regulations do not sanction pre-funding of a loss or deduction. Generally, pre-funding is incompatible with a conclusion that a loss or deduction is unlikely.

G. Changes in Partnership Allocations

The final regulations retain the rule that changes in partnership allocations resulting from transfers or shifts in partnership interests will be closely scrutinized, but generally will be relevant only on a prospective basis. However, the final regulations provide taxpayers with more specific guidance. The scope of the scrutiny relates to the determination of whether the transfers or shifts stem from a prior agreement, understanding, or plan, or could otherwise be expected given the structure of the transaction (e.g., a situation where the structure and economics is such that it could well be anticipated that a sale of an interest would occur at some particular phase of the partnership's (or transaction's) life). This approach bears some similarity to the approach of § 1.704-1(b)(4)(vi) (relating to the scrutiny given to amendments to partnership agreements).

H. De Minimis Exceptions

In response to comments, changes were also made to the two *de minimis* rules. One commentator asked for clarification on the exception for *de minimis* interests. In response, the rule has been slightly clarified and an example has been added to illustrate the rule's application.

The nature of the comments received with respect to the *de minimis* allocation exception indicated that the exception was viewed differently than

had been intended. The intent of this exception was to provide relief for what would otherwise be minor inadvertent violations of the fractions rule. One example would be a plumber's bill that is paid directly by a taxable partner, or that is paid by the partnership but is overlooked until after the partnership's allocations have been computed and then is allocated entirely to the taxable partner. It was not intended that this provision be used routinely by partnerships to allocate some of the partnership's losses and deductions. Consistent with the intent underlying this provision, the final regulations limit the total amount (rather than the amount allocated to the QO partner) to which the exception applies to the lesser of \$50,000 and one percent of the partnership's total losses and deductions.

I. Anti-Abuse Rule

At least one commentator suggested that the anti-abuse rule in the proposed regulations was vague. To address this concern, the final regulations provide a more complete statement of the purpose of the fractions rule, which largely tracks the wording of the Conference Committee Report accompanying the enactment of the Revenue Act of 1987. See H.R. Conf. Rep. No. 495, 100th Cong., 1st Sess. 957 (1987).

J. Tiered Partnerships

The rules regarding tiered partnerships were well received and remain largely the same as in the proposed regulations. However, some changes were made. First, the final regulations clarify that the relevant partnerships (as opposed to individual QOs) must demonstrate that the relevant chains satisfy the requirements of the regulations under any reasonable method. Also, although the same three basic examples contained in the proposed regulations continue to illustrate the application of this rule, a number of changes were made to those examples. Most of the changes to the examples are stylistic or clarifying.

One clarification is that tiered partnerships may not simply be used to achieve results that could not be achieved in the absence of a tiered-partnership structure. For example, the facts in the second tiered-partnership example (relating to the entity-by-entity approach) now state that each of the upper-tier partnerships has been established for the purpose of investing in numerous real estate properties independently of the other upper-tier partnership and its partners. Thus, the tiered-partnership rules may not be used simply to apply the fractions rule on a

QO-by-QO basis instead of the regulation's generally applicable overall partnership basis.

The facts in the second example also now contain a statement that neither of the upper-tier partnerships have outstanding debt. The reason for that statement is that in some cases, debt might be used to attempt to achieve allocations that would not satisfy the fractions rule if, for example, the lower-tier partnership had incurred the debt. The inclusion of this added fact should not be viewed as flatly precluding the existence of debt at any level other than the lower-tier partnership. The absence of debt was added as a fact to obviate the need to complicate the example by addressing the precise effect of debt, in what likely would have been a fact pattern that would have been of limited value in analyzing other debt arrangements. Accordingly, the existence of debt at a level other than the lower-tier partnership should be viewed as something to be taken into consideration in determining whether a partnership can demonstrate that the requirements of the regulations have been satisfied. It should also be noted that the existence of debt at the partner level might also be relevant in situations where tiered partnerships are not used.

One clarifying change and one technical change were made with respect to the third example in the tiered-partnership rules (relating to the independent chain approach). The clarifying change was to state that the upper-tier partnership separately allocates to its upper-tier partners the items allocated to the upper-tier partnership by the lower-tier partnerships. This change emphasizes that, as a practical matter, partnerships would not otherwise be able to demonstrate that the requirements of the fractions rule are complied with.

The technical change, which is related, is to provide that for purposes of applying § 1.704-2(k) under the independent chain approach, minimum gain chargebacks are taken into account on an if-and-when basis. Absent this change, no tiered-partnership structure in which a lower-tier partnership incurred nonrecourse debt would be able to comply with the fractions rule. This is because § 1.704-2(k) would be treated on a prospective basis as giving rise to: (1) an allocation of a decrease in minimum gain to the upper-tier partnership (and, in turn, an upper-tier QO partner) from one lower-tier partnership lacking sufficient income and gain to effect a minimum gain chargeback; and (2) a corresponding minimum gain chargeback by the upper-tier partnership using income and gain

allocated to the upper-tier partnership by the other lower-tier partnership.

K. Effective Date

The final regulations retain December 30, 1992, as their general effective date, i.e., the date the proposed regulations were published in the *Federal Register*. However, the final regulations also permit reliance on the proposed regulations during the window period beginning December 30, 1992, and ending on May 13, 1994. The regulations provide transition rules for partnerships commencing after October 13, 1987, property acquired by partnerships after October 13, 1987, and partnership interests acquired by qualified organizations after October 13, 1987.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Deane M. Burke, Office of Assistant Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income Taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

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

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

Section 1.514(c)-2 also issued under 26 U.S.C. 514(c)(9)(E)(iii). * * *

Par. 2. Section 1.514(c)-2 is added to read as follows:

§ 1.514(c)-2. Permitted allocations under section 514(c)(9)(E).

(a) *Table of contents.* This paragraph contains a listing of the major headings of this § 1.514(c)-2.

- (a) Table of contents.
- (b) Application of section 514(c)(9)(E), relating to debt-financed real property held by partnerships.
- (1) In general.
 - (i) The fractions rule.
 - (ii) Substantial economic effect.
 - (2) Manner in which fractions rule is applied.
 - (i) In general.
 - (ii) Subsequent changes.
- (c) General definitions.
- (1) Overall partnership income and loss.
 - (i) Items taken into account in determining overall partnership income and loss.
 - (ii) Guaranteed payments to qualified organizations.
 - (2) Fractions rule percentage.
 - (3) Definitions of certain terms by cross reference to partnership regulations.
 - (4) Example.
- (d) Exclusion of reasonable preferred returns and guaranteed payments.
- (1) Overview.
 - (2) Preferred returns.
 - (3) Guaranteed payments.
 - (4) Reasonable amount.
 - (i) In general.
 - (ii) Safe harbor.
 - (iii) Unreturned capital.
 - (iv) In general.
 - (v) Return of capital.
 - (vi) Timing rules.
 - (i) Limitation on allocations of income with respect to reasonable preferred returns for capital.
 - (ii) Reasonable guaranteed payments may be deducted only when paid in cash.
- (7) Examples.
- (e) Chargebacks and offsets.
- (1) In general.
 - (2) Disproportionate allocations.
 - (i) In general.
 - (ii) Limitation on chargebacks of partial allocations.
 - (3) Minimum gain chargebacks attributable to nonrecourse deductions.
 - (4) Minimum gain chargebacks attributable to distribution of nonrecourse debt proceeds.
 - (i) Chargebacks disregarded until allocations made.
 - (ii) Certain minimum gain chargebacks related to returns of capital.
 - (5) Examples.
- (f) Exclusion of reasonable partner-specific items of deduction or loss.
- (g) Exclusion of unlikely losses and deductions.
- (h) Provisions preventing deficit capital account balances.
- (i) [Reserved].
- (j) Exception for partner nonrecourse deductions.
- (1) Partner nonrecourse deductions disregarded until actually allocated.
 - (2) Disproportionate allocation of partner nonrecourse deductions to a qualified organization.
- (k) Special rules.

- (1) Changes in partnership allocations arising from a change in the partners' interests.
- (2) De minimis interest rule.
 - (i) In general.
 - (ii) Example.
- (3) De minimis allocations disregarded.
- (4) Anti-abuse rule.
- (l) [Reserved].
- (m) Tiered partnerships.
 - (1) In general.
 - (2) Examples.
- (n) Effective date.
 - (1) In general.
 - (2) General effective date of the regulations.
 - (3) Periods after June 24, 1990, and prior to December 30, 1992.
 - (4) Periods prior to the issuance of Notice 90-41.
 - (5) Material modifications to partnership agreements.

(b) Application of section 514(c)(9)(E), relating to debt-financed real property held by partnerships—(1) In general.

This § 1.514(c)-2 provides rules governing the application of section 514(c)(9)(E). To comply with section 514(c)(9)(E), the following two requirements must be met:

(i) *The fractions rule.* The allocation of items to a partner that is a qualified organization cannot result in that partner having a percentage share of overall partnership income for any partnership taxable year greater than that partner's fractions rule percentage (as defined in paragraph (c)(2) of this section).

(ii) *Substantial economic effect.* Each partnership allocation must have substantial economic effect. However, allocations that cannot have economic effect must be deemed to be in accordance with the partners' interests in the partnership pursuant to § 1.704-1(b)(4), or (if § 1.704-1(b)(4) does not provide a method for deeming the allocations to be in accordance with the partners' interests in the partnership) must otherwise comply with the requirements of § 1.704-1(b)(4). Allocations attributable to nonrecourse liabilities or partner nonrecourse debt must comply with the requirements of § 1.704-2(e) or § 1.704-2(i).

(2) *Manner in which fractions rule is applied—(i) In general.* A partnership must satisfy the fractions rule both on a prospective basis and on an actual basis for each taxable year of the partnership, commencing with the first taxable year of the partnership in which the partnership holds debt-financed real property and has a qualified organization as a partner. Generally, a partnership does not qualify for the unrelated business income tax exception provided by section 514(c)(9)(A) for any taxable year of its existence unless it satisfies the fractions

rule for every year the fractions rule applies. However, if an actual allocation described in paragraph (e)(4), (h), (j)(2), or (m)(1)(ii) of this section (regarding certain allocations that are disregarded or not taken into account for purposes of the fractions rule until an actual allocation is made) causes the partnership to violate the fractions rule, the partnership ordinarily is treated as violating the fractions rule only for the taxable year of the actual allocation and subsequent taxable years. For purposes of applying the fractions rule, the term *partnership agreement* is defined in accordance with § 1.704-1(b)(2)(ii)(h), and informal understandings are considered part of the partnership agreement in appropriate circumstances. See paragraph (k) of this section for rules relating to changes in the partners' interests and *de minimis* exceptions to the fractions rule.

(ii) *Subsequent changes.* A subsequent change to a partnership agreement that causes the partnership to violate the fractions rule ordinarily causes the partnership's income to fail the exception provided by section 514(c)(9)(A) only for the taxable year of the change and subsequent taxable years.

(c) *General definitions*—(1) *Overall partnership income and loss.* Overall partnership income is the amount by which the aggregate items of partnership income and gain for the taxable year exceed the aggregate items of partnership loss and deduction for the year. Overall partnership loss is the amount by which the aggregate items of partnership loss and deduction for the taxable year exceed the aggregate items of partnership income and gain for the year.

(i) *Items taken into account in determining overall partnership income and loss.* Except as otherwise provided in this section, the partnership items that are included in computing overall partnership income or loss are those items of income, gain, loss, and deduction (including expenditures described in section 705(a)(2)(B)) that increase or decrease the partners' capital accounts under § 1.704-1(b)(2)(iv). Tax items allocable pursuant to section 704(c) or § 1.704-1(b)(2)(iv)(f)(4) are not included in computing overall partnership income or loss.

Nonetheless, allocations pursuant to section 704(c) or § 1.704-1(b)(2)(iv)(f)(4) may be relevant in determining that this section is being applied in a manner that is inconsistent with the fractions rule. See paragraph (k)(4) of this section.

(ii) *Guaranteed payments to qualified organizations.* Except to the extent

otherwise provided in paragraph (d) of this section—

(A) A guaranteed payment to a qualified organization is not treated as an item of partnership loss or deduction in computing overall partnership income or loss; and

(B) Income that a qualified organization may receive or accrue with respect to a guaranteed payment is treated as an allocable share of overall partnership income or loss for purposes of the fractions rule.

(2) *Fractions rule percentage.* A qualified organization's fractions rule percentage is that partner's percentage share of overall partnership loss for the partnership taxable year for which that partner's percentage share of overall partnership loss will be the smallest.

(3) *Definitions of certain terms by cross reference to partnership regulations.* *Minimum gain chargeback, nonrecourse deduction, nonrecourse liability, partner nonrecourse debt, partner nonrecourse debt minimum gain, partner nonrecourse debt minimum gain chargeback, partner nonrecourse deduction, and partnership minimum gain* have the meanings provided in § 1.704-2.

(4) *Example.* The following example illustrates the provisions of this paragraph (c).

Example. Computation of overall partnership income and loss for a taxable year. (i) Taxable corporation TP and qualified organization QO form a partnership to own and operate encumbered real property. Under the partnership agreement, all items of income, gain, loss, deduction, and credit are allocated 50 percent to TP and 50 percent to QO. Neither partner is entitled to a preferred return. However, the partnership agreement provides for a \$900 guaranteed payment for services to QO in each of the partnership's first two taxable years. No part of the guaranteed payments qualify as a reasonable guaranteed payment under paragraph (d) of this section.

(ii) The partnership violates the fractions rule. Due to the existence of the guaranteed payment, QO's percentage share of any overall partnership income in the first two years will exceed QO's fractions rule percentage. For example, the partnership might have bottom-line net income of \$5,100 in its first taxable year that is comprised of \$10,000 of rental income, \$4,000 of salary expense, and the \$900 guaranteed payment to QO. The guaranteed payment would not be treated as an item of deduction in computing overall partnership income or loss because it does not qualify as a reasonable guaranteed payment. See paragraph (c)(1)(ii)(A) of this section. Accordingly, overall partnership income for the year would be \$6,000, which would consist of \$10,000 of rental income less \$4,000 of salary expense. See paragraph (c)(1)(i) of this section. The \$900 QO would include in income with respect to the guaranteed payment would be treated as an

allocable share of the \$6,000 of overall partnership income. See paragraph (c)(1)(ii)(B) of this section. Therefore, QO's allocable share of the overall partnership income for the year would be \$3,450, which would be comprised of the \$900 of income pertaining to QO's guaranteed payment, plus QO's \$2,550 allocable share of the partnership's net income for the year (50 percent of \$5,100). QO's \$3,450 allocable share of overall partnership income would equal 58 percent of the \$6,000 of overall partnership income and would exceed QO's fractions rule percentage, which is less than 50 percent. (If there were no guaranteed payment, QO's fractions rule percentage would be 50 percent. However, the existence of the guaranteed payment to QO that is not disregarded for purposes of the fractions rule pursuant to paragraph (d) of this section means that QO's fractions rule percentage is less than 50 percent.)

(d) *Exclusion of reasonable preferred returns and guaranteed payments*—(1) *Overview.* This paragraph (d) sets forth requirements for disregarding reasonable preferred returns for capital and reasonable guaranteed payments for capital or services for purposes of the fractions rule. To qualify, the preferred return or guaranteed payment must be set forth in a binding, written partnership agreement.

(2) *Preferred returns.* Items of income (including gross income) and gain that may be allocated to a partner with respect to a current or cumulative reasonable preferred return for capital (including allocations of minimum gain attributable to nonrecourse liability (or partner nonrecourse debt) proceeds distributed to the partner as a reasonable preferred return) are disregarded in computing overall partnership income or loss for purposes of the fractions rule. Similarly, if a partnership agreement effects a reasonable preferred return with an allocation of what would otherwise be overall partnership income, those items comprising that allocation are disregarded in computing overall partnership income for purposes of the fractions rule.

(3) *Guaranteed payments.* A current or cumulative reasonable guaranteed payment to a qualified organization for capital or services is treated as an item of deduction in computing overall partnership income or loss, and the income that the qualified organization may receive or accrue from the current or cumulative reasonable guaranteed payment is not treated as an allocable share of overall partnership income or loss. The treatment of a guaranteed payment as reasonable for purposes of section 514(c)(9)(E) does not affect its possible characterization as unrelated business taxable income under other

provisions of the Internal Revenue Code.

(4) *Reasonable amount*—(i) *In general.* A guaranteed payment for services is reasonable only to the extent the amount of the payment is reasonable under § 1.162-7 (relating to the deduction of compensation for personal services). A preferred return or guaranteed payment for capital is reasonable only to the extent it is computed, with respect to unreturned capital, at a rate that is commercially reasonable based on the relevant facts and circumstances.

(ii) *Safe harbor.* For purposes of this paragraph (d)(4), a rate is deemed to be commercially reasonable if it is no greater than four percentage points more than, or if it is no greater than 150 percent of, the highest long-term applicable federal rate (AFR) within the meaning of section 1274(d), for the month the partner's right to a preferred return or guaranteed payment is first established or for any month in the partnership taxable year for which the return or payment on capital is computed. A rate in excess of the rates described in the preceding sentence may be commercially reasonable, based on the relevant facts and circumstances.

(5) *Unreturned capital*—(i) *In general.* Unreturned capital is computed on a weighted-average basis and equals the excess of—

(A) The amount of money and the fair market value of property contributed by the partner to the partnership (net of liabilities assumed, or taken subject to, by the partnership); over

(B) The amount of money and the fair market value of property (net of liabilities assumed, or taken subject to, by the partner) distributed by the partnership to the partner as a return of capital.

(ii) *Return of capital.* In determining whether a distribution constitutes a return of capital, all relevant facts and circumstances are taken into account. However, the designation of distributions in a written partnership agreement generally will be respected in determining whether a distribution constitutes a return of capital, so long as the designation is economically reasonable.

(6) *Timing rules*—(i) *Limitation on allocations of income with respect to reasonable preferred returns for capital.* Items of income and gain (or part of what would otherwise be overall partnership income) that may be allocated to a partner in a taxable year with respect to a reasonable preferred return for capital are disregarded for purposes of the fractions rule only to the

extent the allocable amount will not exceed—

(A) The aggregate of the amount that has been distributed to the partner as a reasonable preferred return for the taxable year of the allocation and prior taxable years, on or before the due date (not including extensions) for filing the partnership's return for the taxable year of the allocation; minus

(B) The aggregate amount of corresponding income and gain (and what would otherwise be overall partnership income) allocated to the partner in all prior years.

(ii) *Reasonable guaranteed payments may be deducted only when paid in cash.* If a partnership that avails itself of paragraph (d)(3) of this section would otherwise be required (by virtue of its method of accounting) to deduct a reasonable guaranteed payment to a qualified organization earlier than the taxable year in which it is paid in cash, the partnership must delay the deduction of the guaranteed payment until the taxable year it is paid in cash. For purposes of this paragraph (d)(6)(ii), a guaranteed payment that is paid in cash on or before the due date (not including extensions) for filing the partnership's return for a taxable year may be treated as paid in that prior taxable year.

(7) *Examples.* The following examples illustrate the provisions of this paragraph (d).

Facts. Qualified organization QO and taxable corporation TP form a partnership. QO contributes \$9,000 to the partnership and TP contributes \$1,000. The partnership borrows \$50,000 from a third party lender and purchases an office building for \$55,000. At all relevant times the safe harbor rate described in paragraph (d)(4)(ii) of this section equals 10 percent.

Example 1. Allocations made with respect to preferred returns. (i) The partnership agreement provides that in each taxable year the partnership's distributable cash is first to be distributed to QO as a 10 percent preferred return on its unreturned capital. To the extent the partnership has insufficient cash to pay QO its preferred return in any taxable year, the preferred return is compounded (at 10 percent) and is to be paid in future years to the extent the partnership has distributable cash. The partnership agreement first allocates gross income and gain 100 percent to QO, to the extent cash has been distributed to QO as a preferred return. All remaining profit or loss is allocated 50 percent to QO and 50 percent to TP.

(ii) The partnership satisfies the fractions rule. Items of income and gain that may be specially allocated to QO with respect to its preferred return are disregarded in computing overall partnership income or loss for purposes of the fractions rule because the requirements of paragraph (d) of this section are satisfied. After disregarding those allocations, QO's fractions rule percentage is

50 percent (see paragraph (c)(2) of this section), and under the partnership agreement QO may not be allocated more than 50 percent of overall partnership income in any taxable year.

(iii) The facts are the same as in paragraph (i) of this *Example 1*, except that QO's preferred return is computed on unreturned capital at a rate that exceeds a commercially reasonable rate. The partnership violates the fractions rule. The income and gain that may be specially allocated to QO with respect to the preferred return is not disregarded in computing overall partnership income or loss to the extent it exceeds a commercially reasonable rate. See paragraph (d) of this section. As a result, QO's fractions rule percentage is less than 50 percent (see paragraph (c)(2) of this section), and allocations of income and gain to QO with respect to its preferred return could result in QO being allocated more than 50 percent of the overall partnership income in a taxable year.

Example 2. Guaranteed payments and the computation of overall partnership income or loss. (i) The partnership agreement allocates all bottom-line partnership income and loss 50 percent to QO and 50 percent to TP throughout the life of the partnership. The partnership agreement provides that QO is entitled each year to a 10 percent guaranteed payment on unreturned capital. To the extent the partnership is unable to make a guaranteed payment in any taxable year, the unpaid amount is compounded at 10 percent and is to be paid in future years.

(ii) Assuming the requirements of paragraph (d)(6)(ii) of this section are met, the partnership satisfies the fractions rule. The guaranteed payment is disregarded for purposes of the fractions rule because it is computed with respect to unreturned capital at the safe harbor rate described in paragraph (d)(4)(ii) of this section. Therefore, the guaranteed payment is treated as an item of deduction in computing overall partnership income or loss, and the corresponding income that QO may receive or accrue with respect to the guaranteed payment is not treated as an allocable share of overall partnership income or loss. See paragraph (d)(3) of this section. Accordingly, QO's fractions rule percentage is 50 percent (see paragraph (c)(2) of this section), and under the partnership agreement QO may not be allocated more than 50 percent of overall partnership income in any taxable year.

(e) *Chargebacks and offsets*—(1) *In general.* The following allocations are disregarded in computing overall partnership income or loss for purposes of the fractions rule—

(i) Allocations of what would otherwise be overall partnership income that may be made to chargeback (i.e., reverse) prior disproportionately large allocations of overall partnership loss (or part of the overall partnership loss) to a qualified organization, and allocations of what would otherwise be overall partnership loss that may be made to chargeback prior disproportionately small allocations of

overall partnership income (or part of the overall partnership income) to a qualified organization;

(ii) Allocations of income or gain that may be made to a partner pursuant to a minimum gain chargeback attributable to prior allocations of nonrecourse deductions to the partner;

(iii) Allocations of income or gain that may be made to a partner pursuant to a minimum gain chargeback attributable to prior allocations of partner nonrecourse deductions to the partner and allocations of income or gain that may be made to other partners to chargeback compensating allocations of other losses, deductions, or section 705(a)(2)(B) expenditures to the other partners; and

(iv) Allocations of items of income or gain that may be made to a partner pursuant to a qualified income offset, within the meaning of § 1.704-1(b)(2)(ii)(d).

(2) *Disproportionate allocations*—(i) *In general.* To qualify under paragraph (e)(1)(i) of this section, prior disproportionate allocations may be reversed in full or in part, and in any order, but must be reversed in the same ratio as originally made. A prior allocation is disproportionately large if the qualified organization's percentage share of that allocation exceeds its fractions rule percentage. A prior allocation is disproportionately small if the qualified organization's percentage share of that allocation is less than its fractions rule percentage. However, a prior allocation (or allocations) is not considered disproportionate unless the balance of the overall partnership income or loss for the taxable year of the allocation is allocated in a manner that would independently satisfy the fractions rule.

(ii) *Limitation on chargebacks of partial allocations.* Except in the case of a chargeback allocation pursuant to paragraph (e)(4) of this section, and except as otherwise provided by the Internal Revenue Service by revenue ruling, revenue procedure, or, on a case-by-case basis, by letter ruling, paragraph (e)(1)(i) of this section applies to a chargeback of an allocation of part of the overall partnership income or loss only if that part consists of a pro rata portion of each item of partnership income, gain, loss, and deduction (other than nonrecourse deductions, as well as partner nonrecourse deductions and compensating allocations) that is included in computing overall partnership income or loss.

(3) *Minimum gain chargebacks attributable to nonrecourse deductions.* Commencing with the first taxable year of the partnership in which a minimum

gain chargeback (or partner nonrecourse debt minimum gain chargeback) occurs, a chargeback to a partner is attributable to nonrecourse deductions (or separately, on a debt-by-debt basis, to partner nonrecourse deductions) in the same proportion that the partner's percentage share of the partnership minimum gain (or separately, on a debt-by-debt basis, the partner nonrecourse debt minimum gain) at the end of the immediately preceding taxable year is attributable to nonrecourse deductions (or partner nonrecourse deductions).

The partnership must determine the extent to which a partner's percentage share of the partnership minimum gain (or partner nonrecourse debt minimum gain) is attributable to deductions in a reasonable and consistent manner. For example, in those cases in which none of the exceptions contained in § 1.704-2(f)(2) through (5) are relevant, a partner's percentage share of the partnership minimum gain generally is attributable to nonrecourse deductions in the same ratio that—

(i) The aggregate amount of the nonrecourse deductions previously allocated to the partner but not charged back in prior taxable years; bears to

(ii) The sum of the amount described in paragraph (e)(3)(i) of this section, plus the aggregate amount of distributions previously made to the partner of proceeds of a nonrecourse liability allocable to an increase in partnership minimum gain but not charged back in prior taxable years.

(4) *Minimum gain chargebacks attributable to distribution of nonrecourse debt proceeds*—(i) *Chargebacks disregarded until allocations made.* Allocations of items of income and gain that may be made pursuant to a provision in the partnership agreement that charges back minimum gain attributable to the distribution of proceeds of a nonrecourse liability (or a partner nonrecourse debt) are taken into account for purposes of the fractions rule only to the extent an allocation is made. (See paragraph (d)(2) of this section, pursuant to which there is permanently excluded chargeback allocations of minimum gain that are attributable to proceeds distributed as a reasonable preferred return.)

(ii) *Certain minimum gain chargebacks related to returns of capital.* Allocations of items of income or gain that (in accordance with § 1.704-2(f)(1)) may be made to a partner pursuant to a minimum gain chargeback attributable to the distribution of proceeds of a nonrecourse liability are disregarded in computing overall partnership income or loss for purposes

of the fractions rule to the extent that the allocations (subject to the requirements of paragraph (e)(2) of this section) also charge back prior disproportionately large allocations of overall partnership loss (or part of the overall partnership loss) to a qualified organization. This exception applies only to the extent the disproportionately large allocation consisted of depreciation from real property (other than items of nonrecourse deduction or partner nonrecourse deduction) that subsequently was used to secure the nonrecourse liability providing the distributed proceeds, and only if those proceeds were distributed as a return of capital and in the same proportion as the disproportionately large allocation.

(5) *Examples.* The following examples illustrate the provisions of this paragraph (e).

Example 1. Chargebacks of disproportionately large allocations of overall partnership loss. (i) Qualified organization QO and taxable corporation TP form a partnership. QO contributes \$900 to the partnership and TP contributes \$100. The partnership agreement allocates overall partnership loss 50 percent to QO and 50 percent to TP until TP's capital account is reduced to zero; then 100 percent to QO until QO's capital account is reduced to zero; and thereafter 50 percent to QO and 50 percent to TP. *Overall partnership income* is allocated first 100 percent to QO to chargeback overall partnership loss allocated 100 percent to QO, and thereafter 50 percent to QO and 50 percent to TP.

(ii) The partnership satisfies the fractions rule. QO's fractions rule percentage is 50 percent. See paragraph (c)(2) of this section. Therefore, the 100 percent allocation of overall partnership loss to QO is disproportionately large. See paragraph (e)(2)(i) of this section. Accordingly, the 100 percent allocation to QO of what would otherwise be overall partnership income (if it were not disregarded), which charges back the disproportionately large allocation of overall partnership loss, is disregarded in computing overall partnership income and loss for purposes of the fractions rule. The 100 percent allocation is in the same ratio as the disproportionately large loss allocation, and the rest of the allocations for the taxable year of the disproportionately large loss allocation will independently satisfy the fractions rule. See paragraph (e)(2)(i) of this section. After disregarding the chargeback allocation of 100 percent of what would otherwise be overall partnership income, QO will not be allocated a percentage share of overall partnership income in excess of its fractions rule percentage for any taxable year.

Example 2. Chargebacks of disproportionately small allocations of overall partnership income. (i) Qualified organization QO and taxable corporation TP form a partnership. QO contributes \$900 to the partnership and TP contributes \$100. The partnership purchases real property with money contributed by its partners and with

money borrowed by the partnership on a recourse basis. In any year, the partnership agreement allocates the first \$500 of overall partnership income 50 percent to QO and 50 percent to TP; the next \$100 of overall partnership income 100 percent to TP (as an incentive for TP to achieve significant profitability in managing the partnership's operations); and all remaining overall partnership income 50 percent to QO and 50 percent to TP. Overall partnership loss is allocated first 100 percent to TP to chargeback overall partnership income allocated 100 percent to TP at any time in the prior three years and not reversed; and thereafter 50 percent to QO and 50 percent to TP.

(ii) The partnership satisfies the fractions rule. QO's fractions rule percentage is 50 percent because qualifying chargebacks are disregarded pursuant to paragraph (e)(1)(i) in computing overall partnership income or loss. See paragraph (c)(2) of this section. The zero percent allocation to QO of what would otherwise be overall partnership loss is a qualifying chargeback that is disregarded because it is in the same ratio as the income allocation it charges back, because the rest of the allocations for the taxable year of that income allocation will independently satisfy the fractions rule (see paragraph (e)(2)(i) of this section), and because it charges back an allocation of zero overall partnership income to QO, which is proportionately smaller (i.e., disproportionately small) than QO's 50 percent fractions rule percentage. After disregarding the chargeback allocation of 100 percent of what would otherwise be overall partnership loss, QO will not be allocated a percentage share of overall partnership income in excess of its fractions rule percentage for any taxable year.

Example 3. Chargebacks of partner nonrecourse deductions and compensating allocations of other items. (i) Qualified organization QO and taxable corporation TP form a partnership to own and operate encumbered real property. QO and TP each contribute \$500 to the partnership. In addition, QO makes a \$300 nonrecourse loan to the partnership. The partnership agreement contains a partner nonrecourse debt minimum gain chargeback provision and a provision that allocates partner nonrecourse deductions to the partner who bears the economic burden of the deductions in accordance with § 1.704-2. The partnership agreement also provides that to the extent partner nonrecourse deductions are allocated to QO in any taxable year, other compensating items of partnership loss or deduction (and, if appropriate, section 705(a)(2)(B) expenditures) will first be allocated 100 percent to TP. In addition, to the extent items of income or gain are allocated to QO in any taxable year pursuant to a partner nonrecourse debt minimum gain chargeback of deductions, items of partnership income and gain will first be allocated 100 percent to TP. The partnership agreement allocates all other overall partnership income or loss 50 percent to QO and 50 percent to TP.

(ii) The partnership satisfies the fractions rule on a prospective basis. The allocations of the partner nonrecourse deductions and

the compensating allocation of other items of loss, deduction, and expenditure that may be made to TP (but which will not be made unless there is an allocation of partner nonrecourse deductions to QO) are not taken into account for purposes of the fractions rule until a taxable year in which an allocation is made. See paragraph (j)(1) of this section. In addition, partner nonrecourse debt minimum gain chargebacks of deductions and allocations of income or gain to other partners that chargeback compensating allocations of other deductions are disregarded in computing overall partnership income or loss for purposes of the fractions rule. See paragraph (e)(1)(iii) of this section. Since all other overall partnership income and loss is allocated 50 percent to QO and 50 percent to TP, QO's fractions rule percentage is 50 percent (see paragraph (c)(2) of this section), and QO will not be allocated a percentage share of overall partnership income in excess of its fractions rule percentage for any taxable year.

(iii) The facts are the same as in paragraph (i) of this Example 3, except that the partnership agreement provides that compensating allocations of loss or deduction (and section 705(a)(2)(B) expenditures) to TP will not be charged back until year 10. The partners expect \$300 of partner nonrecourse deductions to be allocated to QO in year 1 and \$300 of income or gain to be allocated to QO in year 2 pursuant to the partner nonrecourse debt minimum gain chargeback provision.

(iv) The partnership fails to satisfy the fractions rule on a prospective basis under the anti-abuse rule of paragraph (k)(4) of this section. If the partners' expectations prove correct, at the end of year 2, QO will have been allocated \$300 of partner nonrecourse deductions and an offsetting \$300 of partner nonrecourse debt minimum gain. However, the \$300 of compensating deductions and losses that may be allocated to TP will not be charged back until year 10. Thus, during the period beginning at the end of year 2 and ending eight years later, there may be \$300 more of unreversed deductions and losses allocated to TP than to QO, which would be inconsistent with the purpose of the fractions rule.

Example 4. Minimum gain chargeback attributable to distributions of nonrecourse debt proceeds. (i) Qualified organization QO and taxable corporation TP form a partnership. QO contributes \$900 to the partnership and TP contributes \$100. The partnership agreement generally allocates overall partnership income and loss 90 percent to QO and 10 percent to TP. However, the partnership agreement contains a minimum gain chargeback provision, and also provides that in any partnership taxable year in which there is a chargeback of partnership minimum gain to QO attributable to distributions of proceeds of nonrecourse liabilities, all other items comprising overall partnership income or loss will be allocated in a manner such that QO is not allocated more than 90 percent of the overall partnership income for the year.

(ii) The partnership satisfies the fractions rule on a prospective basis. QO's fractions rule percentage is 90 percent. See paragraph

(c)(2) of this section. The chargeback that may be made to QO of minimum gain attributable to distributions of nonrecourse liability proceeds is taken into account for purposes of the fractions rule only to the extent an allocation is made. See paragraph (e)(4) of this section. Accordingly, that potential allocation to QO is disregarded in applying the fractions rule on a prospective basis (see paragraph (b)(2) of this section), and QO is treated as not being allocated a percentage share of overall partnership income in excess of its fractions rule percentage in any taxable year. (Similarly, QO is treated as not being allocated items of income or gain in a taxable year when the partnership has an overall partnership loss.)

(iii) In year 3, the partnership borrows \$400 on a nonrecourse basis and distributes it to QO as a return of capital. In year 8, the partnership has \$400 of gross income and cash flow and \$300 of overall partnership income, and the partnership repays the \$400 nonrecourse borrowing.

(iv) The partnership violates the fractions rule for year 8 and all future years. Pursuant to the minimum gain chargeback provision, the entire \$400 of partnership gross income is allocated to QO. Accordingly, notwithstanding the curative provision in the partnership agreement that would allocate to TP the next \$44 ($[(\$400 \div 9) \times 10\%]$) of income and gain included in computing overall partnership income, the partnership has no other items of income and gain to allocate to QO. Because the \$400 of gross income actually allocated to QO is taken into account for purposes of the fractions rule in the year an allocation is made (see paragraph (e)(4) of this section), QO's percentage share of overall partnership income in year 8 is greater than 100 percent. Since this exceeds QO's fractions rule percentage (i.e., 90 percent), the partnership violates the fractions rule for year 8 and all subsequent taxable years. See paragraph (b)(2) of this section.

(f) *Exclusion of reasonable partner-specific items of deduction or loss.* Provided that the expenditures are allocated to the partners to whom they are attributable, the following partner-specific expenditures are disregarded in computing overall partnership income or loss for purposes of the fractions rule—

(1) Expenditures for additional record-keeping and accounting incurred in connection with the transfer of a partnership interest (including expenditures incurred in computing basis adjustments under section 743(b));

(2) Additional administrative costs that result from having a foreign partner;

(3) State and local taxes or expenditures relating to those taxes; and

(4) Expenditures designated by the Internal Revenue Service by revenue ruling or revenue procedure, or, on a case-by-case basis, by letter ruling. (See § 601.601(d)(2)(ii)(b) of this chapter.)

(g) *Exclusion of unlikely losses and deductions.* Unlikely losses or deductions (other than items of

nonrecourse deduction) that may be specially allocated to partners that bear the economic burden of those losses or deductions are disregarded in computing overall partnership income or loss for purposes of the fractions rule, so long as a principal purpose of the allocation is not tax avoidance. To be excluded under this paragraph (g), a loss or deduction must have a low likelihood of occurring, taking into account all relevant facts, circumstances, and information available to the partners (including bona fide financial projections). The types of events that may give rise to unlikely losses or deductions, depending on the facts and circumstances, include tort and other third-party litigation that give rise to unforeseen liabilities in excess of reasonable insurance coverage; unanticipated labor strikes; unusual delays in securing required permits or licenses; abnormal weather conditions (considering the season and the job site); significant delays in leasing property due to an unanticipated severe economic downturn in the geographic area; unanticipated cost overruns; and the discovery of environmental conditions that require remediation. No inference is drawn as to whether a loss or deduction is unlikely from the fact that the partnership agreement includes a provision for allocating that loss or deduction.

(h) *Provisions preventing deficit capital account balances.* A provision in the partnership agreement that allocates items of loss or deduction away from a qualified organization in instances where allocating those items to the qualified organization would cause or increase a deficit balance in its capital account that the qualified organization is not obligated to restore (within the meaning of § 1.704-1(b)(2)(ii) (b) or (d)), is disregarded for purposes of the fractions rule in taxable years of the partnership in which no such allocations are made pursuant to the provision. However, this exception applies only if, at the time the provision becomes part of the partnership agreement, all relevant facts, circumstances, and information (including bona fide financial projections) available to the partners reasonably indicate that it is unlikely that an allocation will be made pursuant to the provision during the life of the partnership.

(i) [Reserved]

(j) *Exception for partner nonrecourse deductions—(1) Partner nonrecourse deductions disregarded until actually allocated.* Items of partner nonrecourse deduction that may be allocated to a partner pursuant to § 1.704-2, and

compensating allocations of other items of loss, deduction, and section 705(a)(2)(B) expenditures that may be allocated to other partners, are not taken into account for purposes of the fractions rule until the taxable years in which they are allocated.

(2) *Disproportionate allocation of partner nonrecourse deductions to a qualified organization.* A violation of the fractions rule will be disregarded if it arises because an allocation of partner nonrecourse deductions to a qualified organization that is not motivated by tax avoidance reduces another qualified organization's fractions rule percentage below what it would have been absent the allocation of the partner nonrecourse deductions.

(k) *Special rules—(1) Changes in partnership allocations arising from a change in the partners' interests.* A qualified organization that acquires a partnership interest from another qualified organization is treated as a continuation of the prior qualified organization partner (to the extent of that acquired interest) for purposes of applying the fractions rule. Changes in partnership allocations that result from other transfers or shifts of partnership interests will be closely scrutinized (to determine whether the transfer or shift stems from a prior agreement, understanding, or plan or could otherwise be expected given the structure of the transaction), but generally will be taken into account only in determining whether the partnership satisfies the fractions rule in the taxable year of the change and subsequent taxable years.

(2) *De minimis interest rule—(i) In general.* Section 514(c)(9)(B)(vi) does not apply to a partnership otherwise subject to that section if—

(A) Qualified organizations do not hold, in the aggregate, interests of greater than five percent in the capital or profits of the partnership; and

(B) Taxable partners own substantial interests in the partnership through which they participate in the partnership on substantially the same terms as the qualified organization partners.

(ii) *Example.* Partnership PRS has two types of limited partnership interests that participate in partnership profits and losses on different terms. Qualified organizations (QOs) only own one type of limited partnership interest and own no general partnership interests. In the aggregate, the QOs own less than five percent of the capital and profits of PRS. Taxable partners also own the same type of limited partnership interest that the QOs own. These limited partnership interests owned by the taxable partners

are 30 percent of the capital and profits of PRS. Thirty percent is a substantial interest in the partnership. Therefore, PRS satisfies paragraph (k)(2) of this section and section 514(c)(9)(B)(vi) does not apply.

(3) *De minimis allocations disregarded.* A qualified organization's fractions rule percentage of the partnership's items of loss and deduction, other than nonrecourse and partner nonrecourse deductions, that are allocated away from the qualified organization and to other partners in any taxable year are treated as having been allocated to the qualified organization for purposes of the fractions rule if—

(i) The allocation was neither planned nor motivated by tax avoidance; and

(ii) The total amount of those items of partnership loss or deduction is less than both—

(A) One percent of the partnership's aggregate items of gross loss and deduction for the taxable year; and

(B) \$50,000.

(4) *Anti-abuse rule.* The purpose of the fractions rule is to prevent tax avoidance by limiting the permanent or temporary transfer of tax benefits from tax-exempt partners to taxable partners, whether by directing income or gain to tax-exempt partners, by directing losses, deductions, or credits to taxable partners, or by some other similar manner. This section may not be applied in a manner that is inconsistent with the purpose of the fractions rule.

(l) [Reserved].

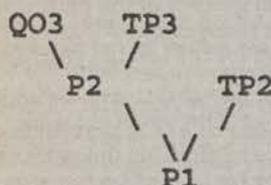
(m) *Tiered partnerships—(1) In general.* If a qualified organization holds an indirect interest in real property through one or more tiers of partnerships (a chain), the fractions rule is satisfied only if—

(i) The avoidance of tax is not a principal purpose for using the tiered-ownership structure (investing in separate real properties through separate chains of partnerships so that section 514(c)(9)(E) is, effectively, applied on a property-by-property basis is not, in and of itself, a tax avoidance purpose); and

(ii) The relevant partnerships can demonstrate under any reasonable method that the relevant chains satisfy the requirements of paragraphs (b)(2) through (k) of this section. For purposes of applying § 1.704-2(k) under the independent chain approach described in Example 3 of paragraph (m)(2) of this section, allocations of items of income or gain that may be made pursuant to a provision in the partnership agreement that charges back minimum gain are taken into account for purposes of the fractions rule only to the extent an allocation is made.

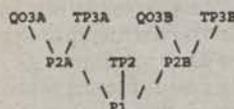
(2) *Examples.* The following examples illustrate the provisions of this paragraph (m).

Example 1. Tiered partnerships—collapsing approach. (i) Qualified organization QO3 and taxable individual TP3 form upper-tier partnership P2. The P2 partnership agreement allocates overall partnership income 20 percent to QO3 and 80 percent to TP3. Overall partnership loss is allocated 30 percent to QO3 and 70 percent to TP3. P2 and taxable individual TP2 form lower-tier partnership P1. The P1 partnership agreement allocates overall partnership income 60 percent to P2 and 40 percent to TP2. Overall partnership loss is allocated 40 percent to P2 and 60 percent to TP2. The only asset of P2 (which has no outstanding debt) is its interest in P1. P1 purchases real property with money contributed by its partners and with borrowed money. There is no tax avoidance purpose for the use of the tiered-ownership structure, which is illustrated by the following diagram.



(ii) P2 can demonstrate that the P2/P1 chain satisfies the requirements of paragraphs (b)(2) through (k) of this section by collapsing the tiered-partnership structure. On a collapsed basis, QO3's fractions rule percentage is 12 percent (30 percent of 40 percent). See paragraph (c)(2) of this section. P2 satisfies the fractions rule because QO3 may not be allocated more than 12 percent (20 percent of 60 percent) of overall partnership income in any taxable year.

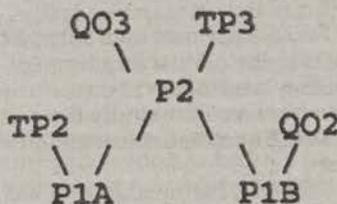
Example 2. Tiered partnerships—entity-by-entity approach. (i) Qualified organization QO3A is a partner with taxable individual TP3A in upper-tier partnership P2A. Qualified organization QO3B is a partner with taxable individual TP3B in upper-tier partnership P2B. P2A, P2B, and taxable individual TP2 are partners in lower-tier partnership P1, which owns encumbered real estate. None of QO3A, QO3B, TP3A, TP3B or TP2 has a direct or indirect ownership interest in each other. P2A has been established for the purpose of investing in numerous real estate properties independently of P2B and its partners. P2B has been established for the purpose of investing in numerous real estate properties independently of P2A and its partners. Neither P2A nor P2B has outstanding debt. There is no tax avoidance purpose for the use of the tiered-ownership structure, which is illustrated by the following diagram.



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(ii) The P2A/P1 chain (Chain A) will satisfy the fractions rule if P1 and P2A can demonstrate in a reasonable manner that they satisfy the requirements of paragraphs (b)(2) through (k) of this section. The P2B/P1 chain (Chain B) will satisfy the fractions rule if P1 and P2B can demonstrate in a reasonable manner that they satisfy the requirements of paragraphs (b)(2) through (k) of this section. To meet its burden, P1 treats P2A and P2B as qualified organizations. Provided that the allocations that may be made by P1 would satisfy the fractions rule if P2A and P2B were direct qualified organization partners in P1, Chain A will satisfy the fractions rule (for the benefit of QO3A) if the allocations that may be made by P2A satisfy the requirements of paragraphs (b)(2) through (k) of this section. Similarly, Chain B will satisfy the fractions rule (for the benefit of QO3B) if the allocations that may be made by P2B satisfy the requirements of paragraphs (b)(2) through (k) of this section. Under these facts, QO3A does not have to know how income and loss may be allocated by P2B, and QO3B does not have to know how income and loss may be allocated by P2A. QO3A's and QO3B's burden would not change even if TP2 were not a partner in P1.

Example 3. Tiered partnerships— independent chain approach. (i) Qualified organization QO3 and taxable corporation TP3 form upper-tier partnership P2. P2 and taxable corporation TP2 form lower-tier partnership P1A. P2 and qualified organization QO2 form lower-tier partnership P1B. P2 has no outstanding debt. P1A and P1B each purchase real property with money contributed by their respective partners and with borrowed money. Each partnership's real property is completely unrelated to the real property owned by the other partnership. P1B's allocations do not satisfy the requirements of paragraphs (b)(2) through (k) of this section because of allocations that may be made to QO2. However, if P2's interest in P1B were completely disregarded, the P2/P1A chain would satisfy the requirements of paragraphs (b)(2) through (k) of this section. There is no tax avoidance purpose for the use of the tiered-ownership structure, which is illustrated by the following diagram.



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(ii) P2 satisfies the fractions rule with respect to the P2/P1A chain, but only if the P2 partnership agreement allocates those items allocated to P2 by P1A separately from those items allocated to P2 by P1B. For this purpose, allocations of items of income or gain that may be made pursuant to a provision in the partnership agreement that charges back minimum gain, are taken into account for purposes of the fractions rule only to the extent an allocation is made. See

paragraph (m)(1)(ii) of this section. P2 does not satisfy the fractions rule with respect to the P2/P1B chain.

(n) *Effective date—(1) In general.* Section 514(c)(9)(E), as amended by sections 2004(h) (1) and (2) of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, applies generally with respect to property acquired by partnerships after October 13, 1987, and to partnership interests acquired after October 13, 1987.

(2) *General effective date of the regulations.* Section 1.514(c)-2 (a) through (m) applies with respect to partnership agreements entered into after December 30, 1992, property acquired by partnerships after December 30, 1992, and partnership interests acquired by qualified organizations after December 30, 1992 (other than a partnership interest that at all times after October 13, 1987, and prior to the acquisition was held by a qualified organization). For this purpose, paragraphs (a) through (m) of this section will be treated as satisfied with respect to partnership agreements entered into on or before May 13, 1994, property acquired by partnerships on or before May 13, 1994, and partnership interests acquired by qualified organizations on or before May 13, 1994, if the guidance set forth in (paragraphs (a) through (m) of § 1.514(c)-2 of PS-56-90, published at 1993-5 I.R.B. 42, February 1, 1993, is satisfied. (See § 601.601(d)(2)(ii)(b) of this chapter).

(3) *Periods after June 24, 1990, and prior to December 30, 1992.* To satisfy the requirements of section 514(c)(9)(E) with respect to partnership agreements entered into after June 24, 1990, property acquired by partnerships after June 24, 1990, and partnership interests acquired by qualified organizations after June 24, 1990, (other than a partnership interest that at all times after October 13, 1987, and prior to the acquisition was held by a qualified organization) to which paragraph (n)(2) of this section does not apply, paragraphs (a) through (m) of this section must be satisfied as of the first day that section 514(c)(9)(E) applies with respect to the partnership, property, or acquired interest. For this purpose, paragraphs (a) through (m) of this section will be treated as satisfied if the guidance in sections I through VI of Notice 90-41, 90-1 C.B. 350, (see § 601.601(d)(2)(ii)(b) of this chapter) has been followed.

(4) *Periods prior to the issuance of Notice 90-41.* With respect to partnerships commencing after October 13, 1987, property acquired by partnerships after October 13, 1987, and partnership interests acquired by qualified organizations after October 13,

1987, to which neither paragraph (n)(2) nor (n)(3) of this section applies, the Internal Revenue Service will not challenge an interpretation of section 514(c)(9)(E) that is reasonable in light of the underlying purposes of section 514(c)(9)(E) (as reflected in its legislative history) and that is consistently applied as of the first day that section 514(c)(9)(E) applies with respect to the partnership, property, or acquired interest. A reasonable interpretation includes an interpretation that substantially follows the guidance in either sections I through VI of Notice 90-41, (see § 601.601(d)(2)(ii)(b) of this chapter) or paragraphs (a) through (m) of this section.

(5) Material modifications to partnership agreements. A material modification will cause a partnership agreement to be treated as a new partnership agreement in appropriate circumstances for purposes of this paragraph (n).

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved: April 21, 1994.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 94-11612 Filed 5-11-94; 8:45 am]

BILLING CODE 4830-01-U

26 CFR Parts 1 and 602

[TD 8537]

RIN 1545-AQ50

Carryover of Passive Activity Losses and Credits and At Risk Losses to Bankruptcy Estates of Individuals

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the application of carryover of passive activity losses and credits and at risk losses to the bankruptcy estates of individuals. The final regulations affect individual taxpayers who file bankruptcy petitions under chapter 7 or chapter 11 of title 11 of the United States Code and have passive activity losses and credits under section 469 or losses under section 465.

DATES: These regulations are effective May 13, 1994.

These regulations apply to bankruptcy cases commencing on or after November 9, 1992. In addition, the regulations apply, at the election of the affected taxpayers, to cases that commenced before, and end on or after, November 9, 1992.

FOR FURTHER INFORMATION CONTACT:

Amy J. Sargent of the Office of Assistant Chief Counsel (Income Tax & Accounting), Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, or telephone (202) 622-4930 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545-1375. The estimated annual burden per respondent varies from .5 hour to 1.5 hours, depending on individual circumstances, with an estimated average of 1 hour.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

This document contains final Income Tax Regulations (26 CFR part 1) under section 1398 of the Internal Revenue Code (Code). On November 9, 1992, the IRS published in the Federal Register a notice of proposed rulemaking designating passive activity losses and credits under section 469 and unused section 465 losses as attributes that pass from the debtor to the bankruptcy estate under section 1398(g) of the Code and that, upon termination of the estate, pass from the bankruptcy estate to the debtor under section 1398(i). Corrections to the Notice of Proposed Rulemaking were published in the Federal Register on December 22, 1992 (57 FR 246). A public hearing was held on January 25, 1993. After consideration of the public comments regarding the proposed regulations, the final regulations adopt the rules contained in the proposed regulations without substantive change. A discussion of the public comments is set forth below.

Public Comments

The comments received by the IRS were generally favorable, welcoming the designation of attributes under section 1398(g)(8). Several commentators suggested that the regulations be

modified. These suggestions are discussed below.

I. Expansion of the Proposed Regulations to Include Additional Attributes

The proposed regulations designate passive activity losses and credits under section 469 and losses under section 465 as attributes that pass from the debtor to the estate. Several commentators suggested that the scope of the proposed regulations be expanded to include additional attributes of the debtor, either by specifically listing the additional attributes or by providing that attributes of the debtor pass to the estate if they are related to property passing to the estate or are in the nature of a carryforward.

These suggestions were not adopted in the final regulations. The treatment of other unenumerated attributes under section 1398 (g) and (i) is more appropriately provided in a separate regulation project. This would provide taxpayers with an opportunity to comment before additional attributes of the debtor are designated, by final regulation, as attributes that pass to the estate.

II. Taxation of Estate's Transfers of an Interest in a Passive Activity or Former Passive Activity or an Interest in a Section 465 Activity Before Termination of the Estate

The proposed regulations provide that if, before the termination of the estate, the estate transfers an interest in a passive activity or former passive activity to the debtor (other than by sale or exchange), the transfer is not treated as a disposition for purposes of any provision of the Code assigning tax consequences to a disposition. By way of example, the proposed regulations state that such transfers include transfers from the estate to the debtor of property that is exempt under section 522 of title 11 of the United States Code and abandonments of estate property to the debtor under section 554(a) of such title. The proposed regulations provide similar rules for the transfer of a section 465 activity.

Several commentators objected on the grounds that these provisions are outside the scope of the regulatory authority of the IRS under section 1398(g) and (i). In general, these commentators maintained that the regulatory authority of the IRS is limited to listing attributes that pass from the debtor to the estate and that, upon termination of the estate, pass to the debtor. In addition, one commentator contended that the provisions relating to pre-termination transfers between the

estate and the debtor constitute an improper attempt to amend by regulation the express language of section 1398(f)(2). Commentators also questioned the treatment of abandonments as nontaxable dispositions, reiterating many of the arguments set forth in *In re A.J. Lane & Co.*, 133 B.R. 264 (Bankr. D. Mass. 1991), which stated in *dicta* that abandonments are taxable dispositions. See also *In re Rubin*, 154 B.R. 897 (Bankr. D. Md. 1992).

The final regulations retain the rules of the proposed regulations. Although section 1398 does not provide explicit rules relating to pre-termination transfers between the estate and the debtor, the Secretary has authority pursuant to section 7805(a) to issue interpretative regulations under section 1398. The IRS and the Treasury Department believe the rules adopted in the final regulations are consistent with the overall system established by section 1398 and, in the absence of a contrary statutory provision, are a reasonable exercise of the Secretary's authority under section 7805(a). Moreover, the rules adopted in the final regulations are consistent with the only appellate court case on point, which holds that the transfer (other than by sale or exchange) of an asset from the estate to the debtor before the termination of the estate is a nontaxable disposition. See *In re Olson*, 100 B.R. 458 (Bankr. N.D. Iowa 1989), *aff'd*, 121 B.R. 346 (N.D. Iowa 1990), *aff'd*, 930 F.2d 6 (8th Cir. 1991).

III. Debtor's Succession to the Estate's Passive Activity Losses and Credits and Unused Section 465 Losses Before Termination of the Estate

As a corollary to the treatment of the estate's transfer of an interest in a passive activity or former passive activity as a nontaxable disposition, the proposed regulations provide that if, before the termination of the estate, the estate transfers an interest in a passive activity or former passive activity to the debtor (other than by sale or exchange), the debtor succeeds to and takes into account the allocable portion of the estate's unused passive activity loss and credit attributable to the activity (determined as of the first day of the estate's taxable year in which the transfer occurs). The proposed regulations provide similar rules for section 465 losses.

The objections submitted by one commentator generally parallel the previously discussed objections to the treatment of the estate's transfer of an interest in a passive activity or former passive activity before the termination

of the estate as a nontaxable disposition. The final regulations retain the rules in the proposed regulations.

IV. Effective Date

The provisions of §§ 1.1398-1 and 1.1398-2 were proposed to be effective for bankruptcy cases commencing on or after November 9, 1992. Several commentators suggested alternative effective dates for the final regulations. One commentator recommended that a more appropriate effective date would be the date the regulations become final. Another commentator contended that, at least in certain situations, the regulations should be effective for bankruptcy cases commencing prior to November 9, 1992.

The IRS and the Treasury Department believe that it is not necessary to delay the effective date because publication of the proposed regulations, which are being finalized without significant change, provided adequate notice of the new rules. In addition, limiting the application of the new rules to cases commenced after publication of the proposed regulations is clearly within the Treasury Department's authority to prescribe the extent to which regulations shall be applied without retroactive effect and conforms to the pattern of section 1398(g), which applies to cases commencing after March 25, 1981. Accordingly, the final regulations retain the effective date of the proposed regulations.

V. Joint Election to Have §§ 1.1398-1 and 1.1398-2 Apply to Cases Commenced Before November 9, 1992

For cases commenced prior to November 9, 1992, and terminating on or after that date, the proposed regulations apply only if a joint election is made by the debtor and the estate. In cases under chapter 7, the election is valid only with the written consent of the bankruptcy trustee. In cases under chapter 11, the election is valid only if it is incorporated (a) into a bankruptcy plan that is confirmed by the bankruptcy court, or (b) into an order of the court. Additionally, the caption "ELECTION PURSUANT TO § 1.1398-1 (or § 1.1398-2)" must be placed prominently on the first page of each of the debtor's returns that is affected by the election (other than returns for taxable years that begin after the termination of the estate) and on the first page of each of the estate's returns that is affected by the election.

One commentator recommended eliminating the requirement that the debtor join in the election. In general, this commentator felt that this requirement gave the debtor exclusive

control over the passive activity losses and credits and unused section 465 losses to the detriment of the creditors.

The final regulations retain the requirement that the debtor join in the election. This requirement permits debtors to rely on the law in effect at the time they entered into bankruptcy.

One commentator suggested that because the consent of the debtor is required, the regulations should clarify that the written consent of the debtor is required in cases under chapter 7, in addition to the written consent of a bankruptcy trustee. The proposed regulations require the debtor to show consent by actually making the election. The debtor's election will be evidenced by the return on which it is made, and it is not clear what purpose would be served by an additional paperwork requirement. Accordingly, this suggestion was not adopted.

A commentator requested clarification as to whether the election could be made on an amended return. In response to this comment, the regulations clarify that the election can be made on an amended return.

Finally, a commentator requested that the regulations clarify whether the election is available for estates that are terminated after November 9, 1992, but before the adoption of final regulations. Because the regulations are sufficiently clear on this point, this comment was not adopted.

VI. Other Comments

One commentator requested that the regulations provide guidance on the determination of basis under section 1398(g)(6), which provides that, in the case of assets acquired by the estate from the debtor, the estate succeeds to the debtor's basis, determined as of the first day of the debtor's taxable year in which the case commenced. The specific guidance requested concerned the effect on basis of events (such as depreciation or distributions received by the debtor as the result of holding an interest in a passthrough entity) that occur after the first day of the debtor's taxable year in which the case commenced, but prior to the commencement date. It was also requested that the regulations provide guidance on the application of the "varying interest" rule of section 706(d)(1) to the estate. This guidance is outside the scope of these regulations. Accordingly, the final regulations do not provide guidance on these issues.

Special Analysis

It has been determined that these final regulations are not significant rules as defined in EO 12866. Therefore, a

regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, a copy of the proposed rules was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Amy J. Sargent of the Office of Assistant Chief Counsel (Income Tax and Accounting), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

Par. 2. An undesignated center heading is added immediately following § 1.1388-1 to read as follows:

"Rules Relating to Individuals' Title 11 Cases"

Par. 3. Sections 1.1398-1 and 1.1398-2 are added to read as follows:

§ 1.1398-1 Treatment of passive activity losses and passive activity credits in individuals' title 11 cases.

(a) *Scope.* This section applies to cases under chapter 7 or chapter 11 of title 11 of the United States Code, but only if the debtor is an individual.

(b) *Definitions and rules of general application.* For purposes of this section—

(1) *Passive activity and former passive activity* have the meanings given in section 469(c) and (f)(3);

(2) The unused passive activity loss (determined as of the first day of a taxable year) is the passive activity loss

(as defined in section 469(d)(1)) that is disallowed under section 469 for the previous taxable year; and

(3) The unused passive activity credit (determined as of the first day of a taxable year) is the passive activity credit (as defined in section 469(d)(2)) that is disallowed under section 469 for the previous taxable year.

(c) *Estate succeeds to losses and credits upon commencement of case.* The bankruptcy estate (estate) succeeds to and takes into account, beginning with its first taxable year, the debtor's unused passive activity loss and unused passive activity credit (determined as of the first day of the debtor's taxable year in which the case commences).

(d) *Transfers from estate to debtor—*

(1) *Transfer not treated as taxable event.* If, before the termination of the estate, the estate transfers an interest in a passive activity or former passive activity to the debtor (other than by sale or exchange), the transfer is not treated as a disposition for purposes of any provision of the Internal Revenue Code assigning tax consequences to a disposition. The transfers to which this rule applies include transfers from the estate to the debtor of property that is exempt under section 522 of title 11 of the United States Code and abandonments of estate property to the debtor under section 554(a) of such title.

(2) *Treatment of passive activity loss and credit.* If, before the termination of the estate, the estate transfers an interest in a passive activity or former passive activity to the debtor (other than by sale or exchange)—

(i) The estate must allocate to the transferred interest, in accordance with § 1.469-1(f)(4), part or all of the estate's unused passive activity loss and unused passive activity credit (determined as of the first day of the estate's taxable year in which the transfer occurs); and

(ii) The debtor succeeds to and takes into account, beginning with the debtor's taxable year in which the transfer occurs, the unused passive activity loss and unused passive activity credit (or part thereof) allocated to the transferred interest.

(e) *Debtor succeeds to loss and credit of the estate upon its termination.* Upon termination of the estate, the debtor succeeds to and takes into account, beginning with the debtor's taxable year in which the termination occurs, the passive activity loss and passive activity credit disallowed under section 469 for the estate's last taxable year.

(f) *Effective date—*(1) *Cases commencing on or after November 9, 1992.* This section applies to cases commencing on or after November 9, 1992.

(2) *Cases commencing before November 9, 1992—*(i) *Election required.* This section applies to a case commencing before November 9, 1992, and terminating on or after that date if the debtor and the estate jointly elect its application in the manner prescribed in paragraph (f)(2)(v) of this section (the election). The caption "ELECTION PURSUANT TO § 1.1398-1" must be placed prominently on the first page of each of the debtor's returns that is affected by the election (other than returns for taxable years that begin after the termination of the estate) and on the first page of each of the estate's returns that is affected by the election. In the case of returns that are amended under paragraph (f)(2)(iii) of this section, this requirement is satisfied by placing the caption on the amended return.

(ii) *Scope of election.* This election applies to the passive and former passive activities and unused passive activity losses and passive activity credits of the taxpayers making the election.

(iii) *Amendment of previously filed returns.* The debtor and the estate making the election must amend all returns (except to the extent they are for a year that is a closed year within the meaning of paragraph (f)(2)(iv)(D) of this section) they filed before the date of the election to the extent necessary to provide that no claim of a deduction or credit is inconsistent with the succession under this section to unused losses and credits. The Commissioner may revoke or limit the effect of the election if either the debtor or the estate fails to satisfy the requirement of this paragraph (f)(2)(iii).

(iv) *Rules relating to closed years—*(A) Estate succeeds to debtor's passive activity loss and credit as of the commencement date. If, by reason of an election under this paragraph (f), this section applies to a case that was commenced in a closed year, the estate, nevertheless, succeeds to and takes into account the unused passive activity loss and unused passive activity credit of the debtor (determined as of the first day of the debtor's taxable year in which the case commenced).

(B) *No reduction of unused passive activity loss and credit for passive activity loss and credit not claimed for a closed year.* In determining a taxpayer's carryover of a passive activity loss or credit to its taxable year following a closed year, a deduction or credit that the taxpayer failed to claim in the closed year, if attributable to an unused passive activity loss or credit to which the taxpayer succeeded under this section, is treated as a deduction or

credit that was disallowed under section 469.

(C) *Passive activity loss and credit to which taxpayer succeeds reflects deductions of prior holder in a closed year.* A loss or credit to which a taxpayer would otherwise succeed under this section is reduced to the extent the loss or credit was allowed to its prior holder for a closed year.

(D) *Closed year.* For purposes of this paragraph (f)(2)(iv), a taxable year is closed to the extent the assessment of a deficiency or refund of an overpayment is prevented, on the date of the election and at all times thereafter, by any law or rule of law.

(v) *Manner of making election—(A) Chapter 7 cases.* In a case under chapter 7 of title 11 of the United States Code, the election is made by obtaining the written consent of the bankruptcy trustee and filing a copy of the written consent with the returns (or amended returns) of the debtor and the estate for their first taxable years ending after November 9, 1992.

(B) *Chapter 11 cases.* In a case under chapter 11 of title 11 of the United States Code, the election is made by incorporating the election into a bankruptcy plan that is confirmed by the bankruptcy court or into an order of such court and filing the pertinent portion of the plan or order with the returns (or amended returns) of the debtor and the estate for their first taxable years ending after November 9, 1992.

(vi) *Election is binding and irrevocable.* Except as provided in paragraph (f)(2)(iii) of this section, the election, once made, is binding on both the debtor and the estate and is irrevocable.

§ 1.1398-2 Treatment of section 465 losses in individuals' title 11 cases.

(a) *Scope.* This section applies to cases under chapter 7 or chapter 11 of title 11 of the United States Code, but only if the debtor is an individual.

(b) *Definition and rules of general application.* For purposes of this section—

(1) *Section 465 activity* means an activity to which section 465 applies; and

(2) For each section 465 activity, the unused section 465 loss from the activity (determined as of the first day of a taxable year) is the loss (as defined in section 465(d)) that is not allowed under section 465(a)(1) for the previous taxable year.

(c) *Estate succeeds to losses upon commencement of case.* The bankruptcy estate (the estate) succeeds to and takes into account, beginning with its first

taxable year, the debtor's unused section 465 losses (determined as of the first day of the debtor's taxable year in which the case commences).

(d) *Transfers from estate to debtor—(1) Transfer not treated as taxable event.* If, before the termination of the estate, the estate transfers an interest in a section 465 activity to the debtor (other than by sale or exchange), the transfer is not treated as a disposition for purposes of any provision of the Internal Revenue Code assigning tax consequences to a disposition. The transfers to which this rule applies include transfers from the estate to the debtor of property that is exempt under section 522 of title 11 of the United States Code and abandonments of estate property to the debtor under section 554(a) of such title.

(2) *Treatment of section 465 losses.* If, before the termination of the estate, the estate transfers an interest in a section 465 activity to the debtor (other than by sale or exchange) the debtor succeeds to and takes into account, beginning with the debtor's taxable year in which the transfer occurs, the transferred interest's share of the estate's unused section 465 loss from the activity (determined as of the first day of the estate's taxable year in which the transfer occurs). For this purpose, the transferred interest's share of such loss is the amount, if any, by which such loss would be reduced if the transfer had occurred as of the close of the preceding taxable year of the estate and been treated as a disposition on which gain or loss is recognized.

(e) *Debtor succeeds to losses of the estate upon its termination.* Upon termination of the estate, the debtor succeeds to and takes into account, beginning with the debtor's taxable year in which the termination occurs, the losses not allowed under section 465 for the estate's last taxable year.

(f) *Effective date—(1) Cases commencing on or after November 9, 1992.* This section applies to cases commencing on or after November 9, 1992.

(2) *Cases commencing before November 9, 1992—(i) Election required.* This section applies to a case commencing before November 9, 1992, and terminating on or after that date if the debtor and the estate jointly elect its application in the manner prescribed in paragraph (f)(2)(v) of this section (the election). The caption "ELECTION PURSUANT TO § 1.1398-2" must be placed prominently on the first page of each of the debtor's returns that is affected by the election (other than returns for taxable years that begin after the termination of the estate) and on the first page of each of the estate's returns

that is affected by the election. In the case of returns that are amended under paragraph (f)(2)(iii) of this section, this requirement is satisfied by placing the caption on the amended return.

(ii) *Scope of election.* This election applies to the section 465 activities and unused losses from section 465 activities of the taxpayers making the election.

(iii) *Amendment of previously filed returns.* The debtor and the estate making the election must amend all returns (except to the extent they are for a year that is a closed year within the meaning of paragraph (f)(2)(iv)(D) of this section) they filed before the date of the election to the extent necessary to provide that no claim of a deduction is inconsistent with the succession under this section to unused losses from section 465 activities. The Commissioner may revoke or limit the effect of the election if either the debtor or the estate fails to satisfy the requirement of this paragraph (f)(2)(iii).

(iv) *Rules relating to closed years—(A) Estate succeeds to debtor's section 465 loss as of the commencement date.* If, by reason of an election under this paragraph (f), this section applies to a case that was commenced in a closed year, the estate, nevertheless, succeeds to and takes into account the section 465 losses of the debtor (determined as of the first day of the debtor's taxable year in which the case commenced).

(B) *No reduction of unused section 465 loss for loss not claimed for a closed year.* In determining a taxpayer's carryover of an unused section 465 loss to its taxable year following a closed year, a deduction that the taxpayer failed to claim in the closed year, if attributable to an unused section 465 loss to which the taxpayer succeeds under this section, is treated as a deduction that was not allowed under section 465.

(C) *Loss to which taxpayer succeeds reflects deductions of prior holder in a closed year.* A loss to which a taxpayer would otherwise succeed under this section is reduced to the extent the loss was allowed to its prior holder for a closed year.

(D) *Closed year.* For purposes of this paragraph (f)(2)(iv), a taxable year is closed to the extent the assessment of a deficiency or refund of an overpayment is prevented, on the date of the election and at all times thereafter, by any law or rule of law.

(v) *Manner of making election—(A) Chapter 7 cases.* In a case under chapter 7 of title 11 of the United States Code, the election is made by obtaining the written consent of the bankruptcy trustee and filing a copy of the written

consent with the returns (or amended returns) of the debtor and the estate for their first taxable years ending after November 9, 1992.

(B) *Chapter 11 cases.* In a case under chapter 11 of title 11 of the United States Code, the election is made by incorporating the election into a bankruptcy plan that is confirmed by the bankruptcy court or into an order of such court and filing the pertinent portion of the plan or order with the returns (or amended returns) of the debtor and the estate for their first taxable years ending after November 9, 1992.

(vi) *Election is binding and irrevocable.* Except as provided in paragraph (f)(2)(iii) of this section, the election, once made, is binding on both the debtor and the estate and is irrevocable.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 5. In § 602.101(c), entries are added to the table in numerical order to read as follows:

CFR part or section where identified and described	Current OMB control No.
1.1398-1	1545-1375
1.1398-2	1545-1375
.....

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved: April 6, 1994.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 94-11493 Filed 05-12-94; 8:45 am]

BILLING CODE 4830-01-J

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2619 and 2676

Valuation of Plan Benefits in Single-Employer Plans; Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal; Amendments Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's

("PBGC's") regulations on Valuation of Plan Benefits in Single-Employer Plans and Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal. The former regulation contains the interest assumptions that the PBGC uses to value benefits under terminating single-employer plans. The latter regulation contains the interest assumptions for valuations of multiemployer plans that have undergone mass withdrawal. The amendments set out in this final rule adopt the interest assumptions applicable to single-employer plans with termination dates in June 1994, and to multiemployer plans with valuation dates in June 1994. The effect of these amendments is to advise the public of the adoption of these assumptions.

EFFECTIVE DATE: June 1, 1994.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202-326-4024 (202-326-4179 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This rule adopts the June 1994 interest assumptions to be used under the Pension Benefit Guaranty Corporation's ("PBGC's") regulations on Valuation of Plan Benefits in Single-Employer Plans (29 CFR part 2619, the "single-employer regulation") and Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676, the "multiemployer regulation").

Part 2619 sets forth the methods for valuing plan benefits of terminating single-employer plans covered under title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Under ERISA section 4041(c), all single-employer plans wishing to terminate in a distress termination must value guaranteed benefits and "benefit liabilities," *i.e.*, all benefits provided under the plan as of the plan termination date, using the formulas set forth in part 2619, subpart C. (Plans terminating in a standard termination may, for purposes of the Standard Termination Notice filed with PBGC, use these formulas to value benefit liabilities, although this is not required.) In addition, when the PBGC terminates an underfunded plan involuntarily pursuant to ERISA section 4042(a), it uses the subpart C formulas to determine the amount of the plan's underfunding. Part 2676 prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of ERISA.

Appendix B to part 2619 sets forth the interest rates and factors under the single-employer regulation. Appendix B to part 2676 sets forth the interest rates and factors under the multiemployer regulation. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

The PBGC issues two sets of interest rates and factors, one set to be used for the valuation of benefits to be paid as annuities and one set for the valuation of benefits to be paid as lump sums. The same assumptions apply to terminating single-employer plans and to multiemployer plans that have undergone a mass withdrawal. This amendment adds to appendix B to parts 2619 and 2676 sets of interest rates and factors for valuing benefits in a single-employer plans that have termination dates during June 1994 and multiemployer plans that have undergone mass withdrawal and have valuation dates during June 1994.

For annuity benefits, the interest rates will be 6.70% for the first 25 years following the valuation date and 5.25% thereafter. For benefits to be paid as lump sums, the interest assumptions to be used by the PBGC will be 5.25% for the period during which benefits are in pay status, 4.5% during the seven years directly preceding the benefit's placement in pay status, and 4.0% during any other years preceding the benefit's placement in pay status. (ERISA section 205(g) and Internal Revenue Code section 417(e) provide that private sector plans valuing lump sums not in excess of \$25,000 must use interest assumptions at least as generous as those used by the PBGC for valuing lump sums (and for lump sums exceeding \$25,000 must use interest assumptions at least as generous as 120% of the PBGC interest assumptions.) The above annuity interest assumptions represent an increase (from those in effect for May 1994) of .20 percent for the first 25 years following the valuation date and are otherwise unchanged. The lump sum interest assumptions are unchanged from those in effect for May 1994.

Generally, the interest rates and factors under these regulations are in effect for at least one month. However, the PBGC publishes its interest assumptions each month regardless of whether they represent a change from the previous month's assumptions. The assumptions normally will be published in the *Federal Register* by the 15th of the preceding month or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on these amendments are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates and factors can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in single-employer plans whose termination dates fall during June 1994, and in multiemployer plans that have undergone mass withdrawal and have valuation dates during June 1994, the PBGC finds that good cause exists for making the rates and factors set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866, because it will not 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; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the

President's priorities, or the principles set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 2619

Employee benefit plans, Pension insurance, and Pensions.

29 CFR Part 2676

Employee benefit plans and Pensions.

In consideration of the foregoing, parts 2619 and 2676 of chapter XXVI, title 29, Code of Federal Regulations, are hereby amended as follows:

PART 2619—[AMENDED]

1. The authority citation for part 2619 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

2. In appendix B, Rate Set 8 is added to Table I, and a new entry is added to Table II, as set forth below. The introductory text of both tables is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 2619—Interest Rates Used to Value Lump Sums and Annuities

Lump Sum Valuations

In determining the value of interest factors of the form $v^{\circ:n}$ (as defined in

§ 2619.49(b)(1)) for purposes of applying the formulas set forth in § 2619.49(b) through (i) and in determining the value of any interest factor used in valuing benefits under this subpart to be paid as lump sums (including the return of accumulated employee contributions upon death), the PBGC shall employ the values of i_t set out in Table I hereof as follows:

(1) For benefits for which the participant or beneficiary is entitled to be in a pay status on the valuation date, the immediate annuity rate shall apply.

(2) For benefits for which the deferral period is y years (Y is an integer and $0 < y \leq n_1$), interest rate i_1 , shall apply from the valuation date for a period of y years, thereafter the immediate annuity rate shall apply.

(3) For benefits for which the deferral period is y years (y is an integer and $n_1 < y \leq n_1 + n_2$), interest rate i_2 shall apply from the valuation date for a period of $y - n_1$ years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

(4) For benefits for which the deferral period is y years (y is an integer and $y > n_1 + n_2$), interest rate i_3 shall apply from the valuation date for a period of $y - n_1 - n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

TABLE I
[Lump Sum Valuations]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
8	6-1-94	7-1-94	5.25	4.50	4.00	4.00	7	8

Annuity Valuations

In determining the value of interest factors of the form $v^{\circ:n}$ (as defined in § 2619.49 (b)(1)) for purposes of applying the formulas set forth in § 2619.49 (b) through (i) and in determining the value of any interest

factor used in valuing annuity benefits under this subpart, the plan administrator shall use the values of i_t prescribed in Table II hereof.

The following table tabulates, for each calendar month of valuation ending after the effective date of this part, the interest rates (denoted by i_1, i_2, \dots , and

referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.

TABLE II
[Annuity Valuations]

For valuation dates occurring in the month—	The values of k_t are:					
	k_t	for $t=$	k_t	for $t=$	k_t	for $t=$
June 1994	.0670	1-25	.0525	>25	N/A	N/A

PART 2676—[AMENDED]

3. The authority citation for part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399 (c)(1)(D), 1441(b)(1).

4. In appendix B, Rate Set 8 is added to Table I, and a new entry is added to Table II, as set forth below. The introductory text of both tables is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 2676—Interest Rates Used to Value Lump Sums and Annuities

Lump Sum Valuations

In determining the value of interest factors of the form V^n (as defined in

§ 2676.13 (b) (1)) for purposes of applying the formulas set forth in § 2677.13(b) through (i) and in determining the value of any interest factor used in valuing benefits under this subpart to be paid as lump sums, the PBGC shall use the values of i_t prescribed in Table I hereof. The interest rates set forth in Table I shall be used by the PBGC to calculate benefits payable as lump sum benefits as follows:

(1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply.

(2) For benefits for which the deferral period is y years (y is an integer and $0 < y \leq n_1$), interest rate i_1 shall apply from

the valuation date for a period of y years; thereafter the immediate annuity rate shall apply.

(3) For benefits for which the deferral period is y years (y is an integer and $n_1 < y \leq n_1 + n_2$), interest rate i_2 shall apply from the valuation date for a period of $y - n_1$ years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

(4) For benefits for which the deferral period is y years (y is an integer and $y > n_1 + n_4$), interest rate i_3 shall apply from the valuation date for a period of $y - n_1 - n_4$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

TABLE I
[Lump Sum Valuations]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
8	6-1-94	7-1-94	5.25	4.50	4.00	4.00	7	8

Annuity Valuations

In determining the value of interest factors of the form V^n (as defined in § 2676.13(b)(1)) for purposes of applying the formulas set forth in § 2676.13(b) through (i) and in determining the value of any interest factor used in valuing

annuity benefits under this subpart, the plan administrator shall use the values of i_t prescribed in the table below.

The following table tabulates, for each calendar month of valuation ending after the effective date of this part, the interest rates (denoted by i_1, i_2, \dots , and

referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.

TABLE II
[Annuity Valuations]

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for $t=$	i_t	for $t=$	i_t	for $t=$
June 1994	.0670	1-25	.0525	>25	N/A	N/A

Issued in Washington, DC, on this 11th day of May 1994.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 94-11826 Filed 5-12-94; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05-94-012]

Special Local Regulations for Marine Events; The Great Chesapeake Bay Swim Event, Chesapeake Bay, MD

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This notice implements special local regulations for the Great Chesapeake Bay Swim Event to be held on June 12, 1994. These special local regulations are needed to provide for the safety of participants and spectators on the navigable waters during this event. The effect will be to restrict general navigation in the regulated area for the safety of participants in the swim, and their attending personnel.

EFFECTIVE DATES: This regulation is effective from 6:30 a.m. until 1 p.m., on June 12, 1994.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004 (804) 398-6204, or Commander, Coast Guard Group Baltimore (410) 576-8516.

DRAFTING INFORMATION: The drafters of this notice are QM2 Gregory C. Garrison, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and LT John B. Gately, project attorney, Fifth Coast Guard District Legal Staff.

Discussion:

Mr. Charles Nabit, a representative of the March of Dimes, submitted an application on November 23, 1993 to hold the Great Chesapeake Bay Swim Event on June 12, 1994. Approximately 600 swimmers will start from Sandy Point State Park and swim between the William P. Lane Jr. Memorial Twin Bridges to the Eastern Shore. This is the type of event contemplated by these regulations and the safety of the participants depends upon control of vessel traffic, therefore the regulations in 33 CFR 100.507 are implemented. During the swim itself, all vessel traffic

will have to be stopped. However, vessel traffic will be permitted to transit the regulated area as the swim progresses. As a result, commercial traffic should not be severely disrupted.

Dated: April 9, 1994.

W. T. Leland,

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

[FR Doc. 94-11710 Filed 5-12-94; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD 05-94-013]

Special Local Regulations for Marine Events; The Start of the Cock Island Race; Norfolk Harbor, Elizabeth River, Norfolk and Portsmouth, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of Implementation.

SUMMARY: This notice implements special local regulations for the start of the Cock Island Race from the Portsmouth Seawall area of the Southern Branch of the Elizabeth River, Norfolk Harbor, Norfolk and Portsmouth, VA on July 16, 1994. The sailboats will race to Hampton Roads and return. These special local regulations are needed to control vessel traffic within the area due to the confined nature of the waterway and the expected vessel congestion during the starting of the races. The effect will be to restrict general navigation in the regulated area for the safety of participants in the races.

EFFECTIVE DATES: This regulation is effective from 8:30 a.m. to 5 p.m., on July 16, 1994.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District 431, Crawford Street, Portsmouth, Virginia 23705 (804) 398-6204, or Commander, Coast Guard Group, Hampton Roads (804) 483-8568.

Drafting Information:

The drafters of this notice are QM2 Gregory C. Garrison, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and LT Monica L. Lombardi, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulation:

Ports Events, Inc., of Portsmouth, Virginia, submitted an application to hold the Cock Island Race. The race will consist of over 200 sailboats ranging from 22 to 60 feet. The sailboats will be divided into several classes. Each class

will start at ten minute intervals from the Portsmouth Seawall area of the Southern Branch of the Elizabeth River, Norfolk Harbor, Norfolk and Portsmouth, Virginia on July 16, 1994, race to Hampton Roads and return. Because this is the type of event contemplated by these regulations, and because the safety of the participants would be enhanced by the implementation of the special local regulations for this regulated area, the regulations in 33 CFR 100.501 are being implemented for the start of the races.

Dated: May 2, 1994.

W. T. Leland,

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

[FR Doc. 94-11712 Filed 5-12-94; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD 05-94-014]

Special Local Regulations for Marine Events; Great American Music Festival Fireworks, Elizabeth River, Town Point, Norfolk and Portsmouth, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of Implementation.

SUMMARY: This notice implements special local regulations for the Great American Music Festival Fireworks Display to be held in the Waterside area of the Elizabeth River between Norfolk and Portsmouth, VA. These special local regulations are needed to control vessel traffic within the immediate vicinity of Waterside due to the confined nature of the waterway and the expected vessel congestion during the event. The effect will be to restrict general navigation in the regulated area for the safety of participants and spectators.

EFFECTIVE DATES: This regulation is effective from 8:30 p.m. to 11 p.m., July 3, 1994.

If inclement weather causes the postponement of the July 3, 1994 fireworks display, the regulations will be in effect from 8:30 p.m. to 11 p.m., July 4, 1994.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23705 (804) 398-6204, or Commander, Coast Guard Group Hampton Roads (804) 483-8559.

Drafting Information:

The drafters of this notice are QM2 Gregory C. Garrison, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and

LT Monica L. Lombardi, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulation:

Norfolk Festevents, Ltd. has submitted an application to hold the Great American Music Festival July 3, 1994, in the Waterside area of the Elizabeth River. This area is covered by 33 CFR 100.501 and generally includes the waters of the Elizabeth River between Town Point Park, Norfolk, Virginia, the mouth of the Eastern Branch of the Elizabeth River, and Hospital Point, Portsmouth, Virginia. Since this event is of the type contemplated by this regulation and the safety of the participants and spectators viewing this event will be enhanced by the implementation of special local regulations for the Elizabeth River, 33 CFR 100.501 will be in effect during the Great American Music Festival. The waterway will be closed during the fireworks displays. Since the waterway will not be closed for an extended period, commercial traffic should not be severely disrupted. In addition to regulating the area for the safety of life and property, this notice of implementation also authorizes the Patrol Commander to regulate the operation of the Berkley drawbridge in accordance with 33 CFR 117.1007, and authorizes spectators to anchor in the special anchorage areas described in 33 CFR 110.72aa.

Dated: April 20, 1994.

W. T. Leland,

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

[FR Doc. 94-11711 Filed 5-12-94; 8:45 am]

BILLING CODE 4910-14-M

POSTAL SERVICE

39 CFR Part 20

International Surface Air Lift Service

AGENCY: Postal Service.

ACTION: Final Rule.

SUMMARY: The Postal Service is adopting amendments to International Mail Manual, section 246, to allow customers to use International Surface Air Lift (ISAL) service to mail small packets, a type of international mail that can be used to send small quantities of merchandise. By allowing small packets to be sent in ISAL shipments, the Postal Service is responding to customer demand to provide a way of sending these items that is more economical than regular airmail service and faster than surface mail.

DATES: Effective on May 13, 1994.

FOR FURTHER INFORMATION CONTACT: Walter J. Grandjean, (202) 268-5180.

SUPPLEMENTARY INFORMATION: On October 27, 1993, the Postal Service published in the Federal Register (58 FR 57742) an interim rule and request for comment on proposed amendment to section 246 of the International Mail Manual to allow small packets to be included in ISAL shipments to foreign countries where ISAL service is available.

ISAL is a bulk mailing service for international shipment of publications, advertising mail, catalogs, directories, books, and other printed matter. The service is available from designated acceptance cities to approximately 125 countries. To use ISAL, a mailer must send at least 50 pounds of printed matter at one time, sorted and sacked by destination country. ISAL mail is transported by air to the destination country. Once in the foreign country, the mail is entered into that country's surface mail system for delivery. As a result, ISAL rates are lower than those for regular airmail, while service is faster than service for regular surface mail.

Many customers have requested permission to include small packets in ISAL shipments. Frequently, these requests occur because the item being mailed is classified as third-class domestically. Yet, because the item contains something that is not classified internationally as printed matter, the item may not be sent through ISAL. Moreover, since there is no service comparable to ISAL for small packets, these customers are forced to choose between regular airmail service and regular surface mail service.

The Postal Service invited public comment on the interim rule by November 26, 1993, and received one comment.

The commenter asserts that the rates for ISAL will not cover the cost of carrying small packets and that dutiable small packets will cost the Postal Service more than printed matter, which is generally non-dutiable. The Postal Service disagrees. The Universal Postal Convention classifies printed matter and small packets as AO (*Autres Objets*) and considers them together for terminal dues purposes. In addition, all ISAL mail must be sorted and sacked by destination country when it is tendered, and the Postal Service processes ISAL sacks intact. Consequently, the Postal Service's costs to process a given weight of ISAL mail should be the same regardless of whether the sack contains printed matter, small packets, or a

combination of both. The fact that a higher percentage of small packets may be dutiable does not affect the Postal Service's costs to provide the service. All U.S. origin mail entering another country is subject to customs examination whether it is subject to duty or not. This cost is absorbed by the country of destination and is not charged back to the Postal Service.

The commenter also asserts that there has been no independent verification that the Postal Service's ISAL rates are adequate to cover the cost of the service and that the Postal Service should submit its international rates for oversight to a body such as the Postal Rate Commission. The Postal Service disagrees. The Postal Service alone is responsible for international mail services, and there is no legal requirement that its determinations be subject to verification by any other agency. The Postal Rate Commission, in particular, has no jurisdiction over international rates or services, so any study conducted by the Commission would have no legal significance.

The Postal Service has concluded that the proposed amendments, as collected, would benefit users of United States mail. No persuasive reason has been put forward why implementation should be deferred. Accordingly, the Postal Service will not defer implementation of the final rule.

The final text contains the correction of a citation which was incorrect in the original regulations. In section 246.941 of the International Mail Manual, the reference to section 244.5 for publishers' periodicals is changed to section 244.4. This reference refers to the makeup of individual pieces, not to sortation requirements for publishers' periodicals.

List of Subjects in 39 CFR Part 20

Foreign relations, incorporation by reference, international postal services.

The Postal Service adopts the following amendments to the International Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

PART 20—[AMENDED]

1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. Chapter 2 of the International Mail Manual is amended by revising section 246 to read as follows:

CHAPTER 2—CONDITIONS FOR MAILING

* * * * *

246 International Surface Air Lift (ISAL) Service

246.1 Definition

International Surface Air Lift (ISAL) is a bulk mailing system that provides fast, economical international delivery of publications, advertising mail, catalogs, directories, books, other printed matters, and small packets. The cost is lower than that of airmail, while the service is much faster than ordinary surface mail. Customers take ISAL shipments to designated U.S. acceptance cities, where the mail is flown to the foreign destinations and entered into that country's surface mail system for delivery.

246.2 Qualifying Mail and Minimum Quantities

Only printed matter as defined in 241 and small packets as defined in 260 that meet all applicable mailing standards may be sent in this service. There is a minimum volume requirement of 50 pounds per shipment except for the direct shipment option, which requires a minimum of 750 pounds to a single country destination. Mailers may present sacks of pound-rate and piece-rate mail to meet minimum quantity requirements. Small packets may not be enclosed in M-Bags and do not qualify for the full service or gateway/direct shipment M-Bag rates.

246.3 General

246.31 Availability. ISAL service is available to the foreign countries listed in Exhibit 246.71, through designated U.S. acceptance cities.

246.32 Designated Acceptance Cities. Exhibit 246.32 shows cities designated to accept ISAL.

246.4 Special Services

Special services provided for in Chapter 3 are not available for items sent by ISAL.

246.5 Customs Documentation

See 244.6 and 264.5 for the requirements for customs forms.

246.6 Permit or Customer Identification Number

Each mailer must have a 10-digit ISAL permit number or customer identification number. The first five digits are the ZIP Code of the post office where the permit or customer identification number is issued. The second five digits are separated from the first five by a hyphen and are either the customer's permit imprint number or a sequential number issued by the post office of account. If the permit imprint number has fewer than five digits,

precede the permit number with enough zeros to make a five-digit number. For example, a mailer with a permit imprint number of 29 whose business location is in New York City (10010) is assigned an ISAL permit number of 10010-00029. This number must be used on Form 3650, Statement of Mailing-International Surface Air Lift.

246.7 Postage

246.71 Rates

246.711 Items Weighing Over 2 Ounces. Postage is paid on a per-pound basis by rate group. M-Bags are also paid on a per-pound basis by rate group, even if they contain items weighing 2 ounces, or less. Small packets are ineligible for the M-Bag rates and may not be included in M-Bags. Separate reduced rates are provided for mail transported by the mailer to the gateway airport mail facilities at New York (JFK); San Francisco, CA; and Miami, FL; or when direct shipment can be arranged from one of the acceptance cities (see Exhibit 246.32).

Rate group	Full service		Gateway/direct shipment	
	Regular	M-Bag*	Regular	M-Bag*
1	\$2.90	\$2.32	\$2.60	\$2.08
2	3.25	2.60	2.95	2.36
3	3.40	2.72	3.10	2.48
4	4.20	3.36	3.90	3.12

See Exhibit 246.71 for network countries and individual postage rates.

* Small packets may not be mailed at these rates.

246.712 Items Weighing 2 Ounces or Less. These items are subject to a charge of 32 cents per piece to all countries where service is available. Pieces sent in M-Bags are subject to the pound rates in 247.11. Small packets are ineligible for the M-Bag rates and may not be included in M-Bags. Mailings presented at one of the three gateway offices or under direct shipment arrangements receive a discount.

246.713 Direct Shipment. Mailers may be authorized direct shipment rates from the designated acceptance cities listed in Exhibit 246.32 (except Miami, FL; San Francisco, CA; and AMF-JFK, NY) when the Postal Service can arrange direct transportation to the destination country. To qualify, mailers must present a minimum of 750 pounds to each destination country. This 750-pound minimum may include piece-rate and pound-rate mail. Mailers should contact the postmaster at the designated acceptance city at least 14 days before the first desired mailing date. Postmasters must contact the distribution network office (DNO) to

obtain a contract for transportation. If the DNO cannot arrange direct transportation, the direct shipment rate does not apply. The Postal Service may cancel direct shipment rates and service when direct transportation is no longer available.

246.72 Payment Methods

246.721 Items Weighing 2 Ounces or Less. The following methods apply for the payment of postage for items that weigh 2 ounces or less:

a. Permit Imprint. Mailers may use permit imprints only with mailings that contain identical-weight pieces. Any of the permit imprints for printed matter shown in Exhibit 152.3 are acceptable. The imprint must not denote "Presort Rate," "Bulk Rate," or "Nonprofit Organization." The postage charges are computed on Form 3650, *Statement of Mailing-International Surface Air Lift*, and deducted from the advance deposit account.

b. Postage Meter. If the mailing consists of nonidentical-weight pieces, postage for the mailing must be paid by postage meter stamp on each piece.

c. Permit Imprints. Mailers may use permit imprint with non identical pieces if authorized under the postage mailing systems in DMM P710, P720, or P730.

d. Precanceled Stamps. Mailers authorized to use precanceled stamps may use this payment method.

246.722 Items Weighing Over 2 Ounces. Postage must be paid by a permit imprint subject to the standards in DMM P040. Any of the permit imprints for printed matter shown in Exhibit 152.3 are acceptable. The imprint must not denote "Presort Rate," "Bulk Rate," or "Nonprofit Organization." The postage charges are computed on Form 3650 and deducted from the advance deposit account.

246.723 Direct Sacks (M-Bags). For direct sacks to one addressee, Tag 158, *M-Bag Addressee Tag*, must be endorsed "ISAL U.S. Postage Paid" or show the permit imprint in the space reserved for postage. (If an M-Bag is presented with a mailing when all other postage is paid by meter, the postage on the M-Bag may be paid by a meter strip attached to the M-Bag tag.)

246.73 Form 3650. Form 3650 is required for all ISAL mailings.

246.8 Weight and Size Limits

Any item sent by ISAL must conform to the weight and size limits for the types of printed matter described in 243 or for small packets in 263.

246.9 Preparation

246.91 Addressing. See 122.

246.92 Marking. Items must be endorsed with the appropriate markings as shown in 244.2 for printed matter and in 264.2 for small packets. For publishers' periodicals (second-class publications), the imprint authorized under 244.21d(2) or 244.21d(3) may be used in place of the "PRINTED MATTER—SECOND—CLASS" endorsement.

246.93 Sealing. Printed matter and small packets sent by ISAL may be sealed at the sender's option.

246.94 Makeup

246.941 Sortation. All items must meet the makeup requirements in 244.4 for printed matter and publishers' periodicals and 264 for small packets. Items must be sorted to the destination country. Items weighing 2 ounces or less may not be placed in sacks with items weighing over 2 ounces unless mailings are made under special mailing programs (see 247.213).

246.942 Residue. Mail addressed to different countries may not be commingled. Consequently, no residual mail is allowed in an ISAL dispatch.

246.943 Facing of Pieces and Packaging. All pieces must be faced in the same direction and packaged in bundles that are securely tied or rubber-banded across the length and width. Pieces that cannot be bundled because of their physical characteristics must be placed loose in the sack.

246.944 Sacking. Mail to each country must be sacked in disposable gray plastic sacks and labeled to that particular country with Tag 155, *Surface Airlift Mail*. The three classifications of printed matter, as well as small packets, may be mixed in the same sack. The combined weight of the contents and the sack may not exceed 66 pounds. Tag 155 must show the weight in kilograms. No minimum weight per sack applies.

246.945 Direct Sacks to One Addressee (M-Bags) for ISAL. M-Bags may be sent in the ISAL service to all countries except Ethiopia. Weight, makeup, sacking, and sorting requirements must conform to part 245. Tag 158 must show the complete address of the addressee and the sender and be attached securely to the neck of each sack. M-Bags may not contain small packets.

246.95 Mailer Notification. Mailers wanting to mail shipments that weigh over 750 pounds but not eligible for direct shipment rates, must notify the ISAL coordinator at the acceptance city at least 4 days before the planned date of mailing. Specific country information and weight per country must be provided. No prior notification is

required for mailers with 750 pounds or less.

Stanley F. Mires,
Chief Counsel, Legislative.

Exhibit 246.32, Designated ISAL Acceptance Cities

Akron, OH*
Albany, NY
Albuquerque, NM
Anchorage, AK
Atlanta, GA
Austin, TX
Baltimore, MD
Bellmawr, NJ*
Billings, MT
Birmingham, AL
Bismarck, ND
Boise, ID
Boston, MA
Buffalo, NY
Burlington, VT
Charleston, SC
Charlotte, NC
Chicago, IL
Cincinnati, OH
Cleveland, OH
Colorado Springs, CO*
Columbia, SC
Columbus, OH
Dallas/Ft. Worth, TX
Dayton, OH
Denver, CO
Des Moines, IA
Detroit, MI
Duluth, MN
El Paso, TX
Erie, PA*
Eugene, OR
Florence, SC
Grand Rapids, MI
Greensboro, NC
Greenville, SC
Harrisburg, PA
Hartford, CT
Honolulu, HI
Houston, TX
Huntsville, AL*
Indianapolis, IN
Jackson, MS
Jacksonville, FL
Jersey City, NJ
Kalamazoo, MI*
Kansas City, MO
Knoxville, TN*
Las Vegas, NV
Little Rock, AR
Long Beach, CA*
Los Angeles, CA
Louisville, KY
Memphis, TN
Miami, FL
Midland, TX
Milwaukee, WI
Minneapolis/St. Paul, MN
Mount Vernon, NY*
Myrtle Beach, SC

* Provisional Cities.

Nashville, TN
New Haven, CT*
New Orleans, LA
New York, NY
Norfolk, VA
Oklahoma City, OK
Omaha, NE
Orlando, FL
Pittsburgh, PA
Philadelphia, PA
Providence, RI
Phoenix, AZ
Portland, OR
Raleigh, NC
Richmond, VA
Rochester, NY
Sacramento, CA
St. Louis, MO
Salt Lake City, UT
San Antonio, TX
San Diego, CA
San Francisco, CA
San Juan, PR
Santa Ana, CA*
Seattle, WA
Sioux Falls, SD
Spokane, WA*
Syracuse, NY
Tampa, FL
Toledo, OH*
Tucson, AZ
Tulsa, OK
Washington, DC
Wichita, KS

[FR Doc. 94-11685 Filed 5-12-94; 8:45 am]
BILLING CODE 7710-12-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK-932-4210-06; AA-40482]

43 CFR Public land order 7042

Opening of Land, Under section 24 of the Federal Power Act, in the Departmental Order Dated May 14, 1929, as Amended, Which Established Powersite Classification No. 221; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order opens, subject to the provisions of section 24 of the Federal Power Act, approximately 575 acres of National Forest System land withdrawn by a Departmental order which established Powersite Classification No. 221 at Baranof Lake. This action will permit conveyance of the land to the State of Alaska, if such land is otherwise available, and retain the water power rights to the United States. Any land described herein that is not conveyed to the State will be subject

to the terms and conditions of the national forest reservation and any other withdrawal of record.

EFFECTIVE DATE: May 13, 1994.

FOR FURTHER INFORMATION CONTACT:

Sue A. Wolf, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513-7599, 907-271-5477.

By virtue of the authority vested in the Secretary of the Interior by section 24 of the Federal Power Act of June 10, 1920, as amended, 16 U.S.C. 818 (1988), and pursuant to the determination by the Federal Energy Regulatory Commission in DVAK-145, it is ordered as follows:

1. At 10 a.m. on May 13, 1994, the following described land withdrawn by a Departmental Order dated May 14, 1929, which established Powersite Classification No. 221, will be opened to permit conveyance to the State of Alaska subject to the provisions of section 24 of the Federal Power Act as specified by the Federal Energy Regulatory Commission in determination DVAK-145, and subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law:

Copper River Meridian

Tongass National Forest

All lands below an altitude of 210 feet above sea level adjacent to Baranof Lake and the stream which is its outlet and included in the State of Alaska selection application AA-53101 located within:

T. 55 S., R. 66 E., unsurveyed, Sec. 24.

T. 55 S., R. 67 E., partly unsurveyed, Secs. 17 to 20, inclusive, and sec. 30.

The area described contains approximately 575 acres.

2. The State of Alaska application for selection made under section 6(a) of the Alaska Statehood Act of July 7, 1958, 48 U.S.C. note prec. 21 (1988) and under Section 906(e) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(e) (1988), becomes effective without further action by the State upon publication of this public land order in the *Federal Register*, if such land is otherwise available. Land not conveyed to the State will be subject to the terms and conditions of the Tongass National Forest reservation, Section 24 of the Federal Power Act, and any other withdrawal of record.

Dated: April 22, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94-11671 Filed 5-12-94; 8:45 am]

BILLING CODE 4310-JA

[OR-943-4210-06; GP4-056; ORE-012693]

43 CFR Public Land Order 7043

Modification of Public Land Order No. 5490, as Amended by Public Land Order No. 5542; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order establishes a 20-year term for a public land order which withdrew approximately 243,000 acres of public lands for multiple use management. This order will also open the lands to surface entry, except to agricultural entry. The lands have been and remain open to mining and mineral leasing.

EFFECTIVE DATE: June 13, 1994.

FOR FURTHER INFORMATION CONTACT:

Donna Kauffman, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208-2965, 503-280-7162.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is hereby ordered as follows:

1. The Public Land Order No. 5490 dated February 12, 1975, as amended by Public Land Order No. 5542 dated September 23, 1975, is hereby modified to open the lands to all forms of discretionary appropriation, except the agricultural land laws (43 U.S.C. 321-323 (1988), as amended, and 25 U.S.C. 334 (1988)), and to expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended insofar as it affects the following described lands:

Willamette Meridian

All public lands in and west of Range 8 East and all lands within that area which hereinafter become public lands, except revested Oregon and California Railroad Grant Lands.

The areas described aggregate approximately 243,000 acres in Benton, Clackamas, Clatsop, Columbia, Coos, Curry, Douglas, Jackson, Josephine, Klamath, Lane, Lincoln, Linn, Marion, Multnomah, Polk, Tillamook, Washington, and Yamhill Counties.

2. At 8:30 a.m. on June 13, 1994, the lands described above will be opened to the operation of the public land laws, except the agricultural land laws (43

U.S.C. 321-323 (1988), as amended, and 25 U.S.C. 334 (1988)), subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m. on June 13, 1994, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: April 22, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94-11670 Filed 5-12-94; 8:45 am]

BILLING CODE 4310-33-M

[CO-932-4210-06; COC-28611, COC 28633]

43 CFR Public Land Order 7044

Revocation of Secretarial Order Dated August 20, 1915, Which Established Powersite Reserve No. 496, and Secretarial Order Dated January 15, 1926, Which Established Powersite Classification No. 127; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes two Secretarial orders, which established Powersite Reserve No. 496, and Powersite Classification No. 127, in their entireties and opens 1,647.47 acres to such forms of disposition as may be law be made of National Forest System lands. The Forest Service has requested this action to allow for disposal of the lands under the Small Tracts Act. These lands are no longer needed for waterpower purposes. The lands have been open to mining under the provisions of the Mining Claims Rights Restoration Act of 1955, and these provisions are no longer required. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: June 13, 1994.

FOR FURTHER INFORMATION CONTACT:

Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215-7076, 303-239-3706.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Secretarial Order dated August 20, 1915, which established Powersite Reserve No. 496, and Secretarial Order dated January 15, 1926, which established Powersite Classification No. 127, are hereby revoked in their

entireties. This revocation will affect the following described lands:

Arapaho National Forest

6th Principal Meridian

T. 1 S., R. 71 W.,

- Sec. 4, lots 5, 6, 10, 11, and 12;
- Sec. 5, lots 90, 91, 94, 96, 101, and 102;
- Sec. 6, lots 40, 44, 45, 46, and 47;
- Sec. 7, lots 28, 29, and 35, and SW $\frac{1}{4}$ NE $\frac{1}{4}$;
- Sec. 8, lots 2, 4, and 5;
- Sec. 9, W $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, and NW $\frac{1}{4}$;
- Sec. 10, SW $\frac{1}{4}$ NW $\frac{1}{4}$;
- Sec. 11, E $\frac{1}{2}$ SE $\frac{1}{4}$.

T. 1 S., R. 72 W.,

- Sec. 1, lots 23 to 34, inclusive, and SE $\frac{1}{4}$ SE $\frac{1}{4}$;
- Sec. 2, lots 5 to 14, inclusive;
- Sec. 9, lot 1;
- Sec. 12, lots 3, 4, exclusive of patented lands.

T. 1 N., R. 71 W.,

- Sec. 34, lot 9 and SE $\frac{1}{4}$ SW $\frac{1}{4}$.

The areas described aggregate approximately 1,647.47 acres of National Forest System lands in Boulder County.

2. At 9:00 a.m. on June 13, 1994 the lands described in paragraph 1 will be open to such forms of disposition as may by law be made of National Forest System lands, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. The lands have been open to mining under the provisions of the Mining Claims Rights Restoration Act of 1955, 30 U.S.C. 621 (1988), and these provisions are no longer required.

Dated: April 22, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94-11669 Filed 5-12-94; 8:45 am]

BILLING CODE 4310-JB-M

[AZ-930-4210-06; AZA-13401, AZA-13406, AZA-439]

43 CFR Public Land Order 7045

Partial Revocation of Secretarial Orders Dated October 22, 1919, and March 14, 1929, and Executive Order No. 8685; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes the Secretarial orders dated October 22, 1919, and March 14, 1929, and Executive Order No. 8685, insofar as they affect 3.75 acres of public land withdrawn for the Colorado River and Yuma Storage Projects and the Imperial National Wildlife Refuge. The land is no longer serving the purposes for which it was withdrawn, and the revocation is needed to permit disposal of the land to

the State of Arizona as partial compensation in a condemnation action under Title V of the Arizona-Idaho Conservation Act of 1988, 16 U.S.C. 460xx (1988), commonly referred to as the Santa Rita Legislation. This action will open the land to mineral leasing and surface entry and mining, unless closed by other withdrawals or segregations of record.

EFFECTIVE DATE: June 13, 1994.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, 602-650-0509.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), and the National Wildlife Refuge System Administration Act of October 15, 1966, 16 U.S.C. 668dd (1988), as amended, it is ordered as follows:

1. The Secretarial Orders dated October 22, 1919, and March 14, 1929, which withdrew land for the Bureau of Reclamation's Colorado River and Yuma Storage Projects and Executive Order No. 8685, which withdrew land for the Fish and Wildlife Service's Imperial National Wildlife Refuge, are hereby revoked insofar as they affect the following described land:

Gila and Salt River Meridian

T. 5 S., R. 22 W.,

- Sec. 13, W $\frac{1}{2}$ W $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, E $\frac{1}{2}$ E $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, W $\frac{1}{2}$ W $\frac{1}{2}$ E $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, and E $\frac{1}{2}$ E $\frac{1}{2}$ W $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$.

The area described contains 3.75 acres in Yuma County.

2. At 10 a.m. on June 13, 1994, the land will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on June 13, 1994 shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 10 a.m. on June 13, 1994 the lands will be opened to location and entry under the United States mining laws and to the operation of the mineral leasing laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession

under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: April 22, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94-11668 Filed 5-12-94; 8:45 am]

BILLING CODE 4310-32-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 311

Federal Employee Emergency Identification Card

CFR Correction

In title 44 of the Code of Federal Regulations, revised as of October 1, 1993, the text for part 311 should be removed and the part number reserved.

BILLING CODE 1505-01-D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, 95

[FCC 94-99]

Implement Competitive Bidding for Interactive Video and Data Services (IVDS)

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted a Fourth Report and Order to authorize procedures for auctioning licenses in the IVDS. This action implements new section 309(j) of the Communications Act of 1934, as amended. This will permit the Commission to employ competitive bidding procedures to choose from among two or more mutually exclusive applications for initial license.

EFFECTIVE DATE: June 13, 1994.

FOR FURTHER INFORMATION CONTACT: Eric Malinen, (202) 632-6497, Private Radio Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Fourth Report and Order, FCC 94-99, adopted April 20, 1994, and released May 10,

1994. The full text of this Fourth Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center, room 230, 1919 M Street NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, suite 140, Washington, DC 20037, telephone (202) 857-3800.

SUMMARY OF ORDER

I. Introduction

1. On March 8, 1994, the Commission adopted a Second Report and Order in this proceeding (Second Report and Order)¹ establishing general rules and procedures governing competitive bidding for radio spectrum (auctions). The Second Report and Order identified the types of services and licenses that may be subject to auctions, described a menu of competitive bidding methods, and adopted generic auction procedures. The Commission stated that specific competitive bidding rules for licensing individual services would be addressed in subsequent Reports and Orders. This Fourth Report and Order establishes rules and procedures for auctioning licenses in the Interactive Video and Data Service (IVDS).²

2. In this Fourth Report and Order, we find that the value of IVDS licenses is not expected to be sufficiently high to justify the use of simultaneous multiple round bidding. We therefore conclude that the auction methods most appropriate to the IVDS are oral bidding (open outcry) and single round sealed bidding. We also establish rules and procedures to deter possible abuses of the bidding and licensing procedures. Last, we establish preferences for small businesses and businesses owned by minorities or women to enhance their participation in the competitive bidding process and in the provision of IVDS system offerings.

II. Background and Auction Eligibility

3. The IVDS is a point-to-multipoint, multipoint-to-point, short distance

¹ Second Report and Order in PP Docket No. 93-253, FCC 94-61, released April 20, 1994 (Second Report and Order). On February 3, 1994, we adopted the First Report and Order in this proceeding, which, pursuant to 47 U.S.C. 309(j)(4)(C), prescribed transfer disclosure requirements with respect to licenses or permits awarded by random selection. First Report and Order in PP Docket No. 93-253, FCC 94-32 (released February 4, 1994), petitions for reconsideration pending.

² Concurrent with this Fourth Report and Order, we are adopting a Third Report and Order, FCC 94-98, in this docket addressing the specific competitive bidding rules and procedures for "narrowband" Personal Communications Services (PCS).

communications service in which licensees may provide information, products, or services to individual subscribers located at fixed locations in the service area, and subscribers may provide responses.³ The rules governing IVDS were adopted in 1992 in Gen. Docket No. 91-2.⁴ In that proceeding, the Commission decided to define specific service areas and license IVDS channels in these areas on an exclusive basis. As so defined, the IVDS has 734 service areas, with two licenses of 500 kilohertz each (218.0-218.5 and 218.5-219.0 MHz) available in each area.⁵ In the event of mutually exclusive applications⁶ for license, the Commission decided in that earlier proceeding to use the lottery processes specified in our rules.⁷

4. The Omnibus Budget Reconciliation Act of 1993 (Budget Act)⁸ added a new Section 309(j) to the Communications Act of 1934, as amended (Communications Act),⁹ to permit the Commission to employ competitive bidding procedures to choose from among two or more mutually exclusive accepted applications for initial license. In the Notice of Proposed Rule Making in this proceeding, we stated that "the principal use of IVDS-allocated spectrum is reasonably likely to involve the licensee receiving compensation from subscribers for communications services," and therefore proposed to subject IVDS to competitive bidding.¹⁰

³ Service offerings might include subscriber opportunities to provide real-time responses to educational and pay-per-view programming, commercial data applications such as home banking, and the downloading of data. See Report and Order in Gen. Docket No. 91-2, 7 FCC Rcd 1630, 1630 ¶ 2, 1637 ¶ 54 (1992).

⁴ Report and Order, *supra* note 3; see 47 CFR part 95, Subpart F.

⁵ See 47 C.F.R. §§ 95.803, 95.853. IVDS service or market areas are defined in terms of the 734 cellular system service areas. See Public Notice, Report No. 92-40, released January 24, 1992; 47 C.F.R. 22.903 (cellular). Many of these service areas cover rural or remote, sparsely populated areas.

⁶ The Commission, in general, "considers two or more applications to be 'mutually exclusive' if their conflicts are such that the grant of one application would effectively preclude, by reason of harmful electrical interference, the grant of one or more of the other applications." Second Report and Order at ¶ 12 n. 5.

⁷ See 47 CFR 1.972 (1992). On September 15, 1993, a lottery for nine IVDS markets was conducted. This lottery was permitted under the Budget Act described below, the pertinent applications having been accepted for filing by the Commission prior to July 26, 1993. See Budget Act, *infra* note 8, § 6002(e).

⁸ Pub. L. No. 103-66, Title VI, § 6002(a), 107 Stat. 312, 387 (1993) (Budget Act); see H.R. Conf. Rep. No. 213, 103d Cong., 1st Sess. 480-89 (1993), reprinted in 1993 U.S. Code Cong. & Admin. News 1169-78.

⁹ 47 U.S.C. 151-713.

¹⁰ 8 FCC Rcd 7635, 7659 ¶ 143 (1993); see generally 47 U.S.C. § 309(j)(2).

Following our subsequent review of comments and reply comments, we concluded that IVDS should be subject to auctions.¹¹ In this Fourth Report and Order we have attempted to design IVDS auction rules and procedures that meet Congressional objectives.¹² We believe that these objectives are embodied in two basic Commission policy goals: promoting economic growth, and enhancing access to telecommunications service offerings for consumers, procedures, and new entrants.¹³

III. Competitive Bidding Design

5. As noted, we have determined that mutually exclusive IVDS applications are subject to auctions. We must, therefore, identify the methodology and procedure we will use to auction the licenses. We do so in the paragraphs below, pursuant to Section 309(j)(3) of the Communications Act and based on the record in this proceeding.¹⁴ As described below, some further details about specific competitive bidding procedures will be provided later by Public Notice(s).¹⁵

A. General Competitive Bidding Designs

6. The Second Report and Order established the criteria to be used in selecting the auction design method for each auctionable service. Generally, we concluded that awarding licenses to those parties that value them most highly will foster Congress' policy objectives. In this regard, we noted that because a bidder's ability to introduce valuable new services and to deploy them quickly, intensively, and efficiently increases the value of the license to that bidder, an auction design that awards licenses to those bidders who are willing to pay the highest bid tends to promote the development and rapid deployment of new services and the efficient and intensive use of the spectrum.

¹¹ Second Report and Order at ¶¶ 49-53.

¹² 47 U.S.C. § 309(j)(3).

¹³ Second Report and Order at ¶¶ 3-7.

¹⁴ We received comments or reply comments on auctioning licenses in the IVDS from the following: American Group (American); Quentin L. Breen (Breen); Chase McNulty Group, Inc. (Chase); EON Corporation (EON) (*ex parte* filings); Independent Cellular Consultants (ICC); Andrea L. Johnson (Johnson); Kingswood Associates (Kingswood); NYNEX Corporation (NYNEX); Radio Telecom and Technology, Inc. (RTT); Harry Stevens, Jr. (Stevens); and Richard L. Vega Group (RLV). Of these, five—American (reply comment at 23-25), Kingswood (reply comment at 23-25), NYNEX (comment at 11), Stevens (reply comment at 1), and RLV (comment at 11-14)—commented in this context only on whether IVDS should be subject to auctions, an issue we addressed in the Second Report and Order. See ¶ 3, *supra*.

¹⁵ The Public Notice(s) will be issued by either the Commission or the Private Radio Bureau.

7. We concluded that where the licenses to be auctioned are interdependent (that is, either substitutes for, or complements to, each other) and their value is expected to be high, "simultaneous multiple round" auctions would best achieve the Commission's goals for competitive bidding.¹⁶ We also noted that simultaneous multiple round bidding is more complex for bidders and may be administratively more expensive than other auction methods we may select, and indicated that we would use this design only in instances where the expected value of the licenses to be auctioned is high relative to the costs of conducting a simultaneous multiple round auction.¹⁷

8. In the Second Report and Order we stated our intention to tailor the auction design to fit the characteristics of the licenses to be awarded. We noted that simultaneous multiple round auctions may not be appropriate for all licenses.¹⁸ The less the interdependence among licenses, the less the benefit to auctioning them simultaneously. To the extent that simultaneous auctions are more costly and complex to run, we indicated that we may choose a sequential auction design, including sequential oral auctions, when there is little interdependence among individual licenses.

9. We further explained that when the values of particular licenses to be auctioned are low relative to the costs of conducting a simultaneous multiple round auction, we may consider auction designs that are relatively simple, with low administrative costs and minimal costs to the auction participants. We noted that as the value of licenses decreases, and thus the benefits of simultaneous multiple round bidding diminish relative to the cost and complexity of such auctions, a less complex auction method may be more suitable. For example, with large numbers of low value licenses we noted that we may decide that it is preferable to implement a low cost auction method such as single round sealed bidding to minimize cost and expedite the licensing process.

10. Last, in the Second Report and Order we noted that Congress directed us to "design and test multiple alternative methodologies under

appropriate circumstances."¹⁹ Thus, where appropriate, we intend to choose bidding methods other than simultaneous multiple round auctions and periodically reevaluate the effectiveness of all methods utilized.

B. IVDS Competitive Bidding Design

11. We find that the generally preferred method of simultaneous multiple round auctions is not the most appropriate for IVDS, and that IVDS also presents a good opportunity to test less complex alternative procedures. As discussed below, of the auction methods described in the Second Report and Order, oral bidding (open outcry) and single round sealed bidding appear best suited to the IVDS. Both are relatively inexpensive for the Commission to administer, and the costs of participation by bidders are fairly low. Moreover, both have the advantage of being relatively simple for bidders to understand and also generally can be completed quickly. Thus, these methods are likely to promote the statutory goal of rapid implementation of service to the public.²⁰ We therefore adopt these two methods to auction IVDS licenses.²¹

12. The IVDS offers two 500 kilohertz channels (frequency segments A and B) in each of 734 service areas, and the aggregation of both channels in a market is not permitted. While there may be some degree of interdependency among the IVDS licenses for geographically contiguous areas,²² we do not believe that it is great enough to justify the greater costs and administrative complexities associated with holding a simultaneous multiple round auction.²³ Last, with large numbers of IVDS licenses covering only rural areas,²⁴ we anticipate that the demand for, and value of, most markets will not be great

enough to justify the use of more complex methods such as simultaneous multiple round auctions.²⁵

13. For IVDS open outcry auctions, each service area (with two licenses each) will be auctioned individually, and the two highest bidders in each service area will be awarded a license. The highest bidder will get first choice of frequency segment A or segment B at the highest bid price. The second highest bidder will be awarded the remaining segment at the amount it bid.

14. With single round sealed bidding, we will auction the two frequency segments separately. Licenses for frequency segment B will be auctioned first. As soon as practicable thereafter, we will announce the high bidders for licenses on frequency segment B and announce a deadline date for short-form applications for segment A licenses. In the event of a tie in single round sealed bidding, we will hold one additional round between the parties that tied.

15. Having both oral and sealed bidding methods available permits us the flexibility to fit the right auction method to the particular IVDS licenses being auctioned. Further, it is consistent with Congress' directive that we design and test multiple alternative methodologies under different circumstances. ICC comments that, of the two methods, sealed (or electronic) bidding is preferable to oral bidding because some potential bidders perhaps cannot afford to attend an auction in person.²⁶ As noted in the Second Report and Order, however, such sealed bidding generates no information about license values until after the auction closes, tending to decrease bid levels and reduce the efficiency of the license assignment.²⁷ We therefore believe that oral bidding should be used in the potentially higher valued markets, where having license value information during the auction is especially important, and that sealed bidding should be used for the remaining markets.²⁸

16. We believe that, in general, the greater the population in the service area, the greater will be the perceived value of, and demand for, the license. The 734 service areas for the IVDS are identical to those of cellular radio

¹⁹ *Id.* at ¶ 115, quoting 47 U.S.C. § 309(j)(3); see also ICC comment at 9 (supporting IVDS as a candidate for testing alternative methodologies).

²⁰ See 47 U.S.C. § 309(j)(3)(A).

²¹ If, as we gain experience, we find that another auction design for the IVDS would better achieve the goals of the Budget Act, we may revisit this issue.

²² Two commenters, EON and ICC, very briefly address the issue of potential interdependence among IVDS licenses. EON argues that the sequence of IVDS auctions should track "ADIs," a proposal we discuss and adopt *infra*. EON does not state, however, that bidders might perceive the aggregation of licenses to result in additional efficiencies of IVDS operation. EON *ex parte* filing of Jan. 26, 1994, at 4. ICC states that auction procedures favoring license aggregation run counter to policies favoring licensee diversity. ICC Comment at 7.

²³ The interdependencies for IVDS are likely to be less than for services where roaming is important. See generally Second Report and Order at ¶ 91. The IVDS rules do not permit "roaming" across service areas.

²⁴ See note 5, *supra*.

²⁵ See Second Report and Order at ¶¶ 112-113.

²⁶ ICC comment at 6-7, reply comment at 7-8. Chase would prefer that we randomly alternate between oral and sealed methodologies. Chase comment at 1-2.

²⁷ Second Report and Order at ¶ 89 n. 81.

²⁸ For example, when choosing between the two methods, we do not want to hold the more expensive oral bidding auction in instances where we believe that the operational costs of holding the auction might outweigh the benefits (efficient allocation and revenues generated).

¹⁶ See Second Report and Order at ¶¶ 106-111. With this method, all licenses or classes of licenses are auctioned at once, using multiple rounds, and the bidding continues until bidding activity subsides. Thus, bidders may repeatedly "top" the previously high bids. See *id.* at ¶¶ 82, 86.

¹⁷ *Id.* at ¶ 111.

¹⁸ *Id.* at ¶ 112.

service areas: 306 "Metropolitan Statistical Areas" (MSAs) and 428 "Rural Service Areas" (RSAs).²⁹ We have concluded that we should conduct oral auctions for the IVDS service areas corresponding to MSAs, and sealed bid auctions for the remaining service areas, or RSAs. We reserve the discretion to reconsider this bidding design if, in light of experience gained with auctions, a change appears warranted.³⁰

C. Bidding Procedures

17. *Sequencing.* We must choose the sequence in which IVDS licenses will be auctioned. We believe that, in general, the higher valued IVDS licenses should be auctioned first: the cost to the public from delaying licensing increases with the value of the license, and, to the limited extent that aggregation of license is important, auctioning the higher valued licenses first facilitates it.³¹ In determining the sequence for auctioning IVDS licenses we are persuaded by EON's argument that the IVDS is a television-driven service and that the licenses should therefore be auctioned in a manner consistent with the geographic areas defined by "Areas of Dominant Influence" (ADIs),³² rather than by numerical order of service area. EON and ICC also commented generally that licenses for the more densely populated IVDS service areas should be auctioned prior to the other areas.³³ Therefore, we will auction licenses in ADI order, starting with the lowest numbered ADI (having the highest population) and proceeding in numerical order.³⁴ Prior to starting the auction process, we will issue a Public Notice listing the pertinent ADIs, and the order in which licenses for the corresponding service areas will be auctioned (by open outcry) in each ADI. We anticipate that we will hold sealed bid auctions for licenses in rural areas as soon as practicable after auctioning the more populated areas. For the rural

areas, licenses on frequency segment B will be auctioned first, and then a separate sealed bid auction will be held for licenses on frequency segment A.

18. *Bid Increments.* In a multiple round auction, a bid increment is the amount or percentage by which a bid must be raised above the previous round's high bid in order to be accepted as a valid bid in the current round of bidding. For IVDS auctions, the Commission, including the auctioneer, retains the discretion to impose bid increments before or during the auction.³⁵

IV. Procedural Payment and Penalty Issues

A. Pre-Auction Application Procedures

19. The Second Report and Order established general rules and procedures for participating in auctions. Again, however, we noted that these might be modified on a service-specific basis. As described below, we have determined that we will follow the procedural, payment, and penalty rules established in the Second Report and Order, with certain minor modifications to fit the IVDS. Certain procedural details will be supplied later by Public Notice(s). Our objective has been to design rules and procedures that will reduce administrative burdens and costs on bidders and the Commission, ensure that bidders and licensees are qualified and able to construct their systems, and minimize the potential for delay of service to the public.

20. We will require applicants to follow the application filing and processing rules outlined in the Second Report and Order.³⁶ Before each scheduled IVDS auction the Commission, or, pursuant to delegated authority, the Private Radio Bureau, will release Public Notices concerning the auction. The Public Notices will specify the license(s) to be auctioned and the time, place, and method of competitive bidding to be used, as well as applicable bid submission and payment procedures. A Public Notice will also

specify the filing deadline date for short-form applications.

21. Bidders will be required to submit short-form applications on FCC form 175 by the date specified in the Public Notice.³⁷ If the Commission receives only one application that is acceptable for filing for a particular frequency segment, and there is thus no mutual exclusivity,³⁸ the Commission will by Public Notice cancel the auction for this license and established a date for the filing of a long-form application (FCC Form 574). In order to encourage maximum bidder participation, we will provide applicants whose short-form applications are substantially complete, but which contain minor errors or defects, with an opportunity to correct their applications prior to the auction. However, applicants will not be permitted to make any major modifications to their applications, including ownership changes or changes in the identification of parties to bidding consortia.³⁹ In addition, applications that are not signed or that fail to make the required certifications will be dismissed and may not be resubmitted.

22. The Commission will issue a subsequent Public Notice listing all applications containing minor defects, and applicants will be given an opportunity to cure and resubmit defective applications. After reviewing the corrected applications, the Commission will release another Public Notice announcing the names of all applicants whose applications have been accepted for filing.

B. Upfront Payment

23. In the Second Report and Order, we described three types of payments: upfront payments, down payments, and final payments. Chase favors upfront payments, while ICC believes that such a requirement would constitute a hardship on small entrepreneurs.⁴⁰ We believe an upfront payment is needed for oral outcry IVDS auctions. Requiring this payment provides some degree of assurance that only serious, qualified bidders will participate and serves as a deterrent to the filing of speculative applications which tend to slow down the provision of service to the public. It also provides the Commission with a source of funds to satisfy any penalties

²⁹ Applicants should note whether they intend to bid for one or both frequency segments. Applicants need not submit microfiche originals or copies.

³⁰ As noted previously, absent mutually exclusive applications, the Commission is prohibited from auctioning the license. 47 U.S.C. § 309(j)(1).

³¹ See Second Report and Order at ¶ 167.

³² Chase comment at 2; ICC comment at 8, reply comment at 7.

²⁹ See note 5, *supra*.

³⁰ For instance, sealed bidding might be appropriate if we re-auction a small number of MSAs, or postpone initially the auctioning of MSAs located near international borders while agreements are negotiated.

³¹ Second Report and Order at ¶¶ 117-120. We have noted, "Knowing who has won (the) large markets is likely to be more important for bidding decisions about small markets than the converse." *Id.* at ¶ 119.

³² This standard market definition, developed by Arbitron Ratings Company, places each county in the continental U.S. within one of 210 ADIs.

³³ EON *ex parte* filing of Jan. 26, 1994, at 2, 4; ICC comment.

³⁴ The majority of ADIs comprise a number of MSAs. See generally note 5, *supra*. We will auction the lowest numbered service area in the ADI first, also auction the remaining service areas (MSAs) that make up the ADIs for the 9 markets that were lotteried. See *id.*

³⁵ See generally *id.* at ¶ 126.

³⁶ Second Report and Order at ¶ 160-188. In its comments, RTT sets forth a waiver request and asks that we rule on it in advance of the IVDS auctions. RTT comment at 1-5. Specifically, RTT requests that the Commission, by declaratory ruling, rule that any IVDS licensee using "T-NET" technology, with a power level greater than that permitted in our rules, will be granted a rule waiver to permit the power level. We will not make the requested ruling at this time. All requests for waiver must be evaluated in the context of a specific system design for avoidance of interference to television reception. This information can be provided when the applicant files a long-form application for license in a particular market. See generally Second Memorandum Opinion and Order in Gen. Docket No. 91-2, 8 FCC Rcd 2787, 2788 ¶ 8 (1993).

assessed. Therefore, we will require the upfront payment and retain the flexibility to determine the payment amount on an auction-by-auction basis. We will not, however, require an upfront payment for applicants in sealed bid IVDS auctions.

24. A bidder may file applications for every IVDS license being auctioned, but, for open outcry auctions, its upfront payment should reflect the maximum number of licenses it desires to win. Once a bidder is a "winning" bidder for the maximum number of licenses reflected by its upfront payment, it will be precluded from bidding further. We will use the following procedure for collecting this payment for oral bidding IVDS auctions. The applicant or its representative will be required to show the Commission, immediately prior to the auction, a cashier's check for at least \$2,500⁴¹ in order to get a bidding number and enter the designated area in the room where the bidding will take place. Bidders will be required to have \$2,500 upfront money for every five licenses they win.⁴² The \$2,500 upfront payment will be collected immediately after the first license is won by an applicant.⁴³ The highest bidder will be asked to sign a bid confirmation form. The upfront money will later be counted toward the down payment. We believe these procedures will keep the auction process simple, keep costs down for small businesses who wish to bid on only a few licenses, and eliminate

Commission expenses due to issuing refunds.

C. Payment for Licenses Awarded by Competitive Bidding

25. To provide further assurance that winning bidders will be able to pay the full amount of their bids, we decided generally in the Second Report and Order that each winning bidder must tender a down payment sufficient to bring the total deposit up to 20 percent of the winning bid. We believe a down payment is appropriate for IVDS. Therefore, winning bidders will be required to supplement their upfront payments to bring their total deposit with the Commission up to at least 20 percent⁴⁴ of the final payment due for the license(s) won in that particular auction.⁴⁵ The down payment will be due within five business days after the close of bidding.⁴⁶ The down payment will be held by the Commission until the high bidder has been awarded the license and has paid the remaining balance due on the license, or until the winning bidder is found unqualified to be a licensee or has defaulted, in which case it will be returned, less applicable penalties. During the period that deposits are held pending ultimate award of the license, the interest that accrues, if any, will be retained by the Government.

26. Long-form applications (FCC Form 574) will be due from successful bidders within 10 business days after they have been notified of their winning bidder status.⁴⁷ Once we have reviewed the application and made a determination that the applicant is qualified, we will grant the license, conditioned on the timely payment of all monies due. In the Second Report and Order, we decided to require auction winners to make full payment of the balance of their winning bids within 5 business days of the grant of their license, except for small businesses using the preference of

installment payments.⁴⁸ This time frame appears to be appropriate for IVDS, and we will therefore use it.

D. Default and Disqualification

27. In the Second Report and Order, we concluded that strong incentives are needed to ensure that potential bidders are financially and otherwise qualified to participate in auction proceedings, so as to avoid delays in the deployment of new services to the public.⁴⁹ We stated that, for open outcry auctions, we will assess a default penalty if a bidder fails to make the down payment on a license, fails to pay for a license, or is disqualified after the close of an auction. In the case of single round bidding, we stated that we will impose a penalty in instances where the default occurs after the high bidder has been notified by the Commission that it has submitted the high bid.⁵⁰

28. In an oral auction, a winning bidder that withdraws its bid after signing a bid confirmation form or fails to remit the required down payment or balance of its winning bid in the time frame specified, will be deemed to have defaulted. In a sealed bid auction, a winning bidder is deemed to have defaulted if it withdraws its bid after publication of the initial public notice notifying auction winners or fails to remit the required down payment or balance of its winning bid in the time frame specified. In such instances, we may re-auction the license or offer it to the next highest bidder(s). In cases where disqualification or default occurs after the full down payment has been made, we will hold a new auction for the license. Further, "if a default or disqualification involves gross misconduct, misrepresentation or bad faith by an applicant, the Commission also may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it may deem necessary, including institution of proceedings to revoke any existing licenses held by the applicant."⁵¹ Entities who obtain their licenses through the auction process are put on notice that if their licenses are revoked or canceled they will forfeit all monies paid to the Commission regarding those licenses.⁵²

29. We believe it is important to adopt default penalties for IVDS auctions. If a bidder in an oral auction defaults or is disqualified, a default penalty will be

⁴¹ In establishing procedures for auctioning IVDS licenses, we have tried to reduce the complexities of the auction process for both the Commission and potential applicants. To this end, we have established a standard, reasonable upfront payment amount in lieu of an amount based on a formula (e.g., \$0.02/pop/MHz). Such a formula, when used in the context of more populated areas, can result in a very substantial upfront payment. In the context of IVDS, we believe \$2,500 strikes a good balance between ensuring that only serious, qualified bidders participate and not placing an unreasonable financial burden on small businesses. This amount was established in the Second Report and Order, see *id.* at ¶ 180, as the general minimum upfront payment, consistent with comments submitted.

⁴² For example, if a bidder brings only one check for \$2,500 and wins five licenses, he or she will not be allowed to bid on another license. If a bidder brings two \$2,500 checks, he or she may bid until 10 licenses are won. Therefore, if a bidder anticipates winning 16 licenses, he or she must bring four \$2,500 cashier's checks.

⁴³ The upfront money will be collected immediately after the first license is won in each group of five licenses (1, 6, 11, etc.). Bidders should bring a \$2,500 cashier's check for each five licenses they desire to purchase. The Commission will not refund money to those bringing a single check to cover the total upfront payment required, rather than multiple \$2,500 checks, if the single check is for an amount ultimately greater than the upfront payment required. On request we will, however, apply such balance to any further monies owed in the context of IVDS auctions.

⁴⁴ Small businesses using the preference of installment payments, see Section VI below, need only bring their deposits up to 10 percent within 5 business days, with the remaining 10 percent due within five days of the license grant. See Second Report and Order at ¶¶ 192 n. 145, 238.

⁴⁵ If the upfront payment already tendered amounts to 20 percent or more of the winning bid, no additional deposit will be required.

⁴⁶ Second Report and Order at ¶ 192. For single round sealed bidding, we will notify the high bidder soon after the auction. The down payment will then be due within five business days.

⁴⁷ If a filing fee is required, the general rules governing the submission of fees will apply. See 47 C.F.R. § 1.1101 *et seq.* These rules provide for dismissal of an application if the application fee is not paid, is insufficient, is in improper form, is returned for insufficient funds, or is otherwise not in compliance with our fee rules. See also Second Report and Order at ¶ 167 n. 127.

⁴⁸ *Id.* at ¶ 194.

⁴⁹ *Id.* at ¶¶ 195-197.

⁵⁰ *Id.* at ¶¶ 156-157.

⁵¹ *Id.* at ¶ 198.

⁵² This includes licensees who fail to meet the construction benchmarks contained in 47 C.F.R. § 95.833.

impose equal to the difference between the bidder's high "winning" bid and the amount of the winning bid the next time the license is offered by the Commission, if this latter amount is lower. In addition, with open outcry auctions, the defaulting auction winner will be assessed a penalty of three (3) percent of the subsequent winning bid or three percent of its own (the defaulting bidder's) bid, whichever is less.⁵³ The additional three percent penalty is designed to discourage insincere bidding and to compensate the government for the cost of reauctioning a license. In single round sealed bid auctions, if a high bidder defaults prior to making the required down payment, we will impose a default penalty equal to the difference between the high bid and the next highest bid. If a high bidder defaults after having made the down payment, the additional three percent penalty will be applied.⁵⁴

V. Regulatory Safeguards

A. Unjust Enrichment Provisions

30. Congress directed that we take steps to prevent unjust enrichment due to trafficking in licenses that were obtained through competitive bidding. 47 U.S.C. § 309(j)(4)(E). In Section VI, below, we adopt specific rules governing unjust enrichment by designated entities.⁵⁵ The IVDS rules already contain provisions to reduce trafficking,⁵⁶ and ICC argues that these rules are sufficient.⁵⁷ Consistent with the Second Report and Order, however, the IVDS-specific anti-trafficking provisions will not apply to licenses obtained through competitive bidding, although we will enforce the new transfer disclosure requirements contained in Section 1.2111 of our rules.⁵⁸ Generally, applicants seeking to transfer their licenses within five years of the initial license grant will be required to file, together with their transfer application, the associated contracts for sale, option agreements, management agreements, and all other documents disclosing the total consideration received in return for the transfer of the license. We will give particular scrutiny to auction winners who have not yet begun commercial

service and who seek approval for an assignment or transfer of control of their licenses, in order to determine whether any unforeseen problems relating to unjust enrichment have arisen outside of the designated entity context.

B. Performance Requirements

31. Congress has directed that the Commission, in implementing auction procedures, "include performance requirements, such as appropriate deadlines and penalties for performance failures, to ensure prompt delivery of service to rural areas, to prevent stockpiling or warehousing of spectrum by licensees or permittees, and to promote investment in and rapid deployment of new technologies and services."⁵⁹ In the Second Report and Order, we decided that it was unnecessary and undesirable to impose additional performance requirements for auctionable services beyond those already provided in service rules.⁶⁰ The IVDS rules already contain specific performance requirements, such as the requirement to build-out the system within a specified period of time. See, e.g., 47 CFR 95.833. Entities that obtain, by transfer or assignment, an IVDS license that was awarded by competitive bidding, take such license subject to the existing performance requirements.

C. Rules Prohibiting Collusion

32. In the Second Report and Order we adopted special rules prohibiting collusive conduct in the context of competitive bidding. See 47 CFR 1.2105(c). We indicated that such rules would serve the objectives of the Budget Act by preventing parties, especially larger firms, from agreeing in advance to bidding strategies that might divide the market according to their strategic interests and to the disadvantage of other bidders. These rules apply to all auctionable services, including the IVDS. Bidders are required to identify on their FCC Form 175 applications any parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings which relate to the competitive bidding process. Bidders are also required to certify that they have not entered into any explicit or implicit agreements, arrangements or understandings with any parties, other than those identified, regarding the amount of their bid, bidding strategies or the particular properties on which they will or will not bid. After the short-form applications are filed and prior to the

time that the winning bidder has made its required down payment, all bidders are prohibited from cooperating, collaborating, discussing or disclosing in any manner the substance of their bids or bidding strategies with other bidders, unless such bidders are members of a bidding consortium or other joint bidding arrangement identified on the bidder's short-form application.

33. Concerning bidding consortia, joint venture, partnership or other such agreements or arrangements, all such arrangements must have been entered into prior to the filing of short-form applications. Where specific instances of collusion in the competitive bidding process are alleged, the Commission may conduct an investigation or refer such complaints to the United States Department of Justice for investigation. Bidders who are found to have violated the antitrust laws or the Commission's rules in connection with participation in the auction process may be subject to forfeiture of their down payment or their full bid amount, revocation of their license(s), and may be prohibited from participating in future auctions.

VI. Treatment of Designated Entities

A. Introduction

34. As discussed in the Second Report and Order, Congress mandated that the Commission "ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services." 47 U.S.C. 309(j)(4)(D). The statute requires the Commission to "consider the use of tax certificates, bidding preferences, and other procedures" in order to achieve this congressional goal. In addition, Section 309(j)(3)(B) provides that in establishing eligibility criteria and bidding methodologies the Commission shall promote "economic opportunity and competition . . . by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women." 47 U.S.C. 309(j)(3)(B). Finally, Section 309(j)(4)(A) provides that to promote these objectives, the Commission shall consider alternative payment schedules, including lump sums or guaranteed installment payments.

35. In the Second Report and Order we established the eligibility criteria and general rules that would govern the award of preferences for designated

⁵³ *Id.* at ¶¶ 154-157.

⁵⁴ See *id.* at ¶ 157.

⁵⁵ See ¶¶ 47, 52, 54 & n. 90, *infra*. We have amended 47 CFR 95.819 to clarify the procedures for the transfer or assignment of IVDS licenses.

⁵⁶ For example, current IVDS licenses must meet the five-year construction benchmark before they may transfer, sell, assign, or give an IVDS license to another entity. See 47 CFR 95.819.

⁵⁷ ICC comment at 7.

⁵⁸ See 47 CFR 1.2111; Second Report and Order at ¶¶ 263-265.

⁵⁹ 47 U.S.C. 309(j)(4)(B).

⁶⁰ Second Report and Order at ¶ 219.

entities. We also established a menu of preferences, including installment payments and bidding preferences, that we could choose from in selecting the preferences that will be applicable to a particular service, and specified the circumstances under which a tax certificate program would be established. In addition, we set forth rules to prevent unjust enrichment by designated entities seeking to transfer licenses obtained through use of one of the preferences.

36. In this Fourth Report and Order we adopt specific preferences for the IVDS designed to ensure that designated entities are given the opportunity to participate both in the competitive bidding process and in the provision of the service. In particular, we adopt the following preferences:

(1) A 25 percent bidding credit will be available for one license in each service area (for either frequency segment A or B), for businesses owned by minorities and/or women;

(2) Tax certificates will be available to initial investors in minority and women-owned enterprises upon divestiture of their non-controlling interests, and to licensees who transfer their authorizations to minority or women-owned businesses; and

(3) Installment payments will be made available to small businesses. We also incorporate and adopt the unjust enrichment provisions adopted in the Second Report and Order applicable to each of the preferences we adopt here, and adopt the designated entities eligibility requirements of the Second Report and Order.⁶¹

37. We received IVDS-specific comments favoring the preferences of spectrum set-asides⁶² and royalty payments.⁶³ As we noted in the Second Report and Order, however, the appropriateness of preferences is best determined in light of the characteristics of the particular service and the nature of its expected pool of bidders, and we find that these preferences are not appropriate for the IVDS. Concerning set-asides, we note that the total spectrum available in the service is small: two 500 kilohertz channels available in each service area. Thus for the IVDS, with its licensing scheme of

two licenses per market, the use of set-asides would result in one of every two licenses being reserved for designated entities. We decline to reserve so great a proportion of the service's spectrum. Furthermore, in the Second Report and Order we decided, for all services, not to use the preference of royalty payments.⁶⁴ While we will continue to assess the feasibility of these preferences as we gain experience with auctions in the context of this and other services, we are not persuaded to change our decision for the IVDS.

38. We note that the IVDS, with its expected relatively low capital entry requirements, is well suited for ownership by designated entities and other potential bidders that might otherwise lack the financial resources to compete by auction for a license. This, combined with the variety of uses possible with the service, makes it likely that the IVDS will promote economic growth and enhance the access of consumers to new and innovative service offerings. As we gain experience with IVDS auctions, we intend continually to assess the effectiveness of our measures, and will apply any knowledge gained to subsequent auctions for other services.

B. Bidding Credits

39. In the Second Report and Order we stated that we would consider using bidding credits to encourage participation by designated entities in auctions. Upon consideration and review of the record on this subject, we believe that affording businesses owned by minorities and women a substantial bidding credit for certain specified IVDS licenses is the most cost-effective and efficient means of achieving Congress' objective of "ensuring" the opportunity of these designated entities to participate in the provision of IVDS offerings. Bidding credits will provide minority and women-owned firms with a significant advantage, which we believe is necessary to achieve this congressional goal, while preserving the advantages of open bidding competition. In effect, the bidding credit will function as a discount on the bid price a minority- or women-owned firm will actually have to pay to obtain a license and, thus, will address directly the financing obstacles encountered by these entities. We believe that a bidding credit in the amount of twenty-five (25) percent is necessary to provide these designated entities with a significant enough advantage to ensure their ability to compete successfully for some IVDS licenses. Thus, in each market, a single

25 percent bidding credit will be awarded to a business owned by minorities and/or women if it is a winning bidder.⁶⁵

40. As discussed in the Second Report and Order, Congress mandated that the Commission "ensure" the opportunity for participation in spectrum-based services by each category of designated entity, including businesses owned by minorities and women. This plain language leads us to conclude that adequate measures must be taken to assure that minority and women-owned businesses have the ability to participate in the provision of services subject to competitive bidding. Moreover, in enacting this legislation, it is clear that Congress was concerned about disseminating licenses to a wide variety of applicants and wanted the Commission to take meaningful steps to accomplish this goal.⁶⁶ Indeed, Congress included a requirement in the statute that the Commission report to it in 1997 about, among other things, whether competitive bidding facilitated the introduction of new companies into the telecommunications market and whether designated entities "were able to participate successfully in the competitive bidding process." 47 U.S.C. 309(j)(12)(iv).

41. Apart from Congress' directive, we think that ensuring opportunities for women and minorities to participate in the IVDS is important for the telecommunications industry. These companies can play a vital role in serving inner city areas and other niche markets that may be overlooked by other companies; thus promoting our goal of universal access to telecommunications services. Not only will the industry become more diverse through the adoption of meaningful preferences, but we believe that a much wider customer base will obtain access to innovative technologies. Moreover, studies show that even when minority-owned firms

⁶⁵ Only one bidding credit is available in each market. If it happens that the two highest bidders are both designated entities eligible for a bidding credit, the second highest bidder will be given the option of accepting the remaining license without the credit, or declining the remaining license.

⁶⁶ We have decided not to provide bidding credits (or other separate preferences) to rural telephone companies bidding on IVDS spectrum because we conclude that, given the relatively modest build-out costs for systems in this service, such preferences are unnecessary to ensure the participation of rural telephone companies in the provision of IVDS offerings to rural areas. The preferences are also, therefore, unnecessary in this context to meet Congress' intent to ensure that rural consumers receive the benefit of new technologies such as IVDS. Rural telephone companies will, however, be eligible for bidding credits if they are owned by minorities or women. They may also qualify for installment payments if they satisfy the eligibility criteria for small businesses.

⁶¹ See 47 CFR 1.2111; Second Report and Order at ¶¶ 267-278.

⁶² Breen and ICC favor set-asides as a means to encourage applications from small businesses. Comments of Breen 9; ICC at 4-6. ICC also argues that, without set-asides, large telecommunications providers might attempt to stifle IVDS technology or permit it only as an adjunct to existing offerings. ICC comments at 5-6.

⁶³ Breen and ICC state that this option will encourage participation by designated entities. Breen at 7; ICC comment at 7, reply comment at 8.

⁶⁴ *Id.* at ¶¶ 252-253.

do not locate within urban minority communities, they employ more minorities relative to other companies, thereby promoting our goals of equal employment opportunity and economic growth.⁶⁷

42. The general record in this proceeding⁶⁸ reflects a severe underrepresentation of minorities and women in telecommunications. Indeed, the Commission's Small Business Advisory Committee (SBAC) found only 11 minority firms engaged in the delivery of cellular, specialized mobile radio, radio paging, or messaging services.⁶⁹ Likewise, American Women in Radio and Television (AWRT) found that only 24 percent of small communications businesses are owned by women (when companies without paid employees are excluded, women own less than 15 percent of small communications firms).⁷⁰ Many commenters observe that the factors that preclude minorities and women from effective participation concern access to financing. With regard to women, they note that no existing FCC policy provides an incentive for women to enter the communications business, and that access to capital remains the biggest obstacle women business owners must face. Similarly, the SBAC states that minorities frequently do not or cannot use traditional sources of financing. Citing the U.S. Senate amicus brief in *Metro Broadcasting, Inc. v. FCC*, 110 S. Ct. 2997 (1990), the SBAC asserts that "spectrum for radio facilities was first allocated at a time when undisguised discrimination in education, employment opportunities, and access to capital excluded minorities from all but token participation." The SBAC concludes that minorities were impeded from successfully competing for licenses when they were first awarded and, due to systematic barriers to technical

training and employment opportunities, this situation has continued over time.

43. Given this history of underrepresentation of minorities and women in telecommunications and the inability of these groups to access financing, we find that the best way we can accomplish these statutory mandates is to provide bidding credits exclusively to minority and women-owned businesses. The record demonstrates that women and minorities face barriers to entry not encountered by other firms, including other designated entities, and it is, therefore, appropriate and necessary that we provide them with a substantial bidding advantage.⁷¹ In other contexts, Congress has recognized that the use of preferences in the licensing process can be necessary to remedy underrepresentation by minorities. For example, in 1982, Congress mandated the grant of a "significant preference" to minority applicants participating in lotteries for spectrum-based services. 47 U.S.C. 309(i)(3)(A). And, in 1988, Congress attached a provision to the FCC appropriations legislation that precluded the Commission from spending any appropriated funds to examine or change its minority broadcast preference policies.⁷² Absent such measures targeted specifically to women and minorities, it would be virtually impossible to assure that these groups achieve any meaningful measure of opportunity for actual participation in the provision of the services in question.⁷³

⁶⁷ See e.g., Comments of AWRT at 4-7; Call-Her at 5; Cook Inlet at 38-39.

⁶⁸ Continuing Appropriations Act for Fiscal Year 1988, Public Law No. 100-102, 101 Stat. 1329-31.

⁶⁹ In the Second Report and Order, we addressed the constitutionality of race and gender-based preferences and concluded that the proper standard of scrutiny to be employed in this context is the "intermediate scrutiny" standard used in the *Metro* case. Second Report and Order at ¶¶ 289-297; see 110 S.Ct. at 2997. We further concluded that under such a standard, preferences for minority and women-owned businesses are constitutionally permissible. We recognize that *Metro's* standard of review applies to measures approved by Congress. 110 S. Ct. at 3008-09. As noted above, the bidding credits in question here were expressly approved and, indeed, are required to achieve the statutory goals. See 47 U.S.C. § 309(j)(4)(D) (The Commission must "consider the use of tax certificates, bidding preferences, and other procedures" to ensure the participation of "small businesses, rural telephone companies, and businesses owned by members of minority groups and women."). Moreover, an argument might be made that IVDS licensees will be able to control the content of the transmissions carried on their facilities and that the service can therefore be analogized (at least) to mass communications media. See, e.g., Johnson comment at 1-4, 8 (like other emerging subscription-based services, IVDS will, in practice, increasingly converge with broadcast and cable services). To the extent that this control exists or is later developed with regard to the IVDS, the preferences

44. We also agree with Call-Her that even comparatively large businesses owned by women and minorities face discriminatory lending practices and other discriminatory barriers to entry and, therefore, eligibility for bidding credits should not be limited to small firms. The IVDS auctions present a unique licensing opportunity for these historically disadvantaged groups to gain a foot-hold in the communications industry.⁷⁴ Our goal is to encourage businesses owned by minorities and women to provide viable, sustained competition to larger businesses. Therefore, we have accorded preferences to minority and women-owned firms regardless of their size. This approach is consistent with our auction rules and will further the statutory mandate to ensure participation by designated entities.⁷⁵

45. Further, Congress clearly intended that businesses owned by minorities and women must be given the opportunity to participate in the provision of spectrum-based services independent of their status as small businesses. The plain language of section 309(j)(4)(D) states that the Commission "shall . . . ensure" the opportunity for participation by "small businesses . . . and businesses owned by members of minority groups and women . . ." (emphasis added). If Congress had intended to limit the directive of Section 309(j)(4)(D) only to small businesses, no need would have existed to mention separately minorities and women. Moreover, Section 309(j)(4)(D) was added to Conference, and the Conference Report does not offer any suggestion that, to come within the section's purview, businesses owned by minorities or women must be small businesses. In contrast, and as we discussed more fully in the Second Report and Order, the legislative history of Section 309(j)(4)(A), relating to installment payments, expressly indicates that the provision was intended only to promote financial assistance for small businesses.⁷⁶ Accordingly, we shall interpret Section

we adopt for minorities and women would be consistent with the important governmental interest identified in *Metro*: increasing minority ownership to encourage diversity in the provision of content.

⁷⁴ Because of the discrimination suffered by minorities and women as contractors and subcontractors in the telecommunications industry, see MBELDEF Study, this unique chance to enter the field as primary telecommunications providers, competing with, rather than dependent upon, other providers, is especially important.

⁷⁵ See *Banking on Black Enterprise* at 13 (government assistance should accrue to more capable black entrepreneurs, who are most likely to contribute to the goal of economic development).

⁷⁶ See Second Report and Order at ¶¶ 234-236.

⁶⁷ See e.g., 47 CFR 21.307, 22.307 (equal employment opportunity rules for common carriers); Implementation of the Commission's Equal Employment Opportunity Rules (Notice of Inquiry), FCC 94-103 (released April 21, 1994) ("[O]ur EEO rules enhance access by minorities and women to increase employment opportunities which are the foundation for increasing opportunities for minorities and women in all facets of the communications industry, including participation in ownership. Thus the rules . . . promote the further development of the broader communications infrastructure.") See also *Banking on Black Enterprise* at 3.

⁶⁸ For a list of all commenters in this proceeding, see Appendix A, Second Report and Order. Footnote 14, *supra*, lists those commenters that made IVDS-specific comments.

⁶⁹ Report of the FCC Small Business Advisory Committee to the FCC Regarding Gen. Docket No. 90-314 (Sept. 15, 1993), reprinted at 8 FCC Rcd 7820, 7827 (1993).

⁷⁰ See Comments of AWRT at 5.

309(j)(4)(D) in accordance with its plain language and will not limit its application to small businesses.⁷⁷

46. In determining the appropriate amount of the bidding credit we considered several factors. First, we agree with those commenters that support a bidding credit of 25 percent or more⁷⁸ because we think that a substantial credit is necessary to ensure meaningful participation by minority and women-owned businesses. In the broadcast context, we have noted that licensees can transfer their stations to minorities in distress sales provided that the price is no more than 75 percent of market value.⁷⁹ This policy is based upon our finding that 25 percent is an appropriate discount to eliminate financial entry barriers for minority-owned companies seeking to become broadcast licensees. Likewise, we believe that a bidding credit of 25 percent will adequately ensure participation by a wide variety of minority and women-owned firms in IVDS auctions and service provision. The amount is not so substantial, however, as to foster participation by firms that are not otherwise financially capable of building-out an IVDS system. We will monitor carefully the effectiveness of the 25 percent bidding credit in the IVDS context and continually assess whether it is achieving the goal of ensuring that minority and women-owned firms participate successfully in auctions for these services.

47. To prevent any unjust enrichment by minorities or women trafficking in licenses acquired through the use of bidding credits, we will impose a forfeiture requirement on transfers or assignments of such licenses to entities that are not owned by minorities or women.⁸⁰ Minority and women-owned businesses seeking to transfer or assign a license to an entity that is not owned by minorities or women will be required to reimburse the government for the amount of the bidding credit, plus

⁷⁷ Even though small businesses are also mentioned in Section 309(j)(4)(D), we do not believe bidding preferences for small businesses are appropriate for IVDS auctions. We believe the installment payments preference, as outlined below, will be sufficient to ensure their participation.

⁷⁸ See comments of AIDE at 7, Devsha at 5, NABOB at 10-11, and *ex parte* filing of Personal Communications Network Services of New York at 2-3, each suggesting a bidding credit of 25 percent. Rocky Mountain Telephone proposes of 50 percent bidding credit. Comments of Rocky Mountain Telephone at 16. And Richard Vega proposes a 100 percent bidding credit for certain designated entities. Comments of Richard Vega at 7.

⁷⁹ See Lee Broadcasting Corp., 76 FCC 2d 462 (1980).

⁸⁰ See Second Report and Order at ¶ 264.

interest at the rate imposed for installment financing at the time the license was awarded, before transfer or assignment will be permitted. The amount of the penalty will be reduced over time: a transfer or assignment in the first two years of the license term will result in a forfeiture of 100 percent of the value of the bidding credit; during year three, of 75 percent of the bidding credit; in year four, of 50 percent; in year five, of 25 percent; and thereafter, no penalty.⁸¹ Furthermore, as noted earlier, we will use the eligibility criteria from the Second Report and Order to ensure that only legitimate minority and women-owned firms are able to take advantage of bidding credits. In addition, to further ensure that our rules are as narrowly tailored as possible, while still fulfilling the statutory goal, we are prohibiting publicly-traded companies from taking advantage of the bidding credits and we are providing bidding credits for only one license in each market for businesses owned by minorities or women.

C. Tax Certificates

48. Congress instructed the Commission to consider the use of tax certificates to ensure designated entity participation in a spectrum-based services. See 47 U.S.C. 309(j)(4)(D). In the Second Report and Order we observed that tax certificates could be useful as a means of attracting investors to designated entity enterprises and to encourage licensees to assign or transfer control of licenses to designated entities in post-auction transactions. We stated further that we would examine the feasibility of using this measure in subsequent service-specific auction rules.⁸² After further consideration of this matter, we believe that tax certificates would be an appropriate tool to assist minority and women-owned businesses to attract start-up capital from non-controlling investors. In addition, we believe that tax certificates will give licensees the incentive to assign or transfer their authorizations to such entities in post-auction sales, thereby providing added assurance that minority and women-owned entities will have the opportunity to participate in the provision of IVDS offerings. Accordingly, we will issue tax certificates to initial investors in minority and women-owned IVDS applicants upon the sale of their non-controlling interests. We will also issue tax certificates to IVDS licensees who

⁸¹ Interest will also be charged according to the total number of years the license was held.

⁸² Second Report and Order at ¶ 251.

assign or transfer control of their licenses to minority and/or women-owned entities.

49. As stated previously, the record reveals that women and minorities face barriers to entry not encountered by other designated entities.⁸³ In particular, they have an especially difficult time accessing capital and, as a result, are severely under-represented in the telecommunications industry. Together with the other preferences we adopt today, tax certificates should help to ensure the participation of minority and women-owned businesses in this service. This measure will make it easier for these designated entities to attract start-up capital because investors will know that they can defer taxes on any gains made when their interests are sold. In addition, tax certificates will provide incentives to licensees to seek out minority and female buyers in after-market sales because the licensees will be able to defer taxes on profits made in the sale.

50. We have used tax certificates over the years to encourage broadcast licensees and cable television operators to transfer their stations and systems to minority buyers.⁸⁴ We also have granted tax certificates to shareholders in minority-controlled broadcast or cable entities who sell their shares, when such interests were acquired to assist in the financing of the acquisition of the facility.⁸⁵ These broadcast and cable tax certificates are issued pursuant to the Internal Revenue Code, 26 U.S.C. 1071. While Congress' goal in authorizing tax certificates under Section 309(j)(4)(D) of the Act is somewhat different, and focuses on ensuring the opportunity for designated entities to participate in auctions and spectrum-based services, we think that it will be an equally valuable program. Issuance of tax certificates to investors and licensees that sell to minorities and women will augment the bidding credits preference, and together the measures should increase the ability of these entities to access financing, thus ensuring their opportunity to participate in IVDS auctions and services.

51. In implementing this program, we will borrow from our existing tax certificate program and grant tax certificates, upon request, that will enable the licensees and investors meeting the criteria outlined here to defer the gain realized upon a sale either

⁸³ See ¶¶ 42-44, *supra*.

⁸⁴ See Commission Policy Regarding the Advancement of Minority Ownership in Broadcasting, 92 FCC 2d 849 (1982) ("1982 Policy Statement"); See also Statement of Policy on Minority Ownership of Broadcasting Facilities, 68 FCC 2d 979 (1978).

by: (1) Treating it as an involuntary conversion under 26 U.S.C. 1033, with the recognition of gain avoided by the acquisition of qualified replacement property; or (2) electing to reduce the basis of certain depreciable property; or both. Tax certificates will be available to initial investors in minority and women-owned businesses who provide "start-up" financing, which allows these businesses to acquire licenses at auction or in the aftermarket, and those investors who purchase interests within the first year after license issuance, which allows for the stabilization of the designated entities' capital base. Also, in accordance with our existing policy, to be eligible for a tax certificate, such investor transactions must not reduce minority or female ownership or control in the entity below 50.1 percent. The definition of a minority or female-owned entity is set forth in the Second Report and Order and, with regard to our investor tax certificate policy, the entity in which the investment is made must satisfy that definition at the time of the original investment as well as after the investor's shares are sold. For after-market sales, tax certificates will only be issued to licensees who sell to entities that meet that definition. Tax certificates will be granted only upon completion of the sale, although parties can request a declaratory ruling from the Commission regarding the tax consequences of prospective transactions.

52. As with our other tax certificate policies, we wish to deter "sham" arrangements to obtain tax certificates and, pursuant to Section 309(j)(4)(E), therefore adopt measures to prevent unjust enrichment. First, we intend to enforce strictly the definitions adopted in the Second Report and Order and will carefully review investment and purchase arrangements to ensure that 50.1 percent control and equity by minorities and women was, and will be maintained. Second, like our existing tax certificate program,⁸⁵ we will impose a one-year holding requirement on the transfer or assignment of IVDS licenses obtained through the benefit of tax certificates. We believe that the rapid resale of such licenses to non-minorities or women at a profit would subvert our goal of ensuring the opportunity to participate by minority and women-owned businesses. The well-established one-year holding period would prevent this type of unjust enrichment. While this restriction will not be applied to assignments or transfers to qualified minority and female-owned businesses, assignees and

transferees obtaining licenses pursuant to this exception will be subject to the one-year holding requirement.

D. Installment Payments

53. In this Fourth Report and Order, we adopt the preference of installment payments and limit its use to small businesses. Permitting a winning bidder to pay by installment payments is the equivalent of having the government extend credit to the bidder. Using this option, a prospective licensee may not need to rely as heavily on private financing either before or after an auction. As a result, this method is an effective way to promote the participation of designated entities in the provision of spectrum-based services, and is an effective means to distribute licenses and services among geographics areas.⁸⁷ In the Second Report and Order, we decided that the option of installment payments should be extended only to small businesses (including those held by minorities and women), and then only in instances where smaller spectrum blocks are being auctioned and the use of the blocks is very likely to match the business objectives of bona fide small businesses.⁸⁸ With the IVDS, the spectrum blocks are relatively small and the potential difficulties associated with permitting this option in the context of larger spectrum blocks (e.g., undercapitalization) are not present. We also find that, because of the expected relatively low capital entry requirements for the IVDS and the potential variety of offerings⁸⁹ that might result from the service, the IVDS will offer a bona fide business opportunity to small businesses.

54. Therefore, we will permit the use of installment plans for all IVDS auctions, and follow the general procedures given in the Second Report and Order for the use of this preference.⁹⁰ The installment payment option will enable all small businesses

⁸⁷ Second Report and Order at ¶¶ 231-233.

⁸⁸ *Id.* at ¶¶ 234-237. We noted that the legislative history of the Budget Act indicates that large entities with established revenue streams are not intended beneficiaries of the installment payments preference. *Id.* at ¶ 236.

⁸⁹ See note 3, *supra*.

⁹⁰ Under these general procedures, for example, only interest payments will be due for the first two years, with principal and interest both being amortized over the remaining years of the license. Also, interest charges will be fixed at the time of licensing at a rate equal to that of five-year U.S. Treasury notes, to track the IVDS license term of five years. See Second Report and Order at ¶ 239. If a small business making installment payments seeks to transfer a license to a non-small business entity during the term of the license, we will require payment of the remaining principal balance as a condition of the license transfer. *Id.* at ¶ 263.

to pay the full amount of their winning bid in installments (less the upfront payment, which must be paid in full, and the down payment, half of which is due five days after the auction closes and the other half five days after the application is granted). Timely payments of all installments will be a condition of the license grant, and failure to make such timely payments on or before the date due may be grounds for revocation.⁹¹

VII. Conclusion

55. In summary, the rules and procedures we adopt in this Fourth Report and Order for auctioning licenses in the IVDS are designed to minimize the regulatory burdens on both applicants and the Commission, reduce the potential for delay of service to the public, and maintain safeguards to preserve the integrity of the bidding process. The rules also seek to meet Congressional objectives and serve two basic goals: promoting economic growth, and enhancing access to telecommunications service offerings for consumers, producers, and new entrants. We also take account of Congress' desire that designated entities previously underrepresented in the provision of telecommunications services be afforded preferences to encourage their participation. We expect that these procedures will lead to the development and rapid deployment of IVDS offerings across the country.

VIII. Final Regulatory Flexibility Analysis

56. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 604, the Commission's final analysis is as follows:

A. Need For, and Purpose of, This Action

As a result of the Budget Act referenced above, the Commission may utilize competitive bidding mechanisms in the granting of certain initial licenses. The Commission published an Initial Regulatory Flexibility Analysis, see generally 5 U.S.C. 603, within the Notice of Proposed Rule Making in this proceeding, and published a Final Regulatory Flexibility Analysis within the Second Report and Order (at ¶¶ 299-304). As noted in that previous final analysis, this proceeding will establish a system of competitive bidding for choosing among certain applications for initial licenses, and will carry out Congressional mandates that

⁹¹ Limited grace periods for defaulting licensees may be considered on a case-by-case basis. *Id.* at ¶ 240.

⁸⁵ 1982 Policy Statement, 92 FCC 2d at 855-58.

certain designated entities be afforded an opportunity to participate in the competitive bidding process and the provision of spectrum-based services.

B. Summary of the Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis

In regard to the specific IVDS issues addressed by this Fourth Report and Order, no comments were submitted in response to our Initial Regulatory Flexibility Analysis.

C. Significant Alternatives Considered

Although, as described in (B) above, no comments were received pertaining to IVDS, the Second Report and Order addressed at length the general policy considerations raised as a result of the new legislation.

IX. Ordering Clauses

57. Accordingly, *it is ordered* that, pursuant to the authority of Sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 309(j), this Fourth Report and Order is adopted, and Parts 0, 1, and 95 of the Commission's Rules are amended as set forth in the attached Appendix.

58. *It is further ordered* that the rule amendments set forth in the Appendix will become effective 30 days after their publication in the Federal Register.

List of Subjects

47 CFR Part 0

Organization and functions

47 CFR Part 1

Administrative practice and procedure

47 CFR Part 95

Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Parts 0, 1, and 95 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for Part 0 continues to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

2. Section 0.131 is amended by adding new paragraph (k) to read as follows:

§ 0.131 Functions of the Bureau.

* * * * *

(j) Develops, in coordination with the Office of Plans and Policy, policies for selection of licensees from mutually exclusive applicants in the Private Radio Services subject to competitive bidding; issues Public Notices announcing auctions of Private Radio Services licenses; specifies the licenses to be auctioned, the time, place and method of competitive bidding, including applicable bid submission procedures, bid withdrawal procedures, stopping rules and activity rules; specifies the filing windows for short-form applications, bidder certifications, and the deadlines for submitting filing fees, upfront payments and down payments.

PART 1—PRACTICE AND PROCEDURE

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

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 C.F.R. 154, 303; Implement, 5 U.S.C. 552 and 21 U.S.C. 853a, unless otherwise noted.

4. Section 1.912 is amended by redesignating paragraph (e) as paragraph (f) and adding new paragraph (e) to read as follows:

§ 1.912 Where applications are to be filed.

* * * * *

(e) Applicants submitting long-form applications pursuant to competitive bidding procedures (see § 1.2107(c)) must mail or otherwise deliver their application to: Office of the Secretary, Federal Communications Commission, 1919 M Street NW., Room 222, Washington, DC 20554, Attention: Auction Application Processing Section.

* * * * *

5. Section 1.922 is amended by adding two entries at the beginning of the table to read as follows:

§ 1.922 Forms to be used.

FCC Form and Title

175—Application to Participate in an FCC Auction

175—S Supplemental Application to Participate in an FCC Auction.

* * * * *

§ 1.972 [Amended]

6. In § Section 1.972, paragraph (a)(1) is amended by removing the words "Part 95-Subpart F-Personal Radio Services" and paragraph (c) is amended by removing the words "or part 95-subpart F", removing the comma and adding the word "or" after "part 90" in the first sentence.

PART 95—PERSONAL RADIO SERVICES

7. The authority citation for Part 95 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

8. New § 95.816 is added to read as follows:

§ 95.816 Competitive bidding proceedings.

(a) Mutually exclusive IVDS initial applications are subject to competitive bidding.

(b) The General Procedures set forth in 47 CFR Part 1, Subpart Q are applicable to competitive bidding proceedings used to select among mutually exclusive applicants for initial IVDS licenses.

(c) The specific procedures applicable to auctioning particular IVDS licenses will be set forth by Public Notice. Generally, the following competitive bidding procedures will be used to auction mutually exclusive IVDS licenses. The Commission, however, may design and test alternative procedures.

(1) Competitive bidding design. Sequential oral (oral outcry) auctions will be used to assign licenses in and around large urban areas and single-round sealed bidding will be used for rural areas unless otherwise specified by the Commission. See 47 CFR 1.2103 and 1.2104.

(2) Forms. (i) Applicants must submit short-form applications (FCC Form 175) as specified in Commission Public Notices. Minor deficiencies may be corrected prior to the auction. Major modifications such as changes in ownership, failure to sign an application or failure to submit required certifications will result in the dismissal of the application. See 47 CFR 1.2105(a) and (b).

(ii) Applicants must submit a long-form application (FCC Form 574) within ten (10) business days after being notified that it is the winning bidder for a license. See 47 CFR 1.2107 (c) and (d).

(3) Upfront payments. For oral outcry bidding, applicants will be required to show the Commission or its representative, immediately prior to the auction, a cashiers check for at least \$2500 in order to get a bidding number and secure a place in the room where the bidding will take place. Bidders will be required to have \$2500 upfront money for every five licenses they win. No upfront payment will be required from applicants in single-round sealed bid auctions. See 47 CFR 1.2106.

(4) Down payments. Within five (5) business days after an oral outcry auction is over, or within five (5)

business days after being notified that it is the high bidder in a single round sealed bid auction, a high bidder on a particular license(s) must submit to the Commission's lockbox bank such additional funds as are necessary to bring total deposits (upfront payment plus down payment) up to twenty (20) percent of the high bid(s). Small businesses eligible and electing to use installment payments pursuant to § 95.816(d)(3) are required to bring their total deposits up to ten (10) percent of their winning bid. The remainder of the twenty (20) percent down payment must be submitted within five (5) business days of the grant of their license(s). See 47 CFR 1.2107(b).

(5) Full payment. Auction winners, except for small businesses eligible for installment payments, must pay the balance of their winning bids in a lump sum within five (5) business days following the grant of their license(s). The grant of a license(s) to an auction winner(s) will be conditioned on the timely payment of all monies due the Commission. See 47 CFR 1.2109(a).

(6) Default or disqualification, see 47 CFR 1.2104(g).

(i) Sequential oral auctions. If a high bidder, after signing a bid confirmation form, fails to make the required down payment, fails to pay for a license, or is otherwise disqualified, it will be assessed a penalty equal to the difference between its winning bid and the winning bid the next time the license is auctioned by the Commission, plus three (3) percent of the lower of these two amounts.

(ii) Single round sealed bid auctions. If a high bidder withdraws its bid prior to making the required down payment, it will be assessed a penalty equal to the difference between its bid and the next highest bid. If a high bidder, after having made the required down payment for a license, fails to pay the remaining amount for the license, or is otherwise disqualified, it will be assessed a penalty equal to the difference between its winning bid and the winning bid the next time the license is auctioned by the Commission plus three (3) percent of the lower of these two amounts.

(d) Designated entities. Designated entities are small businesses, and businesses owned by members of minority groups and/or women, as defined in 47 CFR 1.2110(b).

(1) Bidding credits. A winning bidder that qualifies as a business owned by women and/or minorities may use a bidding credit of twenty-five (25) percent to lower the cost of its winning bid. A bidding credit is available for a license for either frequency segment A

or frequency segment B in each service area. A bidding credit, however, may be applied to only one of the two licenses available in each service area.

(2) Tax certificates. Any initial investor in a business owned by minorities and/or women and who provides "start-up" financing, which allows such business to acquire a IVDS license(s), and any investor who purchases ownership in an interest in a IVDS license owned by minorities and/or women within the first year after license issuance, which allows for the stabilization of the entity's capital base, may, upon the sale of such investment or interest, request from the Commission a tax certificate, so long as such investor transaction does not reduce minority or female ownership or control in the entity below 50.1 percent. Any IVDS licensee who assigns or transfers control of its license to a business owned by minorities and/or women may request that the Commission issue it a tax certificate.

(3) Installment payments. Small businesses, including small businesses owned by women and/or minorities may elect to pay the full amount of their bid in installments over the term of their licenses. See 47 CFR 1.2110(d).

(e) Unjust enrichment. Any business owned by minorities and/or women that obtains a IVDS license through the benefit of tax certificates shall not assign or transfer control of its license within one year of its license grant date. If the assignee or transferee is a business owned by minorities and/or women, this paragraph shall not apply; Provided, however, that the assignee or transferee shall not assign or transfer control of the license within one year of the grant date of the assignment or transfer.

9. Section 95.819 is revised to read as follows:

§ 95.819 License transferability.

(a) IVDS system licenses acquired through competitive bidding procedures may be transferred, assigned, sold, or given away only in accordance with the provisions and procedures set forth in 47 CFR 1.2111.

(b) Except for licenses acquired through competitive bidding procedures, the licensees may not transfer, assign, sell, or give the IVDS system licenses or any component CTS licenses to any other entity until the five year construction benchmark (50 percent coverage) has been met.

(c) Once the five year construction benchmark has been met, licensees of IVDS systems that were not acquired through competitive bidding may transfer, sell, assign, or give the IVDS

system licenses together with all of its component CTS licenses to any other entity in accordance with the provisions of § 95.821. If the licensee sells or gives away the apparatus the new owner must obtain a new IVDS system license and CTS licenses before placing it in operation.

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DEPARTMENT OF DEFENSE

48 CFR Parts 219 and 252

Defense Federal Acquisition Regulation Supplement; Indian Tribal or Alaska Native Corporation

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for public comments.

SUMMARY: The Department of Defense has amended the Defense Federal Acquisition Regulation Supplement so that a qualified Indian Tribal Corporation, including an Alaska Native Corporation, furnishing the product of a responsible small business concern is not denied the opportunity to compete for and be awarded a contract under small disadvantaged business preference programs.

DATES: *Effective Date:* May 3, 1994.

Comment Date: Comments on the interim DFARS rule should be submitted in writing to the address shown below on or before July 12, 1994, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to The Defense Acquisition Regulations Council, ATTN: Mrs. Alyce Sullivan, PDUSD (A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telefax number (703) 604-5971. Please cite DFARS Case 93-D309 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Mrs. Alyce Sullivan, (703) 604-5929.

SUPPLEMENTARY INFORMATION:

A. Background

Section 8051 of the Fiscal Year 1994 Defense Appropriations Act, Public Law 103-139, provides that notwithstanding any other provision of law, a qualified Indian Tribal Corporation or Alaska Native Corporation furnishing the product of a responsible small business concern shall not be denied the opportunity to compete for and be awarded a contract under the Small

Disadvantaged Business (SDB) preference programs.

The Director, Defense Procurement, issued Departmental Letter 94-009, May 3, 1994, to implement Section 8051 in the Defense Federal Acquisition Regulation Supplement.

B. Regulatory Flexibility Act

The interim rule may have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the rule makes small disadvantaged businesses owned by Indian tribes, including Alaska Native Corporations, eligible for small disadvantaged business preferences when they furnish the product of a small business concern. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. Comments from small entities concerning the affected DFARS subparts will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite DFARS Case 94-610 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the revisions in this rulemaking notice do not contain and/or affect information collection requirements which require the approval of OMB under 44 U.S.C. 3501 *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense to issue this rule as an interim rule. Urgent and compelling reasons exist to promulgate this rule before affording the public an opportunity to comment. This action is necessary because Section 8051 became effective upon enactment of the Fiscal Year 1994 Defense Appropriations Act (Pub. L. 103-139), on November 11, 1993. However, pursuant to Public Law 98-577 and Federal Acquisition Regulation 1.501, public comments received in response to this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Parts 219 and 252

Government procurement.
Claudia L. Naugle,
Deputy Director, Defense Acquisition
Regulations Council.

Therefore, 48 CFR Parts 219 and 252 are amended as follows:

1. The authority for 48 CFR parts 219 and 252 continues to read as follows:

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

PART 219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

2. Section 219.502-2-70 is amended by revising paragraph (a)(1)(ii) and adding (a)(1)(iii) to read as follows:

219.502-2-70 Total set-asides for small disadvantaged business concerns.

- (a) * * *
(1) * * *
(i) * * *

(ii) In the case of an SDB regular dealer owned by an Indian tribe, including an Alaska Native Corporation, will provide the supplies of a small business for contracts awarded during fiscal year 1994, as provided in Section 8051 of Pub. L. 103-139; or,

(iii) In the case of other SDB regular dealers, will provide the supplies of SDBs (except as provided in Alternate I of the clause at 252.219-7002, Notice of Small Disadvantaged Business Set-Aside).

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.219-7001 is amended by revising the clause date to read "(May 1994)" in lieu of "(Dec 1991)", by adding a definition for *United States* to paragraph (a), and by revising paragraph (f)(2) and Alternate I to read as follows:

252.219-7001 Notice of Partial Small business Set-Aside with Preferential consideration for Small Disadvantaged Business Concerns.

- * * * * *
(a) *Definitions.*
* * * * *

United States, as used in this clause, means the United States, its territories and possessions, the Commonwealth of Puerto Rico, the U.S. Trust Territory of the Pacific Islands, or the District of Columbia.

- * * * * *
(f) *Agreements.*
* * * * *

(2) A manufacturer or regular dealer, which claims preference as a small disadvantaged business and submits an offer in its own name, agrees to furnish in performing this contract only end items manufactured or produced by small disadvantaged business concerns in the United States, except, as provided in Section 8051 of Pub. L. 103-139, for contracts awarded during fiscal year 1994, a small disadvantaged business manufacturer or regular dealer owned by an Indian tribe, including an Alaska Native Corporation, agrees to furnish only end items

manufactured or produced by small business concerns in the United States.

(End of clause)

Alternate I (May 1994)

As prescribed in 219.508(d), substitute the following paragraph (f)(2) for paragraph (f)(2) of the basic clause:

(f)(2) A regular dealer, which claims preference as a small disadvantaged business and submits an offer in its own name, agrees to furnish in performing this contract only end items manufactured or produced by small business concerns in the United States.

4. Section 252.219-7002 is amended by revising the clause date to read "(May 1994)" in lieu of "(Dec 1991)", by revising the heading of paragraph (a), and adding a definition for *United States* to paragraph (a), and by revising paragraph (c) and Alternate I to read as follows:

252.219-7002 Notice of small disadvantaged business set-aside.

- * * * * *
(a) *Definitions.*
* * * * *

United States, as used in this clause, means the United States, its territories and possessions, the Commonwealth of Puerto Rico, the U.S. Trust Territory of the Pacific Islands, or the District of Columbia.

- * * * * *
(c) *Agreement.*

A small disadvantaged business manufacturer or regular dealer, submitting an offer in its own name, agrees to furnish in performing this contract only end items manufactured or produced by small disadvantaged business concerns in the United States, except, as provided in Section 8051 of Pub. L. 103-139, for contracts awarded during fiscal year 1994, a small disadvantaged business manufacturer or regular dealer owned by an Indian tribe, including an Alaska Native Corporation, agrees to furnish only end items manufactured or produced by small business concerns in the United States.

(End of clause)

Alternate I (May 1994)

As prescribed in 219.508-70, substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) *Agreement.*

A small disadvantaged business regular dealer submitting an offer in its own name agrees to furnish in performing this contract only end items manufactured or produced by small business concerns in the United States.

5. Section 252.219-7006 is amended by revising the clause date to read "(May 1994)" in lieu of "(Apr 1994)", and by adding a definition of *United States* to paragraph (a) and by revising paragraph (d)(2) and Alternate I to read as follows:

252.219-7006 Notice of Evaluation Preference for Small Disadvantaged Business Concerns

* * * * *

(a) Definitions.

* * * * *

United States, as used in this clause, means the United States, its territories and possessions, the Commonwealth of Puerto Rico, the U.S. Trust Territory of the Pacific Islands, or the District of Columbia.

* * * * *

(d) Agreements.

(2) A small disadvantaged business, historically black college or university, or minority institution regular dealer submitting an offer in its own name agrees to furnish in performing this contract only end items manufactured or produced by small disadvantaged business concerns, historically black colleges or universities, or minority institutions in the United States, except, as provided in Section 8051 of Pub. L. 103-139, for contracts awarded during fiscal year 1994, a small disadvantaged business manufacturer or regular dealer owned by an Indian tribe, including an Alaska Native Corporation, agrees to furnish only end items manufactured or produced by small business concerns in the United States.

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Alternate I (May 1994)

As prescribed in 219.7003, substitute the following paragraph (d)(2) for paragraph (d)(2) of the basic clause:

(d)(2) A small disadvantaged business, historically black college or university, or minority institution regular dealer submitting an offer in its own name agrees to furnish in performing this contract only end items manufactured or produced by small business concerns, historically black colleges or universities, or minority institutions in the United States.

[FR Doc. 94-11421 Filed 5-12-94; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 229

[FRA Docket No. RSGC-2, Notice No. 6]

RIN 2130-AA80

Locomotive Conspicuity; Minimum Standards for Auxiliary External Lights

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule (referred to as "IR-2") amends FRA's interim rule (referred to as "IR-1") published on February 3, 1993, by relaxing the standards IR-1 contained concerning auxiliary external lights on locomotives. IR-2 contains detailed and specific performance standards regarding color, intensity, operation, mounting location

and flash rate for ditch lights, crossing lights, strobe lights and oscillating lights. This action is intended to increase the visibility of locomotives to motorists and thereby reduce the incidence of accidental collisions between motor vehicles and locomotives at highway-rail grade crossings.

DATES: This interim rule is effective May 13, 1994; written comments must be received on or before July 12, 1994. Comments received after that date will be considered so far as possible without incurring additional expense or delay.

ADDRESSES: Written Comments: Written comments and petitions for reconsideration should identify the docket number and the notice number and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, DC 20590.

Public hearing: Given the limited scope of this interim rule and the statutory exception under 45 U.S.C. 431(u)(2) from public proceedings, FRA does not believe that a public hearing is warranted at this time. However, FRA will consider any request for an opportunity to make an oral presentation that is filed by the deadline for written comments.

FOR FURTHER INFORMATION CONTACT: Gordon Davids, Bridge Engineer, Office of Safety, FRA, 400 Seventh Street, SW., Washington, DC 20590 (telephone: 202-366-9186); Edward R. English, Director, Office of Safety Enforcement, Office of Safety, FRA, 400 Seventh Street, SW., Washington, DC 20590 (telephone: 202-366-9252); or Marina C. Appleton, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, DC 20590 (telephone: 202-366-0628).

SUPPLEMENTARY INFORMATION: On February 3, 1993, FRA published an interim rule (IR-1) (58 FR 6899, to be codified at 49 CFR 229.133), with request for comments, concerning measures to enhance the conspicuity of locomotives. IR-1 implemented requirements mandated by section 14 of the Amtrak Authorization and Development Act (Pub. L. 102-533). This enabling legislation added new subsection (u) to section 202 of the Federal Railroad Safety Act of 1970 (Safety Act) (45 U.S.C. 431), which reads as follows:

(u) Locomotive Conspicuity.

(1) The Secretary shall conduct a review of the Department of Transportation's rules with respect to locomotive conspicuity and shall complete the Department's current locomotive conspicuity research no later than December 31, 1993. As part of this review, the Secretary shall collect relevant data from

operational experience by railroads having enhanced conspicuity measures in service.

(2) Not later than December 31, 1992, the Secretary shall issue interim regulations identifying ditch lights, crossing lights, strobe lights, and oscillating lights as interim locomotive conspicuity measures, and authorizing and encouraging installation and use of such measures. The interim regulations and any amendments thereto shall be adopted without regard to subchapter II of chapter 5 of Title 5. Any locomotive equipped with such interim conspicuity measures on the date of issuance of final regulations under paragraph (3) shall be considered in full compliance with such final regulations until 4 years after issuance of such final regulations.

(3) Not later than June 30, 1994, the Secretary shall initiate a rulemaking proceeding to issue final regulations requiring substantially enhanced locomotive conspicuity measures. In such rulemaking proceeding, the Secretary shall consider, at a minimum—

(A) Revisions to the existing locomotive headlight standard, including standards for placement and intensity;

(B) Requiring use of reflective materials to enhance locomotive conspicuity;

(C) Requiring use of additional alerting lights (including ditch, crossing, strobe, and oscillating lights);

(D) Requiring use of auxiliary lights to enhance locomotive conspicuity when viewed from the side;

(E) The effect of any enhanced conspicuity measures on the vision, health, and safety of train crew members;

(F) separate standards for self-propelled, push-pull and multi-unit passenger operations without a dedicated head-end locomotive.

(4) In issuing regulations under paragraph (3), the Secretary may exclude from any specific conspicuity requirement and category of trains or rail operations if the Secretary determines that such an exclusion is in the public interest and is consistent with rail safety (including grade-crossing safety).

(5) The Secretary shall issue final regulations requiring enhanced locomotive conspicuity measures no later than June 30, 1995. The Secretary shall require that all locomotives not excluded from the regulations be equipped with interim conspicuity measures under paragraph (2) or the conspicuity measures mandated by final regulations issued under this paragraph, no later than December 31, 1997.

(6) As used in this subsection, the term "locomotive conspicuity" means the enhancement of day and night visibility of the front-end unit of a train, by means of lighting, reflective materials, or other means, with particular consideration to the visibility and perspective of drivers of motor vehicles at grade crossings.

Under IR-1, ditch lights, crossing lights, strobe lights and oscillating lights were designated as interim locomotive conspicuity measures. Conspicuity measures that comply with IR-1, IR-2 or any amendment thereto, are deemed

to comply with the final rule for four years after its issuance. As required by the enabling legislation, the final rule requiring enhanced locomotive conspicuity measures must be issued no later than June 30, 1995. All locomotives not excluded from the final regulations must be equipped with either the interim conspicuity lighting arrangements identified in IR-1 or IR-2 or the conspicuity arrangements mandated by the final regulations, no later than December 31, 1997.

If the final rule is issued prior to the deadline, June 30, 1995, the statute's four-year grace period would begin on that earlier date. Likewise, although IR-1 and IR-2 do not require that any train be equipped with conspicuity measures, the final rule may require such equipping even prior to December 31, 1997, which is the latest date for requiring such measures.

Research on locomotive conspicuity conducted through the Volpe National Transportation Systems Center was completed on schedule in 1993. FRA will continue to gather and analyze data concerning means of enhancing visibility of trains at highway-rail grade crossings.

Public Participation in the Rulemaking

Subsection 202(u)(2) of the Safety Act provides that IR-1 and IR-2 and any amendment to either rule shall be adopted without regard to subchapter II of chapter 5 of title 5, United States Code. This subsection thus allows IR-1 and IR-2 to be issued without regard to the Administrative Procedure Act's (APA) general requirement of providing an opportunity for public participation in the rulemaking process or, by implication, the Safety Act's requirement that an opportunity for oral presentation be provided where notice and comment are necessary. See 45 U.S.C. 431(b). Similarly, the normal APA requirement that a rule be effective no sooner than 30 days after issuance does not apply here. See 5 U.S.C. 553(d).

Although the enabling legislation suspended the requirements for notice and comment, FRA will consider written comments received on or before July 12, 1994. During this period, FRA will also consider petitions for amendment of this rule, provided that such petitions clarify the descriptions of devices addressed in this rule, or identify devices that perform the same function at least as effectively as those devices addressed in this rule.

Discussion of Comments and Section Analysis

In IR-1, FRA solicited comments from railroads, lighting manufacturers, railroad employees and other interested persons regarding (i) the specific performance standards for the different auxiliary lighting arrangements detailed in that rule and (ii) the concept of "locomotive conspicuity" in general.

FRA received comments from the Florida East Coast Railway Company, the Union Pacific Railroad Company (UP), The American Short Line Railroad Association (ASLRA), the Association of American Railroads (AAR), the Northeast Illinois Regional Commuter Railroad Corporation (METRA), the Long Island Rail Road, Canadian Pacific Limited (CP), the Quest Corporation, 3M, Flash Technology Corporation of America, the Norfolk Southern Corporation (NS), and the Canadian National Railway Company (CN).

After review of public comments, FRA determined that changes to IR-1 are warranted. The following discussion is provided in response to these comments and in explanation of these changes.

A. Length of the "Grandfathering" Period (§ 229.133(a))

Several commenters, including AAR, UP and ASLRA, requested that any auxiliary lighting system meeting the specifications in IR-1 that is installed on a locomotive be considered in compliance with the final rule for the entire life of the locomotive, rather than for only the four-year period specified in IR-1 at 49 CFR 229.133(a).

The enabling legislation specifically allowed a four-year period of acceptability for installed auxiliary lighting systems that conform to the specifications outlined in IR-1. FRA does not have the authority to "grandfather" such lighting systems beyond that four-year period. Furthermore, FRA does not want to constrain the content and applicability of the final rule to decisions made at this time without benefit of information from research and rulemaking that will be available and incorporated into the rulemaking process beginning in 1994. FRA will endeavor to apply a "rule of reason" at the final-rule stage to recognize the value of early investments in auxiliary lighting systems that were in service prior to the issuance of the final rule.

B. Activation of Auxiliary Lighting Systems (§§ 229.133 (b)(1)(iii), (b)(2)(iv), (b)(3)(v) and (b)(4)(ii))

ASLRA requested that the interim rule not reference the manner in which

the auxiliary lighting systems would be activated on the locomotive. ASLRA is concerned that the language in IR-1 at §§ 229.133(b)(1)(iii), (b)(2)(iv), (b)(3)(v) and (b)(4)(ii) referring to activation parameters of auxiliary lights might be considered a precedent for adoption of similar provisions in the final rule without full consideration of the consequences.

FRA agrees in part. Mention of specific activation parameters without requiring their use may be interpreted to imply that similar parameters would be incorporated in the final rule. That is not the intent of the interim rule. Activation methods or systems will be specified in the final rule as needed. Such activation methods could then be applied to almost any system regardless of whether the lights were installed prior to or after the final rule.

In reality, any system imaginable is capable of actuation by a wide variety of devices and at almost any time. The final rule may require actuation devices to be provided wherever necessary, without rendering existing lighting systems obsolete. Therefore, the specification for capability of automatic operation has been eliminated in IR-2.

C. Dimensional Requirements for Lighting Placement (§§ 229.133(b)(1)(i), (b)(2)(iii) and (b)(3)(i))

Several responders commented on the vertical and horizontal dimensional requirements for the various auxiliary lighting arrangements in IR-1.

The dimensional requirements for light placement in IR-1 at §§ 229.133(b)(1)(i), (b)(2)(iii) and (b)(3)(i) represented the best information available to FRA at the time of issuance of IR-1. The governing principle was to have the lights far enough apart to be distinguishable, preferably forming a triangle with the headlight, and high enough above the rail that they would be effective in snow as well as over vertical curves in the railroad track.

The comments and photographs submitted in this regard were valid and informative. Several locomotive types in common use present a problem with installation of ditch or crossing lights with horizontal spacing greater than 49 inches. CN, which has had considerable experience and success with ditch lights, has one type of installation with a horizontal spacing of 37 inches, and focused on the track at a point 800 feet in front of the locomotive. Other locomotives have horizontal spacing less than the minimum requirement of 60 inches contained in IR-1 at § 229.133(b)(1)(i). CN also has some locomotives equipped with ditch lights placed 91 inches above the rail, above

the 84-inch maximum established in IR-1 at § 229.133(b)(1)(i). METRA, the commuter railroad in the Chicago area, has ditch lights mounted on cab control cars at a height of only 25 inches above the rail, lower than the 36-inch minimum in IR-1 at § 229.133(b)(1)(i). Additionally, the flat section of the cab roof on some EMD locomotives might inhibit the installation of strobe lights spaced 60 inches horizontally.

1. Three-Light Triangle Dimensions:
(New §§ 229.133(b)(1)(ii), (iii), (b)(2)(iii) and (b)(3)(ii), (iii))

FRA believes that the purpose of IR-2 would be best served by broadening the limits on acceptable placement dimensions to some degree. However, some minimum horizontal spacing of lights remains necessary to permit recognition of a characteristic pattern by a motorist sufficiently in advance of the approach of a train to permit timely defensive action. FRA concludes that the spacing requirement for ditch and crossing lights can be modified if the vertical dimension of the three-light triangle (headlight and two crossing lights; headlight and two ditch lights; or headlight and two strobe lights) is large enough to afford recognition by a motorist not only of the approaching train, but also of its general location relative to the crossing. If the vertical dimension, or the altitude, of the three-light triangle is at least 60 inches, it would compensate for a shorter horizontal spacing of the lower lights, or base of the triangle. The normal human eye can resolve two objects spaced to form an angle of approximately one-half of one degree. The orientation—horizontal, vertical or diagonal—is immaterial. Spacing of 60 inches subtends, or delimits, one-half of one degree at 573 feet from the observer, beyond which distance the lights are seen as one. This distance corresponds to an approach time of 6.5 seconds at 60 miles per hour.

2. Horizontal Dimensions (New §§ 229.133(b)(1)(ii), (iii), (b)(2)(iii) and (b)(3)(ii), (iii))

FRA concludes that the minimum horizontal interval between adjacent crossing lights and adjacent ditch lights should be reduced from 60 to 36 inches, provided that, if the horizontal interval is less than 60 inches, the vertical distance between the headlight and the plane of the ditch or crossing lights be not less than 60 inches. See IR-2 at §§ 229.133(b)(1)(ii), (iii) and (b)(3)(ii), (iii).

Strobe lights derive their effectiveness more from their intensity and characteristic flash pattern than from

their relative spacing. The effectiveness of omni-directional strobe lights can be enhanced by mounting them at the highest point on the locomotive cab roof. In order to accommodate such mounting on some cabs with flat top sections narrower than 60 inches, the minimum spacing between adjacent strobe lights is reduced to 48 inches, as set forth in IR-2 at § 229.133(b)(2)(iii).

3. Vertical Dimensions
(§§ 229.133(b)(1)(i), (b)(2)(iii) and (b)(3)(i))

The most common placement of ditch or crossing lights on a road switcher locomotive is directly above the front platform. The headlight is commonly located on the front cab wall, just below the roof line. The front platform is typically between five and six feet above the rail; the cab roof line, 14 feet above the rail. Allowing a conservative placement of one foot from the surface of the front platform to the centerline of the lower lights, and two feet from the edge of the cab roof to the center of the upper headlight unit, the vertical spacing between the lower lights and the headlight would be five feet, or 60 inches.

Height above the rail is a factor in the visibility of a light for several reasons. Increased height has several advantages. First, the light will be less obstructed by objects or vertical curves on or in the track. Second, the light will be less affected by accumulations of snow or foreign material thrown up by the pilot, plow or wheels. Third, the light is less likely to be damaged should the locomotive strike a foreign object. There is no reason to limit the maximum height above the rail for crossing or ditch lights, provided that they meet the criteria for horizontal or vertical spacing as discussed above.

The minimum height for ditch lights was specified in IR-1 as 36 inches in § 229.133(b)(1)(i), and as 48 inches for crossing lights in § 229.133(b)(3)(i), in order to accommodate mounting below the front platform, if necessary. There is no reason for inconsistency between the dimensions for ditch lights and for crossing lights; ditch lights could become crossing lights after modification of control circuitry. Thus, the minimum height for crossing lights in IR-1 at § 229.133(b)(3)(i) is revised from 48 inches to 36 inches.

The 36-inch minimum height requirement will permit maintenance of the 60-inch vertical dimension on locomotives with the headlight mounted in a low front hood. This height requirement also aids the observer's sight distance. The maximum vertical curve recommended by the American

Railway Engineering Association for main track has a rate of change of grade of 0.2 percent per 100 feet. On this vertical curve, a light three feet above the track will be visible to an observer at a distance of 1,095 feet, provided the observer's eyes are three feet above the track. A reduction in height of one foot, of either the observer or the light, reduces the sight distance by approximately 100 feet.

The one comment requesting a lower height above the rail applied only to cab control cars in suburban passenger service. If those cars have suitable conspicuity while operating on their specific routes, the final rule may permit their light configuration in that service. However, the 25-inch height requested is not suitable for general railroad service, owing to the reduced visibility on vertical curves, susceptibility to snow, and damage from foreign objects. FRA therefore concludes that the minimum height of 36 inches for ditch lights, crossing lights and strobe lights will be retained in IR-2. See IR-2 at §§ 229.133(b)(1)(i), (b)(2)(iii) and (b)(3)(i).

D. Strobe Lights (§ 229.133(b)(2)(i))

Flash Technology commented that one forward-facing, focused strobe light could be more effective than two omni-directional strobe lights described in IR-1 at § 229.133(b)(2)(i). If any railroads are presently using the former type of system, none commented or requested its inclusion in the interim rule.

The purpose of both IR-1 and IR-2 is to encourage the installation of currently available effective systems. FRA was not provided with any information indicating that one forward-facing, focused strobe light has been in service or proven effective to date. Such technology may be considered in the final rule. The authority for expedited issuance of IR-1 did not contemplate the inclusion of systems not in current use. Therefore, IR-2 will continue the requirement for two strobe lights.

E. Flash Rates (§§ 229.133(b)(2)(ii), (b)(3)(iii) and New §§ 229.133(b)(2)(ii), (b)(3)(v))

Flash Technology commented that the limits of flash rate of strobes should be broadened to incorporate units used by Amtrak which flash at a period of 0.5 seconds. This rate is used by the Federal Aviation Administration (FAA) for runway lead-in lighting, and does not cause problems with flicker vertigo. Research conducted for FRA by the Transportation Systems Center in 1974 and 1975 shows that a flash rate as rapid as three per second effectively improves conspicuity, and does not produce

flicker vertigo. In view of this research and comment, the flash rate for both strobe lights and crossing lights is broadened in IR-2 at §§ 229.133(b)(2)(ii) and (b)(3)(v), respectively, to permit rapid flash rates up to three per second, or 180 per minute.

Generally, the original specifications for flash rates were drawn around a time period of one second. The proposed revisions to flash or operating rates range on either side of one per second. IR-2 is clarified by restatement of the flash rates in terms of flashes or cycles per minute.

F. Oscillating Lights (§ 229.133(b)(4))

The Florida East Coast Railway Company commented that its locomotives have been equipped since 1978 with an Oscitrol warning light that performs the functions of an oscillating light. This warning light consists of two lamps co-located in the same fixture, aimed three degrees to either side of the locomotive centerline, which flash alternately at a rate of approximately 50 times per minute. It also uses one red lamp, which is actuated by a heavy application of the train air brake.

The red light is used for purposes other than improved conspicuity at highway-rail crossings. It need be addressed only to the extent that the actuation of a red oscillating light generally extinguishes the white light. Its primary purpose is to alert approaching trains on adjacent tracks that the train displaying the red light has undergone a heavy brake application, and could possibly foul the adjacent track.

FRA believes that the warning lights used by Florida East Coast are effective and within the family of oscillating lights defined in the enabling legislation. They are therefore included in the definition of an acceptable oscillating light.

Display of the red light, overriding the white light, occurs only in specific, critical situations when necessary to avoid potential train collisions. The safety benefit of this type of red light, in the rare circumstances under which it is used, outweighs the consequences of the short-term loss of the oscillating white light. This feature is permitted, but not mandated, in acceptable interim oscillating light systems.

Regulatory Impact

Executive Order 12866 and DOT Regulatory Policies and Procedures

This interim rule has been evaluated in accordance with existing regulatory policies and procedures and is considered to be a nonsignificant

regulatory action under DOT policies and procedures (44 FR 11034; February 26, 1979). This rule also has been reviewed under Executive Order 12866 and is considered "nonsignificant" under that Order. This interim rule does not require the use of an auxiliary lighting system. Instead, the rule encourages the installation and use of auxiliary lighting arrangements on locomotives.

Although "nonsignificant," FRA nonetheless has prepared a regulatory evaluation addressing the economic impact of the rule. This regulatory evaluation estimates that economic costs are negligible because installation of the auxiliary external lights on locomotives by railroads is not mandatory. Anticipated benefits and impacts of the rule will not be known until all relevant data is collected and examined by FRA. This regulatory evaluation has been placed in the docket and is available for public inspection and copying during normal business hours in Room 8201, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, DC 20590. Copies may also be obtained by submitting a written request to the FRA Docket Clerk at the above address.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of rules to assess their impact on small entities, unless the Secretary certifies that a final rule will not have a significant economic impact on a substantial number of small entities. This interim rule will not have an adverse impact on any entity because it does not place any new requirements or burdens on the public. Therefore, it is certified that the interim rule will not have a significant economic impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act.

Paperwork Reduction Act

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

Environmental Impact

FRA has evaluated these regulations in accordance with its procedures for ensuring full consideration of the environmental impact of FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and DOT Order 5610.1c. It has been determined that this rule will not have any effect on the quality of the environment.

Federalism Implications

This rule will not have a substantial effect 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. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

Under section 205 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 434), issuance of this regulation preempts any State law, rule, regulation, order, or standard covering the same subject matter, except for a provision directed at a local safety hazard if that provision is consistent with this rule and does not impose an undue burden on interstate commerce.

List of Subjects in 49 CFR Part 229

Railroad safety.

Adoption of the Amendment

In consideration of the foregoing, FRA amends part 229, title 49, Code of Federal Regulations to read as follows:

PART 229—RAILROAD LOCOMOTIVE SAFETY STANDARDS

1. The authority citation for part 229 is revised to read as follows:

Authority: 45 U.S.C. 22-34; 45 U.S.C. 431, 438; 49 App. U.S.C. 1655(e); Pub. L. 100-342; Pub. L. 102-365; Pub. L. 102-533; 49 CFR 1.49 (c), (g) and (m).

2. Section 229.133 is amended by revising paragraph (b) to read as follows:

§ 229.133 Interim Locomotive Conspicuity Measures—Auxiliary External Lights

* * * * *

(b) Each qualifying arrangement of auxiliary external lights shall conform to one of the following descriptions:

(1) *Ditch lights.* (i) Ditch lights shall consist of two white lights, each producing a steady beam of at least 200,000 candela, placed at the front of the locomotive, at least 36 inches above the top of the rail.

(ii) Ditch lights shall be spaced at least 36 inches apart if the vertical distance from the headlight to the horizontal axis of the ditch lights is 60 inches or more.

(iii) Ditch lights shall be spaced at least 60 inches apart if the vertical distance from the headlight to the horizontal axis of the ditch lights is less than 60 inches.

(iv) Ditch lights shall be focused horizontally within 45 degrees of the longitudinal centerline of the locomotive.

(2) *Strobe lights.* (i) Strobe lights shall consist of two white stroboscopic lights,

each with "effective intensity," as defined by the Illuminating Engineering Society's Guide for Calculating the Effective Intensity of Flashing Signal Lights (November 1964), of at least 500 candela.

(ii) The flash rate of strobe lights shall be at least 40 flashes per minute and at most 180 flashes per minute.

(iii) Strobe lights shall be placed at the front of the locomotive, at least 48 inches apart, and at most 36 inches above the top of the rail.

(3) *Crossing lights.* (i) Crossing lights shall consist of two white lights, placed at the front of the locomotive, at least 36 inches above the top of the rail.

(ii) Crossing lights shall be spaced at least 36 inches apart if the vertical distance from the headlight to the horizontal axis of the ditch lights is 60 inches or more.

(iii) Crossing lights shall be spaced at least 60 inches apart if the vertical distance from the headlight to the horizontal axis of the ditch lights is less than 60 inches.

(iv) Each crossing light shall produce at least 200,000 candela, either steadily burning or alternately flashing.

(v) The flash rate of crossing lights shall be at least 40 flashes per minute and at most 180 flashes per minute.

(vi) Crossing lights shall be focused horizontally within 15 degrees of the longitudinal centerline of the locomotive.

(4) *Oscillating light.* (i) An oscillating light shall consist of:

(A) one steadily burning white light producing at least 200,000 candela in a moving beam that depicts a circle or a horizontal figure "8" to the front, about the longitudinal centerline of the locomotive; or

(B) two or more white lights producing at least 200,000 candela each, at one location on the front of the locomotive, that flash alternately with beams within five degrees horizontally to either side of the longitudinal centerline of the locomotive.

(ii) An oscillating light may incorporate a device that automatically extinguishes the white light if display of a light of another color is required to protect the safety of railroad operations.

* * * * *

Issued in Washington, DC, on May 9, 1994.

Jolene M. Molitoris,

Federal Railroad Administrator.

[FR Doc. 94-11733 Filed 5-12-94; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 940425-4125; I.D. 041894A]

Pacific Halibut Fisheries

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

ACTION: Notice of control date for charterboat entry into the Pacific halibut sport fishery.

SUMMARY: NMFS announces that any charterboat entering the Pacific halibut sport fishery off Washington, Oregon, and California after March 10, 1994, may not be assured of future access to the fishery if a limited access regime is developed and implemented. The intended effect of announcing this control date is to discourage speculative entry into the Pacific halibut fisheries in this area while discussions by the Pacific Fishery Management Council (Council) on access control continue.

EFFECTIVE DATE: March 10, 1994.

FOR FURTHER INFORMATION CONTACT: Joe Scordino, 206-526-6140, or Lawrence D. Six, 503-326-6352.

SUPPLEMENTARY INFORMATION: The Northern Pacific Halibut Act of 1982 (Halibut Act) at 16 U.S.C. 773c provides that the Secretary of Commerce (Secretary) shall have general responsibility to carry out the Halibut Convention between the United States and Canada, and that the Secretary shall adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act. The Halibut Act at 16 U.S.C. 773c(c) also authorizes the Regional Fishery Management Council having authority for the geographic area concerned to develop regulations governing the Pacific halibut catch in U.S. Convention waters that are in addition to, but not in conflict with, regulations of the International Pacific Halibut Commission (IPHC). Pursuant to this authority, the Council has recommended allocations between user groups and restrictions on catch and fishing effort in the Pacific halibut fishery off Washington, Oregon, and California (IPHC statistical Area 2A).

Pacific halibut in Area 2A are harvested in treaty Indian fisheries and in non-Indian commercial and sport fisheries. Because the total harvest in any one of these three fisheries can exceed the total allowable catch (TAC)

for Area 2A, Catch Sharing Plans (Plan) that allocate the TAC in Area 2A have been implemented by the Secretary each year since 1988. The intended effect of each year's Plan is to ensure the conservation and management of Pacific halibut stocks by limiting the total harvest to a biologically acceptable level while equitably distributing the allowable harvest among user groups in Area 2A. However, because of decreased TACs in recent years and increased user access, additional measures to restrict fishing effort within the non-Indian commercial and recreational fisheries have been necessary. For example, the non-Indian commercial fishery has been limited by the IPHC to a single 10-hour opening with vessel trip limits to prevent this fishery from exceeding its allocation. Also, sport fisheries in some geographic areas have been limited to 1- or 2-day seasons to prevent allocations from being exceeded. In order to maintain viable Pacific halibut fisheries in Area 2A without exceeding the domestic allocations or the conservation goals established by the IPHC, the Council is considering development of additional management measures including limited access regimes to control fishing effort starting in 1995.

Access to the Pacific halibut sport fishery currently is not limited, although charterboat operators must obtain a fishing license from the IPHC. At the March 8-11, 1994, public meeting in Portland, Oregon, the Council met to address concerns about the additional charterboats entering the sport fishery, additional effort restrictions in the sport fisheries and priorities for future participation by charterboats in Area 2A Pacific halibut fishery. The control date of March 10, 1994, was adopted at this meeting and public notice was provided. A charterboat in the Pacific halibut fishery is defined at 50 CFR 301.2 as follows: "Charter vessel means a vessel used for hire in sport fishing for halibut, but not including a vessel without a hired operator".

For the non-Indian commercial fisheries, during its November 12-15, 1991, public meeting in Millbrae, California, the Council adopted November 13, 1991, as a control date to be used in determining priorities for issuance and shares in a potential individual quota-based limited access system or other access controls for Pacific coast groundfish fisheries, as well as the Area 2A Pacific halibut non-Indian commercial fishery. Notice of this control date and its implications for the non-Indian commercial fishery for Pacific halibut in Area 2A was published in the Federal Register on

February 5, 1992 (57 FR 4394). At its March public meeting in Oregon, the Council reaffirmed the November 13, 1991, control date for future access to the non-Indian commercial halibut fishery if a limited access regime is developed and implemented.

This announcement of a control date does not commit the Council or the Secretary to any particular management regime or priority criteria for access to the halibut fisheries. As the Council further develops a halibut limited access program, fishing activity in the halibut fishery in Area 2A, prior to the control date, may be considered in determining eligibility and allocating harvest shares under a future access limitation program. Fishermen are not necessarily guaranteed issuance of permits or access, regardless of their activity prior to the control dates.

The Council may recommend additional criteria for qualifying fishermen or vessels as participants in the halibut fishery. Some additional criteria that were applied to the groundfish fishery in Amendment 6 to the Pacific Coast Groundfish Fishery Management Plan were minimum amounts landed and minimum numbers of landings. The Council also may choose to take no further action to control entry or access to the fisheries. This announcement does not prevent the development or implementation of other eligibility criteria or restrict the type of management regime selected for limited access.

Authority: 5 UST 5; TIAS 2900; 16 U.S.C. 773-773(k).

Dated: May 6, 1994.

Charles Karnella,

Acting Assistant Administrator for Fisheries,
National Marine Fisheries Service.

[FR Doc. 94-11729 Filed 5-12-94; 8:45 am]

BILLING CODE 3510-22-P

50 CFR Parts 672 and 675

[Docket No. 940225-4025; I.D. 050694F]

Groundfish of the Gulf of Alaska, Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Emergency interim rule; extension of effective date.

SUMMARY: An emergency rule is in effect through May 11, 1994, that: Revises

regulations applicable to the management and monitoring of the Gulf of Alaska (GOA) halibut bycatch limit established for trawl gear fisheries, revises directed fishing standards, and adjusts the Bering Sea and Aleutian Islands management area (BSAI) flatfish seasons to provide for additional fishing opportunities in the BSAI early in the fishing year. NMFS is extending the portions of the emergency rule addressing the management of the GOA halibut trawl bycatch limit and directed fishing standards for an additional 90-day period (through August 9, 1994) to prevent overfishing of GOA thornyhead rockfish and Pacific ocean perch (POP) and to limit unnecessarily high bycatch amounts of these rockfish species and Pacific halibut in the trawl fisheries in a manner that will reduce the likelihood of premature fishery closures. This action is intended to further the goals and objectives contained in the fishery management plans for the groundfish fisheries off Alaska.

EFFECTIVE DATES: The interim regulations published on February 10, 1994 (59 FR 6222), are extended from May 12, 1994, through August 9, 1994, except for amendments to § 675.23, which are effective through May 11, 1994.

FOR FURTHER INFORMATION CONTACT: Susan J. Salvesson, Fisheries Management Division, Alaska Region, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: On February 7, 1994, the Secretary of Commerce (Secretary) implemented an emergency interim rule (59 FR 6222, February 10, 1994) under section 305(c) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1855(c)) (Magnuson Act). The emergency rule implemented the following measures for a 90-day period (through May 11, 1994).

A. Establishment of two GOA trawl fishery categories for purposes of apportioning the GOA halibut bycatch limit established for the trawl gear fisheries (§ 672.20(f)). These two categories are: (1) The shallow water fishery complex (the Alaska pollock, Pacific cod, Atka mackerel, shallow water flatfish, flathead sole, and "other species" trawl fisheries), and (2) the deep water fishery complex (the deepwater flatfish, rex sole, arrowtooth flounder, sablefish, and rockfish trawl fisheries).

B. Revision of the method for calculating retainable amounts of groundfish species under directed

fishing standards (§ 672.20 (h) and (i)). Revised methods prohibit using retained amounts of arrowtooth flounder or groundfish species closed to directed fishing as a basis for calculating retainable amounts of other groundfish species that are closed to directed fishing.

C. Adjustment of the opening date for the BSAI yellowfin sole and "other flatfish" fisheries from May 1 to January 20. As a result of this season adjustment, directed fishing standards governing retainable amounts of flatfish species at § 675.20(h)(2) also were revised.

NMFS has published a proposed rule for public review and comment (59 FR 23044, May 4, 1994) that would implement permanently the management measures implemented under the emergency rule. Pending approval by the Secretary, a final rule implementing these measures likely would not be effective before September 1994. With the exception of the interim adjustment of the BSAI flatfish fisheries, the conditions justifying the emergency action remain unchanged and warrant extension of the emergency rule until Secretarial action is taken on the proposed rule and the measures are implemented through a final rule. Under the emergency rule, regulations set out at § 675.23 were amended to change the opening date of the BSAI yellowfin sole and "other flatfish" fisheries from May 1 to January 20. This interim provision no longer is necessary to allow a BSAI flatfish fishery early in 1994. Therefore, with the exception of the portion of the emergency rule addressing the season change for the BSAI flatfish fisheries (§ 675.23), the Secretary, with the agreement of the North Pacific Fishery Management Council, extends the effectiveness of the emergency rule for an additional 90 days under section 305(c)(3)(B) of the Magnuson Act.

Details concerning the basis for this action and the classification of the rulemaking are contained in the initial emergency rule and are not repeated here.

Dated: May 10, 1994.

Charles Karnella,

Acting Program Management Officer,
National Marine Fisheries Service.

[FR Doc. 94-11706 Filed 5-10-94; 4:11 pm]

BILLING CODE 3510-22-P

Proposed Rules

Federal Register

Vol. 59, No. 92

Friday, May 13, 1994

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 213

RIN 3206-AG00

Student Educational Employment Program

AGENCY: Office of Personnel Management.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Personnel Management is proposing to consolidate existing Federal student employment programs into one streamlined, flexible program that: adapts to changing market conditions and occupational demands, encourages greater participation and partnerships between Federal agencies and educational institutions in developing effective programs, and serves as a critical tool to assist agencies in building a diverse workforce. The program would consist of two components: work-study and temporary student positions.

Over the years, a number of different student employment programs and appointing authorities have often impeded Federal agencies from meeting critical employment challenges with innovative solutions. This new framework will substitute complex regulatory guidance with a flexible approach to developing student educational and employment programs.

DATES: Comments must be received on or before June 13, 1994.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Patricia Paige, Director Paige, Director, Staffing Reinvention Office, U.S. Office of Personnel Management, 1900 E. Street, NW., room 6332, Attention: Staffing Reinvention Office, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Ellie Miller, Staffing Reinvention Office, at (202) 606-0830.

SUPPLEMENTARY INFORMATION: Under this authority, agencies can develop innovative work-study or temporary

programs to attract students. For instance, agencies could create internship programs with a tuition assistance option for students attending college (associate, undergraduate, and graduate), and vocational and technical institutions. Students in these agency/academic tailored programs can be employed in professional, scientific, administrative, technical, clerical, and trades/crafts occupations.

Proposed Amendments

Under the proposed regulations, a new authority, the Student Educational Employment Program, would replace the following:

- Schedule A authority § 213.3102(p) graduate students in scientific, professional or analytical positions;
- Schedule A authority § 213.3102(q), students in scientific, professional and technical positions, GS-9 and below;
- Schedule A authority § 213.3102(v), temporary summer aid;
- Schedule A authority § 213.3102(w), stay-in-school program;
- Schedule A authority § 213.3102(y), summer employment;
- Schedule A authority § 213.3102(jj), legal intern positions;
- Schedule B authority § 213.3202(a) through (c), (e) and (g), cooperative education program;
- Schedule B authority § 213.3102(d), Harry S. Truman Foundation Scholarship Program; and
- Schedule B authority § 213.3202(f), Federal Junior Fellowship Program.

Using the new program, agencies would appoint students under § 213.3202(b) (work study) and § 213.3202(c) (temporary). The new schedule B authority would contain both a Work-Study Component, § 213.3202(b) and a Temporary Student Component, § 213.3202(c).

Under the new program, the definition of student is an individual who is enrolled or accepted for enrollment in at least a half-time academic course load in an accredited high school, technical or vocational, associate, baccalaureate, graduate, or professional diploma or certificate program. An individual is still deemed to be a student as long as there are no breaks in course work of more than 5 months and the student shows to the satisfaction of the agency and academic institution that he/she has a bona fide intention of continuing to pursue a course of study or training. An

individual who has to complete less than half of an academic course load immediately prior to graduating is still considered a student.

Agencies may appoint students on a full-time, part-time or intermittent basis at any time during the year. The student's work schedule should not interfere with his or her academic studies.

Work-Study Component

The work-study component provides experience that is directly related to the student's educational program. Agencies should appoint students under § 213.3202(b) when the job is related to their academic field of study. Programs developed under this component provide for a schedule of periods of attendance at an accredited school combined with periods of career-related work in a Federal agency. Agencies, participating educational institutions, and students should agree on a formally-arranged schedule of school and work to ensure that work responsibilities do not interfere with academic performance.

Students appointed under this component will be classified as Student Trainees, to the -99 series of the appropriate occupational group.

Students appointed under § 213.3202(b) (work study) may be noncompetitively converted to a career or career-conditional appointment under Executive Order 12015 when students have: (1) completed within the preceding 120 days an educational program and course requirements at an accredited school; (2) completed at least 640 hours of career-related work, before completion of or concurrently with, the course requirements (agencies have the option of increasing this requirement for some or all of its occupation fields); (3) been recommended by the employing agency in which the career-related work was performed; and (4) met the qualification standards for the targeted position to which the student is appointed. Conversions will be to an occupation related to the student's academic training and work-study experience.

Temporary Student Component

This component provides flexibility to agencies to appoint students on a temporary basis to jobs that may/may not be related to the students' academic field of study. The intent of a temporary

student component is to provide maximum flexibility and opportunity to agencies and students that will meet both of their needs on a short-term basis.

Classification for students appointed under this component is based on the occupational series for which they are hired.

Schedule B authority § 213.3202(c) would be used for students employed on a not-to-exceed 1 year appointment. Appointments under this authority may be extended in 1-year increments as long as the employee is enrolled or accepted for enrollment as a student in a diplomat or certificate program at an accredited academic institution and is performing at the fully successful or higher performance summary level. Students would not be eligible for conversion to a career or career-conditional appointment under this authority.

Movement Between Components

Agencies may noncompetitively move students between temporary and work-study components if students meet the requirements for that component. Movement between components will require using the appointing authority for the component that the student is entering.

Work performed in the temporary component can not be credited toward meeting the work period requirements of the work-study component.

Student Volunteers

The student volunteer program will continue to be covered by Title 5, Code of Federal Regulations, part 308, Volunteer Service.

Student Financial Assistance Option

Under both components of this program, agencies have the option of using financial need criteria to hire talented students who demonstrate a need for income from employment to continue their education. OPM will continue to develop and distribute annual economic guidelines for use in determining financial need. State Employment Service Offices and financial aid offices in schools can assist in making these determinations.

Benefit Entitlements

Since it is expected that appointments under the work-study component would be for more than 1 year, students would be eligible for retirement, health benefits, and life insurance. Students under the temporary component are not eligible for retirement or life insurance but would become eligible for health benefits coverage only after they

complete 1 year of current, continuous employment. Since under the temporary appointment no Government contribution would be available, the employee would pay the entire premium.

Tuition Assistance

Under both components of this program, agencies may use their training authority in 5 U.S.C. chapter 41 and 5 CFR part 410 to pay for all or part of training expenses. Under the work-study component, an agency may pay other expenses directly related to training, including travel and transportation expenses between duty stations and schools.

Employment of Minors

Participation in this program must be in conformance with Federal, State or local laws and standards governing the employment of minors.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation applies only to appointment procedures for certain employees in Federal agencies.

List of Subjects in 5 CFR Part 213

Government employees, reporting and recordkeeping requirements.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

Accordingly, OPM proposes to amend 5 CFR part 213 as follows:

PART 213—EXCEPTED SERVICE

1. The authority citation for part 213 continues to read as follows:

Authority: 5 U.S.C. 3301 and 3302, E.O. 10577, 19 FR 7521, 3 CFR 1954-1958 Comp., p. 218; Section 213.101 also issued under 5 U.S.C. 2103; Section 213.102 also issued under 5 U.S.C. 1104, Pub. L. 95-454, sec. 3(5); Section 213.3102 also issued under 5 U.S.C. 3301, 3302, 3307, 8337(h), and 8456; E.O. 12364, 47 FR 22931, 3 CFR 1982 Comp. p. 185.

§§ 213.3102 [Amended]

2. In § 213.3102, paragraphs (p), (q), (v), (w), (y), and (jj) are removed and reserved.

3. Section 213.3202 is amended by removing the introductory text, removing and reserving paragraphs (d) through (g) and revising paragraph (a) through (c) to read as follows:

§ 213.3202 Entire executive civil service.

(a) *Student Educational Employment Program.* (1)(i) A student under this program must be enrolled or accepted

for enrollment in at least a half-time course load in an accredited high school, technical or vocational school, associate, baccalaureate, undergraduate certificate, graduate, or professional degree program. An individual is still deemed to be a student if there are no breaks in course work of more than 5 months and the student shows to the satisfaction of the agency and academic institution that he/she has a bona fide intention of continuing to pursue a course of study or training. An individual who has to complete less than half of an academic course load immediately prior to graduating is still considered a student. Appointments may be made on a full-time, part-time or intermittent basis.

(ii) This program is year-round and appointments may be made at any time during the year. There are no limitations on the number of hours a student can work, but the student's work schedule should not interfere with the student's academic studies.

(iii) Participation in this program must be in conformance with Federal, State or local laws and standards governing the employment of minors.

(iv) Students under this authority must be:

(A) A U.S. citizen or national resident of American Samoa or Swains Island; or

(B) In the absence of qualified citizens, a non-citizen provided he/she:

(1) Is lawfully admitted to the United States as a permanent resident and meets citizenship requirements prior to conversion if applicable; or

(2) Is a national of an allied country or otherwise permitted to be paid under an agency's general appropriation act.

(v) Students under the work-study component must meet the educational and work experience requirements of the Qualification Standard for Schedule B Student Trainee positions in OPM's Qualification Standards Handbook or the requirements for wage grade positions in OPM's Job Qualification System for Trades and Labor Occupations (Handbook X-118C). Any OPM test requirements are waived.

Students under the temporary student component may be evaluated either by agency developed standards or by the OPM qualification requirements for the position to which appointed.

(vi) Volunteer students are covered by title 5, Code of Federal Regulations, part 308, Volunteer Service, and may not be treated as employees under this section.

(vii) *Student Financial Assistance Option:* Agencies have the option, under paragraphs (b) and (c) of this section, to use financial need criteria to hire talented students who demonstrate a need for employment in order to

continue their education. OPM will continue to develop and distribute annual economic guidelines for use in determining financial need. State Employment Service Offices and financial aid offices in schools can assist in making the determinations.

(b) Work-Study Component (1)

Students under this appointment may be noncompetitively converted under Executive Order 12015 to a career or career-conditional appointment at any time within a 120-day period after satisfactorily completing career-related any educational requirements at an accredited school.

(2) Students must have completed at least 640 hours of career-related work, prior to or concurrently with completion of academic requirements, in order to be noncompetitively converted to a career or career-conditional appointment. Students must be converted to an occupation related to their academic training and work-study experience.

(3) Work-study positions should be based on the following educational programs:

- (i) Baccalaureate Degree
- (ii) Graduate or Professional Degree
- (iii) Associate Degree
- (iv) High School Diploma
- (v) Undergraduate Certificate or Diploma

(c) Temporary Student Component (1)

Students are appointed to a position not to exceed 1 year. Appointments under this authority may be extended in 1-year increments as long as the individual meets the definition of a student and is performing at the fully successful or higher level. Students would not be eligible for conversion to a career or career-conditional appointment under this authority.

(2) Students may be noncompetitively converted to the work-study component whenever they meet the requirements of the work-study authority and are placed in a career-related position. Conversions would not be subject to requirements of subparts C and D of part 302.

(3) Temporary student positions should be based on the following educational programs:

- (i) Baccalaureate Degree
- (ii) Graduate or Professional Degree
- (iii) Associate Degree
- (iv) High School Diploma
- (v) Undergraduate Certificate or Diploma

* * * * *

[FR Doc. 94-11540 Filed 5-12-94; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 300 and 319

[Docket No. 93-121-2]

Importation of Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to allow, under certain conditions, the cold treatment of imported fruits upon arrival at the port of Wilmington, NC. We have determined that in the Wilmington, NC, area, there are climatic and biological barriers that are adequate to prevent the introduction of certain plant pests into the United States in the event they escape from shipments of fruit before undergoing cold treatment. We are also proposing to delete cold treatments in the regulations and replace them with a reference to cold treatments in the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference.

DATES: Consideration will be given only to comments received on or before June 13, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 93-121-2. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Victor Harabin, Head, Permit Unit, Port Operations, Plant Protection and Quarantine, APHIS, USDA, room 631, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; (301) 436-8645.

SUPPLEMENTARY INFORMATION:

Background

The Fruits and Vegetables regulations, contained in 7 CFR 319.56 through 319.56-8 (referred to below as "the regulations"), prohibit or restrict the importation of fruits and vegetables to prevent the introduction and dissemination of injurious insects, including fruit flies, that are new to or

not widely distributed in the United States. The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture administers these regulations.

Under the regulations, APHIS allows certain fruits to be imported into the United States if they undergo sustained refrigeration (cold treatment) sufficient to kill certain insect pests. Cold treatment temperature and refrigeration period requirements vary according to the type of fruit and the pests involved.

Most imported fruit that requires cold treatment undergoes cold treatment in transit to the United States. However, APHIS allows imported fruit to undergo cold treatment after arrival in the United States at certain ports designated by APHIS.

Currently, cold treatment is limited to ports in the northern United States because APHIS has determined that insect pests escaping from shipments of imported fruit after arrival in the United States would be unable to survive winter weather conditions in the north. The following ports are currently authorized by APHIS to conduct cold treatment on imported fruit: Atlantic ports north of, and including, Baltimore, MD; ports on the Great Lakes and St. Lawrence Seaway; Canadian border ports on the North Dakota border and east of North Dakota; and, for air shipments, Washington DC, at Baltimore-Washington International and Dulles International airports.

Recently, we received petitions from individuals at the ports of Wilmington, NC, and Gulfport, MS, requesting that we amend the regulations to allow cold treatment to be conducted at these ports. On November 12, 1993, in response to these petitions, we published in the *Federal Register* (58 FR 59953, Docket No. 93-121-1) an advance notice of proposed rulemaking requesting public comment on whether we should allow cold treatment at ports in the Southern United States and in California.

We solicited comments concerning this notice for a 45-day period ending on December 27, 1993. During that period, we received four comments, three from State governments and one from a grower organization. Two comments opposed allowing cold treatment at ports in the Southern United States and California, arguing that allowing such treatments would place California and Florida citrus crops at too great a risk of fruit fly infestation. Another comment requested that we perform a detailed pest-risk analysis before deciding whether to allow cold treatment at southern and California ports. Another comment supported

allowing cold treatment at the port of Wilmington, NC.

While we are still considering whether to allow cold treatment at other ports in the Southern United States and California, we are now proposing to allow cold treatment of certain fruit, under certain conditions, at the port of Wilmington, NC. We have determined that in the Wilmington, NC, area, there are climatic and biological barriers adequate to prevent introduction of certain plant pests into the United States in the event they escape from shipments of fruit before undergoing cold treatment. Also, we are proposing to impose additional special conditions regarding cold treatment at Wilmington, NC, that would further reduce the risk of fruit fly introduction.

In addition to meeting the requirements in § 319.56-2d of the regulations regarding cold treatment, the port of Wilmington, NC, cold treatment facilities would be required to operate under the following additional special conditions:

1. Bulk shipments (those shipments which are stowed and unloaded by the case or bin) of fruit arriving for cold treatment must be packaged in fly-proof packaging that prevents the escape of adult, larval, or pupal fruit flies.

2. Bulk and containerized shipments of fruit arriving at the port of Wilmington, NC, for cold treatment must be cold-treated within the port, that is, the area over which the Bureau of Customs is assigned the authority to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws in force.

3. Advance reservations for cold treatment space at the port of Wilmington, NC, must be made prior to the departure of a shipment from its port of origin.

We believe these requirements would reduce the risk of fruit fly introduction into the United States in the event infested shipments of fruit entered the port of Wilmington, NC.

Draft Risk Assessment Regarding Cold Treatment

This proposal to allow cold treatment of fruit under certain conditions at the port of Wilmington, NC, is based, in part, on a draft document, prepared by APHIS, assessing the pest risks associated with allowing cold treatment of tropical fruit fly host materials at certain United States ports. Some of the risk mitigation measures discussed in the draft are included in this proposal as requirements for the port of Wilmington, NC. Copies of this draft document may be obtained from Mr.

Victor Harabin at the address listed under FOR FURTHER INFORMATION CONTACT.

Plant Protection and Quarantine (PPQ) Treatment Manual

We would revise the PPQ Treatment Manual, which has been incorporated by reference into the Code of Federal Regulations at 7 CFR 300.1, to reflect the addition of Wilmington, NC, to the list of ports where cold treatment of imported fruits can be conducted, under certain conditions, upon arrival.

Miscellaneous

We are also proposing to replace the four cold treatment schedules currently listed in § 319.56-2d(a) with a single reference to the Plant Protection and Quarantine (PPQ) Treatment Manual, which is incorporated by reference at 7 CFR 300.1. The cold treatments listed in the PPQ treatment manual are applicable for any fruit required to be cold treated under § 319.56-2d of the regulations.

Also as a nonsubstantive editorial change, we are proposing to remove and reserve the regulations under § 319.56-2q, regarding conditions governing the entry into the United States of pummelo from Israel, and to add pummelo from Israel to the list, under § 319.56-2x, of fruits and vegetables requiring treatment as a condition of entry into the United States. This change would simplify the regulations by placing pummelo from Israel on a list of commodities with similar entry requirements, but would not revise current requirements concerning the entry into the United States of pummelo from Israel.

We are also proposing to make other nonsubstantive changes to the regulations for the sake of clarity.

Executive Order 12866 and Regulatory Flexibility Act

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

We are proposing to allow, under certain conditions, cold treatment of imported fruit upon arrival at the port of Wilmington, NC. As a result of this proposal, a number of different fruits could be imported into Wilmington, NC. Specifically, officials of the North Carolina State Ports Authority in Wilmington, NC, anticipate that apples, grapes, and pears from Argentina, Brazil, and South Africa would be imported and cold treated at the port of Wilmington, NC.

Approximately 20 million pounds of each fruit could be imported annually into Wilmington, NC, as a result of this rule, though we anticipate the amount would be much smaller. While some of the fruit arriving at Wilmington, NC, would be imported in addition to the present volume of annual imports into the United States, some merely would be shipments diverted from other ports also approved to conduct cold treatment on arrival. In the following analysis of the potential impact of this action on domestic producers of apples, grapes and pears, in order to demonstrate the greatest possible economic impact, we have assumed that the maximum amount of fruit would be imported into Wilmington, NC, for cold treatment, and further, that those commodities would be imported in addition to the present volume of annual imports into the United States.

Also in the following analysis, we have used published price flexibilities to estimate the potential economic effects of allowing apples, grapes, and pears to be cold treated at Wilmington, NC; flexibilities are used to estimate relationships between changes in supply and subsequent changes in price.

Apples

In 1987, 36,718 farms in the United States, of which 1,186 were in North Carolina, harvested apples. Although it is not known how many of these farms could be classified as small entities (annual gross receipts of \$0.5 million or less, according to Small Business Administration (SBA) size standards), it is likely that most would. In 1992, domestic farms produced almost 5.78 billion pounds of apples for the fresh market, with an estimated value of \$1.13 billion.

If the volume of apples imported into Wilmington, NC, for cold treatment were to reach 20 million pounds, it would constitute about 7.5 percent of current total imports into the United States, about 0.35 percent of current domestic production and about 0.33 percent of the current total apple supply in the United States (domestic and imports).

Assuming that a 0.33 percent increase in the supply of apples would lead to a decrease of about 0.20 percent in the domestic price of apples (using a price flexibility for apples of -0.590, based on all Eastern States' sales of North Carolina apples), we estimate that this increase in supply would result in a price decrease of about \$0.038 per hundredweight (cwt), or \$0.00038 per pound, from an original price of \$0.195 per pound. As a result of the price decrease, there could be a decrease in

total revenue to U.S. apple producers of about \$2.20 million, which is roughly 0.20 percent of the original total revenue of \$1.13 billion. We anticipate, therefore, that allowing apples to be cold treated at Wilmington, NC, would not have a significant economic impact on domestic producers.

Grapes

In 1987, 23,236 farms in the United States, of which 286 were in North Carolina, harvested apples. In 1992 domestic farms produced about 1.54 billion pounds of grapes for the fresh market, with an estimated value of \$327 million. Although it is not known how many of these farms could be classified as small entities (annual gross receipts of \$0.5 million or less, according to SBA size standards), it is likely that most would.

If the volume of grapes to be imported were to reach 20 million pounds, it would constitute about 2.9 percent of current total imports to the United States, about 1.3 percent of current domestic production and about 0.89 percent of the current total grape supply in the United States (domestic and imports).

Assuming that a 0.89 percent increase in the supply of grapes would lead to a decrease of about 0.88 percent in the domestic price of grapes (using a price flexibility for California grapes of -0.981), we estimate that this increase in supply would result in a price decrease of about \$3.73 per ton, or \$0.0019 per pound, from an original price of \$425.62 per ton. As a result of the price decrease, there could be a decrease in total revenue to U.S. grape producers of about \$2.9 million, which is roughly 0.88 percent of the original total revenue of \$327 million. We anticipate, therefore, that allowing grapes to be cold treated at Wilmington, NC, would not have a significant economic impact on domestic producers.

Pears

In 1987, 10,092 farms in the United States, 88 of which were in North Carolina, harvested apples. In 1992, domestic farms produced about 890 million pounds of pears for the fresh market, with an estimated value of \$168 million. Although it is not known how many of these farms could be classified as small entities (annual gross receipts of \$0.5 million or less, according to SBA size standards), it is likely that most would.

If the volume of pears to be imported were to reach 20 million pounds, it would constitute about 15.4 percent of current total imports to the United

States, about 2.2 percent of current domestic production and about 2.0 percent of the current total pear supply in the United States (domestic and imports).

Assuming that a 2.0 percent increase in the supply of pears would lead to a decrease of about 1.2 percent in the domestic price of grapes (using a price flexibility for California pears of -0.609), we estimate that this increase in supply would result in a price decrease of about \$4.51 per ton, or \$0.0023 per pound, from an original price of \$377.61 per ton. As a result of the price decrease, there could be a decrease in total revenue to U.S. pear producers of about \$2.0 million, which is roughly 1.19 percent of the original total revenue of \$168 million. We anticipate, therefore, that allowing pears to be cold treated at Wilmington, NC, would not have a significant economic impact on domestic producers.

Therefore, in light of the preceding analyses (which estimate greatest possible, and thus highly unlikely, economic effects), as well as our expectation that most imports of fruit to Wilmington, NC, for cold treatment would occur during the off-season for domestic production, we anticipate that this proposal would not have a significant economic impact on domestic producers of apples, grapes, and pears.

Furthermore, we anticipate that allowing cold treatment at the port of Wilmington, NC, could have beneficial economic effects. Importers who routinely transport fruit to the Southeastern United States could benefit from this action due to lower transportation costs. Freight companies and shipping companies in North Carolina, as well as the local economy, might also benefit. Also, consumers are likely to gain from the increased selection of products and any price decreases, albeit small, that occur with increases in supply.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This proposed rule would allow cold treatment of certain fruits to be conducted at the port of Wilmington, NC. If this proposed rule is adopted, State and local laws and regulations regarding the importation of fruits under this rule would be preempted while the fruits are in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the

consuming public, and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects

7 CFR Part 300

Incorporation by reference, Plant diseases and pests, Quarantine.

7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, title 7, chapter III, of the Code of Federal Regulations would be amended as follows:

PART 300—INCORPORATION BY REFERENCE

1. The authority citation for part 300 would be revised to read as follows:

Authority: 7 U.S.C. 150ee, 161, 162; 7 CFR 2.17, 2.51, and 371.2(c). 2. In § 300.1, paragraph (a) would be revised to read as follows:

§ 300.1 Materials incorporated by reference.

(a) The Plant Protection and Quarantine Treatment Manual, which was revised and reprinted November 30, 1992, and includes all revisions through _____, has been approved for incorporation by reference in 7 CFR chapter III by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

* * * * *

PART 319—FOREIGN QUARANTINE NOTICES

3. The authority citation for part 319 would continue to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151-167, 450; 21 U.S.C. 136 and 136a; 7 CFR 2.17, 2.51, and 371.2(c).

4. In § 319.56-2d, paragraph (a) would be revised to read as follows:

§ 319.56-2d Administrative instructions for cold treatments of certain imported fruits.

(a) *Treatments authorized.* Fresh fruits imported in accordance with this subpart and required under this subpart to receive cold treatment as a condition of entry must be cold treated in accordance with the Plant Protection and Quarantine (PPQ) Treatment Manual, which is incorporated by reference at § 300.1 of this chapter. The cold treatments listed in the PPQ Treatment Manual are authorized for any fruit required to be cold treated under this subpart.

§ 319.56-2d [Amended]

5. In § 319.56-2d, paragraph (b)(1), the second sentence would be amended by removing the phrase "port of New York or such other northern ports as he may hereafter designate." and adding the phrase "following ports: the port of Wilmington, NC; Atlantic ports north of, and including, Baltimore, MD; ports on the Great Lakes and St. Lawrence Seaway; Canadian border ports on the North Dakota border and east of North Dakota; and, for air shipments, Washington DC, at Baltimore-Washington International and Dulles International airports." in its place.

6. In § 319.56-2d, headings would be added at the beginning of paragraphs (b)(5)(i) through (b)(5)(iii), and a new paragraph (b)(5)(iv) would be added to read as follows:

§ 319.56-2d Administrative instructions for cold treatments of certain imported fruits.

* * * * *

- (b) * * *
- (5) Cold treatment after arrival. (i) Delivery. * * *
- (ii) Precooling and refrigeration. * * *
- (iii) Customs. * * *
- (iv) *Special requirements for the port of Wilmington, NC.* Shipments of fruit arriving at the port of Wilmington, NC, for cold treatment, in addition to meeting all of the requirements in paragraphs (b)(5)(i) through (b)(5)(iii) of this section, must meet the following special conditions:

(A) Bulk shipments (those shipments which are stowed and unloaded by the case or bin) of fruit must arrive packaged in fly-proof packaging that prevents the escape of adult, larval, or pupal fruit flies.

(B) Bulk and containerized shipments of fruits and vegetables must be cold-treated within the port of Wilmington, NC, that is, the area over which the Bureau of Customs is assigned the authority to accept entries of

merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws in force.

(C) Advance reservations for cold treatment space at the port of Wilmington, NC, must be made prior to the departure of a shipment from its port of origin.

* * * * *

§ 319.56-2u [Removed and Reserved]

7 Section 319.56-2u is removed and reserved.

§ 319.56-2v [Amended]

8. In § 319.56-2v, paragraph (b), the third sentence would be amended by removing the phrase "North Atlantic ports north of and including Baltimore, MD," and adding the phrase "ports listed in § 319.56-2d(b)(1) of this subpart," in its place.

9. Section 319.56-2x would be amended as follows:

a. In paragraph (a), the table would be amended for the Israel entry by adding a new commodity to read as set forth below.

b. In paragraph (b), the first sentence would be amended by adding the phrase "or the port of Wilmington, NC," immediately before the word "if".

§ 319.56-2x Administrative instructions: conditions governing the entry of certain fruits and vegetables for which treatment is required.

(a) * * *

Country/locality	Common name	Botanical name	Plant part(s)
Israel			
	Pummelo.	Citrus grandis.	Fruit

Done in Washington, DC, this 9th day of May 1994.

Lonnice J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94-11678 Filed 05-12-94; 8:45 am]

BILLING CODE 3410-34-P

Agricultural Marketing Service

7 CFR Part 1230

RIN 0581-AB17

[No. LS-94-002]

Pork Promotion and Research

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: Pursuant to the Pork Promotion, Research, and Consumer Information Act (Act) of 1985 and the Order issued thereunder, this proposed rule would increase the amount of the assessment per pound due on imported pork and pork products to reflect an increase in the 1993 six market average price for domestic barrows and gilts. This proposed action would bring the equivalent market value of the live animals from which such imported pork and pork products were derived in line with the market values of domestic porcine animals. This proposed rule also would revise the Harmonized Tariff System (HTS) numbers which identify imported live porcine animals, pork, and pork products to conform with recent changes in these numbers made by the United States Customs Service (USCS). These proposed changes will facilitate the continued collection of assessments on imported porcine animals, pork, and pork products.

DATES: Comments must be received by June 13, 1994.

ADDRESSES: Send two copies of comments to Ralph L. Tapp, Chief, Marketing Programs Branch; Livestock and Seed Division; Agricultural Marketing Service (AMS), USDA, room 2624-S; P.O. Box 96456; Washington, DC 20090-6456. Comments will be available for public inspection during regular business hours at the above office in room 2624 South Building; 14th and Independence Avenue, SW.; Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs Branch, 202/720-1115.

SUPPLEMENTARY INFORMATION: The Department is issuing this proposed rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This proposal is not intended to have a retroactive effect. The Act states that the statute is intended to occupy the field of promotion and consumer education involving pork and pork products and of obtaining funds thereof from pork

producers and that the regulation of such activity (other than a regulation or requirement relating to a matter of public health or the provision of State or local funds for such activity) that is in addition to or different from the Act may not be imposed by a State.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 1625 of the Act, a person subject to an order may file a petition with the Secretary stating that such order, a provision of such order or an obligation imposed in connection with such order is not in accordance with law; and requesting a modification of the order or an exemption from the order. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in the district in which person resides or does business has jurisdiction to review the Secretary's determination, if a complaint is filed not later than 20 days after the date such person receives notice of such determination.

This action also was reviewed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). The effect of the Order upon small entities was discussed in the September 5, 1986, issue of the *Federal Register* (51 FR 31898), and it was determined that the Order would not have a significant effect upon a substantial number of small entities. Many importers may be classified as small entities. This proposed rule would increase the amount of assessments on imported pork and pork products subject to assessment by two-hundredths of a cent per pound, or as expressed in cents per kilogram, four-hundredths of a cent per kilogram. Adjusting the assessments on imported pork and pork products would result in an estimated increase in assessments of \$143,000 over a 12-month period. Accordingly, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities. This proposed rule would also revise HTS numbers for imported porcine animals, pork, and pork products subject to assessment from 11 digits to 10 digits to conform a change in those HTS numbers made by USCS. The change made in the number of digits in HTS numbers is merely a technical change and will not impose any new requirements on importers.

The Act (7 U.S.C. 4801-4819) approved December 23, 1985, authorized the establishment of a national pork promotion, research, and consumer information program. The

program was funded by an initial assessment rate of 0.25 percent of the market value of all porcine animals marketed in the United States and an equivalent amount of assessment on imported porcine animals, pork, and pork products. However, that rate was increased to 0.35 percent effective December 1, 1991 (56 FR 51635). The final Order establishing a pork promotion, research, and consumer information program was published in the September 5, 1986, issue of the *Federal Register* (51 FR 31898; as corrected, at 51 FR 36383 and amended at 53 FR 1909, 53 FR 30243, 56 FR 4, and 56 FR 51635) and assessments began on November 1, 1986.

The Order requires importers of porcine animals to pay USCS, upon importation, the assessment of 0.35 percent of the animal's declared value and importers of pork and pork products to pay USCS, upon importation, the assessment of 0.35 percent of the market value of the live porcine animals from which such pork and pork products were produced. This proposed rule would increase the assessments on all of the imported pork and pork products subject to assessment listed in 7 CFR 1230.110 (September 8, 1993; 58 FR 47205). This increase is consistent with the increase in the annual average price of domestic barrows and gilts for calendar year 1993 as reported by USDA, AMS, Livestock and Grain Market News (LGMN) Branch. This increase in assessments would make the equivalent market value of the live porcine animal from which the imported pork and pork products were derived reflect the recent increase in the market value of domestic porcine animals, thereby promoting comparability between importer and domestic assessments. This proposed rule would not change the current assessment rate of 0.35 percent of the market value.

The methodology for determining the per-pound amounts for imported pork and pork products was described in the Supplementary Information accompanying the Order and published in the September 5, 1986, *Federal Register* at 51 FR 31901. The weight of imported pork and pork products is converted to a carcass weight equivalent by utilizing conversion factors which are published in the USDA Statistical Bulletin No. 616 "Conversion Factors and Weights and Measures." These conversion factors take into account the removal of bone, weight lost in cooking or other processing, and the nonpork components of pork products. Secondly, the carcass weight equivalent is converted to a live animal equivalent

weight by dividing the carcass weight equivalent by 70 percent, which is the average dressing percentage of porcine animals in the United States. Thirdly, the equivalent value of the live porcine animal is determined by multiplying the live animal equivalent weight by an annual average market price for barrows and gilts as reported by USDA, AMS, LGMN Branch. The annual average price, which was based on price data from seven major markets, is now based on only six markets. One of the seven markets—Kansas City—closed in 1991; and thus the 1992 and 1993 annual average prices are based on price data from only six markets. This average price is published on a yearly basis during the month of January in LGMN Branch's publication "Livestock, Meat, and Wool Weekly Summary and Statistics." Finally, the equivalent value is multiplied by the applicable assessment rate of 0.35 percent due on imported pork and pork products. The end result is expressed in an amount per pound for each type of pork or pork product. To determine the amount per kilogram for pork and pork products subject to assessment under the Act and Order, the cent-per-pound assessments are multiplied by a metric conversion factor 2.2046 and carried to the sixth decimal.

The formula in the preamble for the Order at 51 FR 31901 contemplated that it would be necessary to recalculate the equivalent live animal value of imported pork and pork products to reflect changes in the annual average price of domestic barrows and gilts to maintain equity of assessments between domestic porcine animals and imported pork and pork products.

The average annual market price increased from \$42.11 in 1992 to \$45.32 in 1993, an increase of about 7 percent. This increase would result in a corresponding increase in assessments for all HTS numbers listed in the table in § 1230.110 of an amount equal to two-hundredths of a cent per pound, or as expressed in cents per kilogram, four-hundredths of a cent per kilogram. Based on the most recent available Department of Commerce, Bureau of Census, data on the total dollar value of imported pork and pork products subject to the assessment in 1993 the proposed increase in assessment amounts would result in an estimated \$143,000 increase in assessments over a 12-month period.

USCS recently revised HTS numbers to conform with changes in importation procedures. The change is only a minor technical change which revises all HTS numbers for live porcine animals, pork, and pork products listed in the table

found at § 1230.110 (58 FR 47205) by changing them from 11 digit numbers to 10 digit numbers by dropping the last digit. The live porcine animals, pork, and pork products subject to assessment and HTS article descriptions listed in a chart contained in the Supplementary Information section on page 15914 of the final rule (54 FR 15914) would not change. A comparison of the 11 digit numbers and the proposed 10 digit numbers are listed in the following chart.

LIVE PORCINE ANIMALS

11-Digit No.	10-Digit No.
0103.10.00004	0103.10.0000
0103.91.00006	0103.91.0000
0103.92.00005	0103.92.0000

PORK AND PORK PRODUCTS

11-Digit No.	10-Digit No.
0203.11.00002	0203.11.0000
0203.12.10107	0203.12.1010
0203.12.10205	0203.12.1020
0203.12.90100	0203.12.9010
0203.12.90208	0203.12.9020
0203.19.20108	0203.19.2010
0203.19.20901	0203.19.2090
0203.19.40104	0203.19.4010
0203.19.40907	0203.19.4090
0203.21.00000	0203.21.0000
0203.22.10007	0203.22.1000
0203.22.90000	0203.22.9000
0203.29.20008	0203.29.2000
0203.29.40004	0203.29.4000
0206.30.00006	0206.30.0000
0206.41.00003	0206.41.0000
0206.49.00005	0206.49.0000
0210.11.00101	0210.11.0010
0210.11.00209	0210.11.0020
0210.12.00208	0210.12.0020
0210.12.00404	0210.12.0040
0210.19.00103	0210.19.0010
0210.19.00906	0210.19.0090
1601.00.20105	1601.00.2010
1601.00.20908	1601.00.2090
1602.41.20203	1602.41.2020
1602.41.20409	1602.41.2040
1602.41.90002	1602.41.9000
1602.42.20202	1602.42.2020
1602.42.20408	1602.42.2040
1602.42.40002	1602.42.4000
1602.49.20009	1602.49.2000
1602.49.40005	1602.49.4000

This change would permit USCS to continue to collect assessments due on imported live porcine animals, pork, and pork products in conjunction with its regular importation processing and collection system.

List of Subjects in 7 CFR Part 1230

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreement, Meat and meat products, Pork and pork products.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 1230 be amended as set forth below:

PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR 1230 continues to read as follows:

Authority: 7 U.S.C. 4801-4819.

Subpart B—[Amended]

2. Subpart B—Rules and Regulations is amended by revising § 1230.110 to read as follows:

§ 1230.110 Assessments on Imported Pork and Pork Products.

(a) The following HTS categories of imported live porcine animals are subject to assessment at the rate specified.

Live porcine animals	Assessment
0103.10.0000	0.35 percent Customs Entered Value.
0103.91.0000	0.35 percent Customs Entered Value.
0103.92.0000	0.35 percent Customs Entered Value.

The following HTS categories of imported pork and pork products are subject to assessment at the rates specified.

Pork and pork products	Assessment	
	cents/lb	cents/kg
0203.11.0000 .....	.23	.507058
0203.12.1010 .....	.23	.507058
0203.12.1020 .....	.23	.507028
0203.12.9010 .....	.23	.507028
0203.12.9020 .....	.23	.507028
0203.19.2010 .....	.26	.573196
0203.19.2090 .....	.26	.573196
0203.19.4010 .....	.23	.507028
0203.19.4090 .....	.23	.507028
0203.21.0000 .....	.23	.507028
0203.22.1000 .....	.23	.507028
0203.22.9000 .....	.23	.507028
0203.29.2000 .....	.26	.573196
0203.29.4000 .....	.23	.507028
0206.30.0000 .....	.23	.507028
0206.41.0000 .....	.23	.507028
0206.49.0000 .....	.23	.507028
0210.11.0010 .....	.23	.507028
0210.11.0020 .....	.23	.507028
0210.12.0020 .....	.23	.507028
0210.12.0040 .....	.23	.507028
0210.19.0010 .....	.26	.573196
0210.19.0090 .....	.26	.573196
1601.00.2010 .....	.31	.683426
1601.00.2090 .....	.31	.683426
1602.41.2020 .....	.34	.749564
1602.41.2040 .....	.34	.749564
1602.41.9000 .....	.23	.507028
1602.42.2020 .....	.34	.749564

Pork and pork products	Assessment	
	cents/lb	cents/kg
1602.42.2040 .....	.34	.749564
1602.42.4000 .....	.23	.507028
1602.49.2000 .....	.31	.683426
1602.49.4000 .....	.26	.573196

Dated: May 5, 1994.

Lon Hatamiya,
Administrator.

[FR Doc. 94-11491 Filed 5-12-94; 8:45 am]

BILLING CODE 3410-02-P

Office of Operations

7 CFR Part 2812

Department of Agriculture Guidelines for the Donation of Excess Research Equipment

AGENCY: Office of Operations, USDA.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rulemaking sets forth uniform procedures for the donation of excess research equipment to educational institutions and nonprofit organizations for the conduct of technical and scientific education and research activities as authorized by section 11(i) of the Stevenson/Wylder Technology Act.

DATES: Consideration will be given to comments received on or before June 13, 1994.

ADDRESSES: Please send your comments to Division Chief, Personal Property Management Division, USDA-00, room 1522, 14th Street & Independence Ave., SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Robert P. Gililand, Acting Division Chief, Personal Property Management Division on (202) 720-3141.

SUPPLEMENTARY INFORMATION: This document includes not only the Department of Agriculture (USDA) procedures to implement 15 U.S.C. 3710(i) but also draws upon the General Services Administration (GSA) regulations concerning the disposal of excess personal property. However, because of the limited ability at the Office of Operations (OO) to change the portions of this Part that reflect GSA policy, comments on those portions are not appropriate for this proposed rulemaking.

Paperwork Reduction

Except for the gift/Acceptance Agreement contained in the appendix to the proposed rulemaking, the forms necessary to implement these procedures have been cleared by the Office of Management and Budget

(OMB) in accordance with the Paperwork Reduction Act, 44 U.S.C. 3500 *et seq.* The Gift/Acceptance Agreement has been submitted to OMB for clearance under the Paperwork Reduction Act.

Classification

This rule will have been reviewed under Executive Order No. 12866, and it has been determined that it is not a "significant regulatory action" because it will not have an annual effect on the economy of \$100 million or more or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This rule will not create any serious inconsistencies or otherwise interfere with any actions taken or planned by another agency. It will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs and does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order No. 12866. In addition, it will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

The following is given in compliance with Executive Order No. 12778. All State and local laws and regulations that are in conflict with his rule are preempted. No retroactive effect is to be given to this rule. This rule does not require administrative proceedings before parties may file suit in court.

Regulatory Analysis

Not required for this rulemaking.

Environmental Impact Statement

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

Catalog of Federal Domestic Assistance

Not required for this rulemaking.

List of Subjects in 7 CFR Part 2812

Government property, Government property management, Excess government property.

For the reasons set forth in the preamble, part 2812 is proposed to be added to chapter XXVIII of title 7 of the Code of Federal Regulations to read as follows:

PART 2812—DEPARTMENT OF AGRICULTURE GUIDELINES FOR THE DONATION OF EXCESS RESEARCH EQUIPMENT UNDER 15 U.S.C. 3701(i)

Sec.

- 2812.1 Purpose.
- 2812.2 Eligibility.
- 2812.3 Definitions.
- 2812.4 Procedures.
- 2812.5 Restrictions.
- 2812.6 Title.
- 2812.7 Costs.
- 2812.8 Accountability and Recordkeeping.
- 2912.9 Disposal.
- 2812.10 Liabilities and Losses.

Appendix A to Part 2812—Gift/Acceptance Agreement

Authority: 5 U.S.C. 301.

§ 2812.1 Purpose.

This Part sets forth the procedures to be utilized by USDA agencies and laboratories in the donation of excess research equipment to educational institutions and non-profit organizations for the conduct of technical and scientific education and research activities as authorized by 15 U.S.C. 3710(i). Title to excess research equipment donated pursuant to 15 U.S.C. 3710(i) shall pass the donee.

§ 2812.2 Eligibility.

Eligibility organizations are educational institutions or non-profit organizations involved in the conduct of technical and scientific educational and research activities.

§ 2812.3 Definitions.

(a) *Cannibalization*—The dismantling of equipment for parts to repair or enhance other equipment. The residual is reported for disposal. Cannibalization is only authorized if the property value is greater when cannibalized than retention in the original condition.

(b) *Education-related Federal equipment*—Equipment that is appropriate for educational purposes.

(c) *Excess Personal Property*—Items of personal property no longer required by the controlling Federal agency.

(d) *Research equipment*—Federal property determined to be essential to conduct scientific or technical educational research.

(e) *Technical and Scientific Education and Research Activities*—Non-profit tax exempt public educational institutions or government sponsored research organizations which serve to conduct technical and scientific education and research.

§ 2812.4 Procedures.

(a) Prior to receipt of excess personal property/equipment under this part the donee shall enter into a gift/acceptance

agreement with the donor agency. A copy of that agreement is appendix A of this part.

(b) Each agency head will designate in writing an authorized official to approve donations of excess property/equipment under this Part.

(c) Property targeted for donation this Part will first be screened as excess by USDA agencies through the Departmental Excess Personal Property Coordinator (DEPPC) using the PMIS/PROP system.

(d) Upon reporting property for excess screening, if the pertinent USDA agency has an eligible organization in mind for donation under this Part, enter "P.L. 102-245" in the note field. The property will remain in the excess system approximately 30-45 days and, if no agency in USDA requests it during the excess cycle, DEPPC will send you a copy of your excess report stamped "DONATION AUTHORITY TO THE HOLDING AGENCY IN ACCORDANCE WITH P.L. 102-245."

(e) Donations under this Part will be accomplished by preparing a Standard Form (SF) 122, "Transfer Order-Excess Personal Property" and a written justification statement (Submitted by the recipient) explaining why the property is needed.

(f) The SF-122 should be signed by both an authorized official of the agency and the Agency Property Management Officer. The following information should also be provided:

- (1) Name and address of Donee Institution (Ship to);
- (2) Agency name and address (holding Agency);
- (3) Location of property;
- (4) Shipping instructions (Donee contact person);
- (5) Complete description of property, including acquisition amount, serial number, condition code, quantity and agency order number; and
- (6) This statement needs to be added following property descriptions.

The property requested hereon is certified to be used for the conduct of technical and scientific education and research activities. This donation is pursuant to the provisions of Public Law 102-245.

(g) Once the excess personal property/equipment is physically received, the donee is required to immediately return a copy of the SF-122 to the donating agency indicating receipt of requested items. Cancellations should be reported to DEPPC so the property can be reported to the General Services Administration (GSA).

(h) The USDA agency shall send an informational copy of the transaction to GSA.

§ 2812.5 Restrictions.

(a) The authorized official (see § 2812.4(b)) will approve the donation of excess personal property/equipment in the following groups to educational institutions or nonprofit organizations for the conduct of technical and scientific educational and research activities.

ELIGIBLE GROUPS

FSC group	Name
19	Ships, Small Craft, Pontoons, and Floating Docks.
23	Vehicles, Trailers and Cycles.
24	Tractors.
37	Agricultural Machinery & Equipment.
43	Pumps, Compressors.
48	Valves.
58	Communication, Detection, and Coherent Radiation Equipment.
59	Electrical and Electronic Equipment Components.
65	Medical, Dental, and Veterinary Equipment and Supplies.
66	Instruments and Laboratory Equipment.
67	Photographic Equipment.
68	Chemicals and Chemical Products.
70	General Purpose Automatic Data Processing Equipment, Software Supplies, and Support Equipment.
74	Office Machines and Visible Record Equipment.

Note: Requests for items in FSC Groups or Classes other than the above should be referred to the agency head for consideration and approval.

(b) Excess personal/equipment may be donated for cannibalization purposes, provided the donee submits a supporting statement which clearly indicates that cannibalizing the requested property for secondary use has greater potential benefit than utilization of the item in its existing form.

§ 2812.6 Title.

Title to excess personal property/equipment donated under this Part will automatically pass to the donee once the sponsoring agency receives the SF-122 indicating that the donee has received the property.

§ 2812.7 Costs.

Donated excess personal property/equipment is free of charge. However, the donee must pay all costs associated with packaging and transportation, unless the sponsoring agency has made

other arrangements. The donee should specify the method of shipment.

§ 2812.8 Accountability and Recordkeeping.

USDA requires that property requested by a donee be placed into use by the donee within a year of receipt and used for at least 1 year thereafter. Donees must maintain accountable records for such property during this time period.

§ 2812.9 Disposal.

When the property is no longer needed by the donee, it may be used in support of other Federal projects or sold and the proceeds used for technical and scientific education and research activities.

§ 2812.10 Liabilities and Losses.

USDA assumes no liability with respect to accidents, bodily injury, illness, or any other damages or loss related to excess personal property/equipment donated under this Part. The donee is advised to insure or otherwise protect itself and others as appropriate.

Appendix A to Part 2812—Gift/Acceptance Agreement; Educational Institution or Non-Profit Organization and The United States Department of Agriculture

Gift/Acceptance Agreement (Agreement) Between (USDA Agency) and (Educational Institution or Non-Profit Organization).

(1) Purpose

The purpose of the Agreement is to establish a relationship between the U.S. Department of Agriculture (USDA Agency) and (Educational Institution or Non-Profit Organization) concerning the transfer of excess research equipment to this educational institution or non-profit organization for the conduct of technical and scientific education and research activities. Title of ownership transfers to the recipient.

(2) Authority

Public Law 102-245, Sec. 303, Research Equipment, Section 11 of the Stevenson-Wydler Technology Innovation Act of 1980, subsection (i) Research Equipment, provides that "the Director of a laboratory, or the head of any Federal agency or department, may give research equipment that is excess to the needs of the laboratory, agency, or department to an educational institution or non-profit organization for the conduct of technical and scientific education and research activities."

(3) Objectives and Program Elements

This Agreement is intended to provide a mechanism for the transfer of

excess research equipment from USDA to the (Educational Institution or Non-profit Organization) in accordance with the procedures set out in the regulations implementing Public Law 102-245.

(4) Management

In order to enable close collaboration, it is agreed that the (Educational Institution or Non-Profit Organization) will provide to (USDA Agency) an annual inventory listing of property acquired under Public Law 102-245.

The (USDA Agency) and (Educational Institution or Non-Profit Organization) will each identify a coordinator to implement this Agreement. These coordinators shall meet when necessary to review new Federal property regulations.

The coordinators shall seek to resolve any disputes concerning the Agreement through good faith discussions.

(5) Effective Date and Revision or Termination

The Agreement shall enter into effect upon signature and shall remain in effect for 3 years. It may be extended or amended by written agreement of the parties at any time prior to its expiration or termination. The Agreement may be terminated at any time upon 60 days written notice by either party to the other. The termination of the Agreement shall not affect the validity of any property transactions under the Agreement which were initiated prior to such termination.

Property Coordinators

The property coordinators for this Agreement are:

Name _____
(Education Institution/Non-Profit Organization)

(Complete Address and Phone Number)

Name _____
(USDA Coordinator)

(Complete Address and Phone Number)

Approved:

(Education Institution/Non-Profit Organization)

Date _____

(USDA Agency Head)

Date _____

Certification of Compliance With Executive Order No. 12778

Agency Issuing the Regulation

Descriptive Title of the Regulation

CFR Title and Parts Affected

Certification: I have reviewed this draft regulation in light of section 2 of Executive Order No. 12778 and certify for USDA that this draft regulation meets the applicable standards in sections 2(a) and 2(b)(2) of Executive Order No. 12778. The recommendations and cost-benefit analyses required under section 2(d) of Executive Order No. 12778 are not applicable to this regulation.

Name: Kenneth E. Cohen.

Title: Assistant General Counsel,
Research and Operations Division.

Done at Washington, DC, this 4th day of May 1994.

Mike Espy,

Secretary.

[FR Doc. 94-11417 Filed 5-12-94; 8:45 am]

BILLING CODE 3410-98-M

DEPARTMENT OF JUSTICE

8 CFR Part 3

[AG Order No. 1873-94]

Executive Office for Immigration Review; Stipulated Requests for Deportation or Exclusion Orders Telephonic, Video Teleconferenced Hearings

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend agency regulations by requiring Immigration Judge to enter an order of deportation or exclusion, without a hearing, if satisfied that the alien voluntarily entered into a plea-negotiated or otherwise stipulated request for an order of deportation or exclusion. It further codifies the practice of Immigration Judges conducting telephone hearings in deportation, exclusion, or rescission cases, and codifies the authority of the Immigration Judge to hold video teleconferenced hearings.

The proposed rule also clarifies regulatory language to conform with *in absentia* hearing provisions under the Immigration and Nationality Act (the "Act").

DATES: Written comments must be received no later than June 13, 1994.

ADDRESSES: Please submit written comments, in triplicate, to Gerald S. Hurwitz, Counsel to the Director,

Executive Office for Immigration Review, suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041 (703) 305-0470.

FOR FURTHER INFORMATION CONTACT:

Gerald S. Hurwitz, Counsel to the Director, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041 (703) 305-0470; Brian O'Leary, Associate General Counsel, Office of the General Counsel, room 6100, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536 (202) 514-2895.

SUPPLEMENTARY INFORMATION: This proposed rule amends 8 CFR 3.25 by requiring the Immigration Judge, under new subparagraph (b), to enter an order of deportation or exclusion on the written record, without an in-person hearing, based upon the stipulated written request of the respondent/applicant and the government, provided that the Immigration Judge determines that the charging document sets forth a valid basis for deportability or excludability; the stipulated request for an order of deportation or exclusion is voluntarily entered into by the respondent/applicant; and the respondent/applicant specifically waives relief from deportation or exclusion as well as the described hearing rights. The requirements that the Immigration Judge enter the order without a hearing is limited to cases in which the applicant or respondent was represented at the time of the stipulation. The stipulation must be signed on behalf of the government and by both the applicant or respondent and his or her attorney or other representative qualified under part 292 of this chapter.

This procedure codifies the litigation practice in some jurisdictions where, if a party enters into a stipulated request for a deportation or exclusion order with a written waiver of his or her appearance and rights, the Immigration Judge may sign the order of deportation or exclusion based upon the written record. This practice facilitates judicial efficiency in uncontested cases. For example, it has been used to expedite departure shortly after the sentencing of aliens convicted of offenses rendering them immediately deportable or excludable. Whereas this practice currently occurs at the discretion of the Immigration Judge, the proposed rule would make it mandatory.

The procedure also has been used by imprisoned criminal aliens having no apparent avenue of relief from deportation or exclusion who, after consultation with counsel, wish to

avoid further detention pending deportation or exclusion proceedings following release from prison. While protecting the rights of the parties, the rule also implements the statutory requirement of expeditious deportation of criminal aliens under 8 U.S.C. 1252(i), 1252a(d). If used more widely by litigants and criminal prosecutors, the procedure could alleviate overcrowded federal, state, and local detention facilities and eliminate the need to calendar such uncontested cases on crowded immigration court dockets. The procedure is not limited to cases arising from the criminal context and can be used in other appropriate settings.

New subparagraph (c) establishes the authority of Immigration Judges to hold telephonic hearings. Although the proposal is meant to be applicable nationwide, *Purba v. INS*, 884 F.2d 761 (9th Cir. 1988), holds that telephonic deportation hearings may only be conducted with the consent of the parties. This is in conflict with the proposed regulation, which permits telephonic hearings to be conducted at the discretion of the Immigration Judge. The Immigration Judges in the geographical confines the Ninth Circuit currently follow *Purba* and will continue to follow the law of the circuit if the proposed rule is finally adopted. In all areas outside the Ninth Circuit the regulation would be effective and telephonic hearings would be conducted when an Immigration Judge, in his or her sound discretion, deems it appropriate. Subparagraph (c) also codifies the authority of Immigration Judges to hold video teleconferenced hearings. This practice increases administrative efficiency.

The proposed rule also makes minor technical changes in subparagraph (a) to conform with the *in absentia* provisions of 8 U.S.C. 1252.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of Executive Order No. 12291 and this rule has no Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order No. 12612. The rule meets the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order No. 12778.

List of Subjects in 8 CFR Part 3

Administrative practice and procedure, Immigration and Naturalization Service, Organization and functions (government agencies).

Accordingly, 8 CFR part 3 is proposed to be amended as set forth below:

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

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

Authority: 5 U.S.C. 301; 8 U.S.C. 1103, 1252 note, 1252b, 1362; 28 U.S.C. 509, 510, 1746; Section 2, Reorganization Plan No. 2 of 1950, 3 CFR, 1949-1953 Comp., p. 1002.

2. Section 3.25 is revised to read as follows:

§ 3.25 Waiver of presence of the parties.

(a) *Good cause shown.* The Immigration Judge may, for good cause, waive the presence of a respondent/applicant at the hearing where the alien is represented or where the alien is a minor child at least one of whose parents or whose legal guardian is present. In addition, *in absentia* hearings may be held pursuant to sections 1252(b) and 1252(c) of Title 8, United States Code with or without representation.

(b) *Stipulated request for order; waiver of hearing.* Notwithstanding any other provision of this chapter, upon the written request of the respondent/applicant and upon concurrence of the government, the Immigration Judge shall not hold a hearing and shall enter an order of deportation or exclusion on the written record if the Immigration Judge determines, upon a review of the charging document, stipulation document, and supporting documents, if any, that a represented respondent/applicant voluntarily entered into a stipulated request for an order of deportation or exclusion. The stipulation document shall include:

(i) An admission of all factual allegations contained in the charging document to be true and correct as written;

(ii) A concession of deportability or excludability as charged;

(iii) A statement that the respondent/applicant makes no application for relief from deportation or exclusion, including, but not limited to, voluntary departure, asylum, adjustment of status, registry, de novo review of a termination of conditional resident status, de novo review of a denial or revocation of temporary protected status, relief under 8 U.S.C. 1182(c), suspension of deportation, or any other possible relief under the Act;

(iv) A designation of a country for deportation under 8 U.S.C. 1253(a);

(v) A concession to the introduction of the written statements of the respondent/applicant as an exhibit to the record or proceedings;

(vi) A statement that the attorney/representative has explained the consequences of the stipulated request to the respondent/applicant and that the respondent/applicant enters the request voluntarily, knowingly and intelligently;

(vii) A statement that the respondent/applicant will accept a written order for his or her deportation or exclusion as a final disposition of the proceedings; and

(viii) A waiver of appeal of the written order of deportation or exclusion.

(2) The stipulated request and required waivers shall be signed on behalf of the government and by both the respondent/applicant and his or her attorney or other representative qualified under part 292 of this chapter. The attorney or other representative shall file a Notice of Appearance in accordance with § 3.16(a) of this part.

(c) *Telephonic or video teleconferenced hearing.* An Immigration Judge may conduct a telephonic or video teleconferenced hearing in any proceeding under 8 U.S.C. 1226, 1252, or 1256.

Dated: May 1, 1994.

Janet Reno,

Attorney General.

FR Doc. 94-11314 Filed 5-12-94; 8:45 am

BILLING CODE 4410-01-M

8 CFR Part 3

[Order No. 1872-94]

Executive Office for Immigration Review: Appeal Procedure

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule establishes an alternative procedure for filing proof of fee payment for appeals of Immigration Judge decisions to the Board of Immigration Appeals (Board). It provides added flexibility in the appeal filing procedure by permitting a respondent/applicant to certify that a fee was forwarded to the Immigration and Naturalization Service (Service). It further allows thirty (30) days from the date of filing the appeal for the respondent/applicant to submit a fee receipt. It also provides that failure to present proof of payment of fee will cause the appeal to be deemed improperly filed.

DATES: Written comments must be received on or before July 12, 1994.

ADDRESSES: Please submit written comments in triplicate to Gerald S. Hurwitz, Counsel to the Director, Executive Office for Immigration

Review, suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041.

FOR FURTHER INFORMATION CONTACT:

Gerald S. Hurwitz, Counsel to the Director, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, Telephone: (703) 305-0470.

SUPPLEMENTARY INFORMATION: This proposed rule provides a flexible alternative to the existing procedure of filing appeals of Immigration Judge decisions before the Board of Immigration Appeals. The current procedure mandates that a timely filed notice of appeal include a copy of a fee receipt or a fee waiver application. The proposed alternative procedure would allow the filing of an appeal of the Immigration Judge's decision to the Board with a certification stating that the fee has been forwarded to the Service. A sample certification follows the proposed rule. The respondent/applicant would then have thirty (30) days from the date of filing the notice of appeal to obtain and file a copy of the fee receipt. This alternate procedure may be particularly useful when the respondent/applicant is located a great distance from a Service office or is in a custodial setting. This alternate procedure provides additional flexibility for such a person by creating a thirty (30) day window of time, in which he or she may submit proof of payment of the appropriate fee for an appeal. It also preserves the current appeal filing deadline and fee filing procedures.

This rule does not have a significant adverse economic impact on a substantial number of small entities. 5 U.S.C. 605(b).

This rule was not reviewed by the Office of Management and Budget pursuant to Executive Order No. 12866. Nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order No. 12612. The rule meets the applicable standards provided in section 2(a) and 2(b)(2) of Executive Order No. 12778, Civil Justice Reform. If adopted, this proposed rule will not: (1) Preempt any state or local laws, regulations or policies; (2) have any retroactive effect or require administrative proceedings before parties may file suit challenging the provisions of this rule.

List of Subjects in 8 CFR Part 3

Administrative practice and procedure, Immigration, Organization and functions (Government agencies).

Accordingly, it is proposed that chapter I of title 8 of the Code of Federal Regulations be amended as follows:

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

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

Authority: 5 U.S.C. 301; 8 U.S.C. 1103, 1252 note, 1252b, 1362; 28 U.S.C. 509, 510, 1746; Sec. 2, Reorg. Plan No. 2 of 1950, 3 CFR, 1949-1953 Comp., p. 1002.

§ 3.31 [Amended]

2. Section 3.31 is amended by adding the phrase "Except as provided by 8 CFR 3.38," at the beginning of paragraph (b), and revising the word "All" to read "all".

3. Section 3.38 is amended by redesignating paragraphs (c) and (d) as paragraphs (d) and (e) and by adding a new paragraph (c) and an appendix to the section to read as follows:

§ 3.38 Appeals.

(c) A notice of appeal must be accompanied by a fee receipt from the Service, or by an application for a waiver of fees except that an appeal may be filed within applicable time limits with the appropriate Office of the Immigration Judge, accompanied by certification that the correct fee has been forwarded to a Service office authorized to accept fees pursuant to 8 CFR 103.7(a). The respondent/applicant must subsequently file the fee receipt with the appropriate Office of the Immigration Judge within thirty (30) days of the date of filing the notice of appeal. If a fee receipt is not filed within thirty (30) days of the date of filing the notice of appeal, the appeal will not be deemed properly filed and the decision of the Immigration Judge shall be final to the same extent as though no appeal had been taken.

Appendix to § 3.38

Sample Certification

Certification of Fee

I certify that pursuant to 8 CFR 3.38 I have, as of this date, forwarded/paid the fee required at 8 CFR 103.7 to the Immigration and Naturalization Service. Receipt of the payment of this fee will be filed with the Office of the Immigration Judge within thirty (30) days of the date of filing of this appeal. I further acknowledge that my failure to file the fee receipt within thirty (30) days will result in this appeal being deemed improperly filed and the decision of the Immigration Judge shall be final to the same extent as though no appeal had been taken.

Alien's Name

"A" Number

Signature of Alien and/or Counsel

Date

Dated: May 1, 1994.

Janet Reno,

Attorney General.

[FR Doc. 94-11313 Filed 5-12-94; 8:45 am]

BILLING CODE 4410-01-M

Immigration and Naturalization Service

8 CFR Part 245a

[INS No. 1321-91; AG Order No. 1870-94]

RIN 1115-AC18

Procedure for Automatic Termination of Temporary Resident Status upon Final Order of Deportation or Exclusion

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend existing regulations by providing, in specified circumstances, for the automatic termination of temporary resident status under provisions of the Immigration and Nationality Act (Act) upon the entry of a final order of deportation or exclusion. This amendment is necessary to avoid possible delays in, or termination of, pending deportation and exclusion proceedings that would result if the Immigration and Naturalization Service (INS or Service) were required to follow the existing procedures for the termination of temporary resident status. This amendment would permit the expeditious deportation and removal of aliens who hold temporary resident status, but who have been convicted of an aggravated felony, or who have been found to be ineligible for admission into the United States for reasons that are not waivable. This rule would also prevent the release of dangerous criminal liens into society during deportation or exclusion proceedings.

DATES: Written comments must be submitted on or before July 12, 1994.

ADDRESSES: Please submit comments in triplicate to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, room 5307, 425 I Street, NW., Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT: Gerald S. Hurwitz, Counsel to the Executive Director, Executive Office for

Immigration Review, suite 2400, Skyline Tower, 5107 Leesburg Pike, Falls Church, Virginia 22041, telephone number (703) 305-0470, or David Dixon, Appellate Counsel, Immigration and Naturalization Service, 425 I Street, NW., room 6100, Washington, DC 20536, telephone number (703) 756-6257.

SUPPLEMENTARY INFORMATION: This proposed regulation is necessary in order to correct a procedural anomaly that has resulted in the release of aggravated felons who hold temporary resident status and has impaired the ability of the INS to deport those who, after obtaining temporary resident status, commit deportable acts.

The Board of Immigration Appeals (BIA) held in *Matter of Medrano*, Interim Decision #3138 (BIA September 10, 1990), that the status of a lawful temporary resident alien who commits a deportable offense must be terminated pursuant to § 245A(b)(2) of the Act (8 U.S.C. 1255a(b)(2)), and in accordance with 8 CFR 245a.2(u), before commencement of deportation proceedings. By following this precedent, INS is unable to detain deportable aliens, such as those who commit aggravated felonies, who hold temporary resident status, without first stripping the alien of his or her temporary resident status.

Medrano's interpretation of 8 CFR 245a.2(u)(2) confronts the INS with conflicting obligations. On the one hand, § 242(a)(2)(A) of the Act (8 U.S.C. 1252(a)(2)(A)) requires the INS to detain any alien convicted of an aggravated felony and § 242 of the Act generally establishes the procedure for apprehension and deportation of aliens. On the other hand, *Medrano* stands as an obstacle to detaining and deporting such individuals until the alien's temporary residency status is revoked.

Medrano and 8 CFR 245a.2(u)(2) also grant more procedural rights to temporary residents—who must first have their status revoked—than to lawful permanent residents, who may simply be deported upon the commission of an aggravated felony, without first terminating their status.

The proposed amendment harmonizes with other provisions of 8 CFR 245a.2(u)(1), which it will amend. This section currently provides, in part:

The status of an alien lawfully admitted for temporary residence under section 245(a)(1) of the Act may be terminated at any time in accordance with section 245A(b)(2) of the Act. It is not necessary that a final order of deportation be entered in order to terminate temporary resident status.

Accordingly, the existing regulation contemplates that institution of

deportation proceedings may precede termination of resident status.

The proposed regulation will correspond to regulations currently in force with respect to Special Agricultural Workers. Special Agricultural Workers' temporary resident status is automatically revoked upon the entry of a final order of deportation or exclusion. 8 CFR 210.4(d) (promulgated pursuant to 8 U.S.C. 1160(a)(3)).

Moreover, in other contexts, courts have recognized that deportation entails loss of lawful resident status. See, e.g., *Marti-Xiques v. INS*, 741 F.2d 350 (11th Cir. 1984); *Matter of Diaz-Chambrot*, 19 I. & N. Dec. 674 (BIA 1988) at 675.

Thus, in order to avoid any delay or termination of deportation or exclusion proceedings that may be caused by invoking the termination procedure prescribed in § 245a.2(u)(2)(i), and to permit the expeditious deportation and removal of aggravated felons as required by sections 242A(d) and 242(i) of the Act, the INS proposes to add a new paragraph (ii) to § 245a.2(u)(2), to provide for the institution of deportation or exclusion proceedings and the automatic termination of lawful resident status upon the entry of a final order of deportation or exclusion in cases where: (1) the ground for deportation arises under section 241(a)(2)(A)(iii) of the Act (8 U.S.C. 1251(a)(2)(A)(iii)) (convicted aggravated felons); or (2) the ground of deportability arises after the acquisition of temporary resident status, and that ground may not be waived pursuant to section 245A(d)(2)(B)(ii) of the Act (8 U.S.C. 1255a(d)(2)(B)(ii)) (relating to certain crimes, drug offenses, national security, and likelihood of becoming a public charge); or (3) the alien seeks admission, and the ground of inadmissibility may not be waived pursuant to section 245A(d)(2)(B)(ii) of the Act.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this proposed rule does not have a significant adverse economic impact on a substantial number of small entities. It will affect certain individual aliens, not small entities. This is not a significant rule within the meaning of section 3(f) of Executive Order 12866, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

List of Subjects in 8 CFR Part 245a

Aliens, Immigration, Reporting and recordingkeeping requirements.

Accordingly, it is proposed that chapter I of title 8 of the Code of Federal Regulations be amended as follows:

PART 245a—ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED FOR LAWFUL TEMPORARY OR PERMANENT RESIDENT STATUS UNDER SECTION 245A OF THE IMMIGRATION AND NATIONALITY ACT

1. The heading for part 245a is revised to read as set forth above.

2. The authority citation for part 245a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1255a, and 1255a note.

3. Section 245a.2(u)(2) is amended by:

- Designating the existing text of paragraph (u)(2) as paragraph (u)(2)(i);
- Adding a new heading and revising the first sentence; and
- Adding a new paragraph (u)(2)(ii), to read as follows:

§ 245a.2 Application for temporary residence.

* * * * *

(u) Termination of temporary residence status.

* * * * *

(2) *Procedure*—(i) *Termination by the Service.* Except as provided in paragraph (u)(2)(ii) of this section, termination of an alien's temporary resident status under paragraph (u)(i) of this section will be made before instituting deportation proceedings against a temporary resident alien and only on notice sent to the alien by certified mail directed to his or her last known address, and to his or her representative, if any. * * *

(ii) *Termination upon entry of final order of deportation or exclusion.* (A) The Service may institute deportation or exclusion proceedings against a temporary resident alien without regard to the procedures set forth in paragraph (u)(2)(i) of this section:

(1) If the ground for deportation arises under section 241(a)(2)(A)(iii) of the Act; or

(2) If the ground for deportation arises after the acquisition of temporary resident status, and the basis of such ground of deportation is not waivable pursuant to section 245A(d)(2)(B)(ii) of the Act; or

(3) If the ground for exclusion arises after the acquisition of temporary resident status and is not waivable pursuant to section 245A(d)(2)(B)(ii) of the Act.

(B) In such cases, the entry of a final order of deportation or exclusion automatically will terminate an alien's

temporary resident status acquired under section 245A(a)(1) of the Act.

Dated: April 29, 1994.

Janet Reno,

Attorney General.

[FR Doc. 11312 Filed 5-12-94; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 54 and 91

[Docket No. 93-070-1]

Inspection and Handling of Livestock for Exportation

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the "Inspection and Handling of Livestock for Exportation" regulations to provide that United States origin health certificates include all test results, certifications, or other statements required by the foreign country of destination. This action appears necessary to ensure that the origin health certificate contains all of the information required by the foreign country of destination. We are also proposing to amend the requirements concerning scrapie for sheep and goats intended for export. This action would clarify the regulations and make the terminology used in the export regulations consistent with that used in our domestic scrapie regulations. We are also proposing to revise one definition in the domestic scrapie regulations to make the definitions in those regulations consistent with each other.

DATES: Consideration will be given only to comments received on or before July 12, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 93-070-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Najam Faizi, Senior Staff Veterinarian, Import-Export Animals Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA, room 762, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20762, (301) 436-8383.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 91, "Inspection and Handling of Livestock for Exportation" (referred to below as the regulations), prescribe conditions for exporting animals from the United States. The regulations provide, among other things, that all animals intended for exportation to a foreign country, except animals intended for exportation to Mexico or Canada and cattle from Mexico imported into the United States in bond for temporary feeding and return to Mexico, must be accompanied from the State of origin of the export movement to the port of embarkation by an origin health certificate. All animals intended for exportation to Mexico or Canada, except cattle from Mexico imported into the United States in bond for temporary feeding and return to Mexico, must be accompanied from the State of origin of the export movement to the border of the United States by an origin health certificate.

The regulations state that the origin health certificate shall certify that the animals were inspected within the 30 days prior to the date of the movement of the animals for export, and were found to be sound, healthy, and free from evidence of communicable disease and exposure to communicable disease. The origin health certificate, issued by an Animal and Plant Health Inspection Service (APHIS) representative or an accredited veterinarian, must be endorsed by an authorized APHIS veterinarian in the State of origin. The origin health certificate must also include any test results added by the authorized APHIS veterinarian pursuant to 9 CFR 161.3, which allows test results to be added to an origin health certificate after it is issued or signed by an accredited veterinarian. (Because of a typographical error, the reference in part 91 is to "\$ 161.2." As part of this proposed rule, this reference would be corrected.) The origin health certificate must individually identify the animals in the shipment as to species, breed, sex, and age, and, if applicable, must also show registration name and number, tattoo markings, or other natural or acquired markings.

In addition to the information described in the preceding paragraph, a foreign country of destination may

require that its health requirements be added to the origin health certificate. Because these requirements are not imposed by the United States, and may vary from export to export depending on the requirements of the destination country, they are not set out in our regulations. However, unless all information required by a foreign government is included on the origin health certificate, that animal may be refused entry into the foreign country upon export. To help prevent the return of animals to the United States because they were refused entry in another country, we are proposing to amend § 91.3 to require that the origin health certificate include any test results, certifications, or other statements required by the foreign country of destination.

Exportation of Sheep and Goats

The regulations in 9 CFR part 91 also set forth the conditions under which sheep and goats are eligible for exportation with regard to scrapie. Scrapie is a progressive degenerative disease of the central nervous system of sheep and goats. The signs that become manifest may include nervousness, incoordination, slight muscular tremors, visible weight loss, lack of luster in the animal's wool, and itching. Infected animals become debilitated and die.

The regulations in §§ 91.6(a)(3) and 91.8(a) provide that a goat or sheep shall not be exported if it is affected with or exposed to scrapie; if it originated from, or has been on, any premises which then were infected or source flock premises; if it is the progeny, sire or dam, or full or half brother or sister of any animal found to be affected with scrapie; or if it was moved from premises located in an area quarantined for scrapie.

Under the current regulations, infected premises are those on which an animal has been found to be infected with scrapie, and source flock premises are those premises from which an affected animal was moved within 18 months or less prior to showing signs of scrapie.

When the 18-month time period was established for source flocks, existing biological evidence indicated that the incubation period for scrapie was less than 18 months. Therefore, flocks from which an affected animal was moved more than 18 months prior to showing signs of scrapie were not considered to be at risk from the scrapie-affected animal. However, evidence now available indicates that scrapie develops more slowly than previously thought, with an incubation period that could last for years, and that averages more

than 18 months. Therefore, a flock from which a sheep or goat was moved more than 18 months prior to showing signs of scrapie could be at risk from the affected animal. We are therefore proposing to amend §§ 91.6 and 91.8 by removing footnote 4, which refers to source flock premises as those premises from which an affected animal was moved within 18 months or less prior to showing signs of scrapie, and to define "source flock" as defined below.

We are proposing to amend §§ 91.6 and 91.8 to prohibit the exportation of scrapie positive animals and all animals from infected flocks, source flocks, and trace flocks, as defined in both 9 CFR part 54 (which describes the Voluntary Scrapie Flock Certification Program in place in the United States) and 9 CFR part 79 (which imposes interstate movement restrictions for sheep and goats). We are also proposing to prohibit the exportation of exposed animals, as defined in part 79, and to amend the definition of *scrapie-exposed animals* in part 54 to update it and make it consistent with the definition of *exposed animal* in part 79. The definitions of *exposed animal*, *infected flock*, *scrapie-positive animal*, *source flock*, and *trace flock*, as set forth in part 79 and part 54 (except for *exposed animal*), are as follows:

Exposed animal. Any animal which has been in the same flock at the same time within the previous 60 months as a scrapie-positive animal, excluding limited contacts. Limited contacts are contacts between animals that occur off the premises of the flock, and do not occur during or immediately after parturition for any of the animals involved. Limited contacts do not include commingling (when animals concurrently share the same pen or same section in a transportation unit where there is uninhibited physical contact).

Infected Flock. Any flock in which a Veterinary Services representative or State representative has determined an animal to be a scrapie-positive animal. A flock will no longer be an infected flock after it has completed the requirements of a flock plan.

Scrapie-positive animal. An animal for which a diagnosis of scrapie has been made by the National Veterinary Services Laboratories, United States Department of Agriculture, or another laboratory authorized by the Administrator to conduct scrapie tests in accordance with (9 CFR part 79), through histological examination of central nervous system samples from the animal for microscopic lesions in the form of neuronal vacuoles or spongy degeneration, or by the use of protease-

resistant protein analysis or other confirmation techniques used in conjunction with histological examination.

Source flock. A flock in which a Veterinary Services representative has determined that at least two animals, that were diagnosed as scrapie-positive animals at an age of 54 months or less, were born. In order to be a source flock, the second scrapie-positive diagnosis must be made within 60 months of the first scrapie-positive diagnosis. A flock will no longer be considered a source flock after it has completed the requirements of a flock plan.

Trace flock. A flock in which a Veterinary Services representative has determined that one animal, which was diagnosed as a scrapie-positive animal at an age of 54 months or less, was born.

We consider each of the flocks and animals described in these definitions to pose a risk of transmitting scrapie. The proposed changes to the regulations would both ensure that such animals are not exported, and make the terminology used in part 91 consistent with that used in our domestic scrapie regulations.

We are making several other changes to the export provisions in §§ 91.6(a) and 91.8(a). As noted above, those paragraphs prohibit the export of a sheep or goat if it was moved from premises located in an area quarantined for scrapie, or if it is the progeny, sire or dam, or full or half brother or sister of any animal found to be affected with scrapie.

The prohibition of the export of sheep and goats from premises in a quarantined area is outdated. The provisions that formerly were set forth in part 79 for quarantining areas in which scrapie exists have been replaced in part 54 with a program focusing on individual flocks. Therefore, we are proposing to remove the prohibition, in §§ 91.6(a) and 91.8(a), of the export of sheep and goats from premises in an area quarantined for scrapie.

We are also proposing to make nonsubstantive changes to the wording in §§ 91.6(a) and 91.8(a). We would replace the words "sire or dam" with the word "parent," and would replace the words "full or half brother or sister" with the word "sibling."

Definition of Scrapie-Exposed Animals in 9 CFR part 54

As noted above, the definition of *scrapie-exposed animals* in part 54 differs from the definition of *exposed animals* in part 79. The definition in part 54 reads as follows:

Scrapie-exposed animals. Animals, other than affected or bloodline animals, in a flock in which an affected animal

has been diagnosed by a Veterinary Services representative or state representative. Animals in the flock are no longer considered exposed after they are destroyed or upon the flock's release from surveillance by state animal health officials.

This definition is outdated and does not reflect current practice. For instance, we no longer conduct a bloodline program, nor is surveillance conducted under the current voluntary flock certification program. The definition of *exposed animal* in part 79 (set forth above) was published as part of the current program, and does reflect current practice. Therefore, we are proposing to amend § 54.1 to remove the definition of *scrapie-exposed animals* and to add the same definition of *exposed animal* that appears in § 79.1.

Executive Order 12866 and Regulatory Flexibility Act

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

In accordance with 5 U.S.C. 603, we have performed an Initial Regulatory Flexibility Analysis regarding the impact of this proposed rule on small entities. This proposed rule may have a significant economic impact on a substantial number of small entities. However, we do not currently have all the data necessary for a comprehensive analysis of the effects of this rule on small entities. Therefore, we are inviting comments concerning potential impacts. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from implementation of this proposed rule.

Under 21 U.S.C. 105, 113, 120, 121, 612, 613, and 614, the Secretary of Agriculture is authorized to promulgate regulations to require inspection and certification of animals intended for export from the United States, and to take other measures to prevent the exportation of diseased livestock.

Under this proposed rule, we would require that the origin health certificate required for animals exported from the United States include any test results, certifications, or other statements required by the foreign country of destination. Under this proposed rule, we would also revise the export regulations in §§ 91.6(a)(3) and 91.8(a) to make them consistent with the regulations in 9 CFR parts 54 and 79 regarding the Voluntary Scrapie Flock Certification Program.

We anticipate the proposed changes involving certification will have little or no impact on small domestic exporters. In order for exporters to sell their animals abroad, the animals must meet the import requirements of the country of destination. Therefore, it is in the exporter's interest, even under the current regulations, to ensure that those requirements are met. The proposed change would require only that the origin health certificate include all test results, certifications, or other statements required by the country of destination. However, estimates of the number of animals and the number of small entities that would be affected, and the potential costs to exporters, are not available.

The proposed changes concerning sheep and goats with regard to scrapie would affect some producers. Under the current regulations in part 91, sheep and goats from source flock premises may not be exported, and source flock premises are considered those from which an animal affected with scrapie was moved within 18 months or less prior to showing signs of scrapie.

Under the proposed regulations, the export of sheep and goats from source flocks would continue to be prohibited, but the meaning of "source flock" would be revised to mean a flock in which at least two animals were diagnosed as scrapie-positive animals at an age of 54 months or less, provided the second diagnosis was made within 60 months of the first, and provided the requirements of a flock plan have not been completed. This change would make the regulations more restrictive, and could increase the number of animals prohibited exportation because they originated in a source flock. However, as of September 1993, there were only 8 source flocks in the United States.

Although the proposed change would apply to both sheep and goats, at present the number of goats being exported is minimal.

There are approximately 92,500 sheep farms in the United States, with approximately 11 million sheep. The large majority of these are small entities. Ninety-nine percent of the sheep farms in this country each have annual sales totalling less than \$500,000, and approximately 77,000 have fewer than 100 sheep. In 1992, there were approximately 830,000 sheep exported from the United States.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires

intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

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

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579-0020.

List of Subjects

9 CFR Part 54

Animal diseases, Goats, Indemnity payments, Sheep.

9 CFR Part 91

Animal diseases, Animal welfare, Exports, Livestock, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR parts 54 and 91 would be amended as follows:

PART 54—CONTROL OF SCRAPIE

1. The authority citation for part 54 would continue to read as follows:

Authority: 21 U.S.C. 111, 114, 114a, 134a-134h; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 54.1 would be amended by removing the definition of *scrapie-exposed animals* and by adding, in alphabetical order, a definition of *exposed animal* to read as follows:

§ 54.1 Definitions.

* * * * *

Exposed animal. Any animal which has been in the same flock at the same time within the previous 60 months as a scrapie-positive animal, excluding limited contacts. Limited contacts are contacts between animals that occur off the premises of the flock, and do not occur during or immediately after parturition for any of the animals involved. Limited contacts do not include commingling (when animals concurrently share the same pen or same section in a transportation unit where there is uninhibited physical contact).

* * * * *

PART 91—INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION

3. The authority citation for part 91 would be revised to read as follows:

Authority: 21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 134f, 136, 136a, 612, 613, 614, 618; 46 U.S.C. 466a, 466b; 49 U.S.C. 1509(d); 7 CFR 2.17, 2.51, and 371.2(d).

§ 91.3 [Amended]

4. In § 91.3, paragraph (a) would be amended by removing “§ 161.2” in the fourth sentence and replacing it with “§ 161.3(k) of this chapter”, and by adding a new sentence at the end of the paragraph to read as follows: “The origin health certificate shall include all test results, certifications, or other statements required by the foreign country of destination.”

5. In § 91.6, paragraph (a)(3) would be revised as set forth below, and footnote 4 would be removed.

§ 91.6 Goats.

(a) * * *

(3) No goat will be exported if it is a scrapie-positive animal or an exposed animal, as defined in 9 CFR parts 54 and 79, or if it has ever been in an infected flock, source flock, or trace flock, as defined in 9 CFR parts 54 and 79; or if it is the progeny, parent, or sibling of any scrapie-positive animal.

* * * * *

6. In § 91.8, paragraph (a) would be revised to read as follows:

§ 91.8 Sheep.

(a) No sheep shall be exported if it is a scrapie-positive animal or an exposed animal, as defined in 9 CFR parts 54 and 79, or if it has ever been in an infected flock, source flock, or trace flock, as defined in 9 CFR parts 54 and 79; or if it is the progeny, parent, or sibling of any scrapie-positive animal.

* * * * *

§§ 91.6 and 91.8 [Amended]

7. In § 91.6, paragraph (a)(5), and § 91.8, paragraph (a)(2), footnote 5 and the references to footnote 5 would be redesignated as footnote 4.

Done in Washington, DC, this 9th Day of May, 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94-11677 Filed 5-12-94; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 451

[Docket No. EE-RM-94-301]

Renewable Energy Production Incentives

AGENCY: Office of Energy Efficiency and Renewable Energy, DOE.

ACTION: Notice of proposed rulemaking and public hearing and request for public comment.

SUMMARY: The Department of Energy (DOE) Office of Energy Efficiency and Renewable Energy (EE) today proposes a rule to implement a program in response to the requirements of section 1212 of the Energy Policy Act of 1992 to make incentive payments to qualified renewable energy facilities. The proposed rule covers application procedures, qualification requirements, calculation of incentive payments, and administrative remedies.

DATES: Written comments on the proposed rule (12 copies) must be received by the Department on or before July 12, 1994. A public hearing will be held on June 16, 1994, beginning at 9:30 a.m. at the address listed below. Requests to speak must be received by the Department on or before June 9, 1994. The length of each oral presentation is limited to 10 minutes.

ADDRESSES: All written comments (12 copies), as well as requests to speak at the public hearing are to be submitted to: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE-10/REPI NOPR, Docket No. EE-RM-94-301, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-3012. FAX comments will not be accepted. The public hearing will be held at the U.S. Department of Energy, Forrestal Building, room 1E-245, 1000 Independence Avenue, SW., Washington, DC 20585. Copies of the transcript of the public hearing and public comments received may be read at the DOE Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E-190, 1000 Independence Avenue, SW., Washington, DC, 20585, (202) 586-6020 between the hours of 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays. A copy of comments concerning information collection requirements of the proposed rule should also be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the

Department of Energy, 725 17th Street, NW., Washington, DC, 20503.

FOR FURTHER INFORMATION CONTACT:

Kurt Klunder, Office of Energy Efficiency and Renewable Energy, Mail Station EE-10, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-4564.

Josephine B. Patton, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC-72, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1212 of the Energy Policy Act of 1992, 42 U.S.C. 13317, requires the Department of Energy to make, subject to the availability of appropriations, incentive payments to the owners or operators of qualified renewable energy facilities for the production and sale of electric energy from certain renewable energy sources. With certain exceptions, qualified renewable energy facilities are renewable energy conversion facilities (solar, wind, geothermal, or biomass) owned by States, subdivisions of States, or nonprofit electrical cooperatives that generate electric energy for sale. The goal of the incentive program is to advance the use of renewable energy conversion systems in the United States, particularly those systems that use emerging technologies.

The payment rate begins at 1.5 cents per kilowatt-hour, adjusted for fiscal year 1994 inflation over fiscal year 1993, for energy produced in fiscal year 1994. For energy produced in subsequent years, payment rates will be similarly adjusted annually to account for inflation. Payments may be made for 10 years only to owners or operators of qualified facilities first put in service during the period beginning on October 1, 1993, and ending on September 30, 2003.

The stated purposes of title XII of the Energy Policy Act of 1992, of which section 1212 is a part, are promotion of: (1) increases in the production and utilization of energy from renewable energy resources; (2) further advances of renewable energy technologies; and (3) exports of United States renewable energy technologies." 42 U.S.C. 13311.

Section 1212 appears to be complementary to sections 1914 and 1916 of the Energy Policy Act of 1992. Section 1914 amended the Internal Revenue Code to provide a tax credit of 1.5 cents per kilowatt-hour adjusted for inflation for electricity produced from

wind or from biomass derived from organic matter grown exclusively for use in generating electricity. 26 U.S.C. 45. Section 1916 amended the Internal Revenue Code to make permanent the energy investment tax credit for non-utility investors in solar and geothermal property. 26 U.S.C. 48(a)(2). Sections 1914 and 1916 are designed to assist in making certain emerging renewable energy technologies cost competitive. Section 1212 appears to have a similar objective with regard to State instrumentalities and nonprofit electric cooperatives neither of which can benefit from tax credits because they do not pay Federal income taxes.

II. Description of Proposed Rule

Proposed Section 451.1

Proposed § 451.1 defines the purpose and scope of part 451 as setting policies and procedures governing the administration of the renewable energy production incentive program and the process for the payment of incentives. This proposed section states that determinations with regard to incentive payments are not subject to the Department's general financial assistance regulation in 10 CFR part 600. Those regulations deal with grants and cooperative agreements that are awarded to stimulate assistance recipients to undertake certain future activities with Federal funds. In contrast, the incentive payments under section 1212 are a reward for activities that have already taken place and there is no stated restriction with regard to what the recipient does with the Federal funds received.

Proposed Section 451.2

Proposed § 451.2 sets forth the definitions for part 451. The first defined term is "closed-loop biomass" which is based on the definition of the same term in section 1914. For reasons discussed in greater detail below, closed-loop biomass energy facilities, in contrast to other eligible biomass energy facilities, would receive priority payment in the event that Congress has not appropriated enough funds to make all incentive payments in any given fiscal year.

Proposed § 451.2 defines the term "fiscal year" as the standard Federal fiscal year which runs from October 1 of any given year to September 30 of the next year. Section 1212 refers to fiscal years, but does not provide a definition. In the absence of any legislative history to the contrary, Congress is assumed to have intended use of the standard Federal fiscal year.

Proposed § 451.2 defines the term "nonprofit electrical cooperative," which is one category of eligible owners named in section 1212. The proposed definition is based on the provisions of the Internal Revenue Code dealing with tax exempt organizations and on information provided by the National Rural Electric Cooperative Association. The Department invites comments on the adequacy of this definition and related suggestions for editing.

Although section 1212 does not use the term "renewable energy source," or any other term, to characterize the eligible energy sources, the Department has found it useful at various points in the proposed rule. The definition is based on the list of energy sources in paragraph (b) of section 1212 which refers to "solar, wind, biomass, or geothermal energy." 42 U.S.C. 13317(b). It is also based on the list of excepted (and therefore ineligible) energy sources in subparagraphs (b)(1) (municipal solid waste) and (b)(2) (certain dry steam geothermal energy). 42 U.S.C. 13317(b)(1), (2). Wind and biomass are indirect forms of solar energy. The specification of those two indirect forms as well as the word "solar" suggests that Congress meant the word "solar" to include only direct forms of solar energy, namely, solar heat (concentrated solar insulation for a solar thermal electric facility) and solar light (concentrated or unconcentrated solar insulation for a solar photovoltaic electric facility). That reading is supported by the facts with regard to indirect forms of solar energy. Indirect forms of solar energy other than wind and biomass (e.g., hydropower) are either fully competitive with fossil fuels without need of an incentive payment or are at a development stage such that an incentive payment could not make them cost competitive with fossil fuels.

Proposed § 451.2 defines the term "renewable energy facility" which appears in section 1212. The key part of the definition is the reference to "a system or an integrated set of components" which makes it clear that the facility is mostly equipment such as heat exchangers or turbines and that the facility does not include the land on which it is located. In addition, for geothermal facilities it does not include the geothermal field, and for biomass facilities it does not include the biomass farm. The proposed definition also omits any reference to equipment for transmission or use of electricity because the text of paragraph (b) of section 1212 which defines the term "qualified renewable energy facility," does not state that such a facility must include such equipment. It is important

to note that the definition refers to electric energy "in whole or in part" from a renewable energy source. That language takes account of the likelihood that some facilities will produce electric energy in part from a non-renewable energy source such as fossil fuel.

Finally, proposed 451.2 defines the term "State" which is not defined in the text of section 1212. However, given the above-quoted stated purpose of title XII of the Energy Policy Act of 1992, it is reasonable to conclude that Congress meant for incentive payments to be available for power generation in any of the 50 States, the District of Columbia, Puerto Rico, and any other territory or possession of the United States. This qualification is explicitly set forth in proposed § 451.4(g).

Proposed Section 451.3

Proposed § 451.3 deals with who is eligible to apply. Consistent with section 1212, it states that any owner or operator of a qualified renewable energy facility may apply. However, it qualifies the word "operator" to make clear that such a person or entity must have the written consent of the owner. A contractual provision would suffice, but it is not the only written manifestation of owner consent that would be acceptable. This provision will enable the Department to avoid a situation where both the owner and operator of a facility apply.

Proposed Section 451.4

Proposed § 451.4 answers the question: What is a qualified renewable energy facility? Proposed paragraph (a) tracks section 1212 by providing that various State instrumentalities or a nonprofit electric cooperative must be the owner.

Proposed paragraph (b) clarifies an ambiguity in section 1212 with regard to what constitutes ownership. In light of the possibility that the facilities of nonprofit electric cooperative may be financed, the Department worded proposed paragraph (b) to cover situations in which the cooperative has all rights to the beneficial use of the qualified renewable energy facility, but legal title is held by a financing source for the benefit of the cooperative. The Department invites comments on the adequacy of proposed paragraph (b) in light of experience with the title aspects of financing arrangements.

Proposed paragraph (c) tracks the language of section 1212 by requiring that the electricity generated must be "for sale in, or affecting, interstate commerce among the States." The Department is inclined to interpret the word "sale" to mean a transaction

between two entities, who may be related, involving the transfer of electric energy for consideration. Thus, electric energy generated by an entity for internal use by that entity would not constitute a "sale."

Proposed paragraph (d) restates that only "renewable energy sources" as defined by proposed § 451.2 are covered.

Proposed paragraph (e) lists the types of biomass and geothermal energy sources specifically excluded by section 1212. This paragraph reflects the provisions of section 1212(b)(1) and (2). 42 U.S.C. 13317(b)(1) and (2).

Proposed paragraph (f) tracks the provision of section 1212 which requires that the facility must first be used during the period beginning with October 1, 1993, and ending on September 30, 2003.

In addition, the Department considered inclusion of a requirement that, to be considered qualified for receipt of incentive payments, a facility must be purchased and installed without financial assistance from other federal programs. The requirement was omitted from this proposed rule because of uncertainty regarding the total breadth and form of federal programs that might be applicable to facility design, construction, installation, and operation. The Department will consider this possibility further and invites comments on the advisability of such a requirement.

Proposed Section 451.5

Proposed § 451.5 deals with where and when to apply. Proposed paragraph (a) permits the filing of an application only in response to an annual notice in the *Federal Register*. Issuance of that notice should closely follow enactment of appropriations. Proposed paragraph (b) concerns the initial application. It provides that such an application may be filed in the first fiscal year following that in which electricity eligible for incentive payments is first generated, and that subsequent applications may be filed in the fiscal years following those in which electricity eligible for incentive payments is generated.

Proposed Section 451.6

Consistent with the requirements of section 1212, proposed § 451.6 provides that the Department may only make incentive payments for a 10-fiscal year period to any particular qualified renewable facility.

Proposed Section 451.7

Proposed § 451.7 describes metering requirements which the Department thinks are desirable to promote the

accuracy and veracity of applications for incentive payments. In all cases, the number of kilowatt-hours generated and sold is to be metered. If non-qualifying renewable or non-renewable energy sources as well as qualifying renewable energy sources are used, proposed § 451.7 would not require electrical metering of sources where such is not possible or practical. In such cases, the kilowatt hours attributable to the qualified renewable energy source must usually be calculated from fractions of heat input, or other energy input, from the several sources. Such inputs must be metered, measured, or otherwise quantified from the respective raw energy streams using commonly accepted (and identified) procedures and conversion methodologies.

Proposed Section 451.8

Proposed § 451.8 sets forth application content requirements. Most of the requirements are self-explanatory. However, several of them deserve some discussion to focus them for public comment.

Proposed paragraph (f) would require: "That components and equipment, representing at least 50 percent of the capital cost of the qualified renewable energy facility, were substantially manufactured in a State." This provision is consistent with the purposes of title XII of the Energy Policy Act of 1992. It is modeled on a provision of section 6 of the Renewable Energy and Energy Efficiency Technology Competitiveness Act of 1989, as amended by title XII of the Energy Policy Act of 1992. 42 U.S.C. § 12005(b)(1)(B). Like section 6, it would not exclude entities merely on the basis of foreign ownership. It would promote domestic jobs and production without discriminating against foreign entities that invest in production facilities in the United States.

Proposed paragraphs (g) and (h) would require independently audited and certified statements of the monthly and annual electric energy generated and sold. The content of the certification should be similar to the type of certification supplied by an accounting firm in a company's annual report to shareholders. Paragraph (h) also describes the calculation necessary when the metered number of kilowatt-hours represents electric energy generated from renewable and non-renewable or excluded-renewable energy sources. The proposed requirement for an independently audited and certified statement will minimize the chance of erroneous claims and the need for DOE audits.

Consistent with applicable regulations under the Paperwork Reduction Act, 5 CFR 1320.6(f), proposed paragraph (k) would require a statement agreeing to retain records for a period of three years to provide for prompt access to, or copies of, such records in response to a written request by DOE. DOE is still considering whether the retention period should be the entire ten year period during which incentive payments may be collected. DOE did not propose a longer retention period because the proposed audit and certification requirements would make fraud or mistake unlikely.

Proposed Section 451.9

Proposed § 451.9 describes DOE's procedures for processing applications for incentive payments including the statutory formula for initially calculating the amount due and the adjustment for inflation. DOE is proposing a procedure to deal with the possibility that there could be a shortage of appropriations to make the full incentive payments. The President's annual budget request and Congressional action on that request will precede receipt of the applications in every year. It is therefore unlikely that Congress will appropriate precisely the amount necessary to make the full incentive payments. In the event that the amount appropriated is less than the amount required to make full payments to all qualified applicants, the proposed procedure involves priority first (and, if necessary, pro rata payments) to all owners or operators of solar, wind, geothermal, and closed-loop biomass facilities, and priority second (and, if necessary, pro rata payments) to owners or operators of all other qualified facilities. This procedure favors emerging technologies which are similarly favored by the tax credit provisions of sections 1914 and 1916. These technologies are close to or in early commercialization stages where the incentive payments can help speed the commercialization process. If payments are reduced as a result of a shortage of appropriations, the kilowatt-hours attributable to the shortfall will accrue for payment in succeeding years to the extent that Congress appropriates funds sufficient to allow payment for these accruals together with other eligible electricity production.

Proposed Section 451.10

DOE is proposing an administrative remedy for those aggrieved by the initial decision of the DOE Deciding Official who will be the Assistant Secretary for Energy Efficiency and Renewable Energy. In order to exhaust

administrative remedies, it will be necessary to appeal to DOE's Office of Hearings and Appeals. This procedure has two virtues. It would be less expensive than pursuing a judicial remedy immediately. It would also ensure that DOE has made a record which is appropriate for judicial review in the event a petition for review is filed in a federal court.

III. Regulatory Review

DOE has concluded that this is not a significant regulatory action because it does not meet the criteria which define such actions under Executive Order 12866, 58 FR 51735, and is therefore exempt from regulatory review. Accordingly, no clearance of this proposed rule by the Office of Management and Budget is required.

IV. Review Under the Regulatory Flexibility Act

This proposed rule was reviewed under the Regulatory Flexibility Act of 1980, 5 U.S.C. 601-612, which requires preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities; i.e., small businesses, small organizations, and small governmental jurisdictions. DOE has determined that this proposed rule will not have a significant impact on small entities because the rule directly affects only qualified renewable energy facilities owned by state or local governments or non-profit electrical cooperatives, and such facilities are not deemed small entities.

V. Review Under the Paperwork Reduction Act

New information collection requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501, et seq., and recordkeeping requirements are proposed by this rulemaking. Accordingly, this notice has been submitted to the Office of Management and Budget for review and approval of paperwork requirements. Earlier in this notice, DOE described the application content proposed for use under the rule. The information DOE proposes to collect on the applications for incentive payments is necessary to determine whether the applicant is qualified for payment. The frequency of the information collection is monthly for those entities eligible to apply for incentive payments. It is estimated that less than 40 entities will apply for incentive payments in the first year, growing to less than 200 over a ten year period.

The public reporting burden is estimated to average 25 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and retrieving the collection of information. The collection of information contained in this proposed rule is considered the least burdensome for the Department of Energy's functions to comply with the legal requirements and achieve program objectives. However, comments are requested concerning the accuracy of the estimated paperwork reporting burden, in addition to the proposed record retention requirement discussed above.

VI. Review Under Executive Order 12612

Executive Order 12612, 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 National Government and the States, or in the distribution of power and responsibilities among various levels of Government. If there are sufficient substantial effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing policy action. This proposed rule establishes an incentive program under which state owned renewable energy facilities may qualify for incentive payments based on the amount of electric energy the facility generates using specified renewable sources for sale in, or affecting interstate commerce. The Department has determined that since the generation of electricity is not a primary function of a State, the proposed rule will not have a substantial direct effect on the institutional interests or traditional functions of States.

VII. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency to adhere to certain requirements in promulgating new regulations. These requirements, set forth in section 2(a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation providing clear and certain legal standards for affected legal conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation describes any administrative proceeding to be available prior to judicial review and

any provisions for the exhaustion of administrative remedies. DOE certifies that the proposed rule meets the requirements of section 2(a) and (b)(2) of Executive Order 12778.

VIII. Review Under the National Environmental Policy Act

DOE has determined that promulgation of this proposed rule falls within the procedural rulemaking class, Category A6 of Appendix A to Subpart D, "Categorical Exclusions Applicable to General Agency Actions", of the DOE National Environmental Policy Act (NEPA) regulations. 10 CFR part 1021. It is therefore categorically excluded from preparation of either an Environmental Assessment or an Environmental Impact Statement under the NEPA (42 U.S.C. 4321, et. seq).

IX. Opportunities for Public Comment

A. Written Comment Procedures

Interested persons are invited to participate in this rulemaking by submitting data, views, or comments with respect to the proposed rulemaking.

Twelve copies of written comments should be submitted to the address indicated in the ADDRESSES section of this notice and must be received by the date indicated in the DATES section of this notice. Comments should be identified on the outside of the envelope and on the documents themselves with the designation "REPI NOPR, Docket No. EE-RM-94-301". In the event any person wishing to provide written comments cannot provide twelve copies, alternative arrangements can be made in advance with DOE.

All written comments received will be available for public inspection as part of the administrative record on file for this rulemaking in the Department of Energy Freedom of Information Office Reading Room at the address provided at the beginning of this notice. If informal meetings or other contacts occur during this rulemaking, DOE may add a memorandum to the record on file summarizing what transpired.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information which that person believes to be confidential and which may be exempt by law from public disclosure, should submit one complete copy of the document, as well as two copies from which the information claimed to be confidential has been deleted. DOE reserves the right to determine the confidential status of the information and to treat it according to its determination.

B. Public Hearing

1. Request to Speak Procedures

A public hearing on the proposed rule will be held at the time and place indicated in the DATES and ADDRESSES Sections of this notice. Any person who has an interest in the proposed rule or who is a representative of a group or class of persons that has an interest in the proposed rule may request an opportunity to make an oral presentation. A request to speak at the public hearing should be addressed to the address or phone number indicated at the beginning of this notice. The person making the request should briefly describe his or her interest in the proceedings and, if appropriate, state why the person is a proper representative of the group. The person should also provide a phone number where he or she may be reached during the day. Each person selected to be heard will be notified by DOE as to the approximate time they will be speaking. Twelve copies of the speaker's statement should be submitted at the hearing. In the event any person wishing to testify cannot meet this requirement, alternative arrangements can be made in advance with DOE.

2. Conduct of the Hearing

DOE reserves the right to select persons to be heard at the hearing, to schedule their respective presentations, and to establish procedures governing the conduct of the hearing. The length of each presentation will be limited to 10 minutes or based on the number of persons requesting an opportunity to speak.

A DOE official will preside at the hearing. This will not be a judicial or evidentiary-type hearing. It will be conducted in accordance with 5 U.S.C. 553 and section 501 of the Department of Energy Organization Act, 42 U.S.C. 7191.

Questions may be asked only by those conducting the hearing. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity to make a rebuttal or clarifying statement. The statements will be given in the order in which the initial statements were made and will be subject to time limitations.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made by DOE and made available as part of the administrative record for this rulemaking. It will be on file for inspection at the DOE Freedom of

Information Reading Room at the address indicated at the beginning of this notice.

If DOE must cancel the public hearing, DOE will make every effort to publish an advance notice of such cancellation in the Federal Register. Actual notice of cancellation will also be given to all persons scheduled to speak. The hearing date may be canceled in the event no member of the public requests the opportunity to make an oral presentation.

List of Subjects in 10 CFR Part 451

Electric utilities, Grant programs, Solar energy.

Issued in Washington, DC, on May 9, 1994.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, title 10, chapter II, of the Code of Federal Regulations is proposed to be amended by adding a new part 451 to read as set forth below:

PART 451—RENEWABLE ENERGY PRODUCTION INCENTIVES

Sec.

- 451.1 Purpose and scope.
- 451.2 Definitions.
- 451.3 Who may apply.
- 451.4 What is a qualified renewable energy facility.
- 451.5 Where and when to apply.
- 451.6 What is the duration of incentive payments.
- 451.7 Metering requirements.
- 451.8 Application content requirements.
- 451.9 Procedures for processing applications.
- 451.10 Administrative appeals.

Authority: 42 U.S.C. 7254; 42 U.S.C. 13317.

§ 451.1 Purpose and scope.

(a) The provisions of this part cover the policies and procedures applicable to the determinations by DOE to make incentive payments for electric energy generated in a State and sold by a qualified renewable energy facility, as defined by 42 U.S.C. 13317 and this part.

(b) Determinations to make incentive payments under this part are not subject to the provisions of 10 CFR part 600 and such payments shall not be construed to be financial assistance.

§ 451.2 Definitions.

As used in this part—
Closed-loop biomass means plant matter, other than standing timber, grown for the sole purpose of being used to generate electricity.

Deciding Official means the Assistant Secretary for Energy Efficiency and

Renewable Energy (or any DOE official to whom the authority of the Assistant Secretary may be redelegated by the Secretary of Energy). The duties of the Assistant Secretary may not be sub-delegated without the written approval of the Secretary.

DOE means the Department of Energy. Finance Office means the DOE Office of the Chief Financial Officer (or any office to which that office's authority may be redelegated by the Secretary).

Fiscal year means the Federal fiscal year beginning October 1 and ending on September 30 of the following calendar year.

Nonprofit electrical cooperative means a cooperative association that is treated as tax exempt under section 501(c)(12) of the Internal Revenue Code and that is organized under the laws of any State for the purpose of providing electric service to its members and other customers.

Renewable energy facility means a system or an integrated set of components necessary to generate electric energy in whole or in part from a renewable energy source, including—

- (1) Solar photovoltaic cells which convert sunlight to direct current electricity;
- (2) Solar thermal electric systems which use a fluid heated by the sun to drive a turbine generator;
- (3) Wind energy systems which capture wind energy through aerodynamically shaped blades rotating about a horizontal or vertical axis and drive an alternating current or direct current generator;
- (4) Biomass energy systems which use heat derived from combustion of plant matter or from combustion of gases or liquids derived from plant matter or animal waste or from combustion of gases derived from landfills in order to drive an electric generator; and
- (5) Geothermal systems which use natural heat stored underground in rocks or underground in an aqueous liquid or vapor, whether or not under pressure, in order to drive an electric generator.

Renewable energy source means solar heat, solar light, wind, geothermal, and biomass energy except for exclusions set forth in section 451.4(e) of this part.

State means the District of Columbia, Puerto Rico, and any of the States, territories, and possessions of the United States.

§ 451.3 Who may apply.

Any owner, or operator with the written consent of the owner, but not both, of a qualified renewable energy facility, may apply for incentive payments for electric energy generated

from a renewable energy source and sold.

§ 451.4 What is a qualified renewable energy facility.

In order to be eligible for an incentive payment under this part, a renewable energy facility must meet the following qualifications—

- (a) *Ownership.* The owner must be—
 - (1) A State (or agency, authority, or instrumentality thereof);
 - (2) Any political subdivision of a State (or agency, authority, or instrumentality thereof);
 - (3) Any corporation or association wholly owned, directly or indirectly, by a State or a political subdivision of a State; or
 - (4) A nonprofit electric cooperative.
- (b) *What must be owned.* The owner must have all rights to the beneficial use of the renewable energy facility, and legal title must be held by, or for the benefit of, the beneficial owner.
- (c) *Sales affecting interstate commerce.* The renewable energy facility must generate electric energy for sale in, or affecting, interstate commerce among the States.
- (d) *Type of renewable energy sources.* Except as provided in paragraph (e) of this section, the source of the electric energy for which incentive payments is sought must be solar heat, solar light, wind energy, biomass energy, or geothermal energy.

(e) *Excluded renewable energy sources.* The source of the electric energy for which incentive payments is sought may not be—

- (1) Municipal solid waste which is burned to create heat; or
- (2) A dry steam geothermal reservoir which has—
 - (i) No mobile liquid in its natural state;
 - (ii) Steam quality of 95 percent water, or higher; and
 - (iii) An enthalpy for the total produced fluid greater than or equal to 1200 British thermal units per pound.
- (f) *Time of first use.* The date of the first use of a qualified renewable energy facility must occur during the period beginning with October 1, 1993, and ending on September 30, 2003.

(g) *Location.* The qualified renewable energy facility must be located in a State.

(h) *Location.* The qualified renewable energy facility must be located in a State.

§ 451.5 Where and when to apply.

(a) The owner or operator of a qualified renewable energy facility may file an annual application for incentive payment under this part only in response to an annual notice in the Federal Register inviting applications.

(b) An applicant may file the initial application for incentive payments

under this part in the first fiscal year following that in which electricity generated from the qualified renewable energy facility is first eligible for such payments. Subsequent applications may be filed in the fiscal years following those in which the electricity eligible for incentive payments is generated.

§ 451.6 What is the duration of incentive payments.

DOE may make incentive payments under this part with respect to a qualified renewable energy facility only for a 10-fiscal year period.

§ 451.7 Metering requirements.

The number of kilowatt-hours generated and sold from a qualified renewable energy facility must be measured by a standard metering device that—

- (a) Meets generally accepted industry standards;
- (b) Is maintained in proper working order according to the instructions of its manufacturer; and
- (c) Is calibrated according to generally accepted industry standards.

§ 451.8 Application content requirements.

Except as provided in paragraph (b) of this section, each application for incentive payments under this part must be signed by an authorized executive official and shall provide information showing to the satisfaction of DOE—

- (a) That the applicant is the owner or operator (with the written consent of an authorized executive official of the owner);
- (b) The name of the facility or other official designation by the owner;
- (c) The location of the qualified renewable energy facility and type of renewable energy source;
- (d) The name and telephone number of a point of contact to respond to questions or requests for additional information;
- (e) That the renewable energy facility satisfies the eligibility criteria under section 451.4 of this part and other requirements prerequisite to receipt of incentive payments under this part;
- (f) That components and equipment, representing at least 50 percent of the capital cost of the qualified renewable energy facility, were substantially manufactured in a State;

(g) An independently audited, certified statement of the annual and monthly metered number of kilowatt-hours generated and sold to another entity during the fiscal year and the entity or class of customer to whom the electric energy was sold;

(h) In the case of a renewable energy facility which generates electric energy

(g) An independently audited, certified statement of the annual and monthly metered number of kilowatt-hours generated and sold to another entity during the fiscal year and the entity or class of customer to whom the electric energy was sold;

(h) In the case of a renewable energy facility which generates electric energy

using a fossil fuel, nuclear energy, or other non-qualified energy source, in addition to a renewable energy source, an independently audited, certified statement of the number of kilowatt hours attributable to the renewable energy source, calculated by multiplying the monthly and annual total number of metered kilowatt-hours generated and sold to another entity during the fiscal year by a fraction consisting of the heat input, as measured in British thermal units, received by the working fluid from the renewable energy source divided by the heat input, as measured in British thermal units, received by the working fluid from all energy sources;

(i) The amounts of accrued electric energy by year, if any, for which the applicant previously applied and DOE did not make incentive payments as a result of insufficient appropriations;

(j) Wire transfer payment instructions, if available; and

(k) A statement agreeing to retain records of the independent audit for a period of three years and to provide prompt (no later than 10 calendar days) access to, or copies of, such records in response to a written request by DOE.

§ 451.9 Procedures for Processing Applications.

(a) Upon receipt, each application shall be date and time stamped and DOE shall acknowledge receipt thereof.

(b) DOE may request supplementary information.

(c) DOE may conduct an audit to verify the number of kilowatts claimed to have been generated from renewable energy sources.

(d) Upon evaluating the application and any other available information, DOE shall determine whether the application meets the requirements of this part and, if appropriate, the number of kilowatt-hours to be used in calculating the incentive payment.

(e) *Calculating payments.* Subject to adjustments under paragraphs (f) and (g) of this section, incentive payments under this part to the owner or operator of any qualified renewable energy facility shall be calculated by multiplying the number of kilowatt-hours of electricity generated through the use of renewable energy sources and sold to another entity during the payment period by 1.5 cents per kilowatt-hour.

(f) *Adjustments.* The amount of the incentive payment to any owner or operator under this section shall be adjusted for inflation for each fiscal year beginning after calendar year 1993 in the same manner as provided in section 29(d)(2)(B) of the Internal Revenue Code

of 1986, except that in applying such provisions the calendar year 1993 shall be substituted for calendar year 1979.

(g) If there are insufficient appropriations available to make incentive payments for all approved applications, DOE shall—

(1) On a priority (and if necessary on a pro rata) basis, make incentive payments first with respect to qualified renewable energy facilities using wind, solar, geothermal, and closed-loop biomass technologies;

(2) In the event there are insufficient funds for full incentive payments to applicants other than those specified in paragraph (g)(1) of this section, reduce the amount of incentive payments to these other applicants on a prorated basis by the ratio of appropriated funds remaining after payments under paragraph (g)(1) to the total approved incentive payments for the other applicants; and

(3) Treat the number of kilowatt-hours attributable to the portion of any incentive payment which is reduced under this paragraph as accrued energy that may be combined with energy subsequently produced from the same source for which subsequent application for incentive payment is made.

(h) After calculating the amount of the incentive payment under paragraphs (e) through (g) of this section, the DOE Deciding Official shall then issue a notice of the determination to the applicant—

(1) Approving the application as appropriate for payment and forwarding a copy to the DOE Finance Office with a request to pay;

(2) Setting forth the calculation of the approved amount; and

(3) Stating the amount of accrued kilowatt-hours, if any, and the energy source for same.

(i) If the application does not meet the requirements of this part or some of the kilowatt-hours claimed in the application meriting an incentive payment are disallowed as unqualified, the Deciding Official shall issue a notice denying the application in whole or in part with an explanation of the basis for denial.

§ 451.10 Administrative appeals.

(a) In order to exhaust administrative remedies, an applicant who receives a notice denying an application in whole or in part shall appeal, on or before 30 days from date of the notice issued by the DOE Deciding Official, to the Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, in accordance with the procedures set forth in subpart H of 10 CFR part 205.

(b) If an applicant does not appeal under paragraph (a) of this section, the determination of the DOE Deciding Official shall become final for DOE and judicially unreviewable.

(c) If an applicant appeals on a timely basis under paragraph (a) of this section, the decision and order of the Office of Hearings and Appeals shall be final for DOE.

(d) If the Office of Hearings and Appeals orders an incentive payment, the DOE Deciding Official shall send a copy of such order to the DOE Finance Office with a request to pay.

[FR Doc. 94-11738 Filed 5-12-94; 8:45 am]
BILLING CODE 6450-01-P

FARM CREDIT SYSTEM INSURANCE CORPORATION

12 CFR Part 1403

Privacy Act Regulations

AGENCY: Farm Credit System Insurance Corporation.

ACTION: Proposed rule.

SUMMARY: The Farm Credit System Insurance Corporation (Corporation), by order of the Corporation Board, issues for public comment proposed regulations to implement the requirements of the Privacy Act, 5 U.S.C. 552a, relating to the receipt and processing of requests for Corporation Privacy Act records, requests for amendment of records, fees to be charged, procedures to be followed in processing requests for records, and criminal penalties.

DATES: Comments must be submitted on or before June 13, 1994.

ADDRESSES: Written comments may be mailed (in triplicate) to Mary A. Creedon, Chief Operating Officer, in care of Cindy Nicholson, Farm Credit System Insurance Corporation, McLean, Virginia 22102-0826. Copies of all communications received will be available for examination by interested parties in the offices of the Farm Credit System Insurance Corporation.

FOR FURTHER INFORMATION CONTACT:

Ronald H. Erickson, Privacy Act Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102-0826, (703) 883-4113, TDD (703) 883-4444.

or

Jane M. Virga, Senior Attorney, Office of General Counsel, Farm Credit System Insurance Corporation, McLean, Virginia 22102-0826, (703) 883-4071, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: Pursuant to the Agricultural Credit Act of 1987, which amended the Farm Credit Act of 1971, the Corporation was created, among other things, to manage the Farm Credit Insurance Fund (Insurance Fund) which was established to ensure the timely payment of principal and interest on insured notes, bonds, debentures, and other obligations issued on behalf of the Farm Credit System (FCS) Banks. The Corporation must be appointed as the conservator or receiver for any FCS institution placed into conservatorship or receivership by the Farm Credit Administration (FCA) after January 5, 1993. The Corporation has the authority to examine, as it deems necessary, FCS banks, direct lender associations, and FCS institutions in receivership.

These proposed regulations set forth procedures to be used in requesting access to and responding to requests for Corporation Privacy Act records. As required by 5 U.S.C. 552a(f), the Corporation is notifying the public of the proposed regulations. They provide that all requests for access to Corporation Privacy Act records must be in writing and signed by the subject of the record, adequately describe the material sought, and be sent to the Corporation in McLean, Virginia. The proposed regulations delegate to the Privacy Act Officer authority to make initial determinations concerning requests for access to records. The proposed regulations provide procedures for requests for amendment of records and the appeal of an initial adverse determination on a request to amend a record. The proposed regulations also recite the statutory bases for exemption from disclosure. Finally, the proposed regulations provide a fee structure.

Comments are sought on all the provisions contained in the regulations.

List of Subjects in 12 CFR Part 1403

Archives and records, Bonds, Information, Insurance, Privacy.

For the reasons set out in the preamble, part 1403 of Chapter XIV, title 12 of the Code of Federal Regulations is proposed to be added to read as follows:

PART 1403—PRIVACY ACT REGULATIONS

Sec.

- 1403.1 Purpose and scope.
- 1403.2 Definitions.
- 1403.3 Procedures for requests pertaining to individual records in a record system.
- 1403.4 Times, places, and requirements for identification of individuals making requests.
- 1403.5 Disclosure of requested information to individuals.

- 1403.6 Special procedures for medical records.
- 1403.7 Request for amendment to record.
- 1403.8 Agency review of request for amendment of record.
- 1403.9 Appeal of an initial adverse determination of a request to amend a record.
- 1403.10 Fees for providing copies of records.
- 1403.11 Criminal penalties.

Authority: Secs. 5.58, 5.59 of the Farm Credit Act (12 U.S.C. 2277a-7, 2277a-8); 5 U.S.C. app. 3, 5 U.S.C. 552a.

§ 1403.1 Purpose and scope.

(a) This part is published by the Farm Credit System Insurance Corporation pursuant to the Privacy Act of 1974 (Pub. L. 93-579, 5 U.S.C. 552a) which requires each Federal agency to promulgate rules to establish procedures for notification and disclosure to an individual of agency records pertaining to that person, and for review of such records.

(b) The records covered by this part include:

(1) Personnel and employment records maintained by the Farm Credit System Insurance Corporation not covered by §§ 293.101 through 293.108 of the regulations of the Office of Personnel Management (5 CFR 293.101 through 293.108); and

(2) Other records contained in record systems maintained by the Farm Credit System Insurance Corporation.

(c) This part does not apply to any records maintained by the Farm Credit System Insurance Corporation in its capacity as a receiver or conservator.

§ 1403.2 Definitions.

For the purposes of this part:

(a) *Agency* means the Farm Credit System Insurance Corporation. It does not include the Farm Credit System Insurance Corporation when it is acting as a receiver or a conservator;

(b) *Individual* means a citizen of the United States or an alien lawfully admitted for permanent residence;

(c) *Maintain* includes maintain, collect, use, or disseminate;

(d) *Record* means any item, collection, or grouping of information about an individual that is maintained by an agency including, but not limited to, that person's education, financial transactions, medical history, and criminal or employment history, and that contains that person's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or photograph;

(e) *Routine use* means, with respect to the disclosure of a record, the use of such record for a purpose that is

compatible with the purpose for which it was collected;

(f) *Statistical record* means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by 13 U.S.C. 8;

(g) *System of records* means a group of any records under the control of any agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

§ 1403.3 Procedures for requests pertaining to individual records in a record system.

(a) Any present or former employee of the Farm Credit System Insurance Corporation seeking access to that person's official civil service records maintained by the Farm Credit System Insurance Corporation shall submit a request in such manner as is prescribed by the Office of Personnel Management.

(b) Individuals shall submit their requests in writing to the Privacy Act Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102-0826, when seeking to obtain the following information from the Farm Credit System Insurance Corporation:

(1) Notification of whether the agency maintains a record pertaining to that person in a system of records;

(2) Notification of whether the agency has disclosed a record for which an accounting of disclosure is required to be maintained and made available to that person;

(3) A copy of a record pertaining to that person or the accounting of its disclosure; or

(4) The review of a record pertaining to that person or the accounting of its disclosure. The request shall state the full name and address of the individual, and identify the system or systems of records believed to contain the information or record sought.

§ 1403.4 Times, places, and requirements for identification of individuals making requests.

The individual making written requests for information or records ordinarily will not be required to verify that person's identity. The signature upon such requests shall be deemed to be a certification by the requester that he or she is the individual to whom the record pertains, or the parent of a minor, or the duly appointed legal guardian of the individual to whom the record pertains. The Privacy Act Officer, however, may require such additional

verification of identity in any instance in which the Privacy Act Officer deems it advisable.

§ 1403.5 Disclosure of requested information to individuals.

(a) The Privacy Act Officer shall, within a reasonable period of time after the date of receipt of a request for information of records:

(1) Determine whether or not such request shall be granted;

(2) Notify the requester of the determination, and, if the request is denied, of the reasons therefor; and

(3) Notify the requester that fees for reproducing copies of records may be charged as provided in § 1403.10.

(b) If access to a record is denied because the information therein has been compiled by the Farm Credit System Insurance Corporation in reasonable anticipation of a civil or criminal action proceeding, the Privacy Act Officer shall notify the requester of that person's right to judicial appeal under 5 U.S.C. 552a(g).

(c)(1) If access to a record is granted, the requester shall notify the Privacy Act Officer whether the requested record is to be copied and mailed to the requester or whether the record is to be made available for personal inspection.

(2) A requester who is an individual may be accompanied by an individual selected by the requester when the record is disclosed, in which case the requester may be required to furnish a written statement authorizing the discussion of the record in the presence of the accompanying person.

(d) If the record is to be made available for personal inspection, the requester shall arrange with the Privacy Act Officer a mutually agreeable time in the offices of the Farm Credit System Insurance Corporation for inspection of the record.

§ 1403.6 Special procedures for medical records.

Medical records in the custody of the Farm Credit System Insurance Corporation which are not subject to Office of Personnel Management regulations shall be disclosed either to the individual to whom they pertain or that person's authorized or legal representative or to a licensed physician named by the individual.

§ 1403.7 Request for amendment to record.

(a) If, after disclosure of the requested information, an individual believes that the record is not accurate, relevant, timely, or complete, that person may request in writing that the record be amended. Such a request shall be submitted to the Privacy Act Officer and

shall identify the system of records and the record or information therein, a brief description of the material requested to be changed, the requested change or changes, and the reason for such change or changes.

(b) The Privacy Act Officer shall acknowledge receipt of the request within 10 days (excluding Saturdays, Sundays, and legal holidays) and, if a determination has not been made, advise the individual when that person may expect to be advised of action taken on the request. The acknowledgment may contain a request for additional information needed to make a determination.

§ 1403.8 Agency review of request for amendment of record.

Upon receipt of a request for amendment of a record, the Privacy Act Officer shall:

(a) Correct any portion of a record which the individual making the request believes is not accurate, relevant, timely, or complete and thereafter inform the individual in writing of such correction, or

(b) Inform the individual in writing of the refusal to amend the record and of the reasons therefor, and advise that the individual may appeal such determination as provided in § 1403.9.

§ 1403.9 Appeal of an initial adverse determination of a request to amend a record.

(a) Not more than 10 days (excluding Saturdays, Sundays, and legal holidays) after receipt by an individual of an adverse determination on the individual's request to amend a record or otherwise, the individual may appeal to the Chief Operating Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102-0826.

(b) The appeal shall be by letter, mailed or delivered to the Chief Operating Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102-0826. The letter shall identify the records involved in the same manner they were identified to the Privacy Act Officer, shall specify the dates of the request and adverse determination, and shall indicate the expressed basis for that determination. Also, the letter shall state briefly and succinctly the reasons why the adverse determination should be reversed.

(c) The review shall be completed and a final determination made by the Chief Operating Officer not later than 30 days (excluding Saturdays, Sundays, and legal holidays) from receipt of the request for such review, unless the Chief Operating Officer extends such 30-day period for good cause. If the 30-day

period is extended, the individual shall be notified of the reasons therefor.

(d) If the Chief Operating Officer refuses to amend the record in accordance with the request, the individual shall be notified of the right to file a concise statement setting forth that person's disagreement with the final determination and that person's right under 5 U.S.C. 552a(g)(1)(A) to a judicial review of the final determination.

(e) If the refusal to amend a record as requested is confirmed, there shall be included in the disputed portion of the record a copy of the concise statement filed by the individual together with a concise statement of the reasons for not amending the record as requested. Such statements will be included when disclosure of the disputed record is made to persons and agencies as authorized under 5 U.S.C. 552a.

§ 1403.10 Fees for providing copies of records.

Fees for providing copies of records shall be charged in accordance with §§ 1402.22 and 1402.24 of this chapter.

§ 1403.11 Criminal penalties.

Section 552a(1)(3) of the Privacy Act (5 U.S.C. 552a(i)(3)) makes it a misdemeanor, subject to a maximum fine of \$5,000, to knowingly and willfully request or obtain any record concerning any individual from an agency under false pretenses. Sections 552a(i)(1) and (2) of the Act (5 U.S.C. 552a(i)(1), (2)) provide penalties for violation by agency employees of the Act or regulations established thereunder.

Dated: May 5, 1994.

Nan P. Mitchem,

Acting Secretary to the Board, Farm Credit System Insurance Corporation.

[FR Doc. 94-11464 Filed 5-12-94; 8:45 am]

BILLING CODE 6710-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 94-ASO-8]

Proposed Establishment of Class E Airspace; Thomaston, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Thomaston, Georgia. A Non-Directional Beacon (NDB) Runway 30 Standard Instrument

Approach Procedure (SIAP) for the Thomaston-Upson County Airport has recently been developed. Controlled airspace extending upward from 700 feet above the surface of the earth is needed for instrument flight rules (IFR) operations when utilizing this SIAP. The intended effect of this proposal is to provide adequate Class E airspace for IFR operators executing the developed SIAP. If approved, the operating status of the airport would change from VFR operations to include IFR operations concurrent with publication of the SIAP.

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

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 94-ASO-8, Manager, System Management Branch, ASO-530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, room 530, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305-5200.

FOR FURTHER INFORMATION CONTACT: Robert L. Shipp, Jr., Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305-5591.

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 aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94-ASO-8." The postcard will be date/time stamped and returned to the commenter. All communications received 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 the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, room 530, 1701 Columbia Avenue, College Park, Georgia 30337, 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, Manager, System Management Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320.

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 E airspace at Thomaston, Georgia. The intended effect of this proposal is to provide adequate Class E airspace for IFR operators executing the NDB Runway 30 SIAP to serve the Thomaston-Upson County Airport. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas 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 CFR 71.1 effective September 16, 1993. The Class E airspace designation listed in this document would be published subsequently in the Order. If approved, the operating status of the airport would be changed from VFR operations to include IFR operations concurrent with publication of the SIAP.

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

only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [AMENDED]

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

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

* * * * *

ASO GA E5 Thomaston, GA [New]

Thomaston-Upson County Airport, GA

(lat. 32°57'17"N, long. 84°11'14"W)

Yates NDB

(lat. 32°55'09"N, long. 84°11'14"W)

That airspace extending upward from 700 feet above the surface of the earth within a 6.5-mile radius of the Thomaston-Upson County Airport and within 2.0 miles each side of the 124° bearing from the Yates NDB, extending from the 6.5-mile radius to 7 miles southeast of the NDB.

* * * * *

Issued in College Park, Georgia, on May 2, 1994.

Walter E. Denley,

Acting Manager, Air Traffic Division,
Southern Region.

[FR Doc. 94-11725 Filed 5-12-94; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[IA-23-94]

RIN 1545-AS65

Influencing Legislation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations defining the phrase "influencing legislation" for purposes of the deduction disallowance for certain amounts paid or incurred in connection with influencing legislation. These regulations are necessary because of changes made to the Internal Revenue Code by the Omnibus Budget Reconciliation Act of 1993. These rules will assist businesses and certain tax-exempt organizations in complying with the Internal Revenue Code. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by July 12, 1994. Outlines of topics to be discussed at the public hearing scheduled for Monday, September 12, 1994, at 10 a.m. must be received by Monday, August 22, 1994.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (IA-23-94), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (IA-23-94), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the hearing, Carol Savage, Regulations Unit, 202-622-7190; concerning the regulations, James M. Guiry, 202-622-1585 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed Income Tax Regulations under section 162(e) of the Internal Revenue Code of 1986 (Code), as amended by section 13222 of the Omnibus Budget Reconciliation Act of 1993 (OBRA 1993) (107 Stat. 477). These proposed regulations relate to the definition of

"influencing legislation". On December 27, 1993, a notice of proposed rulemaking (IA-57-93) was published in the *Federal Register* (52 FR 68330) concerning the rules for allocating costs to certain activities, including influencing legislation.

Section 13222 of OBRA 1993 amended section 162(e) of the Code, concerning the deductibility of certain lobbying and political expenditures. As amended, section 162(e)(1)(A) denies a deduction for amounts paid or incurred in connection with influencing legislation. However, certain lobbying expenditures relating to local legislation are not subject to section 162(e)(1)(A). In addition, section 162(e)(1)(D) denies a deduction for any amount paid or incurred in connection with influencing certain federal executive branch officials. Section 162(e)(1)(B) and (C) continues the rules disallowing business deductions for amounts paid or incurred in connection with grassroots lobbying and participation in political campaigns.

Section 162(e)(4)(A) defines "influencing legislation" as "any attempt to influence any legislation through communication with any member or employee of a legislative body, or with any government official or employee who may participate in the formulation of legislation." Section 162(e)(5)(C) provides that "[a]ny amount paid or incurred for research for, or preparation, planning, or coordination of, any activity described in paragraph (1) [including 'influencing legislation'] shall be treated as paid or incurred in connection with such activity." The legislative history of the amendment to section 162(e) indicates that attempts to influence legislation should be distinguished from "mere monitoring" of legislative activities. The legislative history further provides, however, that if a taxpayer monitors legislation and subsequently attempts to influence that or similar legislation, the monitoring activity should generally be treated as "in connection with" the attempt to influence legislation (and, therefore, the costs relating to that monitoring activity would be non-deductible).

Section 4911, relating to the excise tax on certain lobbying activities of certain electing public charities, contains a definition of "influencing legislation" that is essentially identical (as it relates to direct, as opposed to grassroots, lobbying) to the definition of that term in section 162(e)(4)(A). Because of this similarity, these proposed regulations adopt rules that are similar to the rules applicable to direct lobbying communications under § 56.4911-2(b)(1). However, section 162(e) differs

from section 4911 in certain material respects. For example, section 4911(d)(2) contains exceptions to the term "influencing legislation," while section 162(e)(4) does not. Moreover, these proposed regulations under section 162(e) and the regulations under section 4911 differ in some respects due to the nature of charitable organizations described in section 501(c)(3) as compared to, for example, organizations described in section 501(c)(6) and for-profit entities. Accordingly, taxpayers should not infer that these proposed regulations reflect an interpretation of section 4911 or the regulations thereunder.

Discussion of Selected Considerations

The proposed regulations define "influencing legislation" in the same terms as the statutory definition in section 162(e)(4)(A), which requires a "communication" with a government official or employee. With respect to that communication, the proposed regulations adopt rules similar to the rules in the section 4911 regulations. Those rules require that the communication refer to specific legislation and reflect a view on that legislation. This approach was believed to be more appropriate than a general facts and circumstances analysis because it provides reasonably objective criteria for determining whether an attempt to influence legislation has been made.

The proposed regulations also provide rules for determining which activities support a lobbying communication and, therefore, are considered part of the attempt to influence legislation. The principal issue in this regard is whether the mere fact that an activity is used in some manner to support a lobbying communication should be sufficient to treat that activity as part of the attempt to influence legislation. This approach has been referred to by some commentators as a "lookback" rule, in that lobbying activities would be identified solely by "looking back" from the lobbying communication to those activities which supported it. While a lookback approach would appear to be consistent with the legislative history, numerous comments suggested that the administrative burdens associated with a lookback rule could be onerous, particularly if the period of the lookback were long or unlimited. Accordingly, these comments recommended that a lookback rule not be adopted, or, if adopted, that it be limited to a brief period of time. Some of the comments suggested that an appropriate period of time may be six months, by analogy to the limited lookback rule applicable to

certain grassroots lobbying activities under the section 4911 regulations.

Upon consideration of the statute, its legislative history, and the comments received, it was concluded that a lookback rule would not be appropriate. Instead, the proposed regulations provide that only those activities engaged in for the purpose of making or supporting a lobbying communication will be treated as a lobbying activity. This approach strikes an appropriate balance between taxpayers' need for greater contemporaneous certainty regarding whether a particular activity may be treated as a lobbying activity, and Congress' objective of not allowing a deduction for lobbying activities.

Treasury and the IRS view the legislative history on this point as voicing a concern that taxpayers may attempt to abuse an intent- or purpose-based rule by labelling their lobbying activities as "mere monitoring." To protect against that potential abuse, while also providing greater certainty regarding those activities that are less likely to be lobbying activities, the proposed regulations provide presumptions regarding the purpose for engaging in certain activities.

Because the temporal connection between the lobbying communication and the related activity is an important factor in assessing whether the related activity was engaged in for the purpose of supporting the lobbying communication, the presumptions turn to a considerable extent on whether the activity occurred during the taxable year in which the lobbying communication was made or the immediately preceding year. It was believed that the mere closing of the annual accounting period was insufficient, in some cases, to affect this temporal connection, and, consequently, that the presumption would need to operate in more than one annual accounting period. Thus it was believed that the presumption period was an appropriate period during which to treat this temporal connection as indicating (rebuttably) the purpose for engaging in the activity without creating significant difficulties for taxpayers in determining, at the time they file their returns, whether the presumption is likely to operate with respect to that activity.

The proposed regulations also address those supporting activities that are engaged in for both lobbying and non-lobbying purposes. In this connection, some of the comments have suggested that a principal or primary purpose test be adopted. Under this approach, an activity would be treated as influencing legislation if the principal or primary purpose for engaging in that activity was

to make or support a lobbying communication, even if the activity was engaged in for other, non-lobbying purposes as well. Conversely, an activity would be treated as not involving lobbying if the principal or primary purpose for engaging in that activity was a non-lobbying purpose, even though a substantial purpose of the activity was to support lobbying.

After consideration, these suggestions have not been adopted. Instead, the proposed regulations require an activity that is engaged in for both lobbying and non-lobbying purposes to be treated as engaged in partially for a lobbying purpose and partially for a non-lobbying purpose. This division of the activity must result in a reasonable allocation of costs to influencing legislation under § 1.162-28. This allocation approach was adopted rather than a principal or primary purpose test because a principal/primary purpose test does not avoid the necessity of determining the various purposes for engaging in an activity and weighing the relative importance of those purposes, and because it has a substantial "cliff" effect that an allocation approach does not. In those situations where the taxpayer has substantial lobbying and non-lobbying purposes, the results under a principal/primary purpose test would differ dramatically depending on one's views as to which of the purposes is dominant. As a result, Treasury and the IRS have serious concerns whether that test could be administered responsibly and fairly. Finally, nothing in section 162(e) or its legislative history indicates that Congress intended to treat activities engaged in for a substantial lobbying purpose as outside the scope of 162(e).

Consideration was also given to treating an activity as influencing legislation if any substantial purpose for the activity is lobbying. Treasury and the IRS believe it generally would be easier to establish a substantial purpose for engaging in an activity, rather than examining all of the purposes to establish a principal/primary purpose. As a result, this approach would be easier to administer than a principal/primary purpose test. Moreover, a substantial purpose test would appear to be more consistent with Congressional intent to treat as influencing legislation those activities that in fact support a lobbying communication than would a principal/primary purpose test. However, Treasury and the IRS are concerned that this approach could be considerably over-inclusive, in that some activities engaged in predominantly for non-lobbying purposes would be treated entirely as non-deductible lobbying activities. The

IRS invites comments, however, whether this approach would be more appropriate than the rule in the proposed regulations.

Finally, to provide taxpayers greater certainty and relief from burdensome recordkeeping regarding certain relatively minor, recurring activities, the proposed regulations treat certain activities as engaged in solely for non-lobbying purposes.

Explanation of Provisions

Under the proposed regulations, as under section 162(e)(4)(A), "influencing legislation" means any attempt to influence any legislation through a lobbying communication with any member or employee of a legislative body or any government official or employee (other than a member or employee of a legislative body) who may participate in the formulation of the legislation that the taxpayer desires to influence. A lobbying communication is a communication that either (i) refers to specific legislation and reflects a view on that legislation, or (ii) clarifies, amplifies, modifies, or provides support for views reflected in a prior lobbying communication. Specific legislation includes both legislation that has already been introduced in a legislative body and a specific legislative proposal that the taxpayer either supports or opposes.

An attempt to "influence legislation" means the lobbying communication and all activities, such as research, preparation, and other background activities, engaged in for a purpose of making or supporting the lobbying communication. Whether an activity is engaged in for this purpose is determined based on all the facts and circumstances.

If a taxpayer engages in an activity both for a lobbying purpose and for some non-lobbying purpose, the taxpayer must treat the activity as engaged in partially for a lobbying purpose and partially for a non-lobbying purpose. This division of the activity must result in a reasonable allocation of costs to influencing legislation under § 1.162-28. A taxpayer's allocation to influencing legislation of only the incremental amount of costs that would not have been incurred but for the lobbying purpose generally is not reasonable. Similarly, an allocation based on the number of purposes for engaging in an activity without regard to their relative importance also generally is not reasonable.

The proposed regulations presume that if an activity relating to a lobbying communication was engaged in for a non-lobbying purpose prior to the first

taxable year preceding the taxable year in which the lobbying communication is made, that activity was engaged in for all periods solely for that non-lobbying purpose. The Commissioner can rebut this presumption in part (it cannot be rebutted entirely because the presumption only operates if the taxpayer establishes that the activity has been engaged in for a non-lobbying purpose) by establishing that the activity was also engaged in for the purpose of making or supporting a lobbying communication. Thus, for example, if a taxpayer regularly conducts an activity in the ordinary course of its business operations beginning at least two taxable years before the taxable year in which the lobbying communication is made, it would be presumed that the continuing activity was not engaged in to support the lobbying communication, even during the taxable year in which the lobbying communication is made (and the preceding taxable year). In this regard, it is expected that whether a course of conduct spanning a period of time is a single activity will be determined based on all the facts and circumstances. In particular, it is expected that a substantial change in the way an activity is conducted will result in the revised activity being considered a separate activity from the earlier conduct of the activity.

The proposed regulations also presume that if an activity relating to a lobbying communication was engaged in during the same taxable year as the communication is made or in the immediately preceding taxable year, and is not within the presumption described in the preceding paragraph, that activity was engaged in for the sole purpose of making or supporting that communication. The taxpayer may rebut this presumption (in whole or part) by establishing that the activity was engaged in (entirely or partially) for a non-lobbying purpose. If, during the same taxable year, the taxpayer commences an activity that relates directly to the subject matter of specific legislation (then in existence) and makes a lobbying communication with respect to that legislation, it is expected that the taxpayer generally will be unable to rebut the presumption.

The proposed regulations treat certain activities as engaged in without a purpose of making or supporting a lobbying communication. These activities consist of performing an activity for purposes of complying with the requirements of any law, reading any general circulation publications, or viewing or listening to other mass media communications available to the general

public. In addition, if, prior to evidencing a purpose to influence specific legislation (or similar legislation), a taxpayer determines the existence or procedural status of that legislation; determines the time, place, and subject of any hearing to be held by a legislative body with respect to that legislation; or prepares routine, brief summaries of the provisions of that legislation, the taxpayer is treated as engaging in that activity without a purpose of making or supporting a lobbying communication.

The proposed regulations provide a special rule for so-called "paid volunteers." If, for the purpose of making or supporting a lobbying communication, one taxpayer uses the services or facilities of a second taxpayer and does not compensate the second taxpayer for the full cost of the services or facilities, the purpose and actions of the first taxpayer are imputed to the second taxpayer. Thus, for example, if a trade association uses the services of a member's employee, at no cost to the association, to conduct research or similar activities to support the trade association's lobbying communication, the trade association's purpose and actions are imputed to the member. As a result, the member is treated as influencing legislation with respect to the employee's work in support of the trade association's lobbying communication. The proposed regulations also provide a general anti-avoidance rule.

The regulations are proposed to be effective for amounts paid or incurred on or after May 13, 1994. Taxpayers will be required to adopt a reasonable interpretation of section 162(e)(1)(A) for amounts paid or incurred prior to this date.

Modification of 1993 Proposed Regulations

On December 27, 1993, the IRS issued a notice of proposed rulemaking (IA-57-93) concerning the allocation of costs to lobbying activities. Section 1.162-28(g)(3) of those proposed regulations provides a general rule for determining whether a meeting with certain specified government officials or employees constitutes a lobbying activity (a term that includes influencing legislation). Because the proposed regulations contained in this document provide rules for determining whether a taxpayer is engaged in influencing legislation, the IRS will amend § 1.162-28(g)(3), when it is promulgated as a final regulation, to conform that provision to these proposed regulations. As a result, whether sponsoring or attending a

meeting constitutes influencing legislation will be determined under the rules which are the subject of these proposed regulations. Thus, for example, if a taxpayer attends a speech by a legislator at which specific legislation is discussed, the taxpayer will not necessarily be considered to be influencing legislation unless the taxpayer makes a communication with the legislator which refers to specific legislation and reflects a view on that legislation. However, if the taxpayer makes a lobbying communication with respect to that legislation (or similar legislation) within the same or the succeeding taxable year, the presumptions provided in these proposed regulations will apply.

Grass Roots Lobbying

The proposed regulations do not address grass roots lobbying. Although the proposed regulations provide a definition of influencing legislation that is similar to the definition of direct lobbying communication under the section 4911 regulations, it should not be inferred that the IRS will adopt the definition of grassroots lobbying communication under the section 4911 regulations for purposes of section 162(e)(1)(C). As noted above, the prior law rules disallowing business deductions for expenses for grassroots lobbying and participation in political campaigns remain in effect under OBRA 1993.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, a copy of this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Monday, September 12, 1994, at 10 a.m. in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments by July 12, 1994, and submit an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by Monday, August 22, 1994.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is James M. Guiry, Office of Assistant Chief Counsel (Income Tax and Accounting), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.162-29 is added to read as follows:

§ 1.162-29 Influencing legislation.

(a) *Scope.* This section provides rules for determining what is influencing legislation for purposes of section 162(e)(1)(A). Paragraph (b) of this section provides the general rule and necessary definitions for determining whether a taxpayer is influencing legislation. Paragraph (c) of this section provides rules for determining whether a purpose of an activity is to make or support a lobbying communication which constitutes influencing legislation. Paragraph (d) of this section provides a special rule relating to the

use by one taxpayer of the services or facilities of another taxpayer in connection with a lobbying communication. Paragraph (e) of this section provides a general anti-avoidance rule. Paragraph (f) of this section provides the effective date. See section 162(e)(2) and § 1.162-20(c) for exceptions relating to certain local legislation. These rules are not intended to be applied for purposes of section 4911 and the regulations thereunder. See section 4911 and §§ 56.4911-1 through 56.4911-10 for rules relating to excise tax on lobbying activities of certain electing public charities.

(b) *Influencing legislation*—(1) *Definitions.* For purposes of section 162(e) and this section—

(i) *Influencing legislation.* *Influencing legislation* means any attempt to influence any legislation through communication (other than any communication compelled by subpoena, or otherwise compelled by Federal or State law) with—

(A) Any member or employee of a legislative body; or

(B) Any government official or employee (other than a member or employee of a legislative body) who may participate in the formulation of the legislation which the taxpayer desires to influence.

(ii) *Communication.* For purposes of paragraph (b)(1)(i) of this section, the term *communication* is limited to any communication (referred to as a *lobbying communication*) that—

(A) Refers to specific legislation and reflects a view on that legislation; or

(B) Clarifies, amplifies, modifies, or provides support for views reflected in a prior communication satisfying the requirements of paragraph (b)(1)(ii)(A) of this section.

(iii) *Attempt to influence legislation.* *An attempt to influence legislation* means the lobbying communication and all activities, such as research, preparation, and other background activities, engaged in for a purpose of making or supporting the lobbying communication. See paragraph (c) of this section for rules for determining the purpose or purposes for engaging in an activity.

(iv) *Legislation.* *Legislation* includes action with respect to Acts, bills, resolutions, or other similar items by the Congress, any state legislature, any local council, or similar governing body. *Legislation* includes a proposed treaty required to be submitted by the President to the Senate for its advice and consent from the time the President's representative begins to negotiate its position with the

prospective parties to the proposed treaty.

(v) *Specific legislation.* *Specific legislation* includes both legislation that has already been introduced in a legislative body and a specific legislative proposal that the taxpayer either supports or opposes.

(vi) *Action.* For purposes of paragraph (b)(1)(iv) of this section, the term *action* is limited to the introduction, amendment, enactment, defeat, or repeal of Acts, bills, resolutions, or similar items.

(vii) *Legislative and administrative bodies.* *Legislative body* does not include executive, judicial, or administrative bodies. *Administrative bodies* include school boards, housing authorities, sewer and water districts, zoning boards, and other similar Federal, State, or local special purpose bodies, whether elective or appointive.

(2) *Examples.* The provisions of this paragraph (b) are illustrated by the following examples:

Example 1. Taxpayer P's employee, A, is assigned to approach members of Congress to gain their support for a pending bill. A drafts and P prints a position letter on the bill. P distributes the letter to members of Congress. Additionally, A personally contacts several members of Congress or their staffs to seek support for P's position on the bill. The letter and the personal contacts are lobbying communications. Therefore, P is influencing legislation.

Example 2. Taxpayer R is invited to provide testimony at a congressional oversight hearing concerning the implementation of The Financial Institutions Reform, Recovery, and Enforcement Act of 1989. Specifically, the hearing concerns a proposed regulation increasing the threshold value of commercial and residential real estate transactions for which an appraisal by a state licensed or certified appraiser is required. In its testimony, R states that it is in favor of the proposed regulation. Because R does not refer to any specific legislation or reflect a view on any such legislation, R has not made a lobbying communication. Therefore, R is not influencing legislation.

Example 3. State X enacts a statute that requires the licensing of all day-care providers. Agency B in State X is charged with writing rules to implement the statute. After the enactment of the statute, Taxpayer S sends a letter to Agency B providing detailed proposed rules that S recommends Agency B adopt to implement the statute on licensing of day-care providers. Because the letter to Agency B neither refers to nor reflects a view on any specific legislation, it is not a lobbying communication. Therefore, S is not influencing legislation.

Example 4. Taxpayer T proposes to a State Park Authority that it purchase a particular tract of land for a new park. Even if T's proposal would necessarily require the State Park Authority eventually to seek appropriations to acquire the land and develop the new park, T has not made a

lobbying communication because there has been no reference to, nor any view reflected on, any specific legislation. Therefore, T's proposal is not influencing legislation.

Example 5. (i) Taxpayer U prepares a paper that asserts that lack of new capital is hurting State X's economy. The paper indicates that State X residents either should invest more in local businesses or increase their savings so that funds will be available to others interested in making investments. U forwards a summary of the unpublished paper to legislators in State X with a cover letter that states in part:

You must take action to improve the availability of new capital in the state.

(ii) Because neither the summary nor the cover letter refers to any specific legislative proposal, forwarding the summary to legislators in State X is not a lobbying communication. Therefore, U is not influencing legislation.

(iii) Q, a member of the legislature of State X, calls taxpayer U to request a copy of the unpublished paper from which the summary was prepared. U forwards the paper with a cover letter that simply refers to the enclosed materials. Because U's letter to Q and the unpublished paper do not refer to any specific legislation or reflect a view on any such legislation, the letter is not a lobbying communication. Therefore, U is not influencing legislation.

Example 6. (i) Taxpayer V prepares a paper that asserts that lack of new capital is hurting the national economy. The paper indicates that lowering the capital gains rate would increase the availability of capital and increase tax receipts from the capital gains tax. V forwards the paper to its representatives in Congress with a cover letter that says, in part:

I urge you to support a reduction in the capital gains tax rate.

(ii) V's communication is a lobbying communication because it refers to and reflects a view on a specific legislative proposal that V supports (i.e., lowering the capital gains rate). Therefore, V is influencing legislation.

Example 7. Taxpayer W, based in State A, notes in a letter to a legislator of State A that State X has passed a bill that accomplishes a stated purpose and then says that State A should pass such a bill. No such bill has been introduced into the State A legislature. The communication is a lobbying communication because it refers to and reflects a view on a specific legislative proposal that W supports. Therefore, W is influencing legislation.

Example 8. (i) Taxpayer Y represents citrus fruit growers. Y writes a letter to a Senator discussing how pesticide O has benefited citrus fruit growers and disputing problems linked to its use. The letter discusses a bill pending in Congress and states in part:

This bill would prohibit the use of pesticide O. If citrus growers are unable to use this pesticide, their crop yields will be severely reduced, leading to higher prices for consumers and lower profits, even bankruptcy, for growers.

(ii) The communication is a lobbying communication because it refers to and reflects a view on specific legislation. Therefore, Y is influencing legislation.

Example 9. (i) B, the president of Taxpayer Z, an insurance company, meets with Q, who chairs the X state legislature's committee with jurisdiction over laws regulating insurance companies, to discuss the possibility of legislation to address current problems with surplus-line companies. B recommends that legislation be introduced that would create minimum capital and surplus requirements for surplus-line companies and create clearer guidelines concerning the risks that surplus-line companies can insure. B's discussion with Q is a lobbying communication because B refers to and reflects a view on a specific legislative proposal that Z supports. Therefore, Z is influencing legislation.

(ii) Q is not convinced that the market for surplus-line companies is substantial enough to warrant such legislation and requests that B provide information on the amount and types of risks covered by surplus-line companies. After the meeting, B has employees of Z prepare estimates of the percentage of property and casualty insurance risks handled by surplus-line companies. B sends the estimates with a cover letter that simply refers to the enclosed materials. Although B's follow-up letter to Q does not refer to specific legislation or reflect a view on such legislation, B's letter supports the views reflected in the earlier communication. Therefore, the letter is a lobbying communication and Z is influencing legislation.

(c) *Purpose for engaging in an activity—(1) In general.* The purpose or purposes for which a taxpayer engages in an activity are determined based on all the facts and circumstances.

(2) *Multiple purposes.* If a taxpayer engages in an activity both for the purpose of making or supporting a lobbying communication and for some non-lobbying purpose, the taxpayer must treat the activity as engaged in partially for a lobbying purpose and partially for a non-lobbying purpose. This division of the activity must result in a reasonable allocation of costs to influencing legislation. See § 1.162-28 (allocation rules for certain expenditures to which section 162(e)(1) applies). A taxpayer's treatment will, in general, not result in a reasonable allocation if it allocates to influencing legislation—

(i) Only the incremental amount of costs that would not have been incurred but for the lobbying purpose; or

(ii) An amount based on the number of purposes for engaging in that activity without regard to the relative importance of those purposes.

(3) *Presumption of non-lobbying purpose.* If an activity relating to a lobbying communication is engaged in for a non-lobbying purpose prior to the first taxable year preceding the taxable year in which the communication is made, the activity is presumed to be engaged in for all periods solely for that

non-lobbying purpose. The Commissioner can rebut this presumption in part by establishing that the activity was also engaged in for a lobbying purpose. See paragraph (c)(2) of this section relating to an activity engaged in for multiple purposes.

(4) *Presumption of lobbying purpose.* If an activity relating to a lobbying communication is engaged in during the same taxable year as the communication is made or the immediately preceding taxable year, and is not within the presumption in paragraph (c)(3) of this section, the activity is presumed to be engaged in for the sole purpose of making or supporting the lobbying communication. A taxpayer can rebut the presumption (in whole or part) by establishing that the activity was engaged in (entirely or partially) for a non-lobbying purpose. See paragraph (c)(2) of this section relating to an activity engaged in for multiple purposes. If, during the same taxable year, the taxpayer commences an activity that relates directly to the subject matter of specific legislation (then in existence) and makes a lobbying communication with respect to that legislation, it is expected that the taxpayer generally will be unable to rebut the presumption.

(5) *Activities treated as having no purpose to influence legislation.* A taxpayer that engages in any of the following activities is treated as having done so without a purpose of making or supporting a lobbying communication—

(i) Prior to evidencing a purpose to influence any specific legislation referred to in this paragraph (c)(5)(i) (A) or (B) (or similar legislation)—

(A) Determining the existence or procedural status of specific legislation, or the time, place, and subject of any hearing to be held by a legislative body with respect to specific legislation; or

(B) Preparing routine, brief summaries of the provisions of specific legislation.

(ii) Performing an activity for purposes of complying with the requirements of any law.

(iii) Reading any general circulation publications or viewing or listening to other mass media communications available to the general public.

(6) *Examples.* The provisions of this paragraph (c) are illustrated by the following examples:

Example 1. In 1995, Agency F issues proposed regulations relating to the business of Taxpayer W, a calendar year taxpayer. There is no specific legislation during 1995 that is similar to the regulatory proposal. W undertakes a study of the impact of the proposed regulations on its business. W incorporates the results of that study in comments sent to Agency F in 1995. In 1996,

legislation is introduced in Congress that is similar to the regulatory proposal. W writes a letter to Senator P stating that it opposes the proposed legislation. With the letter, W encloses a copy of the comments it sent to Agency F. W's letter to Senator P refers to and reflects a view on specific legislation and therefore is a lobbying communication. Because W used the results of its study of the impact of the proposed regulations in its letter to Senator P in the taxable year following the taxable year the study was conducted, it is presumed under paragraph (c)(4) of this section that W engaged in the study for the sole purpose of making or supporting that lobbying communication. Based on these facts, however, W can rebut the presumption entirely by showing that its sole purpose for undertaking the study was to comment on the proposed regulations.

Example 2. In the ordinary course of its business, Taxpayer Y, a calendar year manufacturing company, regularly keeps records of electricity consumption in its manufacturing process. Y has kept such records since 1970, the year in which Y began business, in order to track the cost of its manufacturing process. In 1995, the governor of State Q proposes a budget that includes a sales tax on electricity. Using its records of electricity consumption, Y estimates the additional costs that the budget proposal would impose upon its business. In the same year, Y writes to members of the state legislature and explains that it opposes the increased sales tax. In its letter, Y includes its estimate of the costs that the sales tax would impose on its business. The letter is a lobbying communication (because it refers to and reflects a view on specific legislation, the governor's proposed budget). Both the recordkeeping activities and the activity of estimating additional costs under the proposed sales tax relate to the lobbying communication because Y used the records to make the estimates, and Y used the estimates in its opposition to the governor's proposal. However, Y had a non-lobbying purpose for keeping the records and engaged in that activity prior to the first taxable year preceding the taxable year in which it made the lobbying communication. Therefore, under paragraph (c)(3) of this section, it is presumed that Y kept these records solely for a non-lobbying purpose during all periods. Based on these facts, the Commissioner cannot rebut the presumption. In contrast, it is presumed, under paragraph (c)(4) of this section, that Y estimated the additional costs it would incur under the proposal solely to make or support the lobbying communication, because the activity commenced in the same taxable year as the lobbying communication was made. Based on these facts, because Y estimated its additional costs under the budget proposal to support the lobbying communication, Y cannot rebut the presumption as it relates to this activity.

Example 3. In 1995, a Senator in the State Q legislature announces her intention to introduce legislation to require health insurers to cover a particular medical procedure in all policies sold in the state. Taxpayer Y, a calendar year taxpayer, has different policies for two groups of

employees, one of which covers the procedure and one of which does not. After the bill is introduced, Y's legislative affairs staff asks Y's human resources staff to track claims for the procedure that are allowed, in order to estimate the additional cost of requiring the coverage under both policies. In 1996, Y's legislative affairs staff prepares a study estimating Y's increased costs based on the results of tracking, in 1995, the claims made. Also in 1996, Y writes to members of the state legislature and explains that it opposes the proposed change in insurance coverage based on the study. The letter is a lobbying communication (because it refers to and reflects a view on specific legislation). Both the activity of tracking the claims and the activity of estimating Y's additional costs under the proposed legislation relate to the lobbying communication because they are used to support that communication. It is presumed, under paragraph (c)(4) of this section, that Y engaged in 1996 in the activity of estimating the additional costs it would incur under the proposal solely to make or support the lobbying communication, because the activity commenced in the same taxable year as the lobbying communication. Based on these facts, Y cannot rebut the presumption as it relates to this activity. Further, because Y did not regularly track these claims before 1995, it is presumed, under paragraph (c)(4) of this section, that Y engaged in 1995 in the activity of tracking these claims solely to make or support the lobbying communication. Based on these facts, because Y tracked these claims to support the lobbying communication, Y cannot rebut the presumption.

Example 4. After several years of developmental work under various contracts, in 1997, Taxpayer A, a calendar year aerospace company, contracts with the Department of Defense (DOD) to produce a prototype of a new generation military aircraft. A is aware that DOD will be able to fund the contract only if Congress appropriates an amount for that purpose in the upcoming appropriations process. In 1998, A conducts simulation tests of the aircraft and revises the specifications of the aircraft's expected performance capabilities, as required under the contract. A submits the results of the tests and the revised specifications to DOD. In 1999, Congress considers legislation to appropriate funds for the contract. In that connection, A summarizes the results of the simulation tests and of the aircraft's expected performance capabilities, and submits the summary to interested members of Congress with a cover letter that encourages them to support appropriations of funds for the contract. The letter is a lobbying communication (because it refers to specific legislation (i.e., appropriations) and requests passage). The described activities in 1998 and 1999 relate to that lobbying communication and, therefore, are presumed, under paragraph (c)(4) of this section, to be for the sole purpose of making or supporting that communication. Based on these facts, A cannot rebut the presumption as it relates to the summary prepared specifically for that communication. However, because A conducted the tests and revised the

specifications to comply with its production contract with DOD, A can rebut the presumption as it relates to those activities.

Example 5. C, president of Taxpayer W, travels to the state capital to attend a two-day conference on new manufacturing processes. C plans to spend a third day in the capital meeting with state legislators to explain why W opposes a pending bill unrelated to the subject of the conference. C's staff prepares a briefing book on the pending bill for C's use in meetings with the state legislators. Because the meetings with the legislators will be lobbying communications (because C will refer to and reflect a view on specific legislation), C's travel and the preparation of the briefing book are presumed to be solely for the purpose of making or supporting the lobbying communications. Based on these facts, W cannot rebut the presumption as it relates to the preparation of the briefing book, but can partially rebut the presumption as it relates to C's travel by demonstrating that the travel was engaged in both for lobbying and non-lobbying purposes. As a result, under paragraph (c)(2) of this section, W must reasonably allocate C's travel between attending the conference and meeting with the state legislators.

Example 6. In 1995, Taxpayer F comments on proposed EPA regulations and successfully contests their validity on constitutional grounds in litigation. In 1997, Senator N introduces environmental legislation, which F believes to be unconstitutional on the same grounds as the previously proposed and defeated regulations. F sends some of the documents it prepared in 1995 to Senator N's staff with a cover letter indicating that F opposes the environmental legislation. The letter to Senator N refers to and reflects a view on specific legislation and thus is a lobbying communication. F engaged in the activity of preparing the documents, however, for a non-lobbying purpose prior to the first taxable year preceding the taxable year in which the lobbying communication was made. Therefore, under paragraph (c)(3) of this section, it is presumed that the document preparation was engaged in solely for a non-lobbying purpose. Based on these facts, the Commissioner cannot rebut that presumption.

Example 7. On February 1, 1995, a bill is introduced in Congress that would affect Company E, a calendar year taxpayer. Employees in E's legislative affairs department, as is customary, prepare a brief summary of the bill and periodically confirm the procedural status of the bill through conversations with employees and members of Congress. On March 31, 1995, the head of E's legislative affairs department meets with E's President to request that B, a chemist, temporarily help the legislative affairs department analyze the bill. The President agrees, and suggests that B also be assigned to draft a position letter in opposition to the bill. Employees of the legislative affairs department continue to confirm periodically the procedural status of the bill. On October 31, 1995, B's position letter in opposition to the bill is delivered to members of Congress. B's letter is a lobbying communication because it refers to and reflects a view on

specific legislation. Under paragraph (c)(5)(i) of this section, the assignment of B to assist the legislative affairs department in analyzing the bill and in drafting a position letter in opposition to the bill evidences a purpose to influence legislation. Based on these facts, neither the activity of periodically confirming the procedural status of the bill nor the activity of preparing the routine, brief summary of the bill before March 31 constitutes influencing legislation. With respect to periodically confirming the procedural status of the bill on or after March 31, it is presumed, under paragraph (c)(4) of this section, that E engaged in the activity solely to make or support the lobbying communication because the activity commenced in the same taxable year as the lobbying communication. These facts indicate that after March 31, E determined the procedural status of the bill for the purpose of supporting the lobbying communication by B and, accordingly, E cannot rebut the presumption as it relates to this activity.

Example 8. Taxpayer Z prepares a report that it is required by state law to submit to a state corporation commission. Z sends a copy of the report to its delegate in the state legislature along with the taxpayer's letter opposing a bill that would increase the state sales tax. Even though the letter to the delegate is a lobbying communication (because it refers to, and reflects a view on, specific legislation), under paragraph (c)(5)(ii) of this section, the preparation of the report does not constitute influencing legislation.

Example 9. Taxpayer Y purchases an annual subscription to a commercial, general circulation newsletter that provides legislative updates on proposed tax legislation. Employees in Y's legislative affairs department read the newsletter in order to keep abreast of legislative developments. Even if Y attempts to influence legislation that is identified and tracked in the newsletter, under paragraph (c)(5)(iii) of this section, the time spent by employees of Y reading the newsletter does not constitute influencing legislation.

(d) *Special imputation rule.* If one taxpayer, for the purpose of making or supporting a lobbying communication, uses the services or facilities of a second taxpayer and does not compensate the second taxpayer for the full cost of the services or facilities, the purpose and actions of the first taxpayer are imputed to the second taxpayer. Thus, for example, if a trade association uses the services of a member's employee, at no cost to the association, to conduct research or similar activities to support the trade association's lobbying communication, the trade association's purpose and actions are imputed to the member. As a result, the member is treated as influencing legislation with respect to the employee's work in support of the trade association's lobbying communication.

(e) *Anti-avoidance rule.* If a taxpayer, alone or in coordination with one or

more other taxpayers, purposely structures its attempts to influence legislation to achieve results that are unreasonable in light of the purposes of section 162(e) and section 6033(e), the Commissioner can take such steps as are appropriate to achieve reasonable results consistent with the purposes of section 162(e), section 6033(e), and this section.

(f) *Effective date.* This section is effective for amounts paid or incurred on or after May 13, 1994. Taxpayers must adopt a reasonable interpretation of section 162(e)(1)(A) for amounts paid or incurred prior to this date.

Par. 3. In § 1.162-20, paragraph (c)(5) is added to read as follows:

§ 1.162-20 Expenditures attributable to lobbying, political campaigns, attempts to influence legislation, etc., and certain advertising.

* * * * *

(c) * * * * *

(5) *Expenses paid or incurred after December 31, 1993, in connection with influencing legislation other than certain local legislation.* The provisions of paragraphs (c)(1) through (c)(3) of this section are superseded for expenses paid or incurred after December 31, 1993, in connection with influencing legislation (other than certain local legislation) to the extent inconsistent with section 162(e)(1)(A) (as limited by section 162(e)(2)) and §§ 1.162-20T(d) and 1.162-29.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 94-11613 Filed 5-10-94; 11:23 am]

BILLING CODE 4830-01-U

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1609

Guidelines on Harassment Based on Race, Color, Religion, Gender, National Origin, Age, or Disability

AGENCY: Equal Employment Opportunity Commission (EEOC).

ACTION: Proposed rule; extension of comment period.

SUMMARY: The period for commenting on the proposed guidelines on harassment based on race, color, religion, national origin, age, or disability (58 FR 51266, October 1, 1993) has been extended to June 13, 1994. After the comment period closed, the Commission received numerous comments and requests by individuals to submit comments. Since the Commission has informally been accepting and reviewing comments and

letters received after the comment period officially closed, it has thus decided to formally extend the comment period in order to give all parties an opportunity to express their views.

DATES: Comments must be received by June 13, 1994.

ADDRESSES: Comments should be addressed to the Office of the Executive Secretariat, EEOC, 10th Floor, 1801 L Street, NW., Washington, DC 20507. Copies of comments submitted by the public will be available for review at the Commission's library, room 6502, 1801 L Street, NW., Washington, DC, between the hours of 9:30 a.m. and 5 p.m. Copies of the notice of proposed rulemaking are available in the following alternative formats: Large print, braille, electronic file on computer disk, and audio tape. Copies may be obtained from the Office of Equal Employment Opportunity by calling (202) 663-4895 (voice) or (202) 663-4399 (TDD).

FOR FURTHER INFORMATION CONTACT: Elizabeth M. Thornton, Acting Legal Counsel, or Dianna B. Johnston, Assistant Legal Counsel, Office of Legal Counsel, EEOC 1801 L Street, NW., Washington, DC 20507; telephone (202) 663-4679 (voice) or (202) 663-7026 (TDD).

Tony E. Gallegos,
Chairman, Equal Employment Opportunity Commission.

[FR Doc. 94-11707 Filed 5-12-94; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

Colorado Permanent Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the Colorado permanent regulatory program (hereinafter, the "Colorado program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to the Colorado rules pertaining to bonding of surface coal mining and reclamation operations and revegetation success criteria for areas to be developed for industrial, commercial, or residential use.

The amendment is intended to revise the Colorado program to be consistent with the corresponding Federal regulations, clarify ambiguities, and improve operational efficiency.

DATES: Written comments must be received by 4 p.m., m.d.t. June 13, 1994. If requested, a public hearing on the proposed amendment will be held on June 7, 1994. Requests to present oral testimony at the hearing must be received by 4 p.m., m.d.t. on May 31, 1994. Any disabled individual who has a need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: Written comments should be mailed or hand delivered to Thomas E. Ehmett at the address listed below.

Copies of the Colorado program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Albuquerque Field Office.

Thomas E. Ehmett, Acting Director,
Albuquerque Field Office, Office of
Surface Mining Reclamation and
Enforcement, 505 Marquette Avenue,
NW., suite 1200, Albuquerque, NM
87102, Telephone: (505) 766-1486.
Colorado Division of Minerals and
Geology, Department of Natural
Resources, 215 Centennial Building,
1313 Sherman Street, Denver,
Colorado 80203, Telephone: (303)
866-3567.

FOR FURTHER INFORMATION CONTACT:
Thomas E. Ehmett, Telephone: (505)
766-1486.

SUPPLEMENTARY INFORMATION:

I. Background on the Colorado Program

On December 15, 1980, the Secretary of the Interior conditionally approved the Colorado program. General background information on the Colorado program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Colorado program can be found in the December 15, 1980, Federal Register (46 FR 5899). Subsequent actions concerning Colorado's program and program amendments can be found at 30 CFR 906.15, 906.16, and 906.30.

II. Proposed Amendment

By letter dated April 18, 1994, Colorado submitted the proposed amendment to its program pursuant to

SMCRA (administrative record No. CO-611). Colorado submitted the proposed amendment in response to the May 7, 1986, and March 22, 1990, letters (administrative record Nos. CO-282 and CO-496) that OSM sent to Colorado in accordance with 30 CFR 732.17(c), and at its own initiative. The provisions of 2 Code of Colorado Regulations 407-2, the rules and regulations of the Colorado Mined Land Reclamation Board, that Colorado proposes to amend are: Rule 1.04, definitions; Rule 3.02, performance bond requirements for surface coal mining and reclamation operations; Rule 3.03, release of performance bonds; Rule 3.06, special bonding requirements for construction of mine drainage control facilities; and Rule 4.15.10, revegetation success criteria for areas to be developed for industrial, commercial, or residential use.

Specifically, Colorado proposes the following changes to the provisions of its rules at:

Rule 1.04(25), revising the definition of "collateral bond" to: (1) Require that a deposit of cash, used as support for the bond, be made in a Federally insured or equivalently protected account, (2) require that a negotiable bond of any political subdivision of the State, used as support for the bond, be endorsed to the order of the State, and (3) deleting language allowing the use of a perfected first-lien security interest in real property located in the State as support for the bond;

Rule 1.04(116), deleting the definition of "self-bond" in order to disallow the use of self-bonds;

Rule 3.02.1(4), revising the reference for the term of bond liability from Rule 3.02.3(2) to Rule 3.03.3, and deleting the last sentence, which extends liability to all lands outside the permit area that are disturbed by surface coal mining operations;

Rule 3.02.1(7), deleting the exemption for bond liability of third party actions that are beyond the control of the permittee, and adding language to: (1) Require, when an alternative postmining land use of industrial, commercial, or residential is approved, a bond sufficient to cover reclamation to the premining land use, and (2) exempt the permittee from implementation of an alternative postmining land use approved under Rule 4.16.3 that is beyond the control of the permittee;

Rule 3.02.2(4)(b), revising the requirement for a written proposed decision regarding the bond amount so that it is issued whenever the bond amount is adjusted rather than increased;

Rule 3.02.2(4)(d), revising the reasons for which a permittee may request a reduction in bond amount, adding a requirement that the request and demonstration for a reduction in bond amount must be submitted in the form of an application for either a permit or technical revision, and clarifying that a request for bond reduction under this rule could not be based on reclamation performed and that such requests for bond release must be made under Rule 3.03;

Rule 3.02.3(2)(c), adding a new provision to require that the minimum bond liability period for lands with an approved industrial, commercial, or residential postmining land use continue until compliance with the revegetation requirements of either Rule 4.15.10(2) or Rule 4.15.10(3) has been demonstrated, and recodifying existing subparagraphs (c) and (d) as (d) and (e);

Rule 3.02.4(1)(b), deleting the allowance of a perfected first-lien security interest in real property located in the State to be used as a collateral bond;

Rule 3.02.4(1)(c), deleting the allowance of the use of self-bonds as an acceptable surety, and recodify existing subparagraphs (d) and (e) as (c) and (d);

Rule 3.02.4(2)(b)(i)(A), revising the conditions for surety bonds to: (1) Allow cancellation by the surety of bond coverage for permitted lands that have not been disturbed only after prior consent of the Division of Minerals and Geology (Division), and (2) require that the Division advise the surety company whether the bond may be cancelled within 30 days after receipt of the notice of intent to cancel;

Rule 3.02.4(2)(b)(v)(A), revising the surety's reporting requirements to include any notice received or action filed alleging the insolvency or bankruptcy of the permittee;

Rule 3.03.4(2)(c), deleting the exemption for irrevocable letters of credit from certain conditions applicable to collateral bonds;

Rule 3.02.4(2)(c)(ii), revising the method by which the Division will assess the market value of collateral by clarifying that it will be adjusted for legal and liquidation fees, as well as value depreciation, marketability, and fluctuations which might affect the net cash available to complete reclamation;

Rule 3.02.4(2)(c)(ix), deleting the entire rule concerning real property in order to disallow real property to be used as a collateral bond, and recodifying existing subparagraph (x) as (ix);

Rule 3.02.4(2)(d)(i), revising the requirement that an irrevocable letter of credit can only be issued by a bank

authorized to do business in the United States to specify that the bank must be located in Colorado;

Rule 3.02.4(2)(d)(vi)(A), revising the bank's reporting requirements to include any notice received or action filed alleging the insolvency or bankruptcy of the permittee;

Rule 3.02.4(2)(e), deleting the rule concerning the allowance for a self-bond, and recodifying existing subparagraph (f) as (e);

Rule 3.03.1(2), revising the requirement concerning the maximum liability of a performance bond that can be released to replace the term "liability" with "amount;"

Rule 3.03.1(2)(b), revising the requirements for release of up to 85 percent of a performance bond;

Rule 3.03.1(3)(d), revising the restriction concerning any release of bond liability, if such release would reduce the total remaining liability to less than that required for the Division to complete the approved reclamation plan, by replacing the term "liability" with "amount;"

Rule 3.03.1(3)(e), revising the requirements for a performance bond for alternative postmining land uses to specify that the rule applies only to the alternative postmining land uses of industrial, commercial, or residential, and to require that a bond shall be maintained throughout the liability period sufficient to allow the Division to reclaim the land to the premining land use in the event that the alternative postmining land use is not developed because of bond forfeiture;

Rule 3.03.2(1)(b), revising the requirements for the content of the public notice which the permittee must advertise when requesting bond release to include the type of bond filed;

Rule 3.03.2(2), revising the requirements concerning the Division's evaluation of a bond release request to: (1) Include a determination regarding the probability of future, rather than continued, pollution of surface or subsurface water, and (2) add a provision specifying that the Division may arrange with the permittee to allow access to the permit area upon request by any person with an interest in bond release, for the purpose of gathering information relevant to the proceeding;

Rule 3.03.2(4)(c), revising the requirements concerning an informal conference that is held to resolve written comments or objections to a bond release to specify that the conference must be held by the 60th day following the inspection and evaluation required in Rule 3.03.2(2);

Rule 3.03.2(5)(a), revising the requirement concerning the Division's

responsibility to provide written notification of its proposed decision on a bond release request to: (1) Delete the condition that the notification is needed only if no informal conference is held, (2) to require that the notification include the right to request a public hearing within 60, rather than 30, days after the completion of the inspection and evaluation required in Rule 3.03.3.2(2), and (3) to delete requirement that the request for a public hearing be made within 30 days from the close of the public comment period;

Rule 3.03.2(5)(b), deleting in its entirety the rule concerning the Division's responsibility to provide written notification of its proposed decision on a bond release request within 30 days after the conclusion of an informal conference, and recodifying existing subparagraph (c) as (b);

Rule 3.06, deleting in its entirety the rule concerning special bonding requirements for construction of mine drainage control facilities;

Rule 4.15.10(2), revising the requirement concerning the establishment of vegetative cover to control erosion on areas to be developed for industrial or residential use to: (1) Apply also to commercial use, (2) require that the vegetation be established within 2 years after the completion of regrading or within 2 years after approval of such use, whichever is later, and (3) state that final bond release shall not occur prior to satisfactory cover establishment; and

Rule 4.15.10(3), addition of a new rule that allows a waiver from the revegetation requirements of Rule 4.15.10(2) for mine support facilities located within areas where the premining and postmining land uses are industrial or commercial, if the waiver is requested in writing by the landowner and the Division determines that revegetation is not necessary to control erosion.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Colorado program.

1. Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commentator's recommendations. Comments received after the time indicated under **DATES** or at locations

other than the Albuquerque Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

2. Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., m.d.t. May, 31, 1994. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

3. Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

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

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory

programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

V. List of Subjects in 30 CFR Part 906

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 6, 1994.

Russell F. Price,
Acting Assistant Director, Western Support
Center.

[FR Doc. 94-11663 Filed 5-12-94; 8:45 am]

BILLING CODE 4310-05-M

National Park Service

36 CFR Part 7

RIN 1024-AC20

Grand Teton National Park, Wyoming Mountain Climbing and Winter Backcountry Trip Regulations

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service (NPS) proposes to eliminate registration and check out requirements for climbing and off trail travel above 7,000 ft., and for winter travel in Grand Teton National Park. Existing regulations requiring climbers, off trail hikers, and winter travel users to register and check out upon completion of their activity were intended primarily to provide information necessary to initiate search and rescue responses. Actual experience over the years has shown that the intended purpose of these regulations has not been achieved. Nearly all search and rescue responses are generated by reports from sources other than the check out system. Instead of aiding rescuers, these regulations burden park rangers with the task of checking on countless cases of climbers and backpackers who failed to check out. These regulations have been enforced selectively for several years, where local climbers and guides have not been forced to register because of an assumed expertise and knowledge of the local area. The deletion of these regulations will not eliminate visitor protection services provided by park personnel.

DATES: Written comments will be accepted through June 13, 1994.

ADDRESSES: Comments should be addressed to: Superintendent, Grand Teton National Park, P.O. Drawer 170, Moose, Wy. 83012.

FOR FURTHER INFORMATION CONTACT: Colin W. Campbell, Law Enforcement Specialist, Grand Teton National Park, Telephone: 307-733-2880.

SUPPLEMENTARY INFORMATION:

Background

The existing National Park Service (NPS) special regulations that pertain to mountain climbing, off trail travel, and winter travel trips are codified at 36 CFR 7.22 (f) and (g). They require all

technical climbers, off trail travel, and winter travel users to register or check in prior to undertaking these activities and to check out with a ranger upon completion of the activity. The original intent was primarily to provide park search and rescue personnel with the knowledge that a park user was in essence overdue from a potentially dangerous activity. In reality, almost all perceived overdue parties concerned climbers and backcountry users failing to properly check out. In addition, the vast majority of winter travelers either ignore or do not know of the requirement to register, and strict enforcement of this regulation has not been done for several years. The result has been a combination of non-compliance, failure to check out, failure to contact a ranger in a timely manner and wasted time and energy on the part of the park staff administering the system. After working with these restrictions since promulgation it has been determined that they are not achieving their original purpose of saving lives by alerting search and rescue personnel. In reality, almost all park search and rescue efforts are the result of initial reports by climbing partners, other park backcountry users, friends or relatives.

The NPS believes the deletion of these rules will make the management of mountain climbing and winter backcountry trips more consistent with the practices of both state and federal agencies whose lands are contiguous with Grand Teton National Park. Overnight backcountry trips will continue to be regulated by general camping regulations at 36 CFR 2.10.

A voluntary registration system will be available to climbers and backcountry travelers who choose to use it. The exchange of information between climbers, off trail hikers, winter travelers and park rangers will still be available and encouraged without mandating it through regulation. Furthermore the park staff will be educating park users to leave trip information with family or friends, shifting responsibility for trip planning onto the park user.

Public Participation

The policy of the National Park Service is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule to the address noted at the beginning of this rulemaking. The Grand Teton National Park staff will also be making public notices in local

papers and contacting representatives of the local climbing community.

Drafting Information

The primary authors of this proposed rule are Colin W. Campbell, Law Enforcement Specialist, and Mark L. Magnuson, Jenny Lake Sub-District Ranger.

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.*

Compliance With Other Laws

The Department of the Interior has determined 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.*), because it deletes an existing requirement and gives more discretion to the park visitor.

The NPS has determined that this proposed rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area causing physical damage to it;

(b) Introduce noncompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, this proposed rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental Regulations in 516 DM 6, (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

This rule was not subject to Office of Management and Budget review under Executive Order 12866.

List of Subjects in 36 CFR Part 7

National parks.

In consideration of the foregoing, it is proposed to amend 36 CFR chapter I as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under D.C. Code 8-137 (1981) and D.C. Code 40-721 (1981).

§ 7.22 [Amended]

2. In § 7.22, paragraphs (f) and (g) are removed, and paragraphs (h) and (i) are redesignated paragraphs (f) and (g) respectively.

Dated: May 23, 1994.

George T. Frampton, Jr.,
Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 94-11626 Filed 5-12-94; 8:45 am]

BILLING CODE 4310-70-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CO23-1-5688; FRL-4884-2]

Clean Air Act Approval and Promulgation of Air Quality Implementation Plan Revision for Colorado; Long-Term Strategy Review of Mandatory Class I Federal Area Visibility Protection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Long-Term Strategy of Colorado's State Implementation Plan (SIP) for Visibility Protection, as submitted by the Governor with a letter dated November 18, 1992. The revisions were made to bring the SIP into compliance with the Federal visibility protection requirements for states containing mandatory Class I Federal Areas, and to fulfill requirements to periodically review and, if necessary, revise the Long-Term Strategy for visibility protection. EPA is also proposing to correct its error in a previous action on the State's Visibility protection provisions.

DATES: Comments on this proposed action must be received in writing by June 13, 1994.

ADDRESSES: Comments should be addressed to Amy Platt, Air Programs Branch, SIP Section (8ART-AP), Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202-2405.

Copies of the State's submittal and other information are available for inspection during normal business hours at the following locations: Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202-2405; and Colorado Department of Health, Air Pollution Control

Division, 4300 Cherry Creek Drive South, Denver, Colorado 80222-1530.

FOR FURTHER INFORMATION CONTACT: Amy Platt, Air Programs Branch, Environmental Protection Agency, Region VIII, (303) 293-1769.

SUPPLEMENTARY INFORMATION:

I. Background

Section 169A of the Clean Air Act¹ establishes as a national goal the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I Federal areas² which impairment results from manmade air pollution. Section 169A called for EPA to, among other things, issue regulations to assure reasonable progress toward meeting the National goal, section 169A(a)(4), including requiring each State with a mandatory Class I Federal area to revise its State implementation plan (SIP) to contain such emission limits, schedules of compliance and other measures as may be necessary to make reasonable progress toward meeting the National goal. Section 169A(b)(2).

EPA promulgated regulations that, in broad outline, required affected States to: (1) Coordinate development of SIPs with appropriate Federal land managers; (2) develop a program to assess and remedy visibility impairment from new and existing sources; and (3) develop a long-term strategy to assure reasonable progress toward the National visibility goal. 45 FR 80084 (December 2, 1980) (codified at 40 CFR 51.300-51.307). The regulations provided for the remedying of visibility impairment that is reasonably attributable to a single existing stationary facility or small group of existing stationary facilities. These regulations required that the SIPs provide for periodic review and revisions, as appropriate, of the long-term strategy not less frequent than every three years, that the review process include consultation with the appropriate FLMs and that the State report to the public and EPA a specified assessment of its progress toward the National goal. See 40 CFR 51.306(c).

On July 12, 1985 (50 FR 28544) and November 24, 1987 (52 FR 45132), EPA disapproved SIPs of states that failed to comply with the requirements of, among others, the provisions of 40 CFR 51.302 (visibility general plan requirements),

¹ The Clean Air Act ("the Act") is codified, as amended, in the U.S. Code at 42 U.S.C. 7401, *et seq.*

² Mandatory class I Federal areas are certain national parks, wildernesses and international parks described in section 162(a). These areas are the responsibility of "Federal land managers" (FLMs), the Secretary of the department with authority over such lands. See section 302(l) of the Act.

51.305 (visibility monitoring), and 51.306 (visibility Long-Term Strategy). EPA also incorporated corresponding Federal plans and regulations into the SIPs of these states pursuant to section 110(c)(1) of the Act. The Governor of Colorado submitted a SIP revision for visibility protection on December 21, 1987, which met the criteria of 40 CFR 51.302, 51.305, and 51.306 and consisted of five major sections: existing impairment, new source review, consultation with Federal land managers, monitoring strategy, and the long-term strategy. EPA approved this SIP revision in an August 12, 1988 Federal Register document (53 FR 30428), and these revisions replaced the Federal plans and regulations in the Colorado Visibility SIP.

II. Revisions Submitted November 18, 1992

At its public hearing on August 20, 1992, the Colorado Air Quality Control Commission (AQCC) adopted revisions to the Long-Term Strategy of the Class I Visibility SIP and revisions concerning the Long-Term Strategy in Commission Regulation No. 3. These revisions require the Air Pollution Control Division (APCD) to review the Long-Term Strategy and report on visibility progress at regular intervals. In a letter dated November 18, 1992, the Governor of Colorado submitted these revisions to EPA. These revisions were made to bring the plan into compliance with Federal regulation and to fulfill the Federal and Colorado requirements to review and, if necessary, revise the Long-Term Strategy at least every three years. This submittal updates the State's Visibility Long-Term Strategy and makes it consistent with Federal requirements. Pursuant to section 110(k)(1) of the Act, EPA found the submittal to be complete and so notified the Governor in a letter dated January 15, 1993.

Regulation No. 3 previously required a Long-Term Strategy review/revision report from the APCD to the AQCC every three years following the effective date of the regulation (November 1987). The August 1992 Long-Term Strategy report was the first to be completed by APCD and, therefore, was behind schedule in arriving at the AQCC (i.e., it should have been prepared by 1990). The purpose of the regulatory change was to clarify, in light of the delay in submitting the initial report, when subsequent Long-Term Strategy review and revision report cycles would occur. Without this regulatory change, the next Long-Term Strategy review would have been due September 1993—approximately a year from the adoption

of the August 1992 report. To adjust the reporting schedule, the regulation was revised. The revision indicates that the Long-Term Strategy report will be made available by September 1 at least every third year following the submittal of the previous report. If the proposed approval of this revision is finalized by EPA, the submittal of the next report by September 1, 1995 will be a federally-enforceable obligation.

Regulation No. 3 was also revised to clear up a discrepancy with EPA requirements regarding the scope of review of the Long-Term Strategy. Among the items indicated for review in the previous version of the regulation was the "progress achieved in developing the components of the Long-Term Strategy." The State revised the language to indicate that the Long-Term Strategy must be reviewed, among other things, to determine "[t]he need for BART [Best Available Retrofit Technology] to remedy existing impairment in an integral vista declared since plan approval." This change brings the State's program into conformance with EPA regulations. See 40 CFR 51.306(c)(7). Declaration of an integral vista allows for protection of visibility resources outside a mandatory Class I area affecting views from within the area. See 40 CFR 51.301(n). The State has not identified any integral vistas at this time, but may do so in the future at its discretion.

Finally, this SIP revision consists of replacing the original Long-Term Strategy with the revised Long-Term Strategy adopted by the State in August, 1992. The SIP revisions address when the Long-Term Strategy review is to be completed, factors to be assessed in periodic Long-Term Strategy reviews, and components of the Long-Term Strategy plan (e.g., existing impairment, prevention of future impairment, smoke management practices, Federal land manager consultation and communication, and annual visibility data reports).

In a February 18, 1993 letter from Doug Skie, EPA, to Paul Frohardt, APCD, EPA requested additional information to determine the approvability of the SIP revisions. From a technical standpoint, EPA found the Long-Term Strategy review and report complete and fully approvable. However, the revision to the timing of the reporting schedule raised some concerns. According to Federal regulation (40 CFR 51.306), "[t]he plan must provide for periodic review and revision, as appropriate, of the long-term strategy not less frequent than every three years." Colorado's reviews should have occurred in 1990, 1993,

1996, and so forth. The August 20, 1992 review and report were nearly two years late. Rather than conducting another review in 1993, the revision changed the schedule to provide for review at least every third year following the submittal of the previous report. Therefore, since the first report was prepared in 1992, the reviews would occur in 1992, 1995, 1998, and so forth. In effect, only two reviews/reports would be submitted to EPA through 1996, when three reports should have been provided.

Therefore, the State committed in a March 5, 1993 letter to Doug Skie, EPA, to prepare and submit a brief informal status report on the Long-Term Strategy by November, 1993. In this way, the State will have provided three reports through the 1996 timeframe (1992, 1993, 1995). The State fulfilled its commitment by submitting to EPA an informal Long-Term Strategy status report dated December 1, 1993.

The State believes that the Long-Term Strategy revisions to the Visibility SIP will provide for continued Class I visibility protection in Colorado, as well as bring the SIP into conformance with Federal requirements for Long-Term Strategy review. This action was requested by the State of Colorado.

EPA is also proposing, under section 110(k)(6) of the Clean Air Act, to correct the provision of 40 CFR 52.344(a) ("Visibility protection"). This provision incorrectly states:

The requirements of section 169A of the Clean Air Act are not met, because the plan does not include approvable procedures for protection of visibility in mandatory Class I Federal areas.

When EPA initially approved the general elements of Colorado's visibility protection program on August 12, 1988 (53 FR 30428), the State's visibility new source review (NSR) regulations had not yet been approved. Therefore, the program disapproval of 40 CFR 52.344(a), quoted above, which had been adopted on July 12, 1985 (50 FR 28544), was retained. Colorado's visibility NSR regulations were approved on December 1, 1988 as to industrial source categories for which EPA had approved Colorado's Prevention of Significant Deterioration (PSD) and nonattainment NSR permit requirements (53 FR 48537). For other sources, for which Colorado did not have approved PSD and nonattainment NSR regulations, EPA disapproved the State's visibility NSR regulations and continued to implement Federal regulations in 40 CFR 52.26 and 52.28, as incorporated into the Colorado SIP. This exception to approval is noted in 40 CFR 52.344(b).

At the time of approval of the visibility NSR regulations, the provision of 40 CFR 52.344(a), relating to over-all program disapproval, should have been revised to indicate that Colorado's visibility protection program was approved, with the exception of visibility NSR as it applied to certain industrial source categories. With this notice, EPA proposes to correct section 52.344(a) to accurately reflect the status of program approval in Colorado.

III. Implications of This Action

EPA has reviewed the adequacy of Colorado's Long-term strategy review and revisions relative to its date of adoption in 1992. EPA is proposing to approve Colorado's revision to the Long-Term Strategy of the Class I Visibility Protection SIP, as submitted by the Governor with a letter dated November 18, 1992. EPA is also proposing to approve revisions to Colorado AQCC Regulation No. 3 to bring it into conformance with Federal requirements for the Long-Term Strategy and to revise the reporting schedule. EPA proposes to determine that these revisions are consistent with applicable Federal requirements for Long-Term Strategy review under the Clean Air Act's visibility protection program for mandatory Class I Federal Areas.

EPA is also proposing to correct its error in failing to accurately reflect Colorado's Visibility SIP approval status in a previous action on the State's Visibility protection provisions.

IV. Request for Public Comments

EPA is requesting comments on all aspects of this proposal. As indicated at the outset of this document, EPA will consider any comments received by June 13, 1994.

V. Executive Order (EO) 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

VI. Regulatory Flexibility

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: May 3, 1994.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 94-11692 Filed 5-12-94; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 63

[AD-FRL-4881-4]

RIN 2060-AD02

Federal Standards for Marine Tank Vessel Loading and Unloading Operations and National Emission Standards for Hazardous Air Pollutants for Marine Tank Vessel Loading and Unloading Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: Standards implementing two provisions of the Clean Air Act (the Act) are being proposed by today's notice. One set of standards is proposed under section 183(f) of the Act and would limit air emissions of volatile organic compounds (VOC) and hazardous air pollutants (HAP) from new and existing marine tank vessel loading and unloading operations. These standards would require the application of reasonably available control technology (RACT).

An additional set of standards is proposed under section 112(d) of the Act and would limit air emissions of HAP from new and existing marine tank vessel loading and unloading operations. These proposed national emission standards for hazardous air pollutants (NESHAP) would require existing and new major sources to control emissions using the maximum achievable control technology (MACT).

DATES: Comments: Comments must be received on or before July 18, 1994.

Public Hearing: A public hearing will be held on June 15, 1994 beginning at 9:30 a.m.

ADDRESSES: Comments: Interested parties may submit comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention: Docket No. A-90-44, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The Agency requests that a separate copy also be sent to the contact person listed below.

Public Hearing: The public hearing will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons wishing to present oral testimony should contact Ms. Lina Hanzely, Chemicals and Petroleum Branch (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5673 by the dates specified above.

Technical Support Document: The technical support document (TSD) for

the proposed standards may be obtained from the U.S. Department of Commerce, National Technical Information Service (NTIS), Springfield, Virginia 22161, telephone number (703) 487-4650. Please refer to "Technical Support Document for the Development of an Emissions Standard for Marine Vessel Loading Operations" (NTIS number PB93-793910, EPA 450/3-92-001a). Electronic versions of the TSD as well as this proposed rule are available for download from the EPA's Technology Transfer Network (TTN), a network of electronic bulletin boards developed and operated by the Office of Air Quality Planning and Standards. The TTN provides information and technology exchange in various areas of air pollution control. The service is free, except for the cost of a phone call. Dial (919) 541-5742 for up to a 14,400 bits per second (bps) modem. If more information on TTN is needed contact the systems operator at (919) 541-5384.

Docket: Docket No. A-90-44, containing supporting information used in developing the proposed standards, is available for public inspection and copying from 8 a.m. to 4 p.m., Monday through Friday, at the EPA's Air and Radiation Docket and Information Center, Waterside Mall, room M-1500, Ground Floor, 401 M Street, SW., Washington, DC 20460. The proposed regulatory text and other materials related to this rulemaking are available for review in the docket. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. David Markwordt, Chemicals and Petroleum Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-0837.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

- I. Background
 - A. History
 - B. Legal Authority for Tank Vessel Standards
 - C. Process Description and Description of Control Technologies
- II. Summary of the Proposed Standards
 - A. Source Category to be Regulated
 - B. Pollutants to be Regulated
 - C. Proposed Standards
 - D. Emission Points to be Regulated
 - E. Format for the Proposed Standards
 - F. Compliance Deadline
 - G. Initial Performance Tests
 - H. Vessel Tightness Testing
 - I. Monitoring
 - J. Recordkeeping and Reporting
- III. Rationale
 - A. Selection of Affected Sources
 - B. Selection of Pollutants to be Regulated

- C. Selection of Basis and Level of the RACT Standards
- D. Selection of MACT Regulatory Approach
- E. Selection of Basis and Level of Proposed MACT Standards
- F. Selection of Format of the Standards
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- H. Selection of Monitoring and Compliance and Performance Testing Requirements
- I. Selection of Recordkeeping and Reporting Requirements
- J. Solicitation of Comments
- IV. Administrative Requirements
 - A. Public Hearing
 - B. Docket
 - C. Office of Management and Budget Reviews
 - D. Regulatory Flexibility Act Compliance

The proposed regulatory text is not included in this Federal Register notice, but is available in Docket No. A-90-44 or by request from the EPA contact persons designated earlier in this notice free of charge. The proposed regulatory language is also available on the EPA's Technology Transfer Network (TTN). See the Docket section of this preamble for more information on accessing TTN.

I. Background

A. History

In 1982, the U.S. Department of Transportation's Maritime Administration (MARAD) began working with the EPA regarding the establishment of Federal regulations under the Clean Air Act pertaining to air pollutants emitted from commercial marine vessels. The MARAD raised concerns regarding the potential disruption of interstate and foreign commerce and safety problems that may result from State regulation of marine vessel emissions. The MARAD believed that the most appropriate method to control these emissions without causing undue disruption of commerce or safety problems would be for the EPA to promulgate national standards regulating air pollutants from these sources.

In 1985, the U.S. Department of Transportation requested that the National Academy of Sciences' National Research Council (NRC) evaluate the feasibility of controlling emissions from marine tank vessel loading operations. At that time, many States were already considering vapor controls for barge and tankship loading and tankship ballasting. The NRC Commission on Engineering and Technical Systems (CETS) then convened a Committee on Control and Recovery of Hydrocarbon Vapors from Ships and Barges. This committee operated under the guidance of the Marine Board of the NRC. The committee and the Marine Board consisted of members of industry and

academia and State representatives. The Coast Guard (U.S. Department of Transportation) and the EPA also worked with the committee on the feasibility study. In 1987, the committee issued its report "Controlling Hydrocarbon Emissions From Tank Vessel Loading" (Docket A-90-44, item II-I-4).

The Marine Board's report determined that controls were technically feasible but that there was a need for the Coast Guard to promulgate safety requirements and a need for the EPA to set uniform emissions standards to mitigate some of the safety issues that could arise from varied State regulations. The report recommended that the Coast Guard "lead the development and implementation of a coordinated program to ensure the safety and standardization of maritime hydrocarbon vapor emissions controls." The Coast Guard would be responsible for the safety issues involved (standardized equipment, detonation arrestors, personnel training, etc.), and the EPA would be responsible for the emissions standards. One of the methods suggested to achieve the coordination necessary to develop standards for marine tank vessel loading operations was an amendment to the Act.

Part of the Marine Board's task was to develop cost estimates. The Marine Board contracted United Technical Design (UTD) to develop cost estimates for three different model terminals and four model vessels. These model terminals and costs served as the basis for the EPA costs (Docket A-90-44, item II-I-5).

In response to the NRC recommendation, the Coast Guard's Chemical Transportation Advisory Committee (CTAC) formed a Subcommittee on Vapor Control to develop standards for designing and operating vapor control systems. This CTAC subcommittee presented its final recommendations to the Coast Guard in February 1989. The Coast Guard standards for safe design, installation, and operation of marine vapor recovery equipment were promulgated in June 1990 (55 FR 2596). The Coast Guard regulations are found in 33 CFR part 154 and 46 CFR part 39.

As a result of the NRC recommendation, Clean Air Act Amendments of 1990 (the 1990 amendments) added a new section to the Act, section 183(f), that requires the EPA to promulgate standards applicable to emissions of VOC and other air pollutants resulting from the loading and unloading of tank vessels.

The 1990 amendments also revised section 112 of the Act to require the EPA to publish a list of categories of major sources and area sources of listed HAP and to promulgate emissions standards for each listed category of emission sources. In the Agency's initial list of categories of sources to be regulated under section 112(c) of the Act, the marine vessel loading and unloading source category was not listed because the Agency intended to regulate the emissions of HAP as well as VOC under the authority of section 183(f) of the Act (57 FR 31566, July 16, 1992). After publication of this initial list of source categories, the Agency decided to regulate HAP emissions from major sources of marine vessel loading and unloading facilities under authority of section 112 of the Act (58 FR 60021, November 12, 1993).

B. Legal Authority for Tank Vessel Standards

1. Clean Air Act Section 183(f)

Section 183(f) of the Act requires the Administrator, in consultation with the Secretary of the Department in which the Coast Guard is operating, to

Promulgate standards applicable to the emissions of VOC and any other air pollutant from loading and unloading of tank vessels (as that term is defined in section 2101 of title 46 of the United States Code) which the Administrator finds causes, or contributes to, air pollution that may be reasonably anticipated to endanger public health or welfare. Such standards shall require the application of reasonably available control technology, considering costs, any non-air-quality benefits, environmental impacts, energy requirements and safety factors associated with alternative control techniques.

The Act further directed the Administrator to limit the application of the standards, to the extent practicable, to loading and unloading facilities and not to tank vessels. The standards were to be promulgated within 2 years after enactment of the amended Act and must be effective within 2 years of promulgation. The Coast Guard was directed to issue regulations "to insure the safety of the equipment and operations which are to control emissions from the loading and unloading of tank vessels * * *."

2. Clean Air Act Section 112

Title III of the 1990 amendments revised section 112 of the Act to reduce the amount of nationwide air toxics emissions. Under title III, section 112 was amended to give the EPA the authority to establish national standards to reduce air toxics from industries that generate these emissions. Section 112(b)

contains a list of 189 HAP, the emissions of which are to be regulated. Specific HAP on the list include benzene (including benzene from gasoline), toluene, and hexane. Section 112(c) directs the EPA to use this pollutant list to develop and publish a list of all categories of major and area sources of the pollutants on the HAP list. National emissions standards for hazardous air pollutants (NESHAP) will be developed for each of the source categories on that list. The list of source categories was published in the *Federal Register* on July 16, 1992 (57 FR 31576) and was revised to include marine vessel loading and unloading operations on November 12, 1993 (58 FR 60021).

The NESHAP are to be developed to control HAP emissions from both new and existing major and area sources according to the statutory directives set out in section 112(d) of the Act. (Section 112(a) defines a major source as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering control, 10 tons per year or more of any HAP or 25 tons per year of any combination of HAP. An area source is any stationary source that is not considered "major".) The statute requires the standards to reflect the maximum degree of reduction in emissions of HAP that is achievable for new or existing sources. This control level is referred to as the "maximum achievable control technology (MACT)", the selection of which must reflect consideration of the cost of achieving the emission reduction, any nonair quality health and environmental impacts, and energy requirements for control levels more stringent than the MACT floors.

The MACT floor is the minimum stringency level for MACT standards. For new sources, MACT must be no less stringent than the level of emission control already achieved in practice by the best controlled similar source. For existing sources, MACT must be no less stringent than the average emission limitation achieved by the best performing 12 percent of existing sources or the best performing 5 sources in categories or subcategories with fewer than 30 sources.

Once the floor has been determined for new or existing sources for a category or subcategory, the Administrator must set MACT standards that "shall require the maximum degree of emission reduction of the hazardous air pollutants subject to this section * * * that the Administrator, taking into consideration the cost of achieving such emission reduction, and any non-

air quality health and environmental impacts and energy requirements, determines is achievable for new or existing sources * * *." These standards must be no less stringent than the MACT floor. Such standards must then be met by all sources within the category or subcategory. In establishing standards, the Administrator may distinguish among classes, types, and sizes of sources within a category or subcategory.

C. Process Description and Description of Control Technologies

1. Process Description

Marine tank vessel loading operations are facilities that load and unload liquid commodities (e.g., crude oil, gasoline, jet fuel, kerosene, toluene, alcohols, fuel oil Numbers 2 and 6, some chemicals, and groups of solvents or petrochemical products, etc.) in bulk. The cargo is pumped from the terminal's large, above-ground storage tanks through a network of pipes and into a storage compartment (tank) on the vessel. Most marine tank vessel loading operations are associated with petroleum refineries or synthetic organic chemical manufacturers, or are independent terminals.

Gasoline, crude oil, and other VOC- and HAP-emitting commodities are normally delivered from refinery to terminal or terminal to terminal via pipeline, ship, or barge. During marine tank vessel loading operations, emissions result as the liquid that is being loaded into the vessel displaces vapors from the vessel's tank. The vapors emitted fall into two categories: Arrival emissions and generated emissions. Arrival emissions are attributed to any vapors remaining in the otherwise empty cargo tanks prior to loading. Generated emissions refer to vapors resulting from the evaporation of the liquid cargo as it is loaded. The ratio of arrival vapors to generated vapors can vary greatly depending upon the liquid, vapor pressure, loading method, and loading conditions.

The major emission points for marine vessel loading operations include open tank hatches and overhead vent systems. Overhead vent systems collect vapors displaced during loading and route them to a vertical pipe or stack. The vapors are released well above the height of the deck with an upward velocity to help isolate the vapors from the deck. Other possible emission points are hatch covers or domes, pressure-vacuum relief valves, seals, and vents.

Emissions may also occur during ballasting, which is the process of drawing ballast (i.e., water) into a cargo

hold. When ballast is loaded into tanks that contain vapors from the preceding cargo, the vapor is displaced and emitted from the vessel. Most tankships carrying crude oil built since 1980 are required by domestic law and international agreement to use segregated ballast tanks, which prevent the possibility of ballast emissions (see also: The Port and Tanker Safety Act (1978), the Act to Prevent Pollution from Ships (1980), the Marine Vapor Control System Standards (55 FR 25396, June 21, 1990); and the Double Hull Standards for Tank Vessels Carrying Oil (57 FR 36221, August 12, 1992). However, some older and smaller tankships may be exempt from these requirements. Inland barges do not carry ballast.

2. Control Technologies

The description of control technologies has two components, the capture of vapors and the destruction or recovery of VOC and HAP. The capture of vapors at the marine vessel requires that the compartments on both tankships and barges be closed to the atmosphere during loading. Most tankships are already equipped for closed loading as a result of having inert gas systems on board because closed loading is necessary to maintain the legally required minimum inert gas pressure in the cargo tanks in accordance with Coast Guard regulations (46 CFR 32.53 and 46 CFR 153.500). Barges generally do not use inert gas and are usually open loaded. Equipment necessary for closed loading includes (1) devices to protect tanks from underpressurization and overpressurization, (2) level-monitoring and alarm systems to prevent overfilling, and (3) devices for cargo gauging and sampling.

The vapor emissions captured from marine tank vessel loading operations can be controlled using one of two primary methods: Combustion or recovery. Combustion devices include flares, enclosed flares, and thermal and catalytic incinerators. The primary recovery methods are carbon adsorption, absorption, vapor balancing, and refrigeration. (For a more complete discussion of the capture and control techniques, consult the technical support document (TSD) previously mentioned in the ADDRESSES section.)

II. Summary of the Proposed Standards

The following summarizes the proposed standards. A full discussion of the rationale underlying these proposed regulations is found in part III.

A. Source Category To Be Regulated

The source category to be regulated is major source marine tank vessel loading and unloading operations. Regulations will require those operations exceeding certain gasoline or crude oil throughput cutoffs or certain HAP emissions cutoff at major sources to install vapor control systems. Approximately 300 marine tank vessel loading and unloading operations would be affected by these proposed regulations. Vessels loading at affected sources must meet vapor tightness criteria in order to load product.

The source category includes only emissions that are directly caused by the loading and unloading of bulk liquids at points where marine terminal equipment is connected to marine vessel sources. Thus, this source category does not include storage tanks and leaking equipment associated with terminal transfer operations. Nor does this source category include emissions from offshore vessel-to-vessel bulk liquid transfer operations (i.e., lightering operations). Lightering operations do not take place at onshore terminals. The Agency may consider addressing lightering operations in a separate source category.

B. Pollutants To Be Regulated

The pollutants to be regulated are all VOC and HAP emitted during marine tank vessel loading and unloading operations.

C. Proposed Standards

The proposed standards are developed under sections 183(f) and 112(d) of the Act. As discussed above, section 183(f) requires the promulgation of standards implementing reasonably available control technology (RACT). Section 112(d) requires the promulgation of maximum achievable control technology (MACT), which is selected using different criteria than are used for determining RACT. As a result, RACT standards developed under section 183(f) have somewhat different applicability criteria, as well as a different level of emissions reduction, compared to the section 112(d) MACT standards. However, the majority of requirements (e.g., reporting, recordkeeping, performance tests, monitoring) are identical. In order to simplify the regulatory process, both sets of standards, RACT and MACT, are presented in a single regulation and proposed under 40 CFR part 63.

1. Proposed RACT Standards

Existing and new sources exceeding either of the throughput cutoffs of 790 million liters per year (L/yr) (5 million

barrels per year (bbl/yr)) of gasoline or 16 billion L/yr (100 million bbl/yr) of crude oil must meet the RACT requirement of capture and control of vapors from marine vessel loading operations. The EPA believes that approximately 25 terminals will be required to install controls under these proposed standards. The RACT for marine vessel loading operations is a capture system consisting of a vapor tight marine vessel and all of the piping and equipment necessary to route all VOC vapors to a control device connected to either a thermal destruction device or a recovery device. If a thermal destruction device is used to process vapors, 98 percent destruction efficiency must be achieved. If a recovery device is used to process the vapors, 95 percent recovery must be achieved, or as an alternative, for recovery of gasoline vapor emissions, a source must ensure an outlet concentration of 1,000 parts per million by volume (ppmv) or less.

2. Proposed MACT Standards

New marine vessel loading operations exceeding 1 megagram per year (Mg/yr) (1.1 tons per year) of uncontrolled HAP emissions that are located at major sources must meet the MACT requirement of capture and control of vapors from marine vessel loading operations. The MACT for new marine vessel loading operations is a capture system consisting of a vapor tight marine vessel and all of the piping and equipment necessary to route all VOC vapors to a control device that is capable of reducing HAP emissions to the atmosphere by 98 percent.

Existing marine vessel loading operations exceeding approximately 1 Mg/yr of HAP emissions that are located at major sources must meet the same vessel tightness requirements as new sources. The EPA believes that approximately 300 terminals will be affected by these proposed standards. These operations will have a MACT emissions requirement of 93 percent emission reduction. Control devices used to achieve this emission limit are required to operate at 95- and 98 percent removal efficiencies respectively. However, these facilities have the option of exempting emissions of one or more commodities from control provided an overall 93 percent emission reduction is achieved. This overall emission reduction may be demonstrated by controlling all but a few commodities loaded. Partial control of any given commodity would not be allowed under the proposed compliance provisions.

At both new and existing sources, emissions from ballasting operations would be prohibited. Emissions of HAP from steam stripping used to regenerate carbon beds when carbon adsorption is used to control emissions from marine vessel loading operations would also be prohibited under today's proposed standards.

3. Source Reduction and Recycling

The Pollution Prevention Act of 1990 (Pub. L. 101-508; 42 U.S.C. 13101 et seq., ER 71:0501) establishes the following pollution prevention hierarchy as national policy:

- a. Pollution should be prevented or reduced at the source wherever feasible;
- b. Pollution that cannot be prevented should be recycled in an environmentally safe manner wherever feasible;
- c. Pollution that cannot be prevented or recycled should be treated in an environmentally safe manner wherever feasible; and
- d. Disposal or other release into the environment should be employed only as a last resort and should be conducted in an environmentally safe manner.

Pollution prevention means "source reduction," as defined under the Pollution Prevention Act, and other practices that reduce or eliminate the creation of pollutants. Source reduction is any practice that reduces the amount of any hazardous substance entering the waste stream or otherwise released into the environment prior to recycling, treatment, or disposal. Source reduction does not include any practice which alters the physical, chemical, or biological characteristics or the volume of a hazardous substance, pollutant, or contaminant through a process or activity which itself is not integral to and necessary for the production of a product or the providing of a service. Under the Pollution Prevention Act, recycling, energy recovery, treatment and disposal are not included within the definition of pollution prevention. Some practices commonly described as "in-process recycling" may qualify as pollution prevention.

Pollution prevention principles have been incorporated into the proposed marine vessel standards. The proposed prohibition of emissions from ballasting and steam stripping operations has the effect of preventing pollution from occurring at the source. Alternative processes (i.e., segregated ballast tanks and vacuum regeneration) are readily available, widely used, and have the benefit of not resulting in HAP or VOC emissions.

Although not considered pollution prevention, vapor recovery and

recycling is a common practice in this industry, particularly gasoline recovery (the lower vapor pressure crude oils are less conducive to recovery and are more likely to foul the carbon bed). The proposed standards encourage vapor recovery by allowing the use of well-operated and maintained recovery devices that operate at 95-percent emission reduction. Recovery devices are desirable compared to combustion devices because the recovered compounds can be reused in other processes, which reduces the quantity of virgin materials that must be produced. Recovery devices also tend to generate fewer secondary pollution impacts than do combustion devices.

D. Emission Points To Be Regulated

The emission points to be regulated include all means of venting the tank during loading of product or ballast. These include, but are not limited to, open hatches and/or overhead vent systems. The proposed rulemakings will not directly regulate seals, hatches, or covers associated with the marine tank vessel. However, these items must be in satisfactory condition for the vessel to pass one of the three different marine tank vessel tightness tests, and must remain closed during the loading process.

E. Format for the Proposed Standards

The chosen format for the standards for product loading is a percentage of mass emissions reduction. An alternative format for gasoline vapor recovery, a maximum allowable concentration for the vapor processor exhaust is also proposed. Emissions are prohibited from ballasting operations and from regeneration of carbon adsorber beds.

F. Compliance Deadline

The compliance deadline for existing sources affected by the RACT standards is 2 years after the date of promulgation. The compliance deadline for existing sources affected by the MACT standards is 2 years after the date of promulgation. An existing source that subsequently exceeds a RACT throughput cutoff will have 2 years to comply once the source exceeds a throughput cutoff. Similarly, any source that exists as of the effective date of the standards and subsequently exceeds the MACT applicability thresholds would have 2 years to comply with the existing source MACT standards. All other new or reconstructed facilities will have to comply upon startup, with the exceptions noted in § 63.6 of the part 63 General Provisions.

G. Initial Performance Tests

Owners or operators must perform initial performance tests as required by § 63.7 of the General Provisions for all combustion or recovery devices except devices such as boilers or process heaters where the emissions stream is the primary fuel or boilers and process heaters having a design heat input capacity of 44 megawatts or more. The test method for compliance for combustion devices is the EPA Method 25 of appendix A of 40 CFR part 60. The test method for compliance for recovery devices is the EPA Method 25A of appendix A of 40 CFR part 60. Flares are not subject to the same tests as other control devices, but must pass a visible emissions test according to the requirements of Method 22 of appendix A of 40 CFR part 60. The performance tests must be conducted to include the loading of the last 20 percent of a compartment, and may be spread out over multiple compartments.

H. Vessel Tightness Testing

Three alternatives to ensure vessel tightness are proposed: (1) Pressure test the vessel, (2) perform a leak test on all components using Method 21 of appendix A of 40 CFR part 60, or (3) load the vessel at less than atmospheric pressure.

I. Monitoring

Owners or operators using a vent system that contains valves that could divert a vent stream from a control device must either monitor vent stream flow to ensure that it is not diverted from a control device or secure the bypass line valve in the closed position.

Monitoring criteria have been established for combustion devices (except flares), carbon adsorbers, condensers and adsorbers. In general, facilities would be required to establish operating parameters during the initial performance test and then monitor combustion temperature for combustion devices, VOC concentration in the exhaust stream outlet for carbon adsorbers, exhaust stream temperature for condensers, and VOC outlet concentration for adsorbers. In the case of flares, owners or operators would be required to monitor for the continuous presence of a flame and to monitor vent stream flow. Owners or operators seeking to use other types of control devices may develop enhanced monitoring criteria for these devices and submit the criteria to the Administrator for approval.

J. Recordkeeping and Reporting

Sources required to install controls would have to fulfill the reporting and

recordkeeping requirements of the part 63 General Provisions including submittal of the following reports: (1) Compliance notification report, (2) notification of initial performance test, (3) report of initial performance test, (4) quarterly parameter exceedance report, and (5) quarterly emissions estimation report. These sources must also maintain documentation that vessels loaded at the facility are vapor tight. All information will be made readily available to the Administrator or delegated State authority for a minimum of 5 years.

III. Rationale

A. Selection of Affected Sources

The primary release of vapors during the marine tank vessel loading process occurs at the tank vessel through hatches, vents, and vent systems. However, it is impractical for marine tank vessels to carry their own vapor processing systems given the limited space on individual vessels. It is also much more economical for terminals to install and operate control devices that are capable of controlling emissions from multiple vessels than for each vessel to control its own emissions. Furthermore, section 183(f) requires that "to the extent practicable such standards shall apply to loading and unloading facilities and not to tank vessels." Therefore, these regulations require that terminals install an air pollution control device and a means of routing the air/vapor mixture from the vessel to the air pollution control device.

Vessels will not be allowed to load or unload product unless they are compatible with terminal air pollution control systems or have a self contained emissions control system on board. Therefore, vessels loading at a controlled terminal will need to have their own vapor collection systems (i.e., pipes which allow for connection to terminal air pollution control system) in order to route vapors to shore. However, vessels are not required to load at controlled terminals. As a result, the affected source is limited to the terminal, which is in turn required to capture and control all loading emissions, with the exception of ballasting and off-shore terminal emissions which are discussed elsewhere in this preamble. Emissions from off shore vessel-to-vessel bulk liquid transfer operations (i.e., lightering operations) are also not included as a source affected by these standards because these operations do not take place at onshore terminals.

B. Selection of Pollutants To Be Regulated

Section 183(f) of the Act states that the Administrator shall "promulgate standards applicable to the emission of VOC and any other pollutant from loading and unloading of tank vessels which the Administrator finds causes, or contributes to, air pollution that may be reasonably anticipated to endanger public health or welfare." Under section 112(d), the EPA is also required to regulate the emissions of HAP from source categories listed pursuant to section 112(c). Marine vessel loading operations were listed on November 12, 1993 (58 FR 60021). In the absence of regulation, the EPA estimates that 75,200 Mg/yr of VOC will be emitted as a result of tank vessel loading operations. Approximately 8,000 Mg/yr of these VOC emissions will be emissions of HAP. Tank vessel loading operations emit approximately 53 different substances listed as HAP under section 112(b) of the Act. Such emissions include unregulated benzene emissions of about 700 Mg/yr. In addition, approximately 6,900 Mg/yr of hexane, toluene, xylene compounds, ethyl benzene, iso-octane, MTBE, naphthalene, and cumene are emitted from tank vessel loading operations. Approximately 44 HAP comprise the remaining four percent of toxic emissions.

Benzene is a known human carcinogen. It has been demonstrated to increase the incidence of nonlymphocytic leukemia in occupationally exposed individuals. It has also been linked to other leukemias, as well as lymphomas and other tumor types in animal studies. Benzene has also been associated with a number of adverse noncancer health effects, including effects on the blood system and the immune system. The other HAP identified above also may induce adverse health effects, including depression of the central nervous system, upper respiratory tract and eye irritation, skeletal abnormalities, anemia, cataracts, kidney damage and liver damage.

As a result of its authority to regulate emission from tank vessel loading operations under both section 183(f) and section 112(d), the EPA shall regulate emissions of VOC and those HAP included on the list under section 112(b) in this rulemaking.

C. Selection of Basis and Level of the RACT Standards

1. Development of Regulatory Alternatives

In deciding how to implement the RACT provisions of section 183(f), the EPA had to determine whether or not all tank vessel loading terminals should be subject to the standards (i.e., whether there should be "cutoffs" below which a terminal would not be subject to the standards) and what level of control would be appropriate. Consistent with the requirements of section 183(f) calling for the consideration of costs and other non-air quality impacts, as well as the general requirements under RACT to review economic feasibility, the EPA believes that section 183(f) gives the EPA the flexibility to determine the level and scope of regulation that is most appropriate for terminal facilities, given all of the factors indicated.

Assuming 100 percent capture of emissions (which can be assumed when vapor tight vessels are loaded), the overall level of control is determined by the efficiency of the control device to which emissions are ducted. Currently, recovery devices (e.g., carbon adsorption, absorption, vapor balancing and refrigeration) are capable of achieving a 95 percent efficiency compared to a 98 percent efficiency achieved by thermal destruction (combustion) devices (e.g., flares, enclosed flares, and thermal and catalytic incinerators). Additional information and descriptions of these control technologies are found in the TSD for this rulemaking (see ADDRESSES section). For purposes of the regulatory alternative analysis, the use of a thermal destruction device (i.e., 98 percent efficiency) was assumed. The control technologies selected for this regulation are discussed in part 4 below.

The next step was to identify regulatory alternatives that would allow the EPA to choose among different optimal cutoffs specifying what types of terminals would have to install control devices. The EPA chose commodity and throughput as factors to distinguish among alternatives because commodities with higher vapor pressures have higher emissions and, for a given commodity, terminals with higher throughput loading similar vessels have higher emissions.

Table 1 is a summary of the five regulatory alternatives developed by the EPA. The regulatory alternatives varied in stringency from controlling all emissions at all facilities to controlling only gasoline loadings at terminals with annual throughputs greater than 1,590 million liters (10 million bbl/yr) and

crude oil terminals with throughputs greater than 15,900 million liters/yr (100 million bbl/yr). The control levels are all based on the capture of loading emissions from marine vessels and a 98 percent removal efficiency. Each regulatory alternative is structured such that the emissions and resulting cost-

effectiveness values from each commodity at the stated throughput are roughly equivalent. For example, the costs of controlling emissions from 10 million barrels of gasoline is treated as being roughly equivalent to the costs of controlling emissions from 100 million barrels of crude oil because the

emissions per volume of gasoline is ten times higher than for crude oil. (For a more complete rationale behind the selection of the regulatory alternatives, consult the technical support document (TSD) previously mentioned in the ADDRESSES section.)

TABLE 1.—RACT REGULATORY ALTERNATIVES^a

Alternatives, throughput (MM bbl/yr)	VOC emissions reduction, Mg/yr ^b	Percent VOC emissions reduction ^b	No. of affected terminals	Capital costs, \$ million ^c	Annual costs, \$ million ^c	Cost effectiveness, \$/Mg	Incremental cost effectiveness, \$/Mg
I. Gasoline >10 MM bbl/yr Crude oil >100 MM bbl/yr	53,200	66	13	220	41	770	N/A
II. Gasoline >5 MM bbl/yr Crude oil >100 MM bbl/yr	58,100	72	25	280	53	910	2,500
III. Gasoline >1 MM bbl/yr Crude oil >10 MM bbl/yr	64,500	80	60	420	85	1,300	5,000
IV. Gasoline >0.5 MM bbl/yr Toluene >0.5 MM bbl/yr Alcohols >1.5 MM bbl/yr Crude oil >5 MM bbl/yr	66,900	83	120	570	120	1,800	15,000
V. All terminals	72,000	98	1,500	2,600	610	8,500	96,000

^a Terminals affected by State regulations or loading less than 1,000 bbl/yr are not included in the above estimates.

^b Based on a 98-percent control efficiency and total VOC emissions of 74,000 Mg/yr.

^c Costs are in 1990 dollars.

Source: Docket A-90-44, items II-A-23 and II-A-32.

The analysis leading to a decision to regulate emissions from ballasting and steam stripping operations is presented in section D, Selection of MACT Regulatory Approach.

2. Impacts of the Regulatory Alternatives

The EPA developed model (i.e., example) vessels and terminals for use in estimating the environmental, cost, and economic impacts associated with the actual terminals represented by the waterborne commerce in the United

States (WCUS) data base. The impacts that resulted from this analysis are presented in Tables 1 through 3. The EPA performed an economic impact analysis of the regulatory alternatives considered for these regulations. Potential price, output, and employment impacts for affected products and for the marine transport industry and for small businesses were examined. Estimated maximum price increases for any product loaded in bulk varied but were not large under any of the regulatory alternatives. These price increase

estimates reflect the control cost increase for both transporting crude and transporting refined products. Because the price increases are small and because the elasticities of demand for petroleum products are small, estimated percent output (i.e., throughput) reductions were minimal in all but Regulatory Alternative V. Correspondingly, estimated employment reductions were also small (less than 20) in all but Regulatory Alternative V.

TABLE 2.—SECONDARY AIR AND ENERGY IMPACTS OF RACT REGULATORY ALTERNATIVES^{a, b}

Alternatives, throughput (MM bbl/yr)	SO _x emissions, Mg/yr ^c	NO _x emissions, Mg/yr ^c	CO emissions, Mg/yr ^c	Electricity impacts, MWh/yr ^d	Natural gas impacts, 1,000 ft ³ /yr ^d
I. Gasoline >10 MM bbl/yr Crude oil >100 MM bbl/yr	61	130	120	3,000	340,000
II. Gasoline >5 MM bbl/yr Crude oil >100 MM bbl/yr	61	150	140	5,400	620,000
III. Gasoline >1 MM bbl/yr Crude oil >10 MM bbl/yr	65	180	170	11,000	1,300,000
IV. Gasoline >0.5 MM bbl/yr Toluene >0.5 MM bbl/yr Alcohols >1.5 MM bbl/yr Crude oil >5 MM bbl/yr	65	190	180	20,000	2,200,000
V. All terminals	69	250	230	170,000	16,000,000

^a Terminals affected by State regulations or loading less than 1,000 bbl/yr are not included in the above estimates.

^b Based on use of incineration.

^c These impacts represent increases in emissions; increases would not be expected if all affected sources used recovery technologies.

^d These impacts represent increases in energy usage.

Source: Docket A-90-44, item II-A-24.

TABLE 3.—SUMMARY OF RACT ECONOMIC IMPACTS BY REGULATORY ALTERNATIVE

Reg. alt.	Terminals covered/throughput, MM BBL/yr	Total cost, MM	Maximum percent price increases	Percent output reductions	Employment reductions	No. of terminals under competitive pressure	Impact on vessels	Displacement potential by pipeline
I	Gasoline >10.0	41	0.16-0.19	0.02	<50	0	Low level of dedication	Minimal.
	Crude oil >100		0.10-0.18	ND				
II	Gasoline >5.0	53	0.18-0.21	0.02	<50	0-5	Low level of dedication	Minimal.
	Crude oil >100		0.10-0.18	ND				
III	Gasoline >1.0	85	0.25-0.29	0.02	119	0-30	Moderate level of dedication	Minimal.
	Crude oil >10.0		0.18-0.31	ND				
IV	Gasoline >0.5	120	0.32-0.37	0.03	165	0-65	Significant level of dedication	Minimal.
	Crude >5.0		0.18-0.32	ND				
	Alcohols >1.5		0.60	0.04				
	Toluene >10.0		0.41					
V	All	610	0.3-1.8	0.07-0.26	924	>1,000	High level of dedication to regulated products.	Some in long run.

ND=Not determinable, function of other products derived from crude oil.

Reference: Docket A-90-44, items II-A-23 and II-A-32.

Because today's proposed regulation involves the application of both RACT and MACT, impacts for each standard were determined separately. In order to avoid overestimation or double-counting, and because the requirements for RACT are more stringent than MACT, the impacts for facilities affected by RACT (i.e., facilities with gasoline throughputs of greater than 790 million L/yr (5 million bbl/yr) or crude oil throughputs of greater than 16 billion L/yr (100 million bbl/yr)) were calculated first, and were discounted when determining the impacts for facilities affected by MACT (i.e., facilities emitting greater than 1 Mg/yr of HAP).

3. RACT Threshold Determination

The Administrator is proposing Regulatory Alternative II as the regulatory threshold for the RACT standard. Regulatory Alternative II would require controls for crude oil loadings at facilities with an crude oil marine throughput of approximately 15,900 L/yr (100 million bbl/yr) or more, and gasoline loadings at facilities with a gasoline throughput of approximately 795 million L/yr (5 million bbl/yr). Approximately 25 terminals (1.5 percent of all terminals) will be affected if the thresholds for Regulatory Alternative II are implemented. In addition, under this alternative, only a small volume of U.S. marine vessels will need to be retrofitted. It is anticipated that only those vessels that are least costly to retrofit would be retrofitted. Approximately 76 percent of the VOC emissions from all marine terminals would be controlled at an average cost effectiveness of approximately \$770/Mg of VOC reduced under Regulatory Alternative II.

The Administrator believes that the incremental cost effectiveness (\$5,000/Mg) of going beyond Regulatory Alternative II is inappropriate given this standard.

Regulatory Alternative III was strongly considered. However, the additional 35 terminals controlled under Regulatory Alternative III would produce only an additional eight percent reduction in nationwide emissions. Of those 35 additional terminals, as many as 25 could be under increased competitive pressure, compared to only up to five terminals under Regulatory Alternative II. (Increased competitive pressure refers to the situation where the controlled terminal is in direct competition with a much smaller or larger terminal. The smaller terminal may not be controlled and the larger terminal may be able to control vapors more effectively on a per-

barrel basis. The controlled terminal could be forced to absorb some of the control costs, reduce throughput, substitute nonregulated products, or close the facility.)

Additionally, the more stringent regulatory alternatives considered involved control of commodities which have vapor pressures much lower than gasoline and crude oil. Emissions generally correspond to the vapor pressure of the commodity being loaded. Gasoline and crude oil generally have the highest vapor pressures, and therefore present better control alternatives. Because the economic and other environmental impacts of Regulatory Alternative II are reasonable and should not place an undue burden on industry or the environment, the Administrator selected Regulatory Alternative II as representative of RACT.

4. Selection of Emission Control Technologies and Emission Control Standards for RACT

Control of marine vessel loading emissions requires the capture of displaced vapors and efficient control of vapors once captured. Vessels loading at facilities with controls must install a vapor collection system and pass one of three tank vessel tightness alternatives to ensure good capture of vapors. The tightness alternative may be one of the following: (1) A leak check performed during loading on all components using Method 21 of appendix A of 40 CFR part 60; (2) a pressure test, where the internal tanks are pressurized and the pressure drop is monitored over time to determine if the vessel is tight; or (3) for noninerted vessels (i.e., vessels having tanks that are not blanketed with nonreactive gas during loading to ensure that vapors in the tanks are below the explosive range), load the vessel at less than atmospheric pressure. These tightness alternatives are the same as those promulgated in the NESHAP for benzene (40 CFR part 61 subpart BB). The EPA does not have sufficient data necessary to determine at what point vessel leaks affect the operation and efficiency of the control system; however, the Agency believes that the three tightness alternatives proposed are sufficient to provide for the collection of nearly all displaced vapors. The EPA believes that once assured of good capture and collection of the vapors through the tightness tests, facilities can concentrate on the operation and maintenance of the control device as a means of ensuring compliance.

The EPA is proposing that vapor emissions captured from marine tank vessel loading operations can be controlled using one of two primary

methods: Combustion or recovery. The primary devices used for combustion of vapors are flares, enclosed flares (often referred to as thermal oxidizers), catalytic incinerators, and thermal incinerators. The primary methods for recovery of vapors include carbon adsorption, absorption, refrigeration, and vapor balancing. In States with marine tank vessel loading standards that allow both combustion and recovery, the control devices are evenly split between enclosed flares and carbon adsorption.

The EPA is proposing that standards for the control of vapors captured during the loading operations be one of the following: (1) A combustion device meeting 98 percent or greater destruction efficiency or (2) A recovery device meeting 95 percent or greater recovery efficiency. The difference in control efficiencies between recovery and combustion is designed to not prohibit recovery systems, which have smaller secondary air emission (sulfur dioxide, nitrous oxides, and carbon monoxide) impacts than combustion systems. The smaller emissions reduction is also warranted because these emissions are recovered as product instead of destroyed. Additionally, the EPA has data supporting the 95- and 98-percent control efficiencies as achievable for recovery and combustion devices, respectively (Docket A-90-44, items II-A-7 and II-B-1). For terminals that use recovery devices for control of gasoline vapor emissions, the EPA is proposing an alternative means of compliance. Such sources can comply by ensuring an outlet concentration of 1,000 ppmv or less for emissions from gasoline loadings. The EPA believes the 1,000 ppmv limit for gasoline vapor is generally more strict than the 95 percent reduction requirement. Data from an existing facility show this limit to be achievable (Docket A-90-44, item II-B-13). The intent of the concentration alternative is to allow those facilities that operate at a higher efficiency than required by the proposed standard to perform a simpler compliance test, as they would only have to test at the outlet of the control device. Because of the lower emission factors associated with crude oil emissions, the fact that hydrogen sulfide present in crude oil may poison the activated carbon, and that there are no known facilities controlling crude oil emissions with carbon adsorbers, the EPA is not proposing a concentration alternative for controlling vapors from crude oil emissions.

5. Impacts of the Proposed RACT Standards

The environmental, costs, energy, and economic impacts of the proposed RACT standards are summarized in Tables 1 through 3, and are represented by Regulatory Alternative II. They are also discussed in parts C.2. and C.3. above. Economic effects of the proposed RACT standards include a maximum price increase of approximately 0.2 percent and nationwide employment reductions of less than fifty. Up to five terminals controlled under the proposed standards could be under increased competitive pressure. Economic effects on oil tankers include an average control cost per barrel of crude oil loaded equal to \$0.002.

A primary concern in the implementation of the proposed standards is safety. Section 183(f)(1) dictates that the EPA consult with the Coast Guard and consider safety when promulgating these standards. Section 183(f)(2) states:

Regulations on Equipment Safety.—Within 6 months after the date of the enactment of the Clean Air Act Amendments of 1990, the Secretary of the Department in which the Coast Guard is operating shall issue regulations to ensure the safety of the equipment and operations which are to control emissions from the loading and unloading of tank vessels, under section 3703 of title 46 of the United States Code and section 6 of the Ports and Waterways Safety Act (33 U.S.C. 1225). The standards promulgated by the Administrator under paragraph (1) and the regulations issued by a State or political subdivision regarding emissions from the loading and unloading of tank vessels shall be consistent with the regulations regarding safety of the Department in which the Coast Guard is operating.

The Coast Guard regulations (55 FR 25396) were promulgated in June 1990, before the passage of the amended Act. These standards dictate equipment, system, and operational requirements for vapor control systems for benzene, gasoline, and crude oil. The EPA has maintained communication with the Coast Guard throughout the rulemaking process. All control systems installed as a result of this proposed regulation would be subject to the Coast Guard regulations, and nothing in the proposed standard should be construed as to require any act or omission that would be in violation of any regulation or other requirements of the United States Coast Guard or prevent any act or omission necessary to secure the safety of a vessel or for saving life at sea. Representatives from the United States Coast Guard have participated in all phases of the development of these

proposed rules. The EPA is confident that these regulations are consistent with the Coast Guard regulations and that the safety factors have been adequately addressed.

6. Attainment/Nonattainment Status and Site Specific Risk Assessment

At one time, the Agency was considering planning regulating based exclusively under the authority of section 183(f). During this time, the Agency held a public meeting to discuss a possible approach for considering a facility's attainment/non-attainment status with respect to NAAQS ozone program and a facility's site specific risk to the public in developing the standards (see Docket A-90-44, item II-E-42). This approach would have required intensive effort on the part of the Agency and the regulated community to develop acceptable criteria and technological methodologies for demonstrating whether the criteria have been met. However, with regulation under section 112, any facility that might have been exempted from RACT under section 183(f) with the approach discussed at the public meeting would ultimately be regulated under the MACT standards of section 112. Therefore, no further consideration was given to this approach.

D. Selection of MACT Regulatory Approach

1. Area Source Finding

The HAP emitted from this source category include benzene, toluene, hexane, xylene, and ethylbenzene from gasoline and crude oil loading as well as approximately 60 HAP from alcohols and specialty chemicals. Of the approximately 1,800 marine vessel terminals in this source category, at least 60 emit 25 ton/year of HAP or more, and are therefore considered major sources. In addition, under section 112(a)(1), a marine vessel terminal may be a part of a major source if it is part of a "group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants." There are approximately 600 refineries and chemical production facilities in the United States; all of these are considered to be major sources. While the Agency does not have the data in its marine vessel data base to estimate how many of these facilities have bulk marine loading

terminals that are contiguous to and under the same control as the main facility, there is a high correlation between large refineries and production facilities and large bulk loading terminals. Therefore, at a minimum, for purposes of this analysis, the Agency assumed that approximately 300 terminals are major sources because they are likely to be located at major sources such as refineries or chemical production facilities. This leaves approximately 1,200 facilities that are considered likely area sources. Based on the emissions data contained in the Agency's data base, these 1,200 facilities represent only 2 percent of nationwide HAP emissions.

Section 112(c)(3) states that categories of area sources emitting HAP may be listed and regulated if the Administrator finds the sources, individually or in the aggregate, present a threat of adverse effects to human health or the environment. Based on limited data available to the Agency, the Administrator is unable to determine a threat of adverse effects at this time. Therefore, the Agency is proposing not to regulate such area sources in this rulemaking. This is consistent with the Agency's decision not to include in its initial list of source categories those categories that contained no major sources and for which the Agency had not made a finding of threat of adverse effects (57 FR 31576, July 16, 1992). The Agency may, however, revisit these sources in the future, if additional data become available.

2. Determination of Subcategories

The source category to be regulated is major sources of marine vessel loading and unloading operations. As part of the NESHAP development process, the source category was evaluated to determine if subcategorization of the source category was justified. Although the Act does not specify the criteria from which subcategories can be developed, section 112(d)(1) of the Act states that the "Administrator may distinguish among classes, types, and sizes of sources within a category or subcategory * * *." The Agency believes that these same criteria are acceptable criteria to use in making subcategory determinations.

Size appears to be a likely candidate for a distinguishing feature, and using total estimated HAP emissions as an indicator for size, the EPA evaluated marine tank vessel loading operations to determine whether it was appropriate to subcategorize the source category on the basis of size. The limit for determining subcategories was examined in 0.5 Mg increments of HAP emissions from 0.5

Mg/yr to 2.0 Mg/yr. A subcategory based on 1 Mg of HAP emissions per year was selected for the following reasons. First, facilities that emit less than 1 Mg of emissions are likely to be area sources and therefore not subject to the proposed standards, or are facilities that are represented by relatively minimal, episodic emissions. For example, a typical river barge holds 10,000 barrels or 420,000 gallons of gasoline. An uncontrolled facility below a 1-Mg cutoff could be loading less than 30 barges per year. These facilities also typically emit less frequently than facilities emitting more than 1 Mg/yr and typically only load a single commodity. Additionally, these facilities also tend to load (and therefore emit) commodities having lower vapor pressures than commodities loaded at other, larger, facilities. Also, facilities that emit 1 Mg or more of HAP emissions contribute approximately 98 percent of HAP emissions to the national inventory. (See Docket A-90-44)

3. Determination of the MACT Floor

The MACT floors were determined for the following types of operations: Product loading and ballasting.

a. *Product loading.* The marine vessel data base is based on throughput data for marine vessel loading terminals. The throughput data are divided into crude oil, gasoline, and 11 other commodity categories. Additional information on these data are available in the TSD for this proposed regulation (see ADDRESSES section of this preamble). The EPA estimated the emissions of HAP from each of these terminals using these throughput data and incorporating assumptions about how many of these facilities were controlled, and the extent of their control. These assumptions are based on existing Federal and State regulations. For example, benzene loadings are already controlled by the benzene NESHAP (40 CFR part 61, subpart BB). In addition, four States have regulations requiring control of emissions from marine tank vessel loading operations: New Jersey, Louisiana, Pennsylvania, and California (District regulations). (Additional information on the derivation of the MACT floor is found in Docket A-90-44, item II-A-44.) Additional discussion of the Agency's interpretation of the MACT floor is presented in section J. Solicitation of Comments.

Of the approximately 360 terminals estimated to be affected by the proposed

regulation, 43 facilities comprise the best performing 12 percent of facilities used in calculating the MACT floor for terminals emitting over 1 Mg of HAP emissions. These terminals are subject to State regulations in California, New Jersey, and Louisiana. Averaging the required control levels of these facilities results in a MACT floor of 93 percent control for facilities emitting more than 1 Mg of HAP per year. Although this derived average does not precisely match a control technology, for all practical purposes it is equivalent the emission reduction achieved by recovery techniques (i.e., 95 percent). Additional information on the derivation of the MACT floor may be found in the docket for this proposed rulemaking effort.

There are approximately 1,440 facilities that would emit less than 1 Mg of HAP emissions annually if uncontrolled. The average control level of the best performing 12 percent of facilities is 36 percent control. This control level does not represent an existing technology. Therefore using the average of the best performing 12 percent is inappropriate for establishing the MACT floor. Taking the median of the best performing 12 percent of these sources (94th percentile) results in a control level of zero because the median facility is uncontrolled. This is a more appropriate portrayal of the level of control that exists in this subcategory. Therefore, this level of control (i.e., no control) represents the MACT floor for terminals emitting less than 1 Mg/yr.

The MACT floor for new facilities, regardless of size, is a 98-percent overall control of emissions. This control level represents the best performing similar source. The Agency will take comment on whether the MACT floor for new sources could, consistent with the requirements of section 112(d) of the Act, be equal to a control requirement of 95 percent when a recovery device is used. As discussed elsewhere in this preamble, the Agency wishes to encourage the use of recovery devices. However, a 95 percent reduction requirement for recovery devices may be considered inconsistent with the requirement of section 112(d)(3) of the Act that emission standards for new sources shall not be less stringent than the emission control achieved by the best controlled similar source. The EPA requests comments on whether the secondary benefits of recovery devices provide the Administrator with the ability to determine that a 95 percent

reduction requirement for those sources using recovery is "not less stringent" than a 98 percent reduction requirement for all other sources.

b. *Ballasting.* According to the Marine Board report, most tankships have segregated or clean ballast tanks due to Coast Guard regulations and international agreements that effectively prohibit ballast emissions from occurring. Since the Marine Board report was issued in 1987, as older vessels have been retired, the proportion of "uncontrolled" vessels has decreased further. However, the Agency does not have any information available to it to evaluate the percentage of vessels that still emit ballasting emissions, particularly those vessels that are not in crude oil service (where the vast majority of ballasting occurs). The Administrator determined that the MACT floor for ballasting at new or existing sources would be a prohibition of ballasting emissions. The Agency is requesting comment on this decision to prohibit ballasting emissions.

E. Selection of Basis and Level of Proposed MACT Standards

1. Development of Regulatory Alternatives

a. *Product loading.* Two regulatory alternatives were developed for the subcategory represented by major source marine tank vessel loading and unloading operations that emit less than or equal to 1 Mg of HAP annually. The regulatory alternatives are summarized in Table 4. The first alternative, Regulatory Alternative A, represents the MACT floor of no control. Regulatory Alternative B represents the control of a facility's total HAP throughput resulting in an overall emission reduction of 95 percent.

Two regulatory alternatives were considered for the subcategory represented by existing facilities emitting more than 1 Mg of HAP per year. Regulatory Alternative A represents the MACT floor level of control (93 percent overall control). Regulatory Alternative B represents the control of a facility's total HAP throughput to an overall control of 95 percent.

There are no regulatory alternatives for new facilities that exceed the MACT floor of 98 percent control because no other alternatives that are more stringent than the floor were considered technically feasible.

TABLE 4.—MACT REGULATORY ALTERNATIVES^a

Regulatory alternative	HAP emissions reduction, Mg/yr	Percent HAP emissions limit	No. of affected terminals ^b	Capital costs, \$ million ^c	Annual costs, \$ million ^c	Cost effectiveness, \$/Mg	Incremental cost effectiveness, \$/Mg
For facilities emitting less than or equal to 1-Mg/yr HAP:							
A. No control (MACT floor)	0	0	0	0	0	0	N/A
B. 95 Percent emission limit ...	125	95	1,200	1,800	430	3,400,000	3,400,000
For facilities emitting greater than 1-Mg/yr HAP ^d :							
A. 93 Percent emission limit (MACT floor)	1,300	93	240	570	130	99,000	N/A
B. 95 Percent emission limit ...	1,300	95	240	(^e)	(^e)	(^e)	(^e)

^aTerminals affected by State regulations or the benzene NESHAP are not included in these estimates.

^b"Affected Terminals" are terminals that would be required to control emissions.

^cCosts are in 1990 dollars.

^dTwenty-five facilities have HAP emissions greater than 1 Mg/yr and are affected by RACT. These facilities are not included in these estimates.

^eGiven the structure of the UTD cost estimates, distinctions between the costs at 93 percent and 95 percent emission reduction were not possible. However, costs would be at least as high as those shown at the 93 percent emissions reduction plus additional retrofit costs for vessels. (Retrofit costs for vessels range from \$9,000 to \$61,000.)

Source: Docket A-90-44, items II-A-23, II-A-32, and II-A-34.

b. *Ballasting.* There are no regulatory alternatives beyond the MACT floor.

2. Impacts of the Regulatory Alternatives

The impacts of the product loading regulatory alternatives are summarized in Tables 4 through 6.

TABLE 5.—SECONDARY AIR AND ENERGY IMPACTS OF MACT REGULATORY ALTERNATIVES^{a,b}

Regulatory alternative	SO _x emissions, Mg/yr ^c	NO _x emissions, Mg/yr ^{c,k}	CO emissions, Mg/yr ^{c,k}	Electricity impacts, MWh/yr ^d	Natural gas impacts 1,000 ft ³ /yr ^d
For facilities emitting less than or equal to 1-Mg/yr HAP:					
A. No control (MACT floor)	0.0	0.0	0.0	0	0
B. 95 Percent emission limit	0.5	28	27	114,000	12,000,000
For facilities emitting greater than 1-Mg/yr HAP:					
A. 93 Percent emission limit (MACT floor)	6.6	64	61	27,000	3,000,000
B. 95 Percent emission limit	6.8	66	62	28,000	3,000,000

^aTerminals affected by State regulations or the benzene NESHAP are not included in these estimates.

^bBased on use of incineration.

^cThese impacts represent increases in emissions; increases would not be expected if all sources used recovery technologies.

^dThese impacts represent increases in energy usage.

Source: Docket A-90-44, items II-A-24 and II-A-33.

TABLE 6.—SUMMARY OF ECONOMIC IMPACTS BY MACT REGULATORY ALTERNATIVE^a

Regulatory alternative	Terminals covered/throughout, (million bbl/yr)	Total cost, (\$MM)	Maximum percent price increase	Percent output reductions	Employment reductions	No. of terminals under competitive pressure	Impact on vessels	Displacement potential by pipeline
For facilities emitting less than or equal to 1-Mg/yr HAP:								
A. No control (MACT floor).	0	0	0	0	0	0	None	None.
B. 95 Percent emission limit.	1,200 (320)	1,800	(^b)	(^b)	(^b)	(^b)	(^b)	(^b)
For facilities emitting greater than 1-Mg/yr HAP ^c :								
A. 93 Percent emission limit (MACT floor).	240 (750)	570	0.09-0.54	0-0.04	166	230	High level of dedication; retrofiting of vessels.	Minimal.

TABLE 6.—SUMMARY OF ECONOMIC IMPACTS BY MACT REGULATORY ALTERNATIVE^a—Continued

Regulatory alternative	Terminals covered/throughout, (million bbl/yr)	Total cost, (\$MM)	Maximum percent price increase	Percent output reductions	Employment reductions	No. of terminals under competitive pressure	Impact on vessels	Displacement potential by pipeline
B. 95 Percent emission limit.	240 (750)	(d)	(e)	(c)	(c)	(c)	(c)	(c)

^a Terminals affected by State regulations or the benzene NESHAP are not included in these estimates.

^b Given the structure of the UTD data base, estimation of the impacts that would be anticipated at a control level more stringent than the MACT floor was not possible. However, it is expected that these impacts would be more severe than those expected for facilities emitting more than 1 Mg/yr of HAP.

^c Twenty-five facilities have HAP emission greater than 1 Mg/yr and are affected by RACT. These facilities are not included in these estimates.

^d Given the structure of the UTD cost estimates, distinctions between the costs at 93 percent and 95 percent emission reduction were not possible. However, costs would be at least as high as those shown for the MACT floor plus additional vessel retrofit costs. (Vessel retrofit costs range from \$9,000 to \$61,000.)

^e Given the structure of the UTD data base, distinctions between the impacts at 93 percent and 95 percent emission reduction were not possible. The impacts for facilities emitting greater than 1 Mg/yr of HAP would be at least as high as the impacts shown for the MACT floor, with higher impacts on vessels.

Source: Docket A-90-44, items II-A-23, II-A-32, and II-A-34.

3. MACT Determination

a. *Product loading.*—(1). *Existing sources emitting 1 Mg/yr or less.* Under Regulatory Alternative B, the average cost effectiveness to control existing facilities emitting less than 1 Mg/yr of HAP is approximately \$3.4 million per Mg. The Administrator has determined that these costs are unreasonable and, as a result, that MACT for the subcategory represented by existing facilities with emissions less than or equal to 1 Mg per year of HAP emissions is equivalent to a MACT floor of no control. This determination follows section 112(d) of the Act where the Administrator is required to consider cost of achieving emission reductions beyond the MACT floor (among other criteria) when selecting MACT. These smaller facilities represent only 2 percent of all industry-wide emissions.

(2). *Existing sources emitting greater Than 1 Mg/yr.* The Administrator has determined that MACT for the subcategory represented by existing facilities with HAP emissions exceeding 1 Mg per year is the MACT floor of 93 percent overall control. The incremental benefits of additional control are not justified considering the costs of achieving these reductions.

The bulk of the incremental costs of control beyond the 93 percent emission limit (MACT floor) are the costs to retrofit a sufficient number of vessels to capture emissions beyond those required at the MACT floor and supplemental operating costs. Unfortunately, the Agency's marine vessel data base does not contain the type of data needed to analyze the nationwide cost effectiveness of a more stringent alternative. However, the average cost per facility to retrofit sufficient vessels to allow the facility to

comply with the incremental emission reduction required for that facility to meet standards beyond the MACT floor ranges from approximately \$9,000 to \$60,000 per year. (Additional information on this analysis is found in Docket A-90-44, item II-A-23 and item II-A-32). In addition, there may be substantial additional costs to the facility to equip additional emission points (e.g., berths) with emission control equipment. The Administrator deems that any costs beyond the MACT floor, which itself has a cost effectiveness of over \$90,000 per Mg, would not be reasonable. (The statute itself precludes the Administrator from selecting a less costly MACT floor.) Based on this limited analysis, the Administrator has elected to not require control beyond the MACT floor for this subcategory.

The selection of 93 percent emission limit as MACT for existing sources emitting greater than 1 Mg/yr should provide flexibility to terminals that install control equipment that is expected to achieve 95 to 98 percent emissions reduction. This flexibility enables facilities to control HAP emissions in the most efficient manner by not requiring the control of liquids having minimal emissions. The Agency is soliciting comment on the need for this flexibility, and on methods to ensure enforceability of these standards given this flexibility.

It should be noted that the EPA does not believe that the analysis performed above for MACT-regulated facilities is applicable to the determination of RACT discussed in section III-C. The EPA believes that the incremental benefits of controlling the MACT-regulated terminals above 93 percent control is unjustified, given the costs already associated with the MACT standard. On

the other hand, the RACT standards apply only to the largest crude oil and gasoline terminals in the United States. The cost effectiveness associated with requiring 95 or 98 percent control at these facilities is considerably more favorable than that associated with requiring 95 or 98 percent control for the MACT-regulated facilities. As shown above, the cost effectiveness associated with the RACT standard is \$2,100/Mg, considerably less than that for the MACT standard. Therefore, the Agency believes that it is not appropriate to reduce the percent reduction requirements of the RACT standard to match those of the MACT standard. The EPA recognizes that for some individual facilities regulated under both sections 112 and 183(f), the RACT standard may be more stringent than the MACT standard. The EPA believes that this result is appropriate, but the EPA is taking comment on this issue. The EPA also notes that the control equipment required under both the MACT standard and the RACT standard must meet the 95 or 98 percent control threshold. The MACT standard offers flexibility with regard to the type of liquids controlled, not the manner in which they are controlled.

(3). *New sources.* The Administrator has determined that MACT for new facilities is the MACT floor, which is an overall control requirement of 98 percent. However, as discussed above, the EPA will take comment on whether MACT for new facilities could, consistent with section 112(d) of the Act, be equal to 95 percent reduction for recovery devices and 98 percent reduction for other destruction devices.

b. *Ballasting.* The Administrator believes that the combined impact of fleet turnover and Coast Guard and other regulatory requirements for

tankships to use segregated ballast tanks means that there should be no impacts from the control (i.e., prohibition) of ballast emissions. As a result, MACT was determined to be equivalent to a prohibition of emissions from ballasting. However, as discussed in section J.2, Ballasting Emissions, the Administrator is soliciting comments and data on the possibility of significant impacts to currently uncontrolled vessels.

4. Selection of the Proposed MACT Standards

a. *Product loading.* As with the RACT standards, vessels loading at facilities with controls must install a vapor collection system and pass one of three tank vessel tightness alternatives.

The MACT standards for existing facilities are based on a facility demonstrating that 93 percent of HAP emissions are controlled. Facilities would be allowed to demonstrate that the standard is being met in one of two ways. In the first case, a facility may choose to demonstrate that emissions from all vessels being loaded at the facility are being routed to either a 95 percent efficient recovery device or a 98 percent efficient destruction device. In the other case, the facility may opt to exclude the emissions of certain vessels or process lines from control, based on documented emission estimates, so long as at least a 93 percent overall level of control is achieved. The partial control of any commodity loaded or unloaded at the terminal would not be allowed as a means of showing compliance with the 93 percent overall emissions reduction standard. The facility would still be required to demonstrate that all controlled emissions are being routed to either a 95 percent efficient recovery device or a 98 percent efficient destruction device.

The MACT standards for new facilities require an emissions limit of 98 percent control. Additionally, these facilities would be required to maintain tank-tight vessels while loading.

b. *Ballasting.* Owners or operators of existing and new marine tank vessel loading and unloading operations would be required to demonstrate compliance with the ballasting standards by maintaining records showing that the vessels loaded met one of the following criteria: (1) The vessel does not perform ballasting at any time, (2) the vessel meets the Coast Guard standards, or (3) ballasting emissions are ducted to a control device.

5. Impacts of the Proposed MACT Standards

The environmental, costs, energy and economic impacts of the proposed

MACT standards are summarized in Tables 4 through 6, and are represented by Regulatory Alternative A for facilities emitting less than or equal to 1 Mg of HAP and Regulatory Alternative A for facilities emitting more than 1 Mg of HAP. There are no projected impacts to controlling emissions from ballasting.

As discussed in section IV.C.5, the EPA believes that the potential safety impacts of the standards have been addressed.

The estimated impacts of the standards are a VOC reduction of 12,400 Mg/yr of which 1,300 Mg are HAP. The capital and annualized costs are estimated to be \$570 million and \$130 million, respectively.

The EPA performed an economic impact analysis of the MACT determination for this regulation. Potential price, output, and employment impacts for affected producers and for the marine transport industry were examined for each alternative. Potential small business impacts were also isolated. Additional information on these economic impacts is available in the docket for this proposed regulation.

Estimated maximum price increases for the affected products varied but were not large (less than 1 percent) for any of the products under Regulatory Alternative A of the MACT determination for terminals emitting more than 1 Mg/yr. These price increase estimates reflect both the control cost increase for transporting crude oil and the control cost increase for transporting petroleum products. Because these price increases are small and because the elasticity of demand coefficients for petroleum products are small, estimated percent output (i.e., throughput) reductions were minimal. Correspondingly, estimated employment reductions were also small (less than 200).

Under Regulatory Alternative A of the MACT determination for terminals emitting more than 1 Mg/yr, potentially significant economic impacts on the smaller terminal operations that would have to install controls were identified. These significant impacts may have resulted from the high costs overall acting in combination with high per-barrel control cost differentials between the smaller and larger terminal operations that would have to control. It is expected that many of the smaller terminal operations would not be able to pass all of their control costs forward to consumers since they would be under increased competitive pressure from the larger terminal operations. It was estimated that up to 200 of the 264 affected terminal operations will have difficulty either absorbing control costs

or passing along these costs to consumers under the proposed standard.

The potential economic impact on marine vessel owners is relatively small. Average control cost per barrel for tankers shipping crude oil or refined products was estimated to be \$0.002 per barrel while owners or barges shipping refined products would face control costs of \$0.08 per barrel. Because 77 percent of U.S. marine-transported petroleum product volume would be affected by these proposed standards, a significant percentage of U.S. marine vessels will need to be retrofitted. The vessels least costly to modify (most likely the larger, newer, double-skin vessels) will be retrofitted first, leading to a significant degree of dedicated service. It is expected that vessel owners that do retrofit will be able to pass retrofit costs forward to consumers.

As discussed above, a primary concern in the implementation of these proposed regulations is safety. Though section 112 of the Act does not specifically address U.S. Coast Guard regulations on safety, the EPA has endeavored to make sure that safety factors are adequately addressed and that nothing in the proposed regulations, whether proposed under section 183(f) or 112, is inconsistent with current U.S. Coast Guard regulations.

In addition, section 183(f)(2) of the Act requires that any regulations promulgated by any State or political subdivision regarding emissions from the loading and unloading of tank vessels must be consistent with U.S. Coast Guard regulations regarding safety. This consistency requirement is equally applicable to any State or local regulation promulgated under the authority of the Clean Air Act section 112. Moreover, section 112(l) requires that the Administrator disapprove any program submitted by a State if the Administrator determines that the program is not likely to satisfy the objectives of the Act. The EPA believes that any State or local program that is inconsistent with U.S. Coast Guard safety regulations is "not likely to satisfy the objectives of the Act" and would therefore be disapproved by the Administrator.

F. Selection of Format for the Standards

The chosen format for the standards is a percent of mass emissions reduction. The percent of mass reduction format allows a focus on the final control device after good capture has been ensured. This approach is consistent with the benzene NESHAP (40 CFR part 61 subpart BB). Sufficient data to

develop a mass per unit loaded standard were not available. Additionally, emission rates can vary between facilities and between vessels based on loading temperature and the arrival condition of the vessel, making it difficult to set an acceptable mass per unit loaded standard while ensuring good capture and control. Developing a mass per unit loaded standard would have required extensive testing and would need to be more stringent than the percent of mass reduction format in order to accommodate the varying terminal and vessel conditions. For this reason, a mass per unit loaded alternative is not being proposed.

The primary format, mass emissions reduction, for the MACT standards is the same as the RACT standards. However, because the MACT standards allow the source the flexibility to control only the portion of total facility emissions needed to meet the 93 percent reduction requirement, facilities may choose to calculate both potential uncontrolled and actual controlled emissions as part of the compliance demonstration.

Emissions from ballasting operations would be prohibited.

G. Selection of Test Methods

The proposed standards require the use of approved test methods to ensure consistent and verifiable results for initial performance tests and compliance demonstrations.

Different test methods are specified for combustion and recovery devices. For combustion devices, Method 25 of 40 CFR part 60, appendix A (Method 25) has been specified. Method 25 is appropriate for measuring the VOC destruction efficiency of combustion devices whose output is greater than 50 ppmv. Given the large inlet concentrations associated with marine loadings, outlet concentrations of less than 50 ppmv are not expected.

For recovery devices, (Method 25A) of 40 CFR part 60, appendix A (Method 25A) has been specified. The (Method 25A) is appropriate for measuring the VOC removal efficiency of a nondestructive control device. Method 25A may be used for testing both removal efficiency and outlet concentration.

Because emissions and control efficiency also vary during the loading cycle, the EPA has determined that performance tests should be conducted to include the loading of the last 20 percent of a compartment, and may be spread out over multiple compartments. Data show that the greatest emissions occur during the last 20 percent of loading of a tank or compartment. The

EPA believes that the control equipment should be designed to handle the peak loading emissions, which occur during this period.

The proposed standards also allow the use of any test method or test results validated according to the protocol in Method 301 of 40 CFR part 63, appendix A to allow owners or operators greater flexibility in testing.

Under today's proposed standards, owners or operators not having documentation of vessel vapor tightness would be required to test the vapor tightness of vessels using a pressure test provided in the regulation, or a leak test provided in Method 21 of 40 CFR part 60, appendix A. Methods are also provided for owners or operators loading under negative pressure. These test methods were first proposed for owners or operators of benzene transfer operations on September 14, 1989 (54 FR 38083) and were promulgated on March 7, 1990 (55 FR 8292). In the proposal of the benzene transfer operations NESHAP, comments were specifically requested regarding the suitability of these methods for these sources. Based on the comments received on these methods and the Agency's knowledge of the use of these methods under the benzene transfer NESHAP, the Agency is confident that these methods are suitable for determining vapor tightness for today's proposed regulation.

Regarding the emission estimation procedures to be followed in determining compliance with the proposed standards, the Agency is proposing that facilities use either actual test data or AP-42 emissions factors to identify emissions from the various commodities and streams loaded. The Agency is requesting comment on this approach for estimating emissions.

H. Selection of Monitoring and Compliance and Performance Testing Requirements

The proposed standards list parameters to be monitored for the purpose of determining compliance. Monitoring requirements are proposed for both the vapor collection system and control devices. The vapor collection system monitoring requirements ensure that vent streams will not be diverted from the control device through the use of flow indicators or routine inspection of secured by-pass lines. While many forms of monitoring may qualify as enhanced monitoring, enhanced monitoring for tank vessel loading vapor control systems will generally be limited to a continuous control device parameter monitoring system, a continuous emissions monitoring

system (CEMS), portable monitors, or a combination thereof.

The monitoring criterion for carbon adsorption is a CEMS for VOC concentration at the exhaust to atmosphere. The compliance condition will be no exceedance of the average concentration demonstrated during the facility's last compliance test. This monitoring criteria does not correspond precisely to the 95 percent reduction requirement, however it will be less costly to install and maintain than a system monitoring inlet and outlet and calculating removal efficiency.

The monitoring parameter for combustion devices, except flares, is combustion temperature. Combustion temperature is a strong indicator of performance. The temperature to be maintained will be determined from the facility's compliance test. For compliance purposes, temperature variation is limited to $\pm 5.6^\circ\text{C}$ ($\pm 10^\circ\text{F}$) compared to the average temperature during the most recent compliance test.

The monitoring parameter for condensers is the exhaust stream temperature. Exhaust temperature directly correlates to exhaust concentration and is easier to monitor than outlet concentration. Coolant temperature was not chosen because it provides no guarantee of heat transfer efficiency or control efficiency. As with combustion devices, temperature deviations from the operating parameters established during the most recent compliance test are limited to $\pm 5.6^\circ\text{C}$ ($\pm 10^\circ\text{F}$).

The monitoring requirements for flares are established in 40 CFR 60.18, which requires the owner or operator to monitor for the presence of a flame at all times.

The monitoring parameters for absorbers are the temperature and specific gravity of the scrubbing liquid. Deviations from the operating parameters established during the most recent compliance test are limited to 11°C (20°F) above the baseline scrubbing liquid temperature and ± 0.1 unit from the baseline scrubbing liquid specific gravity respectively.

Finally, in order to not prohibit the use of other control devices or new technology, a facility not using a control device for which enhanced monitoring criteria have been included may develop its own monitoring criteria and submit them to the Administrator for approval.

The Agency is also proposing alternative means of monitoring compliance with the standards at terminals using recovery devices for control of gasoline vapor emissions. These terminals would monitor the

outlet concentration of VOC from the recovery device. Compliance with the standards is indicated provided that the VOC concentration is 1,000 ppmv or less. The EPA believes the 1,000 ppmv limit for gasoline vapor is generally more strict than the 95-percent control device efficiency requirement. Data from an existing facility show this limit to be achievable (Docket A-90-44, item II-B-13). The intent of the concentration alternative is to allow those facilities that operate at a higher efficiency than required by the proposed standard to perform a simpler compliance test, as they would only have to test at the outlet of the control device. The EPA does not have sufficient data to determine a ppmv emission limit for controlling VOC vapors from crude oil emissions. Nor does the EPA have sufficient data to determine a ppmv emission limit for controlling HAP vapors from crude oil emissions or other commodities. The EPA is soliciting data and comments regarding a ppmv limit for controlling non-gasoline VOC and HAP emissions and whether carbon adsorption would be used to control emissions from crude oil and other commodities.

I. Selection of Recordkeeping and Reporting Requirements

For enforcement purposes, it is necessary to require records and reports of various parameters at all facilities. Two types of records would be required to ensure compliance of facilities required to install controls: (1) Monitoring results from the most recent performance test and (2) results from periods when the measurement of parameters significantly deviated from measurements of the same parameters during the most recent performance test. Reports of those periods when monitored parameters were significantly outside the specified range would be submitted quarterly. These reports are necessary to ensure that the control equipment is maintained in good operating condition.

Additionally, owners or operators would be required to keep vapor tightness documentation for marine vessels loaded on file in a permanent form available for inspection. The owner or operator would be required to update the vapor tightness documentation at least once per year to ensure that only vapor tight marine vessels are loaded.

Owners or operators of affected facilities seeking to demonstrate compliance with the 93 percent emission reduction standard must maintain records of their determination of HAP control efficiency and must

submit quarterly reports of the source's HAP control efficiency calculated from their actual throughputs. The Agency is soliciting comment on these requirements. Specifically, the Agency requests information on the type and method of documentation that should be required to assure compliance with the 93 percent emission reduction standard.

J. Solicitation of Comments

The Administrator specifically requests comments on the topics discussed in this section. Commenters should provide available data and rationale to support their comments on each topic.

1. Subcategories

The Agency has proposed to establish a subcategory for terminals emitting less than 1 Mg/yr of HAP. The Agency is also requesting comment on whether off-shore terminals and the Valdez Marine Terminal should be placed in separate subcategories under section 112 of the Act. The Agency requests comment regarding whether subcategories should be established for other types of terminals based on particular characteristics of these types of terminals of which the Agency currently has no information. EPA also requests comments on whether further subcategorization based on size is warranted.

a. Offshore terminals. The Agency does not believe that a facility which is at least one-half mile offshore is part of a land-based contiguous site. Offshore terminals (both those with subsea lines and platforms) that are part of a contiguous terminal (i.e., offshore terminals less than 1/2 mile from shore) present unique regulatory challenges such as the cost and environmental impacts of installing additional subsea lines to carry vapors to land-based equipment. Size constraints, permitting difficulties, and other concerns may be issues with an offshore control system. The EPA is proposing that offshore terminals exceeding the throughput cutoffs and emission limits be subject to the proposed regulations and control vapors to the same extent as onshore facilities. The EPA is soliciting information and comments regarding the feasibility and cost of controlling emissions from offshore terminals. Comments are also requested on the grouping of offshore facilities into a separate subcategory with different control requirements under MACT.

b. Additional subcategory for the Valdez marine terminal. On December 29, 1993, the Alyeska Pipeline Service Company ("Alyeska") sent a letter to the

Agency regarding this proposed rule (see Docket A-90-44, item II-D-65). In the letter, Alyeska discussed an alternative regulatory approach that would allow the use of less stringent controls at Alyeska's Alaska Valdez Marine Terminal (VMT). Alyeska "believes that the optimal vapor emission control system for the VMT is a system that captures and recovers vapors from tanker loading, rather than one that incinerates captured vapors." Alyeska believes that it can successfully design a vapor recovery system for the VMT but intuitively believes that the emission reduction that such a system can achieve will be less than the percentage emissions reduction achieved by significantly smaller systems and particularly those which address emissions from refined petroleum products rather than crude oil. Alyeska also believes that a vapor recovery system for the VMT is unlikely to meet today's proposed requirements of a 95-percent emission reduction of VOC and HAP for recovery devices under section 183(f) and section 112, respectively. In addition, Alyeska states that the VMT should be placed in a separate category or subcategory under section 112(d) because Alyeska believes the VMT is unique among U.S. marine terminals.

Alyeska has also suggested separately (see Docket A-90-44, item II-D-71) that a recovery device may be available to VMT that could meet a HAP emission reduction requirement approaching 93 percent but that would likely not meet a VOC reduction requirement above 70 percent. Alyeska suggests that as it is located in an ozone attainment area in an extreme northern climate where formation of ozone is not a practical concern, a lesser VOC reduction requirement may be reasonable under section 183(f). The proposed format for the Section 112 emission limit requires the VMT to reduce all the crude emissions by 95 percent when using a recovery device. The EPA requests comments on whether this format could be changed to allow for a 93-percent reduction of emissions for less efficient control technologies.

The EPA made no changes to the proposed standard in response to Alyeska's letter. However, the EPA is seeking public comment on the issues addressed by Alyeska. In addition, Alyeska intends to provide the EPA with further documentation supporting its position before the end of the public comment period. The EPA will consider this new information in addition to currently available information in deciding the final standard. Currently available information which will be

considered is described in the following paragraphs.

Section 183(f) requires the application of RACT considering "costs, any non-air quality benefits, environmental impacts, energy requirements and safety factors associated with alternative control techniques." Section 112(d) requires the application of MACT considering the "cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements." (In addition, as described previously, a minimum control level is specified, referred to as the floor.)

Section 112(c) requires the EPA to establish categories and subcategories of sources for regulation under section 112(d). In the EPA's notice of initial list of categories, the EPA stated that "a category of sources is a group of sources having some common features suggesting that they should be regulated in the same way and on the same schedule." (57 FR 31578, July 16, 1992). The EPA also noted that "criteria that may need to be considered in defining categories of similar sources include similarities in: process operations (including differences between batch and continuous operations), emissions characteristics, control device applicability and costs, safety and opportunities for pollution prevention" (57 FR 31580). To justify VMT being placed in a separate category or subcategory, it needs to be shown that VMT has distinctions that are relevant from a regulatory standpoint (given the restrictions of section 112), in determining whether the VMT can be regulated in a similar manner as other terminals.

The VMT is the largest crude oil loading facility in the U.S. with hourly crude loading rates more than 15 times that of any other marine terminal. The VMT is one of only a few terminals which are exclusively used for crude oil loading.

Alyeska has acknowledged that it could use a combustion device at VMT to achieve a 98 percent reduction in emissions. However, Alyeska has raised concerns about the feasibility of recovering crude oil vapors with a 95 percent efficiency using conventional recovery devices such as carbon adsorbers.

According to Alyeska the design and construction of a vapor recovery system for the VMT would be technically more complicated than for any other marine terminal. This is because no existing vapor recovery system is currently operating on as large a vapor stream as the VMT terminal, there is great complexity in recovering crude oil

vapor (as opposed to petroleum product vapor), and for reasons discussed in the following paragraph, a VMT recovery system would have to be designed to operate efficiently over a broad range of declining input volumes. In addition, the sub-Arctic climate of the region presents unique problems with regard to handling water vapor in terms of both complications on the technical processes by which crude oil vapors can be recovered and in terms of monitoring accuracy. Different and more complex operating parameters must be considered in the design and construction of a vapor recovery system that will operate effectively on the VMT crude oil stream because the number and range of volatility of the hydrocarbon components are greater in a crude oil stream than in a product stream. Alyeska believes that it may not be possible to achieve as high a recovery from a crude oil vapor stream as is achievable from a product vapor stream because of this difference in the number and range of volatility of the hydrocarbon components.

The throughput in the Trans-Alaskan Pipeline (TAP), which supplies the crude for loading at the VMT, is expected to decline such that the volume of vapors that must be handled by the VMT recovery system will decrease with time. In 1988 annual TAP throughput reached a peak of 2.14 million barrels per day. Throughput subsequently has declined to a current level of 1.62 million barrels per day (average year to date for 1993) and estimates indicate that production will continue to decline over the life of the now declining North Slope oil fields. An emission control system designed for the VMT needs to be able to operate efficiently over a broad range of declining input volumes. When considering declining throughput, a recovery system enables more design flexibility than an incineration system because recovery systems require enough contact with either surface area or scrubbing liquid to ensure high recovery; as flow decreases contact increases which marginally increases recovery. Therefore, a facility may design very large control units or smaller parallel units, both of which will function at design efficiency. An incinerator is not as flexible in operation as a recovery system. An incinerator requires proper mixing of the waste stream and the flame and mixing becomes poorer as flow rates decline. Large incinerators cannot be run at flow rates much lower than one half design rates without affecting

mixing and corresponding combustion efficiency.

In addition the VMT will require the use of "active" detonation arrestors instead of "passive" detonation arrestors used at other marine terminals, due to the amount of vapors that must be collected and the distance between the vessel loading berths and vapor recovery facilities. Alyeska has developed active detonator arrestors that have been approved by the Coast Guard, because passive detonation arrestors would not protect a VMT type system from explosion.

Alyeska estimated that the additional amount of energy that could be conserved by recovering (instead of incinerating) tanker vapors at the VMT would be as great or greater than the energy that could be saved by recovering tanker vapors at all other U.S. crude oil loading marine terminals combined (about 250,000 barrels at current throughput). Both recovery and incineration result in other air pollutants including particulate matter (PM), sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO), and carbon dioxide (CO₂). Vapor recovery may be more advantageous when considering the overall contribution of all pollutants to the environment.

The proposed standard does not treat a facility such as the VMT as a separate category or subcategory. However, the EPA is still considering whether these characteristics described above are sufficient to warrant treatment of a facility like the VMT as a separate subcategory, and is requesting additional information and public comments on this issue. Comment is also requested on the extent to which these factors, largely related to recovery devices, should be considered if such a facility can use an incinerator. Additional information is sought on the extent to which factors such as a different detonator device are relevant to the decision. The EPA also invites comment on Alyeska's suggestion that a VOC reduction requirement less stringent than 95 percent is appropriate for a terminal in an ozone attainment area in an extreme northern climate where ozone formation is not a practical concern. The EPA will evaluate all information and comments submitted in making a final determination before promulgation of the standard.

Alyeska states that diminishing throughput could eliminate the need for control equipment at all berths in the future; if throughput continues to decline, the VMT will eventually be able to handle the entire throughput at only two berths instead of the four

available berths. Alyeska has raised an issue concerning the need to control the berths normally not in use if they are used for "emergency purposes." The issue is independent of the choice of control systems and would not be considered in a determination of whether it is appropriate to put the VMT in a separate subcategory. However, the EPA may evaluate a regulatory approach which requires full control of emissions at the primary loading berths, but allows occasional use of uncontrolled berths. This type of regulatory scenario assumes that emissions from the uncontrolled berths would be negligible when compared to emissions to the controlled berths. For the EPA to evaluate such an approach requires VMT to provide detailed information on the impacts and tradeoffs for various scenarios of the controlled versus uncontrolled berths. The EPA is requesting comments on this type of approach, including the need to limit frequency of use or mass emissions, and the details that should be in the rule to ensure compliance.

If facilities with characteristics like the VMT were in a separate subcategory, the MACT floor would appear to be no control. The EPA would consider requiring control levels more stringent than the MACT floor. The tradeoffs between incineration and vapor recovery would be considered in this determination, and also in the determination of RACT under section 183(f). The declining throughput and its effect on the number of berths would also be considered in this decision.

Alyeska is still studying the total impacts associated with vapor recovery systems. Currently, Alyeska has not yet provided the EPA with the control efficiency of the recovery process, the energy requirements, costs, or the secondary pollutants associated with recovery; nor has Alyeska provided evidence showing that a 93 or 95 percent reduction in emissions of HAP using a recovery device is infeasible at VMT. Moreover, given that the EPA's definition of VOC does not include methane and ethane, there is some question as to whether a 95 percent reduction in VOC is in fact possible using recovery at the VMT. Additional information is also needed on the declining throughput, its effect on the number of berths controlled, and the tradeoffs involved. The EPA could possibly consider the trade-offs among HAP, VOC, PM, SO_x, NO_x, CO and CO₂ in addition to energy savings when evaluating recovery versus incineration. The EPA invites comment on whether a regulatory approach that would allow the use of a less stringent vapor recovery

system at the VMT is permissible and appropriate under the Act. Such comments should include the consideration of tradeoffs between HAP, other pollutants, energy, and whether consideration of such tradeoffs is permissible under sections 112 and 183(f). Before promulgating a final rule, the EPA will evaluate all additional information, data, and comments submitted. Based on this evaluation, the promulgated standards could be set at the proposed RACT and MACT levels, but the EPA will examine all information relevant to including a separate subcategory for large crude terminals and establishing a different MACT level for each subcategory.

2. Ballasting Emissions

In preparing today's proposed rule the Agency has assumed that the prohibition of ballasting emissions does not contain any impacts for industry because of the U.S. Coast Guard regulations requiring segregated ballasting tanks. The Administrator is soliciting comments and data that might indicate that there are potential impacts to certain classes of vessels, particularly those carrying noncrude oil product. In addition, the Administrator encourages comment on how a prohibition of ballasting emissions could be implemented most effectively.

3. Alternative Concentration-Based Compliance Determination

For terminals that use recovery devices for control of gasoline VOC and/or HAP emissions, the EPA is proposing an alternative means of compliance to the proposed standards. The EPA is soliciting data and comments regarding a ppmv limit for controlling non-gasoline VOC and HAP emissions and whether carbon adsorption would be used to control emissions from crude oil and other commodities.

4. Vessel Tightness Testing

The proposed standards require vessels to undergo one of three tightness tests at least every 12 months. The Administrator is soliciting data on the frequency of leaks on marine vessels to determine whether the interval between tests is appropriate. The Administrator is also requesting data on the effectiveness of requiring vessels to undergo one of these three tightness tests.

5. Procedures to Estimate HAP Emissions

The TSD describes the limited data regarding marine vessel loading emission factors available to the Administrator to use in estimating HAP

(or VOC) emissions from marine vessel loading operations. While these data are sufficient to estimate emissions as part of regulatory impact analyses, they may not be sufficient for the Administrator to require the use of specific emission factors in the emission estimation alternative allowed under the proposed part 63 standards for existing sources. For this reason, facilities wanting to take advantage of this alternative will develop and submit documentation of emission estimates on a case-by-case basis. The Administrator requests that commenters submit data on possible emission factors and/or alternative emission estimation procedures for consideration in the final rule.

6. RACT Standard of 93 Percent Reduction

As discussed above, for those sources regulated under section 183(f) of the Act, the EPA is requiring that such sources reduce emissions at their facility overall by 95 percent if using a recovery device or by 98 percent if using a destruction device. Nevertheless, the Agency specifically decided not to increase the stringency of its MACT standard, for those existing sources regulated under section 112, beyond a reduction level of 93 percent because the cost effectiveness level of such an increase would not be reasonable.

The Agency believes that it is reasonable, given the associated cost effectiveness values, to require the facilities regulated under section 183(f) (the largest terminals of their kind in the U.S.) to reduce emissions by 95 or 98 percent, despite the fact that the Agency is requiring only 93 percent reduction for the terminals regulated under section 112. However, the EPA understands that it is unusual for a RACT standard for any single source to be more stringent than a MACT standard for that source, as it may be for certain sources regulated under both sections 112 and 183(f).

The Agency requests comment on whether the analysis performed for regulation of sources under the MACT standard of section 112 is equally valid under the RACT standard of section 183(f). That is, given the cost effectiveness values associated with decreasing the stringency of the RACT standard from 95 or 98 percent control to 93 percent control, would it be reasonable, "considering costs, any nonair-quality benefits, environmental impacts, energy requirements and safety factors," for the Agency to promulgate a standard of 93 percent control for those sources regulated under section 183(f), in addition to those sources regulated solely under section 112?

7. Carbon Bed Regeneration Emissions

In the proposed regulation, the Agency is prohibiting HAP emissions from the regeneration of a carbon bed when a carbon bed adsorber is used to control HAP emissions. The Agency is requesting comment on this requirement.

Specifically, the Agency requests comment on the degree to which steam stripping (in which steam is used to regenerate these carbon beds) is used at affected sources.

8. MACT Floor Determination

In a March 9, 1994, *Federal Register* notice reopening the public comment period for determination of "MACT floor" for NESHAP source categories (59 FR 11018), the Agency considered more than one interpretation of the statutory language concerning the MACT floor for existing sources and solicited comment on them. The MACT floor decision that the EPA will make on the basis of this March 9, 1994, notice will have broad precedential effects, and will presumptively be followed by the Agency in any rulemakings subsequently promulgated under Title III of the Act. The MACT floor determinations proposed in today's rulemaking may therefore be affected by the Agency's final interpretation of "MACT floor."

Sections 112(d)(3) (A) and (B) of the Act require that the EPA set standards no less stringent than "the average emission limitation achieved by the best performing 12 percent of the existing sources" if there are at least 30 sources in a category, or "the average emission limitation achieved by the best performing 5 sources" if there are fewer than 30 sources in a category. During the development of this proposed rule, the EPA considered two interpretations of this statutory language. One interpretation groups the words "average emission limitation achieved by" together in a single phrase and asks what is the "average emission limitation achieved by" the best performing 12 percent. This interpretation places the emphasis on "average." It would correspond to first identifying the best performing 12 percent of the existing sources, then determining the average emission limitation achieved by these sources as a group. Another interpretation groups the words "average emission limitation" into a single phrase and asks what "average emission limitation" is "achieved by" all members of the best performing 12 percent. In this case, the "average emission limitation" might be interpreted as the average reduction

across the HAP emitted by an emission point over time. Under this interpretation, the EPA would look at the average emission limits achieved by each of the best performing 12 percent of existing sources, and take the lowest. This interpretation would correspond to the level of control achieved by the source at the 88th percentile if all sources were ranked from the most controlled (100th percentile) to the least controlled (1st percentile). For today's proposed regulation, the Administrator is using the first interpretation described above, which interprets the statutory language to mean that the MACT floor for existing sources should be set at the level of control achieved by the "average" of the best performing 12 percent.

In establishing the MACT floor for today's proposed regulations, the EPA also considered two possible meanings for the word "average" as the term is used in section 112(d)(3) (A) and (B) of the Act. First, the EPA considered interpreting "average" as the arithmetic mean. The arithmetic mean of a set of measurements is the sum of the measurements divided by the number of measurements in the set. The EPA determined that the arithmetic mean of the emissions limitations achieved by the best performing 12 percent of existing sources in some cases would yield an emission limitation that fails to correspond to the limitation achieved by any particular technology. In cases where this limitation existed, the EPA decided not to select this approach. The EPA also considered interpreting "average" as the median emission limitation value. The median is the value in a set of measurements below and above which there are an equal number of values (when the measurements are arranged in order of magnitude).

For the subcategory of sources emitting 1 Mg/yr or more of HAP, the Agency determined that the derived arithmetic mean, for all practical purposes, is equivalent to recovery technologies and thus the Agency used the mean to determine the MACT floor for this subcategory. The EPA selected the median for the subcategory of sources emitting less than 1 Mg/yr of HAP because the arithmetic mean yields a value that does not correspond to a particular emission control technology.

The EPA solicits comment on its interpretation of "the average emission limitation achieved by the best performing 12 percent of the existing sources" (section 112(d)(3)(A) of the Act) and its methodology for determining the MACT floor.

9. Monitoring Parameters

The proposed standard requires that terminals using a combustion device to comply with the standard monitor the combustion temperature computed every hour as an hourly average, and every third hour as a 3-hour block average. Operation of the affected source in deviation of the baseline temperature developed during the compliance test in excess of 5.6°C (10°F) constitutes noncompliance with the standard. The baseline temperature is averaged over the loading cycle. The Agency believes that it is appropriate to average temperatures measured during the compliance test to establish a baseline temperature to which monitored data can be compared. The Agency is soliciting comments on the effect of the proposed averaging times on the parameter's effectiveness in ensuring compliance with the proposed standards.

IV. Administrative Requirements

A. Public Hearing

The EPA will hold a public hearing to discuss the proposed standard in accordance with section 307(d)(5) of the amended Act. Persons wishing to make oral presentation on the proposed standards for marine tank vessel loading operations should contact the EPA at the address given in the ADDRESSES section of this preamble. The EPA will limit oral presentations to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Send written statements to the Air Docket Section address given in the ADDRESSES section of this preamble and should refer to Docket A-90-44.

The EPA will make a verbatim transcript of the hearing and written statements available for public inspection and copying during normal working hours at the EPA's Air Docket Section in Washington, DC (see ADDRESSES section of this preamble).

B. Docket

The docket is an organized and complete file of all of the information submitted to or otherwise considered by the EPA in the development of this proposed rulemaking. The principal purposes of the docket are (1) to allow interested parties to readily identify and locate documents so that they can intelligently and effectively participate in the rulemaking process and (2) to serve as the record in case of judicial review (except for interagency review materials) (section 307(d)(7)(A) of the amended Act).

C. Office of Management and Budget Reviews

1. Paperwork Reduction Act

The information collection requirements in this proposed standard have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. An Information Collection Request (ICR) document has been prepared by the EPA (ICR No. 1679.01), and interested parties may obtain a copy from Sandy Farmer, Information Policy Branch, EPA, 401 M Street, SW. (2136), Washington, DC 20460, or by calling (202) 260-2740. The public reporting burden for this collection of information is estimated to average 265 hours per respondent per year, 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 the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, 2136, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for the EPA." The final standard will respond to any OMB or public comments on the information collection requirements contained in this proposal.

2. Executive Order (E.O.) 12866 Review

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a section of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the

President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action" because an annual effect on the economy of \$100 million or more is anticipated. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

D. Regulatory Flexibility Act Compliance

The Regulatory Flexibility Act (Pub. L. 96-354, September 19, 1980) requires consideration of the impacts of regulations on small entities, which are small businesses, small organizations, and small governments. The major purpose of this Act is to ensure consideration of regulatory alternatives that might mitigate adverse economic impacts on small entities. If a preliminary analysis indicates that a proposed regulation is likely to have a significant economic impact on a substantial number of small entities, a regulatory flexibility analysis must be performed to examine alternatives that might lessen such effects.

The EPA performed an economic impact analysis of the MACT determination considered for this regulation, which included a preliminary assessment of the potential adverse impacts on small entities. Two types of businesses were identified that could incur adverse small business impacts: marine terminal operations and marine vessel operations.

With regard to marine terminal operations, the proposed standards exempt facilities with HAP emissions of less than 1 Mg/yr. This reduces the number of impacted terminals from approximately 1,450 to 264. These exemptions allow the smallest operations to avoid installation of controls. These exemptions greatly reduce per-barrel control cost differentials that, as indicated in the economic impact analysis, would make it difficult for owners of the smallest terminals to pass forward control costs to consumers had no or fewer exemptions been made. With the proposed standards, however, it is expected that a large portion (up to 200) of the 264 regulated terminals will only be able to pass a fraction of the control costs on to consumers in the form of higher prices. This condition is attributable to the EPA's assumption that loading costs will increase by the average cost of control, that terminals are competitive and that higher than average control cost terminals will have

to absorb those differences. Thus, the economic impact on these terminal owners is expected to be significant because of the impact of cost absorption on profitability and/or difficulty in raising capital for the control system. On the other hand, of those 200 terminals, it is expected that many are part of large integrated petroleum operations, have easier access to capital and will remain open. Some with higher than average control costs will also be in a position to raise their prices as much as their control costs because of favorable locations or other market conditions. However, the overall number of small business terminal operations significantly affected by this regulation is expected to be substantial.

With regard to marine vessel operations, the economic impact analysis considered all of these operations to be small businesses. The number of vessel operations estimated to be impacted by the proposed standards is expected to be substantial since a significant percentage of the petroleum products transported via marine vessels will be affected by the standards. Excluding volume from the three large crude oil terminals affected (these terminals are served by large oil tankers with insignificant estimated retrofit costs (\$0.002/bbl), 77 percent of the U.S. marine transported throughput of controlled products and crude oil will be affected by the standards. That same volume percentage of the fleet marine vessels will need to be retrofitted to service regulated terminals. It is expected, however, that many of these vessel owners will be able to pass forward retrofit costs in the form of higher transport prices.

The Agency has therefore judged that a significant economic impact on a substantial number of small entities (namely terminals) will likely result from the proposed standards and that a regulatory flexibility analysis should be performed.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Tank vessel standards.

Statutory Authority

The statutory authority for this proposal is provided by sections 101, 112, 114, 116, 183(f) and 301 Clean Air Act, as amended; 42 U.S.C. 7401, 7411, 7414, 7416, 7511b(f), and 7601.

Dated: April 29, 1994.

Carol M. Browner,
Administrator.

[FR Doc. 94-10974 Filed 5-12-94; 8:45 am]

BILLING CODE 6560-60-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AC09

Endangered and Threatened Wildlife and Plants; Notice of Public Hearing and Reopening of Comment Period for Proposal to List the Lake Erie Water Snake (*Nerodia sipedon insularum*) as a Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

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

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice that two public hearings will be held on the proposed determination of threatened status for the Lake Erie water snake (*Nerodia sipedon insularum*) and that the comment period on the proposal is reopened. The hearings and reopened comment period will allow comments on this proposal to be submitted from all interested parties.

DATES: The first public hearing will be held from 7 to 9 p.m. on Tuesday, May 31, 1994, in Put-in-Bay, on South Bass Island, Ohio. The second public hearing will be held from 7 to 9 p.m. on Wednesday, June 1, 1994, in Port Clinton, Ohio. The comment period will close on June 16, 1994.

ADDRESSES: The May 31, 1994, public hearing will be held at the Village Hall, Catawba Avenue, Put-in-Bay, Ohio. The June 1, 1994, public hearing will be held at Port Clinton High School, 821 S. Jefferson Street, Port Clinton, Ohio. Written comments and materials should be sent to the Regional Director, U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, 1 Federal Drive, Ft. Snelling, Minnesota 55111-4056. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the above Regional Office address.

FOR FURTHER INFORMATION CONTACT:

For information on the public hearing contact Kent Kroonemeyer, Supervisor, U.S. Fish and Wildlife Service Ecological Services Field Office, 6950-H Americana Parkway, Reynoldsburg,

Ohio 43068-4415 (614/469-6923; fax 614/469-6919).

SUPPLEMENTARY INFORMATION:

Background

The Lake Erie water snake is found on the islands of western Lake Erie and the adjacent mainland of Ohio and Ontario, Canada. It has been proposed for listing as a threatened species due to strong evidence that its numbers have declined dramatically, primarily as a result of the destruction of its habitat and human persecution, and that the threats to the habitat and to the snakes themselves are continuing.

The **Federal Register** notice announcing the proposing of the Lake Erie water snake for classification as a threatened species was published on August 18, 1993 (58 FR 43857). The original comment period ended on November 16, and the deadline for receipt of public hearing requests was October 4. On October 12, 1993 (58 FR 52740), a second notice was published extending the comment period until November 16, 1993.

On October 5, 1993, the Service received a request for a public hearing on this proposal from Donald J. McTigue, representing Baycliff's Corporation. A second request for a public hearing was received by the Service on October 13, 1993, from H. R. Clagg, President of the Johnson's Island Property Owners' Association. The Service has scheduled two hearings in the area potentially affected by the listing proposal. Those parties wishing to make statements for the record should have available a copy of their statements to be presented to the Service at the hearing. Oral statements may be limited to 5 or 10 minutes, if the number of parties present necessitates some limitation. There are no limits to the length of written comments presented at this hearing or mailed to the Service. Oral and written comments receive equal consideration.

In order to accommodate the hearing, the Service also reopens the public comment period. Written comments may now be submitted until June 16, 1994, to the Service office in the **ADDRESSES** section or at the public hearing.

Author

The primary author of this notice is Ronald L. Refsnider, Division of Endangered Species, Bishop Henry Whipple Federal Building, 1 Federal Drive, Ft. Snelling, Minnesota 55111-4056 (phone 612-725-3276; fax 612-725-3526).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et. seq.*).

Dated: May 9, 1994.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 94-11660 Filed 5-12-94; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 215

[Docket No. 940414-4114; I.D. 032494B]

Marine Mammals; Subsistence Taking of Northern Fur Seals

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

ACTION: Proposed rule and subsistence harvest estimates for the Pribilof Islands.

SUMMARY: NMFS is required to publish an estimate of the number of seals expected to be harvested in the current year to meet the subsistence needs of the Aleut residents of the Pribilof Islands, AK, pursuant to the regulations governing the subsistence taking of northern fur seals. The purpose of these regulations is to limit the take of fur seals to a level providing for the subsistence needs of the Pribilof residents and to restrict taking by sex, age, and season for herd management purposes. This notice estimates the number of seals to be taken in 1994. This notice also proposes to amend existing fur seal regulations, making the harvest take estimates applicable for 3 years instead of 1 year. This proposed amendment is based on the fact that a relatively consistent number of fur seals has been harvested each year since 1989, and that NMFS does not expect subsistence needs to increase such that takes for subsistence purposes will exceed the established upper limit of the subsistence harvest estimate range first established for the 1992 harvest.

DATES: Written comments must be received by June 13, 1994.

ADDRESSES: Comments should be addressed to Dr. William W. Fox, Jr., Director, Office of Protected Resources, (F/PR), 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT:

Steve Zimmerman, (907) 586-7235, or Margot Bohan, (301) 713-2322

SUPPLEMENTARY INFORMATION:

Background

The subsistence harvest of northern fur seals, *Callorhinus ursinus*, on the Pribilof Islands, AK, is governed by regulations found in 50 CFR part 215, subpart D—Taking for Subsistence Purposes. The purpose of these regulations, published under the authority of the Fur Seal Act (FSA), 16 U.S.C. 1151 *et seq.*, and the Marine Mammal Protection Act (MMPA), 16 U.S.C. 1361 *et seq.*, is to limit the take of fur seals to a level providing for the subsistence needs of the Pribilof residents and to restrict taking by sex, age, and season for herd management purposes. To minimize negative effects on the Pribilof Islands fur seal population, the harvest has been limited to a 47-day season (June 23–August 8) and is restricted to only subadult male fur seals.

Pursuant to the regulations governing the taking of fur seals for subsistence

purposes, NMFS must publish a summary of the previous year's fur seal harvest (1993 harvest results were published on November 1, 1993 (58 FR 59297)), and a projection of the number of seals expected to be taken in the current year to meet the subsistence needs of the Aleut residents of the Pribilof Islands, AK.

The projected estimates are given as a range, the lower end of which may be exceeded if NMFS is given notice, and the Assistant Administrator for Fisheries, NOAA (AA), determines that the annual subsistence needs of the Pribilof Aleuts have not been satisfied (50 CFR 215.32(e)(3)). Conversely, the harvest can be terminated before the lower end of the range is reached if it is determined that the annual subsistence needs of the Pribilof residents have been met or the harvest has been conducted in a wasteful manner.

Subsistence Estimates and Trends

The number of northern fur seals harvested on St. Paul Island since 1986 has ranged from 1,077 (1990) to 1,710 (1987) (Table 1). The annual subsistence takes on St. George Island since 1986 have ranged from 92 (1987) to 319 (1993) seals (Table 1). Within the past 3 years, however, the number of fur seals harvested annually has been relatively consistent. Since 1991, the average number of seals harvested each year on St. Paul and St. George Islands has been 1,548 (range: 1,482–1,645) and 265 (range: 194–319), respectively (Table 1). Furthermore, the actual number of animals harvested has never reached the upper end of the estimated range. In 1992, for example, only 194 of the 365 fur seals originally estimated for subsistence need during that year were taken on St. George Island. In 1993, only 319 of the 407 seals requested were taken to meet the subsistence needs of St. George residents.

TABLE 1.— Subsistence Harvest Levels for Northern Fur Seals on the Pribilof Islands, 1985–1993

Year	Subsistence estimates		Actual harvest levels	
	St. Paul	St. George	St. Paul	St. George
1985				
1986	2,400–8,000	800–1,800	3,384	329
1987	1,600–2,400	533–1,800	1,299	124
1988	1,800–2,200	600–740	1,710	92
1989	1,600–1,800	533–600	1,145	113
1990	1,145–1,800	181–500	1,340	181
1991	1,145–1,800	181–500	1,077	164
1992	1,645–2,000	281–500	1,645	281
1993	1,645–2,000	281–500	1,482	194
			1,518	319

Estimate of Subsistence Need for 1994

NMFS has used the previous year's harvest levels as a baseline to estimate need in the current year. Household surveys have also been conducted by the tribal government on each island since 1992 to estimate, in part, the number of seals required to meet the subsistence needs of the Pribilof Islands residents (57 FR 22450, May 25, 1992, and 58 FR 32892, June 14, 1993). However, not all households can be assessed during a survey. Therefore, results of these surveys provide an index of need rather than an absolute estimate.

NMFS requested that the tribal government on each island determine the number of fur seals that each household would need for the coming year on January 13, 1994. This year's results were consistent with past subsistence harvest survey requests and take records. Therefore, NMFS proposes that the same estimate ranges be

established for 1994 as were established

for 1992 and 1993: 281–500 fur seals for St. George Island and 1,645 to 2,000 for St. Paul Island. NMFS' biologists will continue to monitor the entire harvest on St. George and St. Paul Islands to ensure that the harvest is carried out in a manner that fully complies with the regulations specified at 50 CFR 215.32.

As described earlier in this notice, if the Aleut residents of either island reach the lower end of this yearly harvest estimate and have unmet subsistence needs and no indication of waste, they may request an additional number of seals up to the upper limit of the respective harvest estimates. The residents of St. George Island and St. Paul Island may substantiate any additional need for seals by submitting in writing the information upon which they base their decision that subsistence needs are unfulfilled. The regulations at 50 CFR 215.32(e)(1)(iii) require a suspension of the fur seal harvest for up to 48 hours once the lower end of the estimated harvest levels is reached. The

suspension is to last no more than 48 hours, followed either by a finding that the subsistence needs have been met or by a revised estimate of the number of seals necessary to satisfy the Aleuts' subsistence needs.

Proposed Modification to Fur Seal Regulations

In a notice published on August 1, 1991, NMFS acknowledged the need to develop other methods to monitor the subsistence harvest conducted on the Pribilof Islands (56 FR 36735). In a workshop conducted by NMFS on November 5, 1991, NMFS recognized the need to reevaluate the regulatory issues regarding subsistence, to determine whether changes in the fur seal harvest from a commercial endeavor to one for subsistence may have warranted a revision of the current management regime.

As a first step towards addressing these concerns, NMFS proposes an amendment to § 215.32 of the FSA

regulations, allowing subsistence take estimates to be applicable for a 3-year period, beginning in 1994. During this 3-year period, NMFS will examine the current subsistence harvest management regime. The proposed amendment is based on the fact that the actual number of fur seals harvested each year since 1989 has been relatively consistent (Table 1), and the fur seal take has never exceeded the upper limit of the estimated range for subsistence need within any year of the harvest. Due to recent commercial development in the Pribilof Islands, NMFS anticipates that the subsistence needs will increase during the next 3 years, but, based on historical evidence to date, the annual subsistence needs are not expected to increase to levels exceeding the range established in the 1993 final estimate.

Classification

NMFS has determined that the approval and implementation of this proposed rule will not significantly affect the human environment, and that preparation of an Environmental Impact Statement on this is not required by section 102(2) of the National Environmental Policy Act or its implementing regulations. This rule makes only minor changes to the regulations governing the taking of fur seals for subsistence purposes; this action does not entail significant substantive revision. Because this rule does not alter the conclusions of previous environmental impact analyses and environmental assessments, it is categorically excluded by NOAA Administrative Order 216-6 from the requirement to prepare an environmental assessment.

This proposed rule has been determined to be not significant pursuant to E.O. 12866.

The General Counsel, Department of Commerce, certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. The only impact will be on individual native Alaskan residents of the Pribilof Islands due to revision of the schedule for estimating fur seal harvest levels from an annual estimate to an estimate applicable to a 3-year period. Therefore, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 215

Administrative practice and procedure, Marine mammals, Penalties, Pribilof Islands, Reporting and recordkeeping requirements.

Dated: May 9, 1994.

Charles Karnella,

Acting Program Management Officer.

For the reasons set out in the preamble, 50 CFR part 215, subpart D, is proposed to be amended as follows:

PART 215—PRIBILOF ISLANDS

1. The authority citation for part 215 continues to read as follows:

Authority: 16 U.S.C. 1151-1175, 16 U.S.C. 1361-1384.

2. Section 215.32 is amended by revising paragraph (b) to read as follows:

§ 215.32 Restrictions on taking.

* * * * *

(b) By April 1 of every third year, beginning April 1994, the Assistant Administrator will publish in the *Federal Register* a summary of the preceding 3 years of harvesting and a discussion of the number of seals expected to be taken annually over the next three years to satisfy the subsistence requirements of each island. This discussion will include an assessment of factors and conditions on St. Paul and St. George Islands that influence the need by Pribilof Aleuts to take seals for subsistence uses and an assessment of any changes to those conditions indicating that the number of seals that may be taken for subsistence each year should be made higher or lower. Following a 30-day public comment period, a final notification of the expected annual harvest levels for the next 3 years will be published.

* * * * *

[FR Doc. 94-11615 Filed 5-12-94; 8:45 am]

BILLING CODE 3510-22-P

50 CFR Part 651

[Docket No. 940532-4132; I.D. 041994D]

Northeast Multispecies Fishery

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement a revised part of Amendment 5 to the Northeast Multispecies Fishery Management Plan (FMP) for the winter flounder fishery (revised winter flounder exemption) that was initially disapproved on September 30, 1993. The New England Fishery Management Council (Council) has revised a provision that would exempt fishermen from some

regulations for the winter flounder fishery, under certain conditions, if they are fishing only in state waters. The intended effect is to ensure adequate protection for winter flounder stocks, while minimizing the regulatory burden on fishermen.

DATES: Comments on this proposed rule must be received by June 4, 1994.

ADDRESSES: Send comments on the revised winter flounder exemption, proposed rule or supporting documents to Allen E. Peterson, Acting Regional Director, NMFS, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Winter Flounder Exemption."

Copies of the revised winter flounder exemption, including the Environmental Assessment, are available upon request from Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01906.

FOR FURTHER INFORMATION CONTACT: Susan A. Murphy, NMFS, Fishery Policy Analyst, 508-281-9252.

SUPPLEMENTARY INFORMATION:

Background

The Council submitted Amendment 5 to the FMP on September 27, 1993. Two measures in the amendment were disapproved on September 30, 1993—a haddock possession limit, and the provisions for winter flounder fishing in state waters. The remainder of Amendment 5 was approved on January 3, 1994. Pursuant to section 304(b)(3)(A) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), the Council has submitted the revised winter flounder exemption as described in this proposed rule. The Council's submission of a revised haddock possession limit is not contained in this action.

The disapproved measure for winter flounder established an exemption to the minimum mesh size and minimum fish size regulations when fishing for winter flounder in state waters, provided that a given state's regulations conformed with the Atlantic States Marine Fisheries Commission's (ASMFC) Winter Flounder Plan (ASMFC Plan). The original submission for winter flounder was disapproved because this provision was added to Amendment 5 without adequate analysis, was poorly defined, and would likely have increased mortality of winter flounder and other multispecies.

The revised winter flounder exemption, as described in this proposed rule, lists a detailed set of criteria under which a vessel holding a Federal Northeast multispecies permit

may fish for winter flounder with mesh smaller than the minimum mesh requirement in the FMP, and retain winter flounder smaller than the minimum fish size for that species in the FMP.

Currently, Federal regulations for winter flounder apply to all federally permitted vessels whether they are fishing in state waters or Federal waters. When a federally permitted vessel is fishing for winter flounder in state waters, the more restrictive of either the state or Federal regulations applies. Thus, even if an overall state management program is more restrictive, an individual Federal regulation, such as a minimum mesh size, applies if it is more restrictive than the individual state regulation.

The regulations implementing Amendment 5 to the FMP (59 FR 9872, March 1, 1994), increased the minimum mesh size for fishing for any of the regulated multispecies finfish, including winter flounder, and applied it throughout the range of the species. Prior to Amendment 5, the minimum mesh size was 5½ inches (13.97 cm) in the Gulf of Maine, on Georges Bank, and a part of Southern New England, while elsewhere there was no minimum net mesh size. Under Amendment 5, the minimum mesh size requirement is 6 inches (15.24 cm) throughout the net in the Gulf of Maine and on Georges Bank, as of May 1, 1994. The minimum mesh size requirement is 5½ inches (13.97 cm) throughout the net in Southern New England in 1994, remaining 5½ inch (13.97 cm) diamond and increasing to 6-inch (15.24 cm) square in 1995, and thereafter. In the mid-Atlantic, the minimum mesh size requirement is 5½ inches (13.97 cm) as described in the summer flounder regulations under 50 CFR 625.24(a). Also under the amendment, the minimum size for winter flounder was increased from 11 inches (27.9 cm) to 12 inches (30.5 cm).

The ASMFC Plan was approved in May, 1992. The fishing mortality objectives of the ASMFC Plan, a maximum spawning potential (MSP) target of 30 percent by January 1, 1995, and an MSP target of 40 percent by January 1, 1999, are more restrictive than in the FMP for federally managed stocks (20 percent MSP). The ASMFC Plan allows individual states to utilize different measures to achieve these objectives. State plans must be reviewed by the ASMFC's Winter Flounder Technical Committee and approved by the ASMFC Winter Flounder Management Board as meeting the management objectives.

The Council proposes the winter flounder exemption on the basis that,

while the management objectives of the ASMFC Plan are more conservative for winter flounder than those of Amendment 5, they may be achieved by a different set of measures than those in the FMP. Without the proposed exemption, a vessel would have to comply with the more restrictive elements of both the state and Federal regulations. Under these circumstances, compliance with both state and Federal rules simultaneously might impose an unnecessary regulatory burden on federally permitted vessels fishing in state waters for winter flounder that exceeds that which applies to either state-permitted vessels fishing exclusively in state waters or federally permitted vessels fishing in Federal waters. The purpose of the proposed action is to alleviate the cumulative impact of the regulations on fishermen, while still achieving the FMP's objectives for winter flounder and other regulated species of the FMP.

The proposed rule provides that a vessel holding a Federal multispecies permit may fish for winter flounder with mesh smaller than that specified in the regulations governing the multispecies fishery (50 CFR part 651), may retain winter flounder smaller than the minimum size allowed by those regulations, and may retain more than the possession limit of winter flounder, if certain conditions are met. These conditions are: (1) The fishing is conducted exclusively in the waters of the state from which the exemption certificate was obtained; (2) the vessel has on board a certificate issued by the state agency authorizing the vessel's participation in the state's winter flounder fishing program and is in compliance with the applicable state laws pertaining to minimum mesh size and minimum fish size for winter flounder; (3) the state's winter flounder plan has been approved by the ASMFC as being in compliance with the ASMFC Plan; (4) the state elects in writing to the Director, Northeast Region, NMFS (Regional Director), to participate in the exemption program; (5) the amount of regulated species, exclusive of winter flounder, on board a vessel issued a limited access permit that is fishing under the days-at-sea (DAS) program or under a DAS exemption program in § 651.22(d), does not exceed the possession limit; (6) the vessel does not enter or transit the Exclusive Economic Zone (EEZ), unless the vessel is in a designated transit zone established by the Regional Director at the request of the coastal state; and (7) the vessel does not enter or transit the waters of another state, unless such other state is

participating in the exemption program described by this section and the vessel is enrolled in that state's program.

The exemption to Federal fishery regulations being proposed in this action would apply to minimum fish lengths, minimum mesh size, and the regulated species possession limit of winter flounder, in certain cases. A vessel must still comply with all other applicable Federal fisheries regulations while fishing for winter flounder under this exemption.

The intent of this revised version of the winter flounder exemption is to achieve conservation objectives under the FMP and the ASMFC Plan for winter flounder, and to meet conservation objectives under the FMP for other regulated species of groundfish as defined in the FMP, while still providing for the winter flounder exemption in state waters. The Council intends that any vessel holding a Federal multispecies permit under the FMP subject to requirements of the DAS program in the FMP will have its fishing activity in state waters for winter flounder credited towards its individual DAS or fleet DAS. This requirement should minimize the effect of fishing for winter flounder in state waters on other regulated species of groundfish.

Vessels fishing in state waters under the winter flounder exemption program would be subject to possession limits that would vary, depending on the vessel's gear type and the category of the Federal multispecies permit it holds. Vessels fishing with gillnets, vessels less than 45 ft (13.7 m) in length, and vessels under the individual or fleet DAS program may harvest an unlimited amount of winter flounder and not more than 500 lbs (226.8 kg) of the remaining regulated species other than winter flounder. Vessels using hook gear still would not be subject to any possession limits on multispecies. Vessels fishing with a possession limit only permit would be subject to the 500-lb (226.8-kg) possession limit for regulated species.

Classification

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this action will not have a significant impact on a substantial number of small entities. The action proposed by this rule will provide an undetermined amount of regulatory relief to affected fishing vessels, all of which are small entities. It is unknown how many vessels will choose to fish exclusively in state waters on a given trip if this rule is implemented.

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

List of Subjects in 50 CFR Part 651

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 6, 1994.

Rolland A. Schmitt, Jr.

Assistant Administrator for Fisheries
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 651 is proposed to be amended as follows:

PART 651—NORTHEAST MULTISPECIES FISHERY

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

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

2. In § 651.4, the last sentence of paragraph (d) is revised and a new paragraph (t) is added to read as follows:

§ 651.4 Vessel permits.

(d) * * * Except as provided in §§ 651.20(i) and 651.23(f), if a requirement of this part and a management measure required by a state or local law differ, any vessel owner permitted to fish in the EEZ must comply with the more restrictive requirement.

(t) *Certificate for winter flounder fishing in state waters.* A vessel permitted under this part and fishing for winter flounder in state waters under the minimum mesh size and minimum fish size exemptions described in §§ 651.20(i) and 651.23(f), respectively, must have on board a certificate issued by the state agency authorizing the vessel's participation in the state waters winter flounder fishing program.

3. In § 651.9, paragraphs (a)(1), (b)(1), (d), (e)(2) introductory text, (e)(14), (e)(16), (e)(17), (e)(23), and (g) are revised to read as follows:

§ 651.9 Prohibitions.

(a) * * *
(1) Possess or land multispecies finfish smaller than the minimum size as specified in § 651.23, unless exempted under § 651.23(f).

(b) * * *
(1) Possess or land more than the possession limit of regulated species per trip as specified under § 651.27, after accruing the vessel's annual DAS allocation or when not participating under the DAS program pursuant to § 651.22.

(d) In addition to the prohibitions specified in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel issued a possession limit only permit under § 651.4(c) to possess or land, per trip, more than 500 lbs (226.8 kg) of regulated species.

(e) * * *
(2) Possess or land regulated species in excess of the possession limit, per trip, as specified in § 651.27, unless:

(14) Fish with or possess within the areas described in § 651.20(a)(1) nets of mesh smaller than the minimum size specified in § 651.20(a)(2), unless the vessel is exempted under § 651.20(a)(3), (a)(4), or (i), or unless the vessel qualifies for the exemption specified in paragraph (e)(1)(ii) of this section.

(16) Fish with or possess within the area described in § 651.20(c)(1), nets of mesh smaller than the minimum size specified in § 651.20(c)(2), unless the vessel is exempted under § 651.20(i), the vessel possesses no more regulated species than the possession limit specified in § 651.27(a), the nonconforming mesh is stowed in accordance with § 651.20(c)(4), or the vessel qualifies for the exemption specified in paragraph (e)(1)(ii) of this section.

(17) Fish with or possess, within the area described in § 651.20(d)(1), nets of mesh smaller than the minimum size specified in § 651.20(d)(2), unless the vessel is exempted under § 651.20(i), possesses no more regulated species than the possession limit specified in § 651.27(a), the nonconforming mesh is stowed in accordance with § 651.20(c)(4), or the vessel qualifies for the exemption specified in paragraph (e)(1)(ii) of this section.

(23) Import, export, transfer, land, or possess regulated species that are smaller than the minimum sizes specified in § 651.23, unless the regulated species were harvested from a vessel that qualifies for the exemption specified in paragraph (e)(1)(ii) of this section or the exemption specified in § 651.23(f).

(g) *Presumption.* The possession for sale of regulated species that do not meet the minimum sizes specified in § 651.23 will be *prima facie* evidence that such regulated species were taken or imported in violation of these regulations. Evidence that such fish were harvested by a vessel not issued a permit under this part and fishing

exclusively within state waters or under the exemption specified in § 651.23(f) will be sufficient to rebut the presumption. This presumption does not apply to fish being sorted on deck.

4. In § 651.20, the first sentences of paragraphs (a)(2), (c)(2)(i), and (c)(2)(ii) are revised; paragraph (d)(2) is revised; and paragraph (i) is added, to read as follows:

§ 651.20 Regulated mesh areas and restrictions on gear and methods of fishing.

(a) * * *
(2) *Mesh-size restrictions.* Except as provided in paragraphs (a) (3) through (5), (e), (f), and (i) of this section, the minimum mesh size for any trawl net, sink gillnet, Scottish seine, or midwater trawl, on a vessel, or used by a vessel fishing in the GOM/GB regulated mesh area, shall be 6 inches (15.24 cm) diamond or square mesh throughout the entire net. * * *

(c) * * *
(2) *Mesh-size restrictions.* (i) For 1994, except as provided in paragraphs (e), (f) and (i) of this section, the minimum mesh size for any trawl net, sink gillnet, Scottish seine, or midwater trawl, in use, or available for use as described under paragraph (c)(4) of this section, by a vessel fishing in the Southern New England regulated mesh area, shall be 5½ inches (13.97 cm) diamond or square mesh throughout the net. * * *

(ii) For 1995 and thereafter, except as provided in paragraphs (e), (f) and (i) of this section, the minimum mesh size for any trawl net, sink gillnet, Scottish seine, or midwater trawl, in use, or available for use as described under paragraph (c)(4) of this section, by a vessel fishing in the Southern New England regulated mesh area, shall be 5½ inches (13.97 cm) diamond or 6 inches (15.24 cm) square mesh throughout the net. * * *

(d) * * *
(2) *Mesh-size restrictions.* Except as provided in paragraphs (e), (f) and (i) of this section, the minimum mesh size for any trawl net, sink gillnet, Scottish seine, or midwater trawl, in use, or available for use as described under paragraph (c)(4) of this section, by a vessel fishing in the Mid-Atlantic regulated mesh area shall be that specified in the summer flounder regulations at § 625.24(a) of this chapter.

(i) *State waters winter flounder exemption.* Notwithstanding the provisions of paragraphs (a)(2), (c)(2), and (d)(2) of this section, a vessel

holding a Federal multispecies permit under this part may fish for winter flounder in state waters with mesh size smaller than the minimum size required under this section, provided that: (1) The fishing is conducted exclusively in the waters of the state from which the exemption certificate was obtained;

(2) The vessel has on board a certificate issued by the state agency authorizing the vessel's participation in the state's winter flounder fishing program and is in compliance with the applicable state laws pertaining to minimum mesh size and minimum fish size for winter flounder;

(3) The state's winter flounder plan has been approved by the Atlantic States Marine Fisheries Commission (ASMFC) as being in compliance with the ASMFC Winter Flounder Fishery Management Plan;

(4) The state elects, in writing, to the Regional Director to participate in the exemption program described by this section;

(5) The amount of regulated species on board a vessel issued a limited access permit that is fishing under the days-at-sea (DAS) program or under a DAS exemption program in § 651.22(d), exclusive of winter flounder, does not exceed the possession limit specified in § 651.27(a);

(6) The vessel does not enter or transit the EEZ unless the vessel is in a designated transit zone established by the Regional Director at the request of the coastal state; and

(7) The vessel does not enter or transit the waters of another state unless such other state is participating in the exemption program described by this section and the vessel is enrolled in that state's program.

5. In § 651.23, the introductory text of paragraph (a) is revised, and paragraph (f) is added, to read as follows:

§ 651.23 Minimum fish size.

(a) Except as provided in paragraph (f) of this section, the minimum fish sizes (total length) for the following species are as follows: * * *

* * * * *

(f) *State waters winter flounder exemption.* Notwithstanding the provisions of paragraph (a) of this section, a vessel holding a Federal multispecies permit under this part and fishing in state waters may retain winter flounder smaller than the minimum size allowed under paragraph (a) of this section, provided that:

(1) The fishing is conducted exclusively in the waters of the state from which the exemption certificate was obtained;

(2) The vessel has on board a certificate issued by the state agency authorizing the vessel's participation in the state's winter flounder fishing program and is in compliance with the applicable state laws pertaining to minimum mesh size and minimum fish size for winter flounder;

(3) The state's winter flounder plan has been approved by the ASMFC as being in compliance with the ASMFC Winter Flounder Fishery Management Plan;

(4) The state elects, in writing, to the Regional Director to participate in the exemption program described by this section;

(5) The amount of regulated species on board vessels issued a limited access permit that is fishing under the DAS program, or under a DAS exemption program in § 651.22(d), exclusive of

winter flounder, does not exceed the possession limit specified in § 651.27(a);

(6) The vessel does not enter or transit the EEZ unless the vessel is in a designated transit zone established by the Regional Director at the request of the coastal state; and

(7) The vessel does not enter or transit the waters of another state unless such other state is participating in the exemption program described by this section and the vessel is enrolled in that state's program.

6. In § 651.27, paragraph (a)(5) is added to read as follows:

§ 651.27 Possession limits.

(a) * * *

(5) *Exemption.* Notwithstanding paragraph (a)(1) of this section, a vessel issued a limited access permit under this part that is fishing under the DAS program or under a DAS exemption program in § 651.22(d), and under the state waters winter flounder exemption specified in § 651.20(i) and § 651.23(f), is not subject to the possession limit for winter flounder, but is prohibited from possessing on a vessel, or landing per trip, more than 500 lbs (226.8 kg) of regulated species, exclusive of the winter flounder. This exemption does not apply when a limited access vessel's owner or authorized representative declares the vessel out of the multispecies fishery specified in § 651.29(a)(1), or when a vessel fishing under the Individual DAS program has used up its DAS allocation.

* * * * *

[FR Doc. 94-11651 Filed 5-10-94; 4:11 pm]

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Notices

Federal Register

Vol. 59, No. 92

Friday, May 13, 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

National Advisory Committee on Microbiological Criteria for Foods; Renewal

Office of the Secretary

[Docket No. 94-]

This notice announces the renewal of the National Advisory Committee on Microbiological Criteria for Foods. The Committee is being renewed in cooperation with the Department of Health and Human Services (HHS), and was recommended by a 1985 report of the National Academy of Sciences (NAS) Committee on Food Protection, Subcommittee on Microbiological Criteria, "An Evaluation of the Role of Microbiological Criteria for Foods."

USDA is charged with the enforcement of the Federal Meat Inspection Act (FMIA), the Poultry Products Inspection Act (PPIA), and the Egg Products Inspection Act (EPIA). Under these Acts, USDA is responsible for the wholesomeness and safety of meat, poultry, egg products and products thereof intended for human consumption. Similarly, the Secretary of HHS is charged with the enforcement of the Federal Food, Drug, and Cosmetic Act (FFDCA). Under this Act, HHS is responsible for ensuring the safety of human foods and animal feeds.

In order to continue to meet the responsibilities under the FMIA, PPIA, EPIA, and the FFDCA, the National Advisory Committee of Microbiological Criteria for Foods is being renewed. The Committee will be tasked with advising and providing recommendations to the Secretaries on the development of microbiological criteria by which the safety and wholesomeness of food can be assessed, including criteria for microorganisms that indicate whether foods have been processed using good manufacturing processes.

Renewal of this Committee is necessary and in the public interest

because the development of a sound public policy in this area can best be accomplished by a free and open exchange of information and ideas among Federal, State, and local agencies; the industry; the scientific community; and other interested parties. The complexity of the issues to be addressed assures that more than one meeting will be required to accomplish the Committee's tasks.

Members will be appointed by the Secretary of USDA after consultation with the Secretary of HHS. Because of their interest in the microbiological criteria for foods, advice on membership appointments will be requested from the Department of Commerce's National Marine Fisheries Service, and the Department of Defense's U.S. Army Natick Research and Development Center. Nominations for membership are based primarily on expertise in food science, microbiology, and other relevant disciplines.

For additional information, please contact: Mr. Craig Fedchock, Advisory Committee Specialist, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 2151, South Agriculture Building, 14th and Independence Avenue, S.W., Washington, DC 20250.

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

Wardell Townsend, Jr.,

Assistant Secretary for Administration.

[FR Doc. 94-11640 Filed 5-12-94; 8:45 am]

BILLING CODE 3410-DM-M

Animal and Plant Health Inspection Service

[Docket No. 94-031-1]

Secretary's Advisory Committee on Foreign Animal and Poultry Diseases; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: We are giving notice of a meeting of the Secretary's Advisory Committee on Foreign Animal and Poultry Diseases.

PLACE, DATES, AND TIME OF MEETING: The meeting will be held in the Harbor Room of the Comfort Suites Laurel Lakes, 14402 Laurel Place, Laurel,

Maryland 20707, (301) 206-2600. The Committee will meet on June 28-30, 1994. Sessions will be held from 8 a.m. to 5 p.m. on June 28 and 29, and from 8 a.m. to noon on June 30.

FOR FURTHER INFORMATION CONTACT: Dr. John Williams, Senior Staff Veterinarian, Emergency Programs Staff, Veterinary Services, APHIS, USDA, room 745, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8092.

SUPPLEMENTARY INFORMATION: The Secretary's Advisory Committee on Foreign Animal and Poultry Diseases (FAPD) advises the Secretary of Agriculture of means to suppress, control, or eradicate an outbreak of foot-and-mouth disease or other destructive foreign animal or poultry diseases in the event these diseases should enter the United States. FAPD also advises the Secretary of Agriculture on prevention of these diseases.

Tentative topics for discussion include: Trade issues; the world disease situation, including hog cholera in Mexico; screwworm eradication; the import and export of animals and animal products; regionalization and risk assessment in international trade; emergency response for food safety issues involving residues, natural disasters, or other threats; an avian influenza update; and bovine spongiform encephalopathy. FAPD will also develop recommendations and prepare comments on control and eradication guides for foot-and-mouth disease and other foreign animal diseases.

The meeting will be open to the public. Written statements concerning meeting topics may be filed with FAPD before the meeting by sending them to Dr. John Williams at the address listed under FOR FURTHER INFORMATION CONTACT. Written comments may also be filed at the time of the meeting. Please refer to Docket No. 94-031-1 when submitting your comments.

This notice of meeting is given pursuant to section 10 of the Federal Advisory Committee Act.

Done in Washington, DC, this 9th day of May 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94-11679 Filed 5-12-94; 8:45 am]

BILLING CODE 3410-34-P

[Docket No. 94-024-1]

General Conference Committee of the National Poultry Improvement Plan (NPIP) and the NPIP Biennial Conference; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: We are giving notice of a meeting of the General Conference Committee of the National Poultry Improvement Plan (NPIP) and of the NPIP Biennial Conference.

PLACE, DATES, AND TIMES OF MEETING: The meeting and conference will be held at the Nashville Airport Marriott, 600 Marriott Drive, Nashville, Tennessee, 37214, (615) 889-9300. The General Conference Committee will meet on June 26, from 8 a.m. to 5 p.m. The Biennial Conference will meet on June 27 and June 28, from 8 a.m. to 5 p.m. each day and on June 29, 1994, from 8 a.m. to noon.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew Rhorer, Senior Coordinator, Sheep, Goat, Equine, and Poultry Diseases Staff, Veterinary Services, APHIS, USDA, room 205, Presidential Building, Hyattsville, MD 20782, (301) 436-7768.

SUPPLEMENTARY INFORMATION: The General Conference Committee of the National Poultry Improvement Plan (NPIP), representing cooperating State agencies and poultry industry members, serves an essential function by acting as liaison between the poultry industry and the Department in matters pertaining to poultry health. In addition, this Committee assists the Department in planning, organizing, and conducting the NPIP Biennial Conference.

Tentative topics for discussion include proposed changes to the NPIP that would:

1. Provide for the culture of cull chicks, meconium and hatcher trays in egg-type flocks that have an environment positive for *Salmonella enteritidis* (SE).

2. Propose a voluntary program for SE-tested started poultry.

3. Provide for a mid-lay serological test of suspect breeding flocks for *S. pullorum* and *S. gallinarum*.

4. Provide for the retesting of pullorum-typhoid plate positive serum specimens with the tube agglutination test or the microagglutination test for pullorum-typhoid.

5. Add the laboratory protocol for the bacteriological examination of baby chicks.

6. Amend the U.S. S. Enteritidis Monitored program for egg-type

chickens by disqualifying a breeding flock with an SE positive environment and require the monitoring of rodents.

7. Alter the number of birds monitored for *M. gallisepticum* (MG) in egg-type chickens.

8. Alter the number of birds monitored for *M. synoviae* (MS) in egg-type chickens.

9. Approve fishmeal as an animal protein source for egg-type chickens.

10. Approve fishmeal as an animal protein source for turkeys.

11. Provide for different sample sizes of birds screened for MG using the enzyme-labeled immunosorbent assay test (ELISA).

12. Provide for different sample sizes of birds screened for MS using ELISA.

13. Amend the age at which Exhibition Poultry, Game Birds, and Waterfowl (subpart E) are blood tested for pullorum-typhoid.

14. Create a new SE-free classification for meat-type chickens.

15. Establish a number of serum plate positive samples that will be examined using the hemagglutination inhibition (HI) and/or the serum plate dilution (SPD) test.

16. Establish a new MS clean-state status for turkeys.

17. Reduce the paperwork load on subpart E hatcheries.

The meeting and conference will be open to the public. The sessions will include the delegates to the Biennial NPIP Conference, representing State officials and poultry industry personnel from the 47 cooperating States.

However, due to time constraints, the public will not be allowed to participate in the committee's discussions. Persons interested in expressing their views concerning the above topics, or other aspects of the NPIP, should send their written comments to Mr. Andrew Rhorer at the address listed under **FOR FURTHER INFORMATION CONTACT**.

Written comments may also be filed at the time of the meeting. Please refer to Docket Number 94-024-1 when submitting your comments.

Written comments received by Mr. Rhorer may be inspected in room 205 of the Presidential Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

This notice is given in compliance with the Federal Advisory Committee Act (Pub. L. 92-463).

Done in Washington, DC, this 9th day of May 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94-11680 Filed 5-12-94; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF COMMERCE**National Institute of Standards and Technology****Announcing a Meeting of Computer System Security and Privacy Advisory Board**

AGENCY: National Institute of Standards and Technology, D.C.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Computer System Security and Privacy Advisory Board will meet Wednesday, June 1, and Thursday, June 2, 1994, from 9 a.m. to 5 p.m. The Advisory Board was established by the Computer Security Act of 1987 (Pub. L. 100-235) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to Federal computer systems. All sessions will be open to the public.

DATES: The meeting will be held on June 1 and 2, 1994, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will take place at Hyatt Regency Baltimore on the Inner Harbor, 300 Light Street, Baltimore, MD 21202-9990

AGENDA:

- Welcome and Update
- Overview of Meeting
- National Performance Review Security Issues
- NII Security and Privacy Issues
- NIST Update Briefing
- Considerations of Proposed Resolutions
- Pending Business
- Public Participation
- Discussion of September Meeting Agenda
- Close

PUBLIC PARTICIPATION: The Board agenda will include a period of time, not to exceed thirty minutes, for oral comments and questions from the public. Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the Board Secretariat at the telephone number indicated below. In addition, written statements are invited and may be submitted to the Board at any time. Written statements should be directed to the Computer System Security and Privacy Advisory Board, Computer Systems Laboratory, Building 225, Room B154, National Institute of Standards and Technology, Gaithersburg, MD 20899. It would be appreciated if fifteen copies of written material could be submitted for distribution to the Board by May 27,

1994. Approximately 20 seats will be available for the public and media.

FOR FURTHER INFORMATION CONTACT: Mr. Lynn McNulty, Associate Director for Computer Security, Computer Systems Laboratory, National Institute of Standards and Technology, Building 225, Room B154, Gaithersburg, MD 20899, telephone: (301) 975-3240.

Dated: May 9, 1994.

Samuel Kramer,

Associate Director

[FR Doc. 94-11730 Filed 5-12-94; 8:45 am]

BILLING CODE 3510-CN-M

Announcing a Meeting of Fastener Quality Act Advisory Committee

AGENCY: National Institute of Standards and Technology, DoC.

ACTION: Notice of advisory committee meeting open to the public.

SUMMARY: The National Institute of Standards and Technology (NIST) will hold a meeting of the Fastener Advisory Committee on June 14 and 15, 1994. The meeting will be for the purpose of discussing: (1) Final implementing regulations for the Fastener Quality Act; (2) plans for accrediting laboratories under the Act; (3) plans for enforcement of the Act, to include training of investigators; and (4) plans for regional workshops to address industry questions relating to the above areas.

DATES: The meeting will be held on June 14 from 8:30 a.m. to 5 p.m. and on June 15 from 8:30 a.m. to noon.

ADDRESSES: The meeting will be held at the Gaithersburg Hilton Hotel, Ballroom Salon, 620 Perry Parkway, Gaithersburg, MD.

PUBLIC PARTICIPATION: The meeting is open to the public. Attendance shall be on a first-come, first-serve basis in so far

as seating is concerned, up to the reasonable and safe capacity of the meeting. The public may file written statements with the Advisory Committee at any time before or after the meeting. An effort shall be made to set aside a portion of the meeting for public participation. To the extent that the meeting time and agenda permits; interested persons will be allowed to present oral statements or to participate in the discussion.

FOR FURTHER INFORMATION CONTACT: Mr. David E. Edgerly, Deputy Director, Technology Services, National Institute of Standards and Technology, Building 221, Room A363, Gaithersburg, MD 20899, Telephone (301) 975-4500.

Dated: May 9, 1994.

Samuel Kramer,

Associate Director.

[FR Doc. 94-1173 Filed 5-12-94; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

[Docket No. 940377-4077]

RIN: 0648-AG51

NOAA Climate and Global Change Program, Program Announcement

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice.

SUMMARY: The Climate and Global Change Program represents a National Oceanic and Atmospheric Administration (NOAA) contribution to evolving national and international programs designed to improve our ability to observe, understand, predict, and respond to changes in the global

environment. This program builds on NOAA's mission requirements and longstanding capability in global change research and prediction. The NOAA Program is a key contributing element of the U.S. Global Change Research Program (USGCRP), which is coordinated by the interagency Committee on Environmental and Natural Resources. NOAA's program is designed to complement other agency contributions to that national effort.

DATES: Strict deadlines for submission to the FY 1995 process are: Letters of intent must be received at the Office of Global Programs (OGP) no later than June 14, 1994. Full proposals must be received at OGP no later than August 8, 1994.

Applicants should receive notification of the suitability of their intended proposals by June 30, 1994.

Investigators who have not received notification by that date should contact the program office. The time from target date to grant award varies with program area. We anticipate that review will occur during the fall of 1994 and funding should begin during the early spring of 1995 for most approved projects. April 1, 1995, should be used as the proposed start date on proposals, unless otherwise directed by the appropriate Program Officer. Applicants should be notified of their status within 3 to 6 months. All proposals must be submitted in accordance with the guidelines below. Failure to heed these guidelines may result in proposals being returned without review.

ADDRESSES: Proposals may be submitted to: Office of Global Programs, National Oceanic and Atmospheric Administration, 1100 Wayne Avenue, Suite 1225, Silver Spring, MD 20910-5603, Attn.: Irma duPree.

FOR FURTHER INFORMATION CONTACT:

Irma duPree, The Office of Global Programs, National Oceanic and Atmospheric Administration, at the address given above, phone: (301) 427-2089 ext. 712; fax: (301) 427-2073; OMNET: LDUPREE, Internet: dePree@aogp.noaa.gov.

SUPPLEMENTARY INFORMATION:**Funding Availability**

NOAA believes that the Climate and Global Change Program will benefit significantly from a strong partnership with outside investigators. Current Program plans assume that 30-35% of the total resources available (\$84 million) anticipated in FY 1995 will support extramural efforts, particularly those involving the broad academic community. Approximately \$20 million will be applied toward extramural grants and cooperative agreements already in progress and those proposals submitted in FY 1994 that were recommended for funding in FY 1995. Remaining funds, approximately, \$9 million will be available for new grants and cooperative agreements. This Program Announcement is for projects to be conducted by investigators both inside and outside of NOAA, primarily over a one, two or three year period. Actual funding levels may be subject to change depending on the final FY 1995 budget appropriation. The funding instrument will be a grant unless it is anticipated that NOAA will be substantially involved in the implementation of the project for which an award is to be made, in which case the funding instrument should be a cooperative agreement. Examples of substantial involvement may include but are not limited to proposals for collaboration between NOAA or NOAA scientists and a recipient scientist or technician and/or contemplation by NOAA of detailing Federal personnel to work on proposed projects. NOAA will make decisions regarding the use of a cooperative agreement on a case-by-case basis. Funding for non-U.S. institutions and contractual arrangements for services and products for delivery to NOAA are not available under this announcement.

Program Authority

Authority: 49 U.S.C. 1463; 15 U.S.C. 313; 33 U.S.C. 883a. *et seq.*; 15 U.S.C. 2901; 15 U.S.C. 2921

(CFDA No. 11.431)—Climate and Atmospheric Research**Program Objectives**

The long term objective of the Climate and Global Change Program is to

provide reliable predictions of climate change and associated regional implications on time scales ranging from seasons to a century or more. NOAA believes that these time scales can be studied with an acceptable probability of success and are the most relevant for fundamental social concerns. Predicting the behavior of the coupled ocean-atmosphere-land surface system will characterize NOAA's role in a successful national effort to deal with observed or anticipated changes in the global environment. NOAA has a range of unique facilities and capabilities that can be applied to Climate and Global Change investigations. Proposals that seek to exploit these resources in collaborative efforts between NOAA and extramural investigators are encouraged.

Program Priorities

In FY 1995, NOAA will give priority attention to individual proposals in the areas described below. Investigators are asked to specify clearly which of these areas is being pursued. The names, affiliations and phone numbers of relevant Climate and Global Change Program Officers are provided. Prospective applicants are encouraged to contact Program Officers for further information. Proposals should be sent to the NOAA Office of Global Programs rather than to individual Program Officers.

Atmospheric Chemistry—The Atmospheric Chemistry Project focuses on global monitoring, process-oriented laboratory and field studies, and theoretical modeling to improve the predictive understanding of atmospheric trace gases that influence the Earth's chemical and radiative balance. FY 1995 actions in Atmospheric Chemistry will focus on studies associated with the International Global Atmospheric Chemistry (IGAC) program of the IGBP. Proposals are solicited for the following: (i) (highest priority) the North Atlantic Regional Study (NARE), with emphasis on intensive field studies and modeling; (ii) the International Support Activity: intercalibrations/intercomparisons, with emphasis on the Nonmethane Hydrocarbon Intercomparison Experiment; (iii) the East Asian/North Pacific Regional Experiment (APARE), with emphasis on coordination of ground-based chemical measurements and diagnostic analyses and modeling of regional chemical processes. In addition, proposals are solicited for stratospheric/upper tropospheric ozone research, with an emphasis on the development or deployment of instruments capable of measuring key chemical compounds from high-altitude

jet aircraft. For an information sheet containing further details, contact: Joel Levy, NOAA/Global Programs, 301/427-2089 ext. 756, OMNET: J.Levy, Internet: Levy@aogp.noaa.gov., or Fred C. Fehsenfeld, NOAA/Aeronomy Laboratory, Boulder, CO; 303/497-5819.

Climate Observations—A new FY 1995 Climate and Global Change program element is under consideration at this time. It will focus on ocean, atmosphere and land surface climate observations, measurement systems, and techniques and is expected to be a blend of former elements including Operational Measurements (OM), Long-Term Ocean Observations (L-TOO), Measurement Technique Development, and Solar Variability. Funding for new starts in this element in FY 1995 will be extremely limited, with no more than one or two new projects anticipated in the OM and L-TOO areas and no new projects in Measurement Technique Development or Solar Variability. OM anticipates a tightly focused program which addresses the development, validation, and implementation of high-quality, climate relevant data products derived from operational meteorological satellite and in-situ observing systems. Activities in the L-TOO focus will continue to be on observations for climate prediction, primarily at seasonal to interannual time scales. In parallel with ongoing data collection efforts, L-TOO will support design studies and observing system simulation experiments aimed at assessing the impact of ocean data on climate prediction. Because of the limited FY 1995 funding expected, investigators considering submitting a proposal are encouraged to contact program officials for preliminary discussion of ideas, and are urged to submit letters of intent prior to proposal submission. For further information on OM related projects, contact Bill Murray, NOAA/Global Programs, Silver Spring, MD; 301/427-2089 ext. 26. OMNET: W.Murray, Internet: murray@aogp.noaa.gov and Arnold Gruber, NOAA/NESDIS, Washington, D.C., 20233, 301/763-8127, and for L-TOO projects, contact Bill Woodward, NOAA, NOS/OES, Silver Spring, MD.; 301/713-2790, OMNET: W.Woodward, Internet: W.Woodward@omnet.com.

Atlantic Climate Change—The goal of this project is to determine the nature and influence of interactions between the meridional circulation of the Atlantic Ocean, sea surface temperature and salinity, and the global atmosphere. Proposals are sought in the following areas: (i) Studies using models or historical data to examine variability in the climate system resulting from

interactions between the global atmosphere and the Atlantic Ocean; (ii) modeling of the maintenance and variability of the relatively warm upper layer water in the Grand Banks region and the sea surface temperature field of the tropical Atlantic, and what role these regions may play in the larger scale atmospheric and oceanic climate system; (iii) use of conceptual and numerical models to synthesize near surface data (e.g. surface drifters, XBTs and sea level) and data from the full water column (e.g. hydrographic, tracer and other data sets); (iv) documentation of the general characteristics of decadal/century modes of Atlantic climate variability through synthesis of information from both instrumental and proxy sources. For further information contact: David Goodrich, NOAA/Office of Global Programs, Silver Spring, MD; 301-427-2089 ext. 38, OMNET: D.Goodrich, Internet: Goodrich@ogp.noaa.gov.

Tracers and World Ocean Circulation Experiment Hydrography—As part of NOAA's contribution to WOCE, proposals are sought for tracer observations on WOCE hydrographic cruises. Of particular interest are studies employing transient tracers operating on decadal to centennial time scales, including chlorofluorocarbons, helium-3/tritium, and carbon isotopes. WOCE-related proposals will be jointly reviewed by NOAA and the National Science Foundation (NSF) as part of the interagency WOCE Program Announcement. Proposals for this element should be submitted directly to the NSF Ocean Sciences Division, using NSF format. For further information contact: David Goodrich, NOAA/Global Programs, Silver Spring, MD; 301-427-2089 ext. 38, OMNET: D.Goodrich, Internet: Goodrich@ogp.noaa.gov.

Ocean-Atmosphere Carbon Exchange Study (OCAES)—As part of NOAA's contribution to the Joint Global Ocean Flux Study (JGOFS) and as a continuing effort aimed at improving our understanding of the role of the ocean in sequestering the increasing burden of anthropogenically derived carbon dioxide in the atmosphere, proposals are sought for the planning NOAA research cruises in the Indian Ocean/Arabian Sea (FY 1995) and along 170° West longitude in the South Pacific Ocean (FY 1996). Proposals addressing the measurement of specific chemical variables including alkalinity, pH, nutrients, dissolved organic carbon, dissolved organic nitrogen, primary productivity and carbon isotopes are encouraged. For an information sheet containing further details, contact: James F. Todd, NOAA/Global Programs,

Silver Spring, MD; 301-427-2089 ext. 32, OMNET: J.Todd, Internet: Todd@ogp.noaa.gov.

Global Ocean—Atmosphere-Land System (GOALS)—The objectives of the GOALS Program are to understand global climate variability on seasonal-to-interannual time scales, to determine the extent to which this variability is predictable, to develop the observational, theoretical, and computational means to predict this variability, and to make experimental predictions within the limits of proven feasibility. GOALS will broaden the scientific scope of the Tropical Ocean-Global Atmosphere (TOGA) Program by extending the region of interest to the global climate system, by investigating the feasibility of predicting regional short-term climate variations throughout the world, and by expanding the observational and data transmission network as appropriate. GOALS will support research in the areas of monitoring, data management, empirical studies, modeling and prediction. In this first year, proposals are particularly sought for modeling and diagnostic studies of the coupled global ocean-atmosphere-land system. A related program, the Pan-American Climate Studies (PACS) Program, is being formulated to advance seasonal-to-interannual climate prediction over the Americas and contiguous waters. Proposals for PACS will be solicited under a separate announcement. For further information contact: Kenneth Mooney, NOAA/Office of Global Programs, Silver Spring MD; 301-427-2089 ext. 14, OMNET: K.Mooney, Internet: Mooney@ogp.noaa.gov.

Information Management—The goals of this project are: (i) to provide the organization and focus through which data producers, data managers and data users actively participate in the design, implementation and review of the NOAA Climate and Global Change (C&GC) information management system, (ii) to assist in construction of data and information (metadata) sets required by C&GC researchers, (iii) to provide users with easy access to C&GC data and information, and (iv) to manage long-term C&GC data and information archives. Proposals are sought which are clearly linked to the specific scientific objectives of the NOAA C&GC Program and which are under the direction of a scientific principal investigator. Proposals to enhance system and infrastructure responsibilities without firm science driven objectives will not be considered. Priorities include construction of long-term climate and global change data sets and information products involving data

assembly, digitization, quality control and data rescue, and support of information management applicable to national and international research programs. For further information contact: Bill Murray, NOAA/Global Programs, Silver Spring, MD; 301-427-2089 ext. 26, Omnet: W.Murray, Internet: Murray@ogp.noaa.gov., or Christopher Miller, NOAA/NESDIS, Washington, DC 20235, 202-606-5012, Omnet: C.Miller.NOAA, Internet: C.Miller.noaa@omnet.com.

Global Energy and Water Cycle Experiment (GEWEX)—This program element replaces Atmospheric and Land Surface Processes (ALSP) listed in previous announcements. In FY95, NOAA's principal contribution to GEWEX will be directed at improving our understanding of physical processes associated with the transfer of heat, moisture and momentum across the land/atmosphere interface and through the atmospheric boundary layer. Particular emphasis will be placed on issues involving the scale integration of these processes in climate models. The focus for this activity is the GEWEX Continental-scale International Project (GCIP) centered on the Mississippi River Basin. Also to be supported within this program element will be proposals addressing the role of aerosols in forcing climate variability and change, with a focus on the forthcoming series of Aerosol Characterization Experiments (ACE-1 & 2). For further information contact: Michael Coughlan, NOAA/Office of Global Programs, Silver Spring, MD; 301-427-2089 ext. 40, OMNET: M.Coughlan, Internet: coughlan@ogp.noaa.gov.

Marine Ecosystem Response—The principal objective of the Marine Ecosystem Response Program is to determine the relationship between ecosystem dynamics and the climatic variability associated with global change. The majority of the resources of this program will be devoted to the USGCRP Global Ocean Ecosystem Dynamics (U.S.GLOBEC) program. A solicitation for proposals, separate from this announcement, will be issued by the jointly supported (NSF/NOAA) U.S. GLOBEC program, and will be directed at the ongoing U.S. GLOBEC Northwest Atlantic Field Study and the planned California Current study. In addition to U.S. GLOBEC activities, some resources will be devoted to the early detection of climate change. Under this activity, modest proposals may be sought for the development of coordinated, scientifically based monitoring of coral reef ecosystems and other innovative pilot projects that might contribute to early detection of climate change. For

further information, contact Mark Eakin, NOAA/Global Programs, Silver Spring, MD; 301-427-2089 ext. 710, OMNET: M.Eakin, Internet: Eakin@ogp.noaa.gov; or Bill Peterson, NOAA/National Marine Fisheries Service, Silver Spring, MD; 301-713-2367, OMNET: W.Peterson, Internet: wpeterso@shark.ssp.nmfs.gov.

Paleoclimatology—The Paleoclimatology Program solicits proposals that will make significant advances in our understanding of decade-to-century-scale variability in the climate system. This includes development of new, high-resolution time series from climatically-sensitive areas presently without adequate data coverage (e.g., the tropics and Southern Hemisphere), and datasets that reconstruct large-scale historical patterns of climatic change that can be used to verify climate and ocean models. FY 1995 proposals may be submitted for either research (both field and analytical work) or database development. Further details will be published in the next issue of "The Paleoclimate Data Record" published by the World Data Center—A for Paleoclimatology at NOAA/NGDC. For an information sheet or more information, contact Mark Eakin, NOAA/Global Programs, Silver Spring, MD; 301-427-2089 ext. 710, OMNET: M.Eakin, Internet: Eakin@ogp.noaa.gov or Jonathan Overpeck of NOAA/National Geophysical Data Center, Boulder, CO; 303-497-6172, OMNET: J.Overpeck, Internet: jto@mail.ngdc.noaa.gov.

Economics and Human Dimensions of Climate Fluctuations—A new 1995 program element representing the merging of the Economics and Human Dimensions programs is under consideration at this time. The objective is to promote multidisciplinary research that increases our understanding of the impacts of climate on human forcing functions of environmental change. The Program is also intended to provide opportunities for proposals in economics, anthropology, geography, sociology, and policy sciences to yield insight into this complex relationship. Because funding for new starts may be limited, a more tightly focussed program will reflect an emphasis, where appropriate, on seasonal to interannual time scales. For 1995, proposals on the following topics will be considered: (1) Economics research on the value of scientific and economic information and decision-making frameworks relating to climate fluctuation; (2) historical and archeological perspectives on climate change; and (3) climate-human interactions, including anthropogenic activities affecting climate variability/

change, as well as social and economic consequences of and adaptation to climate fluctuation. Within any of the above topics, a focus on coastal issues is welcomed. NOAA's mission includes human adaptations and vulnerabilities, coastal infrastructure, and governance and management. Interdisciplinary teams of researchers that include both physical and social scientists are strongly encouraged. Investigators considering submitting a proposal are strongly encouraged to contact program officials for preliminary discussion of ideas, and are urged to submit letters of intent prior to proposal submission. For an information sheet containing further details, contact: Claudia Nierenberg, NOAA/Office of Global Programs, Silver Spring, MD; 301-427-2089 ext. 46, OMNET: C.Nierenberg, Internet: Nierenberg@ogp.noaa.gov.

Education—The Climate and Global Change Education Program will not seek applications to fund new starts in FY 1995.

Eligibility

Extramural eligibility is not limited and is encouraged with the objective of developing a strong partnership with the academic community. Non-academic proposers are urged to seek collaboration with academic institutions. Universities, non-profit organizations, for profit organizations, State and local governments, and Indian Tribes, are included among entities eligible for funding under this announcement. While not a prerequisite for funding, applicants are encouraged to consider conducting their research in one or more of the National Marine Estuarine Research Reserve System or National Marine Sanctuary sites. For further information on these field laboratory sites, contact Captain Francesca Cava, NOAA/NOS, 301-713-3125.

The NOAA Climate and Global Change Program has been approved for multi-year funding up to a three year duration. Funding for non-U.S. institutions is not available under this announcement.

Evaluation Criteria

Consideration for financial assistance will be given to those proposals which address one of the Program Priorities listed above and meet the following evaluation criteria:

(1) **Scientific Merit (20%)**: Intrinsic scientific value of the subject and the study proposed.

(2) **Relevance (20%)**: Importance and relevance to the goal of the Climate and Global Change Program and to the research areas listed above.

(3) **Methodology (20%)**: Focused scientific objective and strategy, including measurement strategies and data management considerations; project milestones; and final products.

(4) **Readiness (20%)**: Nature of the problem; relevant history and status of existing work; level of planning, including existence of supporting documents; strength of proposed scientific and management team; past performance record of proposers.

(5) **Linkages (10%)**: Connections to existing or planned national and international programs; partnerships with other agency or NOAA participants, where appropriate.

(6) **Costs (10%)**: Adequacy of proposed resources; appropriate share of total available resources; prospects for joint funding; identification of long-term commitments. (Matching funding is encouraged, but is not required.)

Selection Procedures

All proposals will be evaluated and ranked in accordance with the assigned weights of the above evaluation criteria by: (1) Independent peer mail review, and/or (2) independent peer panel review of both NOAA and non-NOAA experts in the field may be used in this process. Their recommendations and evaluations are considered by the program Manager/Officer in final selections. Those ranked by the panel and program as not recommended for funding are not given further consideration and are notified of non-selection. For the proposals rated either Excellent, Very Good or Good, the Program manager will: (a) Ascertain which proposals meet the objectives, fit the criteria posted, and do not substantially duplicate other projects that are currently funded by NOAA or are approved for funding by other federal agencies, (b) select the proposals to be funded, (c) determine the total duration of funding for each proposal, and (d) determine the amount of funds available for each proposal. Awards are not necessarily made to the highest-scored proposals.

Unsatisfactory performance by a recipient under prior Federal awards may result in an application not being considered for funding.

Proposal Submission

The guidelines for proposal Preparation provided below are mandatory. Failure to heed these guidelines may result in proposals being returned without review.

(a) **Letters of Intent**: (1) Letters should be no more than two pages in length and include the name and institution of principal investigator(s); a statement of

the problem; brief summary of work to be completed; and approximate cost of project and program element(s) to which the proposal should be directed. (2) Evaluation will be by program management, according to the selection criteria for full proposals described below as well as relevance to Climate and Global Change program elements. (3) It is in the best interest of applicants and their institutions to submit letters of intent, however it is not a requirement. (4) Facsimile and electronic mail are acceptable for letters of intent only. (5) Projects deemed unsuitable during program review should not be submitted as full proposals.

(b) Full Proposals: (1) Applicants are not required to submit more than an original and two copies of applications. Investigators who wish all reviewers to receive color, unusually sized (not 8.5x11"), or otherwise unusual materials submitted as part of the proposal are encouraged to submit sufficient proposal copies for the full review process. (2) Proposals must be limited to 30 pages (numbered), including budget, investigators vitae, and all appendices, and should be limited to funding requests for one to three years duration. (3) Proposals should be sent to the NOAA Office of Global Programs at the above address. (4) Facsimile transmissions and electronic mail submission of full proposals will not be accepted.

(c) Required Elements: All proposals should include the following elements:

(1) Signed title page: The title page should be signed by the Principal Investigator (PI) and the institutional representative and should clearly indicate which project area is being addressed. The PI and institutional representative should be identified by full name, title, organization, telephone number and address. The total amount of Federal funds being requested should be listed for each budget period.

(2) Abstract: An abstract must be included and should contain an introduction of the problem, rationale and a brief summary of work to be completed. The abstract should appear on a separate page, headed with the proposal title, institution(s) investigator(s), total proposed cost and budget period.

(3) Statement of work: The proposed project must be completely described, including identification of the problem, scientific objectives, proposed methodology, relevance to the goal of the Climate and Global Change Program, and the program priorities listed above. Benefits of proposed project to the general public and the scientific community should be discussed.

Results from related projects supported by NOAA and other agencies should be included. The statement of work, excluding figures and other visual materials, must not exceed 15 pages of text. Appended information may not be used to circumvent the page length limit. Investigators wishing to submit group proposals that may exceed the 15 page limit should discuss this possibility with the appropriate Program Officer prior to submission. In general, proposals from 3 or more investigators may include a statement of work containing up to 10 pages of overall project description plus up to 5 pages per person of individual project descriptions.

(4) Budget: Applicants must submit a detailed budget using the Standard Form 424a (4-92), Budget Information—Non-Construction Programs. The form is included in the standard NOAA application kit. Unless otherwise directed by the appropriate Program Manager, April 1, 1995, should be used as the target start date for proposals.

(5) Vitae: Abbreviated curriculum vitae are sought with each proposal. Reference lists should be limited to all publications in the last three years with up to five other relevant papers.

(6) Current and pending support: For each investigator, submit a list that includes project title, supporting agency with grant number, investigator months, dollar value and duration. Requested values should be listed for pending support.

(7) List of suggested reviewers: The cover letter may include a list of individuals qualified and suggested to review the proposal. It also may include a list of individuals that applicants would prefer to not review the proposal. Such lists may be considered at the discretion of the Program Officer.

(d) Other requirements:

(1) Applicants may obtain a standard NOAA application kit from the Grants Management Division.

(2) Primary applicant Certification—All primary applicants must submit a completed Form CD-511, "Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying". Applicants are also hereby notified of 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 than \$100,000, and loans and loan guarantees for more than \$150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

4. *Anti-Lobbying Disclosures*—Any applicant that has paid or will pay for lobbying using any funds must submit an SF-LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

(3) Lower Tier Certifications—Recipients must require applicants/bidders for subgrants, contracts, subcontracts, or 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.

(4) Recipients and subrecipients are subject to all applicable Federal laws and Federal and Department of Commerce policies, regulations, and procedures applicable to Federal financial assistance awards.

(5) Preaward Activities—If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that may have been received, there is no obligation to the applicant on the part of Department of Commerce to cover pre-award costs.

(6) This program is subject to the requirements of OMB Circular No. A-110, "Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations", and 15 CFR Part 24, "Uniform Administrative Requirements for Grants and

Cooperative Agreements to State and Local Governments", as applicable. Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

(7) 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.

(8) A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

(9) No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

(i) The delinquent account is paid in full,

(ii) A negotiated repayment schedule is established and at least one payment is received, or

(iii) Other arrangements satisfactory to the Department of Commerce are made.

(10) Buy American-Made Equipment or Products—Applicants are hereby notified that any equipment or products authorized to be purchased with funding provided under this program must be American-made to the maximum extent feasible in accordance with Public Law 103-121, Section 606 (a) and (b).

(11) The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct cost dollar amount in the application, whichever is less.

(e) If an application is selected for funding, the Department of Commerce has no obligation to provide any additional future funding in connection with the award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department of Commerce.

(f) In accordance with Federal statutes and regulations, no person on grounds of race, color, age, sex, national origin or disability shall be excluded from participation in, denied benefits of, or be subjected to discrimination under any program or activity receiving financial assistance from the NOAA Climate and Global Change Program.

The NOAA Climate and Global Change Program does not have direct TDD (Telephonic Device for the Deaf) capabilities, but can be reached through the State of Maryland supplied TDD contact number, 800-735-2258, between the hours of 8 a.m.-4:30 p.m.

Dated: April 28, 1994.

J. Michael Hall,

Director, Office of Global Programs, National Oceanic Atmospheric Administration.

[FR Doc. 94-11592 Filed 5-12-94; 8:45 am]

BILLING CODE 3510-12-M

[I.D. 050694E]

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 Pacific Fishery Management Council's (Council) Groundfish Management Team will hold a joint public meeting with the Scientific and Statistical Committee Groundfish Subcommittee on June 1-3, 1994, at the NMFS Alaska Fisheries Science Center, 7600 Sand Point Way, NE., Building 4, Room 2079, Seattle, WA. The meeting will begin at 1:00 p.m. on June 1, and 8:00 a.m. on June 2 and will adjourn when the business for each day is completed. The meeting on June 3 will begin at 8:00 a.m. until 3:30 p.m.

The purpose of this meeting is to review draft stock assessment reports on several important groundfish species harvested by West Coast fisheries. Other fishery scientists involved in preparation of the stock assessment documents will also participate in the review. In addition, the participants will review a draft stock assessment report on the Pacific halibut stock off the West Coast.

FOR FURTHER INFORMATION CONTACT: Jim Glock, Groundfish Fishery Management Coordinator, Pacific Fishery Management Council, 2000 SW First Avenue, Suite 420, Portland, OR 97201; telephone: (503) 326-6352.

SUPPLEMENTARY INFORMATION: This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Michelle Perry Sailer at (503) 326-6352, at least 5 days prior to the meeting date.

Dated: May 9, 1994.

Richard H. Schaefer

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

[FR Doc. 94-11598 Filed 5-12-94; 8:45 am]

BILLING CODE 3510-22-F

[I.D. 050694D]

South Atlantic Fishery Management Council; Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The South Atlantic Fishery Management Council's (Council) Florida Keys National Marine Sanctuary working group (working group) will hold a public meeting on May 24, 1994, from 8:30 a.m. until 5:00 p.m., at the Council office, One Southpark Circle, Suite 306, Charleston, SC; telephone: (803) 571-4366.

The working group will discuss fishing and zoning regulations for the Florida Keys National Marine Sanctuary.

FOR FURTHER INFORMATION CONTACT: Carrie Knight, Public Information Officer, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407-4699; telephone: (803) 571-4366.

SUPPLEMENTARY INFORMATION: The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Carrie Knight at the above address by May 17.

Dated: May 9, 1994

Richard H. Schaefer

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

[FR Doc. 94-11600 Filed 5-12-94; 8:45a.m.]

BILLING CODE 3510-22-F

[I.D. 050694C]

South Atlantic Fishery Management Council; Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Executive Committee (Committee) of the South Atlantic Fishery Management Council (Council) will hold a meeting on May 23, 1994,

from 1:00 p.m. until 5:00 p.m., at the Council office, One Southpark Circle, Suite 306, Charleston, SC; telephone: (803) 571-4366.

The Committee will develop the Council's activities schedule for Fiscal Year 1995.

FOR FURTHER INFORMATION CONTACT: Carrie Knight, Public Information Officer, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407-4699; telephone: (803) 571-4366.

SUPPLEMENTARY INFORMATION: The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Carrie Knight at the above address by May 16.

Dated: May 9, 1994.

David S. Crestin,

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

[FR Doc. 94-11599 Filed 5-12-94; 8:45 am]

BILLING CODE 3510-22-F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

PROCUREMENT LIST PROPOSED ADDITIONS

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: June 13, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603-7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to

procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46 - 48c) in connection with the commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Towel, Machinery Wiping
7920-01-233-0483
NPA: East Texas Lighthouse for the Blind Tyler, Texas
Suit, Contamination Avoidance
8415-01-364-3320
8415-01-364-3321
8415-01-364-3322
NPA: ORC Industries, Inc. La Crosse, Wisconsin

Services

Janitorial/Custodial, Philadelphia International Airport, Air Mobility Command Terminal D/Concourse D, Philadelphia, Pennsylvania
NPA: A.C.E. Industries, Inc. Exton, Pennsylvania
Janitorial/Custodial
Norfolk Naval Shipyard
Buildings 1SJ, 2SJ, 3SL, 4SJ, 5SJ, 6SJ, 7SJ, 8SJ, 11SJ, 12SJ, 14SJ, 19, 26SJ, 38SJ, 41 & 43SJ, 51, 59, 67, 69SJ, 79SJ, 82SJ, 89SJ, 91SJ, 94SJ, 124SJ, 164SJ, 165SJ, 166SJ, 167SJ, 168SJ, 170SJ, 171SJ, 172SJ, 174SJ, 183SJ, 185SJ, 193

& 194SJ, 201SJ, 202SJ, 203SJ, 213SJ, 217SJ, 252SJ, 277, 277SJ, Trailer 39, 41, 305SJ, 307SJ, 310, 316, 384SG, 400SJ, 491, 492, 1439, 1480, 1500, 1502, 1503, 1510SC, 1555SJ, HSJ, M-1SJ, M-4SJ, IUSSD Trailer 1 & 2, IUSSD Guard Shack, 674SH, Trailer 1700-1

Portsmouth, Virginia

NPA: Diversified Industrial Concepts, Inc. Virginia Beach, Virginia

Toner Cartridge Remanufacturing, Department of Energy, Washington, DC

NPA: Rappahannock Goodwill Industries, Inc. Fredericksburg, Virginia.

G. John Heyer,
General Counsel.

[FR Doc. 94-11661 Filed 5-12-94; 8:45 am]

BILLING CODE 6820-33-P

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the procurement list.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: June 13, 1994.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603-7740.

SUPPLEMENTARY INFORMATION: On March 4 and 18, 1994, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (59 FR 10378 and 12895) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Case, Carrying
1005-00-791-5420

Bag, Sand, Cotton
8105-00-965-2509

Drawers, Flyers'
8415-00-467-4075

8415-00-467-4076

8415-00-467-4078

8415-00-467-4100

8415-01-043-4036

Lubricating Oil, General Purpose
9150-00-458-0075

Services

Janitorial/Custodial, R. B. Long Federal
Courthouse, 777 Florida Street,
Baton Rouge, Louisiana

Toner Cartridge Remanufacturing,
Malmstrom Air Force Base, Montana

Toner Cartridge Remanufacturing,
Bighorn National Forest, Sheridan,
Wyoming.

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

G. John Heyer,

General Counsel.

[FR Doc. 94-11662 Filed 5-12-94; 8:45 am]

BILLING CODE 6820-33-P

COMMODITY FUTURES TRADING COMMISSION

Merger of the Commodity Exchange, Inc., and the New York Mercantile Exchange

AGENCY: Commodity Futures Trading
Commission.

ACTION: Notice of the proposed merger of the Commodity Exchange, Inc., and the New York Mercantile Exchange and of proposed rules and rule amendments to implement that merger.

SUMMARY: The New York Mercantile Exchange ("NYMEX") has submitted a plan to merge NYMEX and the Commodity Exchange, Inc., ("COMEX") and proposed new rules and rule amendments to implement the merger. Acting pursuant to the authority delegated by Commission Regulation 140.96, the Division of Trading and Markets has determined to publish the proposal for public comment. The Division believes that publication of the proposal is in the public interest and will assist the Commission in considering the views of interested persons.

DATES: Comments must be received on or before June 13, 1994.

FOR FURTHER INFORMATION CONTACT: Clarence Sanders, Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION:

I. Description of Proposed Rules and Rule Amendments

By a letter dated May 6, 1994, NYMEX submitted for Commission approval pursuant to Section 5a(a)(12)(A) of the Commodity Exchange Act ("Act") proposed rule amendments designed to implement a Plan of Merger ("Plan") between NYMEX and COMEX.¹ Under the Plan, COMEX would remain a separate corporate entity, but would be restructured as a wholly owned subsidiary of NYMEX (the "COMEX Division"). Current COMEX memberships would be converted to transferable trading rights in the COMEX Division of NYMEX which would allow the holders access to COMEX Division markets. The Plan also would provide for certain cross-access trading rights between members of NYMEX and members of the COMEX Division.

The COMEX Division would be governed by a Board of Directors selected by NYMEX. The COMEX Board would be advised by a COMEX Governors Committee on matters pertinent to specifically identified rights and obligations of the COMEX Division membership. The COMEX Governors Committee would be composed of ten members elected by the COMEX

¹ The merger plan as set forth has been approved by the governing boards of both exchanges and by a vote of their memberships.

Division membership and also include three appointed members representing NYMEX.

Except for the rules proposed to establish the newly created governance system for the COMEX Division, and to govern the associated rights and obligations of the COMEX Division membership, the proposed rule changes for the COMEX Division are substantively the same as existing NYMEX rules, which have previously received Commission approval.

II. Request for Comments

The Commission requests comments from interested persons concerning any aspect of the proposed merger of COMEX and NYMEX that commenters believe raises issues under the Act or Commission regulations.

Copies of the proposed rules and related materials are available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies also may be obtained through the Office of the Secretariat at the above address or by telephoning (202) 254-6314. Some materials may be subject to confidential treatment pursuant to 17 CFR 145.5 or 145.9.

Any person interested in submitting written data, views, or arguments on the proposed merger or proposed new rules or rule amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC, on May 10, 1994.

Alan L. Seifert,

Deputy Director.

[FR Doc. 94-11747 Filed 5-12-94; 8:45 am]

BILLING CODE 6351-01-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Establishment of the Department of Defense (DoD) Commission on Roles and Missions of the Armed Forces

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: The Commission on Roles and Missions of the Armed Forces is being established in consonance with the public interest and in accordance with the provision of Public Law 92-463, the "Federal Advisory Committee Act." The Commission was directed to be established by the National Defense

Authorization Act for Fiscal Year 1994, Section 952.

The Commission will provide advice to the Secretary of the Defense, the secretaries of the military departments, the heads of other DoD components and the Committees on Armed Services of the Senate and House of Representatives, by providing an independent review of the roles and missions of the Armed Forces. It will review the efficacy and appropriateness for the post-Cold War Era of the current allocations among the Armed Forces of roles, missions and functions; evaluate and report on alternative allocations of their roles, missions and functions; make recommendations for changes in the current definition and distributions of those roles, missions, and functions.

The Commission will be composed of a Chairman and 6 Commissioners who will be appointed by the Secretary of Defense from among private United States Citizens with appropriate and diverse military, organizational, and management experiences and historical perspective.

The initial meeting of the Commission will be on May 24, 1994, from 1 p.m. until 6 p.m. at Suite 1200 F, 1100 Wilson Avenue, Rosslyn, VA.

For further information contact Larry Barlow, Director of Administration, (703) 795-8750.

Dated: May 10, 1994.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94-11686 Filed 5-12-94; 8:45 am]

BILLING CODE 5000-04-M

DEPARTMENT OF EDUCATION

National Advisory Committee on Institutional Quality and Integrity; Education

AGENCY: National Advisory Committee on Institutional Quality and Integrity; Education.

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the proposed agenda of the National Advisory Committee on Institutional Quality and Integrity. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of its opportunity to attend this public meeting.

DATES AND TIMES: June 28-30, 1994—8 a.m. until 5 p.m.

LOCATION: The Holiday Inn Hotel, 4610 North Fairfax Drive, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT:

Charles I. Griffith, Executive Director, National Advisory Committee on Institutional Quality and Integrity, U.S. Department of Education, 400 Maryland Avenue, SW., room 3919-ROB#3, Washington, DC 20202-5151. Telephone: (202) 708-9486. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The National Advisory Committee on Institutional Quality and Integrity is established under section 1205 of the Higher Education Act (HEA) as amended by Public Law 102-325 (20 U.S.C. 1145). The Committee advises the Secretary of Education with respect to the establishment and enforcement of the standards of accrediting agencies or associations under subpart 2 of part H of Title IV, HEA, the recognition of a specific accrediting agency or association, the preparation and publication of the list of nationally recognized accrediting agencies and associations, and the functions of the Secretary under subpart 1 of part H of Title IV, HEA relating to State institutional integrity standards. The Committee also develops and recommends to the Secretary standards and criteria for specific categories of vocational training institutions and institutions of higher education for which there are no recognized accrediting agencies, associations, or State agencies, in order to establish eligibility for such institutions on an interim basis for participation in federally funded programs.

AGENDA: The meeting on June 28-30, 1994 is open to the public. The Advisory Committee will begin with a general discussion of its role and responsibilities. In addition, the Committee will discuss the Department's new regulations governing the recognition of accrediting agencies and the State Postsecondary Review Program. The regulations to be discussed during this meeting were published in the *Federal Register* on April 29, 1994.

The Advisory Committee's agenda will also include the review of petitions and interim reports of accrediting agencies and State approval agencies relative to their continued recognition by the Secretary of Education. The Committee will hear presentations by representatives of these petitioning agencies and any third parties who have requested to be heard. The following

petitions and interim reports are scheduled for review:

Nationally Recognized Accrediting Agencies and Associations

Interim Reports (An interim report is a follow-up report on an agency's compliance with specific criteria for recognition that was requested by the Secretary when the Secretary granted recognition to the agency)—

1. Accrediting Association of Bible Colleges, Commission on Accrediting.
2. Accrediting Council on Education in Journalism and Mass Communications, Accrediting Committee.
3. American Board of Funeral Service Education, Committee on Accreditation.
4. American Council for Construction Education.
5. American Dietetic Association, Division of Education Accreditation/Approval.
6. American Society of Landscape Architects, Landscape Architectural Accreditation Board.
7. Association for Clinical Pastoral Education, Inc., Accreditation Commission.
8. Association of Advanced Rabbinical and Talmudic Schools, Accreditation Commission.
9. Computer Sciences Accreditation Board, Inc., Computer Sciences Accreditation Commission.
10. Council on Chiropractic Education, Commission on Accreditation.
11. Council on Education for Public Health.
12. Council on Naturopathic Medical Education, Commission on Accreditation.
13. Council on Social Work Education, Commission on Education.
14. Foundation for Interior Design Education Research, Committee on Accreditation.
15. Middle States Association of Colleges and Schools, Commission on Higher Education.
16. Middle States Association of Colleges and Schools, Commission on Secondary Schools.
17. National Accrediting Commission of Cosmetology Arts and Sciences.
18. National Architectural Accrediting Board, Inc.
19. National Association of Industrial Technology.
20. National Association of Schools of Art and Design, Commission on Accreditation.
21. National Association of Schools of Dance, Commission on Accreditation.
22. National Association of Schools of Music, Commission on Accreditation.
23. National Association of Schools of Theatre, Commission on Accreditation.

24. National Council for Accreditation of Teacher Education.

25. New England Association of Schools and Colleges.

26. North Central Association of Colleges and Schools, Commission on Institutions of Higher Education.

27. Northwest Association of Schools and Colleges, Commission on Colleges.

28. Western Association of Schools and Colleges, Accrediting Commission for Community and Junior Colleges.

State Agencies Recognized for the Approval of Public Postsecondary Vocational Education

Petitions for Renewal of Recognition

1. Arkansas State Board of Vocational Education.

2. Kansas State Board of Education.

Interim Reports

1. Minnesota State Board of Technical Colleges.

2. Missouri State Board of Vocational and Technical Education.

Request for Withdrawal of Recognition

1. Office of Superintendent of Public Instruction, State of Washington.

State Agencies Recognized for the Approval of Nurse Education

Petitions for Renewal of Recognition

1. Colorado Board of Nursing.

2. Iowa Board of Nursing.

In accordance with the Federal policy governing the granting of academic degrees by Federal agencies (approved by a letter from the Director, Bureau of the Budget, to the Secretary, Health, Education, and Welfare, dated December 23, 1954), the Secretary is required to establish a review committee to advise the Secretary concerning any legislation that may be proposed which would authorize the granting of degrees by a Federal agency. The review committee forwards its recommendation concerning a Federal agency's proposed degree-granting authority to the Secretary, who then forwards the committee's recommendation and the Secretary's recommendation to the Office of Management and Budget for review and transmittal to the Congress. The Secretary uses the Advisory Committee as the review committee required for this purpose. Accordingly, the Advisory Committee will review the following at this meeting.

Proposed Master's Degree-Granting Authority

1. School of Advanced Airpower Studies of the Air University, Maxwell Air Force Base, Alabama.

A request for comments on all agencies whose petitions, interim

reports, and requests for degree-granting authority are being reviewed at this meeting was published in the **Federal Register** on December 8, 1993.

The Higher Education Amendments of 1992, Public Law 102-325, authorize the Secretary to grant recognition only to those accrediting agencies that either accredit institutions of higher education, provided that accreditation by those agencies is a required element in enabling those institutions to establish eligibility to participate in HEA programs, or accredit institutions of higher education or higher education programs, provided that accreditation by those agencies is a required element in enabling those institutions or programs to establish eligibility to participate in other programs administered by the Department or by other Federal agencies. Because of the requirements of the new law, a number of agencies currently recognized by the Secretary are no longer eligible for recognition. At this meeting, the Advisory Committee will consider the withdrawal of recognition of the following agencies, based upon the Department staff's determination that they are no longer eligible for recognition by the Secretary because they do not meet this new requirement:

1. Accreditation Board for Engineering and Technology, Inc.
2. American Assembly of Collegiate Schools of Business, Accreditation Council.

3. American Council for Construction Education.

4. American Library Association, Committee on Accreditation.

5. American Society of Landscape Architects, Landscape Architectural Accreditation Board.

6. American Veterinary Medical Association, Committee on Veterinary Technician Activities and Training.

7. Association of Collegiate Business Schools and Programs.

8. Computing Sciences Accreditation Board, Inc., Computer Sciences Accreditation Commission.

9. Council on Social Work Education, Commission on Accreditation.

10. Middle States Association of Colleges and Schools, Commission on Secondary Schools.

11. National Accreditation Council for Agencies Serving the Blind and Visually Handicapped.

12. National Association of Industrial Technology.

13. Society of American Foresters.

14. United States Catholic Conference, Commission on Certification and Accreditation.

Requests for oral presentation before the Advisory Committee should be

submitted in writing to Mr. Griffith at the address above by June 15, 1994. Requests should include the names of all persons seeking an appearance, the organization they represent, and the purpose for which the presentation is requested.

A record will be made of the proceedings of the meeting and will be available for public inspection at the Office of Postsecondary Education, U.S. Department of Education, 7th and D Streets, SW, room 3036, ROB-3, Washington, DC between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Authority: 5 U.S.C.A. Appendix 2.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

DEPARTMENT OF ENERGY

Financial Assistance Award Intent To Award Grant to the President and Fellows of Harvard College

AGENCY: Department of Energy (DOE).

ACTION: Notice of intent.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(5), it is making a discretionary financial assistance award based on the criterion set forth at 10 CFR 600.7(b)(2)(i)(H) to the President and Fellows of Harvard College, Office for Sponsored Research, Harvard University, Harvard School of Public Health, Harvard Air Cleaning Laboratory, Cambridge, Massachusetts, under Grant Number DE-FG01-94EH89439. The DOE intends to make a noncompetitive financial assistance award. The purpose of the proposed grant is to support a conference entitled, "23rd Department of Energy/Nuclear Regulatory Commission Nuclear Air Cleaning and Treatment Conference." This effort will be supported for a total estimated cost of \$69,386 to be provided by the DOE.

FOR FURTHER INFORMATION CONTACT:

Please write the U.S. Department of Energy, Office of Placement and Administration, Attn: Jeffrey R. Dulberg, HR-531.24, 1000 Independence Avenue, SW, Washington, DC 20585.

SUPPLEMENTARY INFORMATION: The proposed grant will provide funding to Harvard to organize and conduct the "23rd Department of Energy/Nuclear Regulatory Commission Nuclear Air Cleaning and Treatment Conference," to be held from July 25 through 28, 1994, in Buffalo, New York. It is planned that the conference will be a forum for direct

and efficient information transfer, both within the domestic United States and internationally, among nuclear air cleaning experts, to industry, to the general public, and to governmental entities. The focus of this information exchange will be currently available technology and forecasted developments for air and gas cleaning wherever nuclear materials are present. This conference's proceedings will be incorporated with those of the previous conferences into a cumulatively indexed publication to aid information retrieval.

The project is meritorious because of its relevance to the accomplishment of an important public purpose—providing an international forum for the dissemination of nuclear energy process and safety information related to nuclear air cleaning and treatment systems in a manner such that the safety of the public will be enhanced by implementation of operational and design improvements in these systems. The conference is planned to include individual presentations and panel discussions. Such formats have been proven by the previous events to be very conducive to direct and efficient information exchange in the state-of-the-art discipline of nuclear air, gas, and water cleaning and treatment. The conference and its subsequent proceedings may demonstrate once again that research and operating experiences to be reported from abroad can benefit workers in the United States in areas of research and operations not now conducted here. Revisions of Federal nuclear standards and regulations pertaining to air and gas cleaning technology are again expected to receive attention and discussion at the conference. Previous conference proceedings have been cumulatively indexed and published to aid information retrieval. These data represent the world's largest, most important, and most accessible information resource on nuclear air and gas cleaning technology. In addition to previously attained benefits to all sectors of the United States nuclear industry, the planned conference is again expected to expand the previous successes with prompt introduction of new technology from worldwide sources, candid exchanges of ways to handle operational difficulties experienced by many installations, stimulation to research in matters of current regulatory concern, and an international forum for unfettered evaluations of research results, design proposals for safety improvements, and the practical effects of implementing new regulations and standards. The

DOE knows of no other entity which is conducting or is planning to conduct such an activity.

Based on the evaluation of relevance to the accomplishment of a public purpose, it is determined that the proposal represents a beneficial method and approach to disseminate to the public information on nuclear air and gas cleaning technology.

Issued in Washington, DC, on May 9, 1994.

Scott Sheffield,

Director Headquarters Operations Division B
Office of Placement and Administration.

[FR Doc. 94-11746 Filed 5-12-94; 8:45 am]

BILLING CODE 5450-01-P

Program Interest For Minority Technical Education Program (MTEP)

AGENCY: Department of Energy, Oakland Operations Office.

ACTION: Amendment to notice of program interest.

SUMMARY: In order to encourage the widest possible representation in this program, DOE will accept proposals or amendments to proposals until May 20, 1994. Proposals already submitted to date are considered timely received. This amends the notice published on January 10, 1994, 59 FR 1389, which required proposals to be submitted by March 15, 1994. By this amendment, applications postmarked after May 20, 1994, will be held for one year and may be eligible for awards in FY 1995. Proposers receiving awards in FY 1994 will be notified not later than July 20, 1994. Proposals (three copies) should be submitted to Estela Romo, HRMD, Department of Energy, 1301 Clay Street, room 700N, Oakland, CA 94612-5208.

For complete information regarding this program and instructions concerning application, please refer to the notice published at 59 FR 1389, January 10, 1994.

FOR FURTHER INFORMATION CONTACT: All questions concerning this program should be directed to Arlene Coleman at (510) 637-1870.

Issued in Oakland, CA on April 29, 1994.
Department of Energy.

Martin J. Domagala,

Manager, Oakland Operations Office.

[FR Doc. 94-11739 Filed 5-12-94; 8:45 am]

BILLING CODE 6450-01-P

Federal Energy Regulatory Commission

[Docket No. EC94-14-000, et al.]

The Cleveland Electric Illuminating Company, et al.; Electric Rate and Corporate Regulation Filings

May 5, 1994.

Take notice that the following filings have been made with the Commission:

1. The Cleveland Electric Illuminating Company and The Toledo Edison Company

[Docket No. EC94-14-000]

Take notice that on May 2, 1994, The Cleveland Electric Illuminating Company ("Cleveland Electric") and The Toledo Edison Company ("Toledo Edison") (together, the "Applicants"), pursuant to section 203 of the Federal Power Act, 16 U.S.C. section 824b, and part 33 of the Rules and Regulations of the Federal Energy Regulatory Commission ("Commission"), tendered for filing an application for an Order from the Commission authorizing the merger of Toledo Edison into Cleveland Electric.

The Applicants are public utilities organized and existing under the laws of the State of Ohio, and both Applicants are engaged in the business of supplying electric energy to wholesale and retail customers within the State of Ohio. Cleveland Electric generates, transmits, distributes and sells electric energy to approximately 748,000 customers in Northern Ohio. Toledo Edison generates, transmits, distributes and sells electric energy to approximately 285,000 customers in Northwestern Ohio. Cleveland Electric's and Toledo Edison's operations are subject to regulation by The Public Utilities Commission of Ohio. Centerior Energy Corporation ("Centerior"), which is organized and existing under the laws of the State of Ohio, is the 100% owner of the common stock of both Cleveland Electric and Toledo Edison. Each of Cleveland Electric and Toledo Edison has outstanding serial preferred shares that are held by the public.

Under the terms and conditions of a definitive Agreement of Merger entered into by Cleveland Electric and Toledo Edison, 100% of the common shares of Toledo Edison will be converted into newly-issued common shares of Cleveland Electric, the Toledo Edison preferred shares will be exchanged for newly-issued preferred shares of Cleveland Electric, and any dissenting preferred shareholders of Toledo Edison will be paid cash for their shares upon exercise of applicable dissenters' rights.

Upon the occurrence of these events, Toledo Edison will be merged into Cleveland Electric and the separate corporate existence of Toledo Edison will cease. Cleveland Electric will, by operation of law, acquire title to and interest in all facilities of Toledo Edison that are currently under the jurisdiction of the Commission, and Cleveland Electric will operate such facilities without change.

Cleveland Electric and Toledo Edison believe the proposed corporate reorganization is consistent with the public interest, and that it will be in the best interests of the customers, shareowners and employees of both Applicants.

Comment date: May 23, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Energía de Nuevo León, S.A. de C.V.

[Docket No. EG94-59-000]

On April 29, 1994, Energía de Nuevo León, S.A. de C.V. ("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 construct, own and operate an eligible facility to be located in Monterrey, in the State of Nuevo León, Mexico. 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.

Comment date: May 24, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. CRSS Power Marketing, Inc.

[Docket No. ER94-142-001]

Take notice that CRSS Power Marketing, Inc., on April 13, 1994, tendered its first informational filing pursuant to the above-captioned docket.

4. Northeast Utilities Service Company

[Docket No. ER94-1205-000]

Take notice that on April 29, 1994, Northeast Utilities Service Company (NUSCO) tendered for filing, on behalf of The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company (including Holyoke Power and Electric Company), and Public Service Company of New Hampshire (together, the NU System Companies), a System Power Sales Agreement (Agreement) with Hudson Light and Power Department (Hudson) and a Service Agreement between

NUSCO and the NU System Companies for service under NUSCO's Short-Term Firm Transmission Service Tariff No. 5. The transaction provides Hudson with economic replacement power during the Seabrook refueling outage over the period April 11-June 11, 1994.

NUSCO requests that the rate schedule become effective on April 11, 1994. NUSCO states that copies of the rate schedule have been mailed or delivered to the parties to the Agreement and the affected state utility commissions.

Comment date: May 19, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. UNITIL Power Corp.

[Docket No. ER94-1206-000]

Take notice that on April 29, 1994, UNITIL Power Corp., tendered for filing pursuant to Schedule II section H of Supplement No. 1 to Rate Schedule FERC Number 1, the UNITIL System Agreement, the following material:

1. Statement of all sales and billing transactions for the period January 1, 1993 through December 31, 1993 along with the actual costs incurred by UNITIL Power Corp. by FERC account.

2. UNITIL Power Corp. rates billed from January 1, 1993 to December 31, 1993 and supporting rate development.

Comment date: May 19, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Northeast Utilities Service Company

[Docket No. ER94-1207-000]

Take notice that on May 2, 1994, Northeast Utilities Service Company (NUSCO) tendered for filing, on behalf of The Connecticut Light and Power Company and Public Service Company of New Hampshire, three System Power Sales Agreements (Agreements) to provide system capacity and associated energy to the Town of Danvers Electric Division, Littleton Electric Light Department, and Mansfield Electric Department and Service Agreements between NUSCO and the NU System Companies for service under NUSCO's Long-Term Firm Transmission Service Tariff No. 1 for these Sales Agreements.

NUSCO requests that the rate schedule become effective on November 1, 1994. NUSCO states that copies of the rate schedule have been mailed or delivered to the parties to the Agreements and the affected state utility commission.

Comment date: May 19, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Southern California Edison Company

[Docket No. ER94-1208-000]

Take notice that on May 2, 1994, Southern California Edison Company (Edison) tendered for filing Letter Agreements with the City of Anaheim (Anaheim Agreement) and the City of Riverside (Riverside Agreement). The Anaheim Agreement amends the Supplemental Agreement to the 1990 Integrated Operations Agreement (1990 IOA) with Anaheim for the integration of Anaheim's entitlement in San Onofre Nuclear Generating Station (SONGS), Commission Rate Schedule FERC No. 246.12 and the associated Firm Transmission Service (FTS) Agreement, Rate Schedule No. 246.13. The Riverside Agreement amends the Supplemental Agreement to the 1990 Integrated Operations Agreement (1990 IOA) with Riverside for the integration of Riverside's entitlement in SONGS, Commission Rate Schedule FERC No. 250.14 and the associated Firm Transmission Service (FTS) Agreement, Rate Schedule No. 250.15.

The Agreements set forth the methodology for determining the Effective Operating Capacity associated with Anaheim's and Riverside's entitlement in SONGS Units 2 and 3 respectively.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: May 19, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. Citizens Utilities Company

[Docket No. ER94-1209-000]

Take notice that on May 2, 1994, Citizens Utilities Company (Citizens), tendered for filing a tariff for transmission service pursuant to its "FPC 10" Agreement ("FPC 10") for the period July 1, 1994, through June 30, 1995. FPC 10 requires an annual rate redetermination and provides a formula for that redetermination. The formula yields a rate for the new period of \$3.34 per Kw-month, compared to the present rate of \$2.59 per Kw-month.

Citizens states that a copy of its filing was served on each of party taking service under FPC 10 and the Vermont Public Service Board.

Comment date: May 19, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. Citizens Utilities Company

[Docket No. ER94-1210-000]

Take notice that on May 2, 1994, Citizens Utilities Company (Citizens), tendered for filing a tariff for

transmission service pursuant to its Block Loading Facilities Transmission Agreement (BLFTA) for the period July 1, 1994, through June 30, 1995. The BLFTA requires an annual rate redetermination and provides a formula for that redetermination. The formula yields a rate for the new period of \$3.91 per Kw-month, compared to the present rate of \$3.31 per Kw-month.

Citizens states that a copy of its filing was served on each of the BLFTA participants and the Vermont Public Service Board.

Comment date: May 19, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. Northeast Utilities Service Company

[Docket No. ER94-1211-000]

Take notice that on May 2, 1994, Northeast Utilities Service Company (NUSCO), on behalf of Public Service Company of New Hampshire (PSNH) tendered for filing an Agreement dated April 28, 1994, to terminate and supersede a sales agreement between PSNH and Citizens Utilities Company (Citizens) dated August 24, 1990.

NUSCO states that a copy of this information has been mailed to Citizens and the Vermont Public Service Board.

Comment date: May 19, 1994, in accordance with Standard Paragraph E at the end of this notice.

11. Northeast Utilities Service Company

[Docket No. ER94-1212-000]

Take notice that on May 2, 1994, Northeast Utilities Service Company (NUSCO) tendered for filing a Service Agreement to provide non-firm transmission service to Fitchburg Gas and Electric Light Company (Fitchburg) under the NU System Companies' Transmission Service Tariff No. 2. NU requests that the Service Agreement become effective 60 days after receipt of the filing by the Commission.

NUSCO states that a copy of this information has been mailed to Fitchburg.

Comment date: May 19, 1994, in accordance with Standard Paragraph E at the end of this notice.

12. Consolidated Edison Company of New York, Inc.

[Docket No. ER94-1213-000]

Take notice that on May 2, 1994, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a Supplement to its Rate Schedule FERC No. 60, an agreement to provide transmission service for the Power Authority of the State of New York (the Authority). The Supplement provides for an increase in the monthly

transmission charge from \$1.06 to \$1.12 per kilowatt per month for transmission of power and energy sold by the Authority to Brookhaven National Laboratory, thus increasing annual revenues under the Rate Schedule by a total of \$29,441.52. Con Edison has requested that the increase take effect on July 1, 1994.

Con Edison states that a copy of this filing has been served by mail upon the Authority.

Comment date: May 19, 1994, in accordance with Standard Paragraph E at the end of this notice.

13. Consolidated Edison Company of New York, Inc.

[Docket No. ER94-1214-000]

Take notice that on May 2, 1994, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a Supplement to its Rate Schedule FERC No. 78, an agreement to provide transmission service for the Power Authority of the State of New York (the Authority). The Supplement provides for an increase in the monthly transmission charge from \$1.06 to \$1.12 per kilowatt per month for transmission of power and energy sold by the Authority to the municipal distribution agencies of Nassau and Suffolk Counties, thus increasing annual revenues under the Rate Schedule by a total of \$5,224.86. Con Edison has requested that the increase take effect on July 1, 1994.

Con Edison states that a copy of this filing has been served by mail upon the Authority.

Comment date: May 19, 1994, in accordance with Standard Paragraph E at the end of this notice.

14. Consolidated Edison Company of New York, Inc.

[Docket No. ER94-1215-000]

Take notice that on May 2, 1994, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a Supplement to its Rate Schedule FERC No. 102, an agreement to provide transmission service for the New York Power Authority (the Authority). The Supplement provides for an increase in the monthly transmission charge from \$1.06 to \$1.12 per kilowatt per month for transmission of power and energy sold by the Authority to its Economic Development Power customers on Long Island, thus increasing annual revenues under the Rate Schedules by a total of \$14,615.64. The Supplement also increases the monthly charge for an alternative transmission service from \$2.35 to \$2.41 per kilowatt per month. Con Edison has requested that the increase take effect on July 1, 1994.

Con Edison states that a copy of this filing has been served by mail upon the Authority.

Comment date: May 19, 1994, in accordance with Standard Paragraph E at the end of this notice.

15. Consolidated Edison Company of New York, Inc.

[Docket No. ER94-1216-000]

Take notice that on May 2, 1994, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a Supplement to its pending Rate Schedule in Docket No. ER93-254-000, an agreement to provide transmission and interconnection service to Long Island Lighting Company (LILCO). The Supplement provides for an increase in annual revenues under the Rate Schedule by a total of \$181,075.75 for transmission service from \$14.53 and \$77.21 per MW per day to \$36.55 and \$79.18 per MW per day. Con Edison has requested that this increase take effect on July 1, 1994.

Con Edison states that a copy of this filing has been served by mail upon LILCO.

Comment date: May 19, 1994, in accordance with Standard Paragraph E at the end of this notice.

16. Consolidated Edison Company of New York, Inc.

[Docket No. ER94-1217-000]

Take notice that on May 2, 1994, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a Supplement to its Rate Schedule FERC No. 51, an agreement to provide transmission service for the Power Authority of the State of New York (the Authority). The Supplement provides for an increase in the monthly transmission charge from \$2.35 to \$2.41 per kilowatt per month for transmission of power and energy sold by the Authority to the Long Island Villages of Freeport, Greenport and Rockville Centre (the Villages), thus increasing annual revenues under the Rate Schedule by a total of \$48,566.64. Con Edison has requested that the increase take effect on July 1, 1994.

Con Edison states that a copy of this filing has been served by mail upon the Authority and the Villages.

Comment date: May 19, 1994, in accordance with Standard Paragraph E at the end of this notice.

17. Consolidated Edison Company of New York, Inc.

[Docket No. ER94-1218-000]

Take notice that on May 2, 1994, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for

filing a Supplement to its Rate Schedule FERC No. 105, an agreement to provide transmission service for Orange and Rockland Utilities, Inc. (O&R). The Supplement provides for an increase in the monthly transmission charge from \$0.87 to \$1.03 per kilowatt per month thus increasing annual revenues under the Rate Schedule by a total of \$192,000. Con Edison requests that this increase take effect on July 1, 1994.

Con Edison states that a copy of this filing has been served by mail upon O&R.

Comment date: May 19, 1994, in accordance with Standard Paragraph E at the end of this notice.

18. Consolidated Edison Company of New York, Inc.

[Docket No. ER94-1219-000]

Take notice that on May 2, 1994, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a Supplement to Con Edison Rate Schedule FERC No. 94 for transmission service for the Long Island Lighting Company (LILCO). The Rate Schedule provides for transmission of power and energy from the New York Power Authority's Blenheim-Gilboa station. The Supplement provides for an increase in annual revenues under the Rate Schedule of \$55,952.50. Con Edison has requested that this increase take effect on July 1, 1994.

Con Edison states that a copy of this filing has been served by mail upon LILCO.

Comment date: May 19, 1994, in accordance with Standard Paragraph E at the end of this notice.

19. Consolidated Edison Company of New York, Inc.

[Docket No. ER94-1220-000]

Take notice that on May 2, 1994, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a Supplement to its Rate Schedule FERC No. 66 an agreement to provide transmission service for the Power Authority of the State of New York (the Authority). The Supplement provides for an increase in the monthly transmission charge from \$1.06 to \$1.12 per kilowatt per month for transmission of power and energy sold by the Authority to Grumman Corporation, thus increasing annual revenues under the Rate Schedule by a total of \$7,595.28. Con Edison requests that the increase take effect on July 1, 1994.

Con Edison states that a copy of this filing has been served by mail upon the Authority.

Comment date: May 19, 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. 94-11616 Filed 5-12-94; 8:45 am]

BILLING CODE 6717-01-P

[Docket No. ER94-1199, et al.]

Oklahoma Gas and Electric Co., et al.; Electric Rate and Corporate Regulation Filings

May 6, 1994.

Take notice that the following filings have been made with the Commission:

1. Oklahoma Gas and Electric Co.

[Docket No. ER94-1199-000]

Take notice that on April 29, 1994, Oklahoma Gas and Electric Company (OG&E) tendered for filing a proposed Letter Agreement with AES Power, Inc. (AESPI) for the sale of capacity and energy.

Copies of this filing have been sent to AESPI, the Oklahoma Corporation Commission, and the Arkansas Public Service Commission.

Comment date: May 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Boston Edison Co.

[Docket No. ER94-1200-000]

Take notice that on April 29, 1994, Boston Edison Company (Edison) tendered for filing a Second Extension Agreement between Edison and New England Power Company (NEP) which extends until December 31, 1994, NEP's notice of termination of service under Edison's Rate Schedule No. 46. Edison requests that this Second Extension be allowed to become effective on July 1, 1994.

Edison states that it has served the filing on NEP and the Massachusetts Department of Public Utilities.

Comment date: May 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Northeast Utilities Service Co.

[Docket No. ER94-1201-000]

Take notice that Northeast Utilities Service Company (NUSCO), on April 29, 1994, tendered for filing an agreement to provide firm transmission service to Long Island Lighting Company (LILCO) under the NU System Companies' FERC Electric Service Tariff No. 1.

Comment date: May 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Sierra Pacific Power Co.

[Docket No. ER94-1202-000]

Take notice that on April 29, 1994, Sierra Pacific Power Company (Sierra) tendered for filing pursuant to Section 205 of the Federal Power Act (the Act) Eleventh Revised Sheet No. 8. Sierra requests that the Commission make effective the tariff sheet on November 1, 1985 which, Sierra states, is consistent with and required by a June 24, 1992 order in Sierra Pacific Power Company, Docket No. FA89-25-000.

Comment date: May 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Fitchburg Gas and Electric Light Co.

[Docket No. ER94-1203-000]

Take notice that on April 29, 1994, Fitchburg Gas and Electric Light Company (Fitchburg) filed with the Commission a service agreement between Fitchburg and Central Vermont Public Service Corporation (Central Vermont) for the sale of up to 13 MW (winter maximum claimed capability) of capacity and associated energy from Fitchburg #7. This is a service agreement under Fitchburg's FERC Electric Tariff, Original Volume No. 2, which was accepted for filing by the Commission in Docket No. ER92-88-000 on September 30, 1992. The capacity rate to be charged Central Vermont is below the maximum capacity charges set forth in the Tariff, and the energy rate is that established in the Tariff. Fitchburg requests that service commence as of May 1, 1994. A notice of cancellation was also filed.

Fitchburg states that copies of the filing were served on Central Vermont and the Massachusetts Department of Public Utilities.

Comment date: May 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. PSI Energy, Inc.

[Docket No. ER94-1224-000]

Take notice that on May 3, 1994, PSI Energy, Inc. (PSI), tendered for filing an Interchange Agreement, dated April 1, 1994, between PSI and AES Power, Inc. (AES).

The Interchange Agreement provides for the following service between PSI and AES:

1. Exhibit A—Power Sales by AES
2. Exhibit B—Power Sales by PSI
3. PSI Delivery of Third Party Purchases for AES

PSI and AES have requested an effective date of April 1, 1994.

Copies of the filing were served on AES Power, Inc., Public Utilities Commission of Ohio, Virginia State Corporation Commission and the Indiana Utility Regulatory Commission.

Comment date: May 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Consolidated Edison Company of New York, Inc.

[Docket No. ER94-1226-000]

Take notice that on May 3, 1994, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing an agreement with PECO Energy Company (PECO) to provide for the sale of excess energy and capacity. The agreement provides for sales of excess energy and capacity to be made subject to cost based ceiling rates. The ceiling rate for energy that Con Edison sells is 110 percent of the highest incremental energy cost on Con Edison's system and the ceiling rate for capacity that Con Edison sells is \$26.00 per megawatt hour.

Con Edison states that a copy of this filing has been served by mail upon PECO.

Comment date: May 20, 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. 94-11617 Filed 5-12-94; 8:45 am]

BILLING CODE 6717-01-P

[Project No. 2561-003, Missouri]

Sho-Me Power Corp.; Availability of Final Environmental Assessment

May 9, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a new license for the existing Niangua Hydroelectric Project, located on the Niangua River in Camden County, Missouri near the city of Camdenton, and has prepared a Final Environmental Assessment (EA) for the project. In the EA, the Commission's staff has analyzed the existing and potential future environmental impacts of the project and has concluded that approval of the project, with appropriate environmental protective or enhancement measures, would not constitute a major federal action that would significantly affect quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 94-11618 Filed 5-12-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. PL94-1-000]

Interstate Natural Gas Pipeline Gas Supply Realignment Costs; Notice of Change in Time of Public Conference

May 9, 1994.

Take notice that the public conference scheduled for May 26, 1994, will begin at 11 a.m. instead of 10 a.m.¹

Lois D. Cashell,

Secretary.

[FR Doc. 94-11683 Filed 5-12-94; 8:45 am]

BILLING CODE 6717-01-M

¹ Notice of Public Conference issued March 30, 1994 (59 FR 16198, April 6, 1994).

[Docket No. CP94-389-000, et al.]

Entre Energy Corp., et al.; Natural Gas Certificate Filings

May 6, 1994

Take notice that the following filings have been made with the Commission:

1. Entre Energy Corp.

[Docket No. CP94-389-000]

Take notice that on April 28, 1994, Entre Energy Corporation (Entre), 909 Fannin, suite 1095, Houston, Texas 77010, filed in Docket No. CP94-389-000, an application pursuant to sections 7(c) and 7(b) of the Natural Gas Act (NGA) and subparts A and F of part 157 and subparts G and J of part 284 of the Commission's Regulations.

Under subpart A of part 157, Entre seeks a certificate of public convenience and necessity authorizing:

- (i) The conversion of an existing natural gas producing field to an interstate natural gas storage field;
- (ii) The construction, installation and operation of the necessary facilities to place the natural gas storage field into service;
- (iii) The right to provide firm and interruptible storage services at market-based rates; and,
- (iv) Pre-granted abandonment authority for the field and the facilities upon termination of the storage contracts.

Under subpart F of part 157 and subparts G and J of part 284, respectively, Entre also seeks the following to carry out its proposal:

- (a) A Blanket Certificate under sections 7(c) and 7(b) of the NGA for certain interstate natural gas facilities transactions described in subpart F of part 157;
- (b) A Blanket Certificate under sections 7(c) and 7(b) of the NGA for certain interstate natural gas storage and transportation activities described in subpart G of part 284; and,
- (c) A Blanket Certificate under sections 7(c) and 7(b) of the NGA, as described in subpart J of part 284, to sell about 7.5 Bcf of natural gas that Entre plans to inject to test the storage reservoir.

Entre states that it is a Delaware corporation and a wholly-owned subsidiary of Entre Holdings Company, an independent producer of natural gas. Entre states that its propose is to develop, construct and operate the first underground natural gas storage facility to be located entirely offshore. The proposed storage reservoir is located in the Chandeleur Area, Block 29 field, of the Federal OCS—Offshore Louisiana. The proposed interstate storage facility

would be connected to the interstate pipeline facilities of Texas Eastern Transmission Corporation (Texas Eastern). Specifically, Entre proposes to connect into Texas Eastern's 24-inch pipeline in the Main Pass Area, Block 92.

Entre filed a *pro forma* tariff which contains rate schedules for firm storage service, interruptible storage service, a sales service and general terms and conditions. Entre states that the storage services will be provided on an open access basis and will confirm to Order No. 636, *et al.* Entre further states that it will hold an open season for the storage capacity which is proposed to begin on July 1, 1994 and continue for 45 days. In addition, Entre proposes to make sales of approximately 7.5 Bcf of gas that it anticipates injecting into the storage reservoir during the testing phase.

Entre states that it is currently planning to operate this proposed storage facility with a total working gas capacity of 25.6 Bcf. Entre says that the storage field will be designed to provide first day withdrawal service of 300,000 Mcf per day and 193,000 Mcf per day withdrawal service at the end of the expected 105-day withdrawal period. Entre further says that if enough interest is generated during its open season, it will seek authorization from the Commission to increase the size of the storage project to 41 Bcf of working gas capacity.

Entre states that facilities associated with the proposed 25.6 Bcf storage project will consist of a 6.5-mile, 16-inch diameter pipeline connected to Texas Eastern, 7 injection/withdrawal wells, compression of about 12,000 horsepower and appurtenant facilities. Entre says that if it elects to pursue the 41 Bcf storage project, it will propose to increase the size of 16-inch diameter pipeline to 24 inches and will increase total compression to 21,400 horsepower.

Entre has proposed market-based rates for all of its services. Entre maintains that it lacks market power for the proposed storage services and that granting it the authority to utilize market-based rates would be consistent with Commission action in other cases. However, Entre does propose to retain 2.2 percent of injected volumes as a fuel reimbursement. Entre also proposes to add the Annual Charge Adjustment to the negotiated base rate of its various proposed charges.

Entre says that the construction of storage-related facilities is scheduled to commence later in 1994. Therefore, Entre requests that the Commission expedite the processing of this application and grant the requested

authorization by July 29, 1994, to permit the commencement of service during the 1994-1995 heating season.

Comment date: May 27, 1994, in accordance with Standard Paragraph F at the end of this notice.

2. Appalachian Gas Sales, Inc. v. Columbia Gulf Transmission Co.

[Docket No. CP94-459-000]

Take notice that on May 2, 1994, Appalachian Gas Sales, Inc. (AGS), 333 N. Fairfax Street, Suite 300, Alexandria, Va. 22314, filed in Docket No. CP94-459-000 a complaint pursuant to Rule 206 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure against Columbia Gulf Transmission Company (Columbia Gulf). AGS states that Columbia Gulf has unduly discriminated against them by erroneously allocating their gas to a third party, Centran Corporation, which filed for bankruptcy on 1/2/93. In addition, AGS claims that Columbia Gulf's refusal to remedy the misallocation creates an undue preference in their favor, all as more fully set forth in the complaint which is on file with the Commission and open to public inspection.

The interruptible transportation service that Columbia Gulf performs for AGS is provided under Columbia Gulf's blanket certificate pursuant to part 284 of the Commission's Regulations. AGS states that the Commission, pursuant to its authority under Sections 4 and 5 of the Natural Gas Act (NGA), should direct Columbia Gulf to remedy the discrimination prejudice, and preference against AGS.

Specifically AGS claims that Columbia Gulf's arbitrary allocation of gas on a pro rata basis between two shippers at a receipt point was not authorized in its tariff. AGS states that Columbia Gulf refused to accept a good faith reallocation request, tendered outside the time period provided under section 6(b)(3) of Rate Schedule ITS-1, while granting out-of-time reallocation requests for other shippers. AGS requests that the Commission order Columbia Gulf to reallocate all volumes of gas delivered for AGS's account during October 1992. AGS claims that Columbia Gulf has provided itself with a preference at AGS's expense by arbitrarily allocating AGS's gas to a third party in order to reduce its exposure as an unsecured creditor in the Centran Corporation bankruptcy.

Comment date: June 6, 1994, in accordance with the first paragraph of Standard Paragraph F at the end of this notice.

3. Koch Gateway Pipeline Co.

[Docket No. CP94-525-000]

Take notice that on May 4, 1994, Koch Gateway Pipeline Company (Koch Gateway), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP94-525-000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to seek certificate authority for facilities previously constructed under section 311(a) of the Natural Gas Policy Act and § 284.3(c) of the Commission's Regulations under Koch Gateway's blanket certificate issued in Docket No. CP82-430-000 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.

Koch Gateway states that the proposed certification of facilities will enable Koch Gateway to provide transportation services under its blanket transportation certificate through two six-inch taps and meter station constructed in Harrison County, Texas. Koch Gateway also states that it will operate the proposed facilities in compliance with 18 C.F.R., Part 157, Subpart F, and that it has sufficient capacity to render the proposed service without detriment or disadvantage to its other existing customers.

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. 94-11619 Filed 5-12-94; 8:45 am]

BILLING CODE 6717-01-P

[Docket No. ER94-1181-000]

C.C. Pace Energy Services; Notice of Filing

May 9, 1994.

Take notice that on April 25, 1994, C.C. Pace Energy Services, a Division of C.C. Pace Resources, Inc. ("Pace"), tendered for filing a request to the Commission that the Commission: (1) Accept Pace's F.E.R.C. Electric Rate Schedule No. 1 to be effective as of the date of filing thereof; (2) grant blanket authorization for Pace to make wholesale sales of electric power in interstate commerce at rates to be negotiated with the purchaser; (3) disclaim jurisdiction over transactions wherein Pace serves as a broker; (4) waive the cost of service filing requirements of 18 CFR 35.12; and (5)

grant such other waivers and authorizations as have been granted to other power marketers, with the exceptions noted in Pace's application.

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 May 23, 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. 94-11620 Filed 5-12-94; 8:45 am]

BILLING CODE 6717-01-P

[Docket No. ER94-1187-000]

Mid-Century Area Power Pool; Notice of Filing

May 9, 1994.

Take notice that on April 25, 1994, Mid-Century Area Power Pool (MAPP) tendered for filing an amendment to the Mid-Century Area Power Pool Agreement. The amendment reflects the transfer of memberships in MAPP from Iowa Electric Light and Power Company and Iowa Southern Utilities Company to IES Utilities Inc., the corporation that resulted from the merger of Iowa Southern Utilities Company into Iowa Electric Light and Power Company utilities.

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 May 23, 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. 94-11621 Filed 5-12-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP94-523-000]

Natural Gas Pipeline Company of America, Florida Gas Transmission Company; Application

May 9, 1994.

Take notice that on May 4, 1994, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148 and Florida Gas Transmission Company (Florida Gas), 1400 Smith Street, Houston, Texas, 77002 filed in Docket No. CP94-523-000 an application pursuant to section 7(b) of the Commission's Regulations under the Natural Gas Act for permission and approval to abandon an exchange service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural and Florida Gas state that pursuant to a gas exchange agreement dated May 5, 1976 (Agreement), as amended, that Natural and Florida Gas exchanged up to 2,000 Mcf of natural gas per day in Nueces County, Texas on a thermally equivalent, interruptible basis. Natural and Florida Gas perform the no-fee exchange under their FERC Gas Tariffs, Rate Schedules X-34 and E-15, pursuant to authorization granted in Docket Nos. CP73-1 and CP73-2, respectively (48 FPC 874).

Natural and Florida Gas state that by letter agreement dated August 20, 1993, they have agreed to terminate the Agreement effective December 1, 1993. Natural and Florida Gas state that no facilities are to be abandoned herein.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 31, 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 is 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 Natural and Florida Gas to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 94-11622 Filed 5-12-94; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

Acid Rain Division

[FRL-4884-7]

Acid Rain Provisions

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: EPA has prepared guidance to help determine if the Acid Rain Program SO₂ requirements apply to specific steam and electric generating units. This guidance is of particular use to owners and operators of electric generating units who are unsure as to whether their units are affected by the Acid Rain Program SO₂ requirements.

ADDRESSES: Copies of the guidance, entitled "Do the Acid Rain SO₂ Regulations Apply to You?," are available upon request by calling the Acid Rain Hotline at (202) 233-9620 or by writing to:

U.S. Environmental Protection Agency, Acid Rain Division 6204J, Attn: Applicability Guidance, 401 M Street, SW., Washington, DC 20460

The following groups have copies available to their members: American Public Power Association, contact Larry

Mansueti; American Forest Products, contact Rob Kaufmann; Council of Industrial Boiler Owners, contact Bill Marx; Chemical Manufacturers Association, contact Nancy Cookson; Edison Electric Institute, contact John Kinsman; Electric Consumers Resource Council, contact John Hughes; Electric Generation Association, contact Julie Blankenship; Large Public Power Council, contact Stephen Fotis; National Coal Association, contact Jerry Karaganis; National Independent Energy Producers, contact Janet Besser; National Rural Electric Cooperative Assoc., contact Ray Cronmiller.

FOR FURTHER INFORMATION CONTACT:

Kathy Barylski, Acid Rain Division, at the above address; telephone (202) 233-9074.

SUPPLEMENTARY INFORMATION: EPA's Acid Rain Program was established by Title IV of the Clean Air Act Amendments of 1990 (CAAA) to reduce acid rain in the continental United States. The Acid Rain Program will achieve a 50 percent reduction in sulfur dioxide (SO₂) emissions from utility units. The SO₂ reduction program is a flexible market-based approach to environmental management. As part of this approach, EPA allocates "allowances" to affected utility units. Each allowance is a limited authorization to emit up to one ton of SO₂. At the end of each calendar year, each unit must hold allowances in an amount equal to or greater than its SO₂ emissions for the year. Allowances may be bought, sold, or transferred between utilities and other interested parties. Those utility units whose annual emissions are likely to exceed their allocation of allowances may either install pollution control technologies or switch to cleaner fuels to reduce SO₂ emissions, or buy additional allowances.

The Acid Rain Program SO₂ requirements potentially affect any device that combusts fossil fuel and supplies electricity for sale or serves an electrical generating device that supplies electricity for sale. Thus, units owned or operated by industrial or commercial entities may be affected. To ensure adequate notice to all potentially affected units, EPA has chosen to provide this notice of availability of the Acid Rain applicability guidance.

The guidance, "Do the Acid Rain SO₂ Regulations Apply to You?," provides information regarding what makes a unit potentially affected, what types of units may be exempted from Acid Rain Program requirements, and what types of units are not affected by the Acid Rain Program requirements. The

document also outlines how the owner or operator of a unit may request a determination of applicability from EPA. If a unit is affected by the Acid Rain Program SO₂ requirements, the document outlines the requirements and compliance dates. The document does not address the Acid Rain Program (Title IV) NO_x requirements or NO_x or SO₂ control requirements under other State or Federal programs.

Dated: May 6, 1994.

Brian J. McLean, Director,
Acid Rain Division.

[FR Doc. 94-11693 Filed 5-12-94; 8:45 am]

BILLING CODE 6560-50-P

[FRL-4884-3]

Acid Rain Program: Notice of Final Retired Unit Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final retired unit exemptions.

SUMMARY: The U.S. Environmental Protection Agency is issuing five-year retired unit exemptions, according to the Acid Rain Program regulations (40 CFR part 72), to the following 11 utility units in Ohio: Acme units 9, 11, 13, 14, 15, 91, and 92; Avon Lake unit 11; and Poston units 1, 2, and 3.

FOR FURTHER INFORMATION CONTACT: Allan Batka at (312) 886-9653. EPA Region 5 (A-18J), Ralph H. Metcalfe Bldg., 77 West Jackson Blvd., Chicago, IL 60604.

Dated: May 4, 1994.

Brian McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 94-11694 Filed 5-12-94; 8:45 am]

BILLING CODE 6560-50-F

[ER-FRL-4711-3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared April 25, 1994 through April 29, 1994 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(C) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the

Federal Register dated April 8, 1994 (59 FR 16807).

Draft EISs

ERP No. D-AFS-J65215-MT Rating EC2, Elk Creek Land Exchange and Granting an Easement to Plum Creek, Implementation, Flathead National Forest, Swan Lake Ranger District, MT.

Summary: EPA expressed environmental concerns about adverse impacts which may occur on the Forest Service land to be given to the Plum Creek Timber Company (i.e., wildlife habitat, old growth, visual, fisheries impacts). EPA also expressed concerns about the uncertainty of future activities (i.e., subdivision development, oil and gas leasing, and mining) on the exchanged parcels. EPA recommended that the Forest Service require a conservation easement prohibiting future subdivision development on the Forest Service land to be given to Plum Creek Timber Company.

ERP No. D-AFS-J65216-UT Rating LO1, Pacer Timber Harvest and Timber Sale, Implementation, Dixie National Forest, Escalante Ranger District, Garfield County, UT.

Summary: EPA had no objections to the proposed action.

ERP No. D-BLA-J39020-SD Rating EC1, Crow Creek Dam Project, Crow Creek Dam and Reservoir (Lake Bedashosha) Improvements, Crow Creek Indian Reservation, near Fort Thompson, Buffalo County, SD.

Summary: EPA expressed environmental concerns with sediment impacts which should be avoided to fully protect the environment and which may require changes to alternatives or mitigation measures.

ERP No. D-BLM-J02029-WY Rating EC2, Enron Burly Field Oil and Gas Leasing, Permit to Drill, Temporary Use Permits, COE Section 404 Permit and Right-of-Way Grants, Pinedale Resource Area, Sublette County, WY.

Summary: EPA had environmental concerns based on potential impacts to groundwater quality, which should be avoided in order to fully protect its high quality.

ERP No. D-BLM-L60100-ID Rating EC2, Twin Falls County Solid Waste Landfill Facility Construction and Operation, Land Acquisition, Twin Falls County, ID.

Summary: EPA had environmental concerns that BLM had not demonstrated that the land transfer and subsequent solid waste facility will result in no adverse consequences to ground water, surface water, and air quality. EPA requested additional information about how hazardous waste in the waste stream will be handled,

how leachate and surface runoff will be disposed, the liner system and how it will be installed, the landfill gas collection and disposal system, and future implementation and operation of the facility.

Final EISs

ERP No. F-AFS-J65205-MT, Upper Sunday Timber Sales, Harvest Timber, Implementation, Kootenai National Forest, Fortine Ranger District, Flathead County, MT.

Summary: EPA had no concerns but recommended that the sediment regime model be tested.

Regulations

ERP No. R-NRC-A09818-00, 10 CFR part 71, Petition for Regulations Governing Packaging and Transportation of Radioactive Materials, Docket No. PRM-71-11, FR 59.8143.

Summary: Review of the Regulation has been completed and the project found to be satisfactory. No formal comment letter was sent to the preparing agency.

Dated: May 9, 1994.

Marshall Cain,

Senior Legal Advisor, Office of Federal Activities.

[FR Doc. 94-11603 Filed 5-12-94; 8:45 am]

BILLING CODE 6560-50-U

[ER-FRL-4711-2]

Environmental Impact Statements; Availability

RESPONSIBLE AGENCY: Office of Federal Activities, General Information (202) 260-5076 or (202) 260-5075. Weekly receipt of Environmental Impact Statements Filed May 2, 1994 through May 6, 1994 Pursuant to 40 CFR 1506.9.

EIS No. 940166, FINAL EIS, SCS, KS, Upper Delaware River and Tributaries Watershed Plan, Flood Prevention and Watershed Protection, Funding, COE Section 404 and NPDES Permits, Atchison, Brown, Jackson and Nemaha Counties, KS, Due: June 13, 1994, Contact: James N. Habiger (913) 823-4565.

EIS No. 940167, FINAL EIS, AFS, AK, Main Bay Salmon Hatchery Expansion, Implementation, Special-Use-Permit and COE Section 404 Permit, Prince William Sound, Chugach National Forest, Glacier Ranger District, AK, Due: June 13, 1994, Contact: Ken Rice (907) 271-2751.

EIS No. 940168, FINAL EIS, SFW, WY, ID, MT, Gray Wolves (Canis Lupus) Reintroduction into the Yellowstone National Park and Central Idaho,

Implementation, MT, WY and ID, Due: June 13, 1994, Contact: Ed Bangs (406) 449-5202.

EIS No. 940169, DRAFT EIS, MMS, TX, AL, LA, MS, 1995 Central and Western Gulf of Mexico Outer Continental Shelf (OCS) Oil and Gas Sales 152 (April 1995) and 155 (August 1995), Lease Offering, Offshore Marine Environment and coastal counties, AL, MS, LA and TX, Due: June 27, 1994, Contact: Richard H. Miller (703) 787-1665.

EIS No. 940170, FINAL EIS, FHW, WA, WA-522 Transportation Improvements, WA-9 near Woodinville to WA-2 in Monroe, Funding, U.S. CGD Permit and Section 10 and 404 Permits, Snohomish River Bridge, Snohomish County, WA, Due: June 13, 1994, Contact: Barry F. Morehead (206) 753-2120.

EIS No. 940171, FINAL EIS, FHW, WI, WI-TH-29 Improvement, from Chippewa Falls to Abbotsford and Marathon City in Martin Lane, Funding and Possible COE 404 Permit, Clark and Marathon Counties, WI, Due: June 13, 1994, Contact: Thomas J. Fudaly (608) 264-5940.

EIS No. 940172, DRAFT EIS, COE, CO, Central City Water Development Project, Implementation, North Clear Creek Basin, COE Section 404 Permit, Right-of-Way Grant and Special-Use-Permit, CO, Due: June 30, 1994, Contact: Richard Gorton (402) 221-4598.

EIS No. 940173, DRAFT EIS, BLM, Rangeland Reform 1994 Program, Implementation, Land Acquisition and Permits Approval, Due: August 11, 1994, Contact: Jim Fox (202) 452-7740.

Dated: May 9, 1994.

Marshall Cain,

Senior Legal Advisor, Office of Federal Activities.

[FR Doc. 94-11605 Filed 5-12-94; 8:45 am]

BILLING CODE 6560-50-U

[FRL-4884-5]

M.A. Norden Company Site, AL; Request for Amendment to June 15, 1984, Clean Water Act section 404(c) Final Determination

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of request for amendment of Section 404(c) final determination and request for comment.

SUMMARY: Notice is hereby given that M.A. Norden Company has petitioned the Environmental Protection Agency

(EPA) for reconsideration of the total site prohibition identified in EPA's June 15, 1984, Final Determination concerning the Norden site in Mobile, Alabama pursuant to section 404(c) of the Clean Water Act (CWA). M.A. Norden has requested this amendment as a prerequisite to seeking CWA authorization to discharge dredged or fill material into wetlands to construct a road across the restricted section 404(c) area in order to provide access to an adjacent parcel of upland property.

EPA is requesting comments on M.A. Norden's proposal for reconsideration of the Final Determination's total site prohibition. In particular, EPA is interested in determining whether discharges associated with the proposed road construction will result in unacceptable adverse effects under section 404(c).

DATES: Written comments concerning this request for amendment must be submitted to EPA on or before June 13, 1994.

ADDRESSES: Copies of the request and supporting documentation are available for public inspection upon request at the following location: U.S.

Environmental Protection Agency, Office of Wetlands, Oceans, and Watersheds Wetlands Division, 499 South Capitol Street SW., Fairchild Building, room 723, Washington, DC 20009.

Comments must be submitted in writing to: Joseph P. DaVia, Acting Chief, Elevated Cases Section, Mail Code (4502F), U.S. EPA, 401 M Street SW., Washington, DC 20460. Written comments may also be sent by facsimile to Mr. DaVia at (202) 260-7546.

FOR FURTHER INFORMATION CONTACT: Specific details are available from Paul Minkin (EPA) at (202) 260-1901.

SUPPLEMENTARY INFORMATION: Section 404(c) of the Clean Water Act authorizes EPA to restrict or prohibit the use of an area as a disposal site for dredged or fill material if the discharge will have unacceptable adverse effects on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas. Prior to making such a determination, the Administrator of EPA consults with the Chief of Engineers and the applicant/landowner. In the case of the Norden Company site, such consultations did not resolve EPA's concerns over the originally planned use of the site and on June 15, 1984, EPA issued a Final Determination prohibiting the discharge of dredged or fill materials into the site.

The Final Determination described the then proposed project, the ecological

values associated with the site, project alternatives, and the efforts made to reach a mutually agreeable resolution. Based on the record it had compiled, EPA determined that "the discharge of the fill materials into the site proposed by the M.A. Norden Company ('the Norden site') would have an unacceptable adverse effect on shellfish beds and fishery areas and wildlife areas" and prohibited the use of the area for specification as a disposal site. This prohibition prevented the future disposal of any dredged or fill material at the entire 25 acre site.

On October 5, 1992, M.A. Norden Company (Norden Company) formally applied to the U.S. Environmental Protection Agency (EPA) for reconsideration of the June 15, 1984 Final Determination for the Norden Company site in Mobile, Alabama pursuant to section 404(c) of the Clean Water Act to accommodate a scaled down proposal. Additional information supporting this request was received by EPA on August 5, 1993. EPA made visits to the Norden Company site in February 1992 and September 1993. As more fully described below, Norden Company has proposed to discharge 9,300 cubic yards of dredged or fill material into approximately 1.5 acres of wetlands on the section 404(c) restricted site in order to construct a roadway to provide access to an adjacent upland site. This new proposal would reduce the direct impacts of the original proposal from 25 acres of wetlands filled to approximately 1.5 acres filled.

The June 15, 1984 Norden Final Determination restricts the use of the entire 25 acre Norden Company site for any discharges of dredged or fill material. Therefore, implementing this new proposal would require that EPA amend the 1984 Final Determination. If EPA, upon consideration of the original administrative record, the new proposal, supporting documentation, and any public comments, determines that such amendment is appropriate, a section 404 permit issued by the Corps of Engineers would still be necessary before discharges associated with the access road could proceed. Norden Company would have to follow the standard permitting process for that approval. That process provides an additional opportunity for public notice and comment.

Proposed Activities

Norden Company has submitted a detailed description of the proposed project. The project description below is based on these Norden Company submissions and may be further revised in the section 404 permit application

review process. The proposal is to extend an existing abandoned railway spur across the site as a vehicular roadway for use by heavy truck (container) traffic from the Port of Mobile facilities to a storage area on the upland. The existing railway spur is 30 feet wide and 900 feet long. It would be widened and extended, at a slight angle, approximately 600 feet across the wetlands and drainage canal to reach an upland area. Approximately 9,300 cubic yards of sand material on geotextile fabric will be placed in the wetlands for roadbed fill. The typical road section will be 36 feet wide at the top and 60 feet wide at the base with 3:1 side slopes. Silt screens will be erected and the side slopes will be seeded and mulched to prevent erosion and sedimentation of the adjacent waters and wetlands. Four concrete culverts (three 24 inch diameter culverts and one 36 inch diameter culvert) will be placed through the fill, underneath the roadway to allow for exchange of water between the divided portions of the wetland. A box culvert will be placed in the existing drainage canal to allow for unobstructed flow. Mitigation for project impacts is proposed in the form of providing culverting where none previously existed through the railway spur to allow for better water circulation. Norden Company anticipates that the work would be completed in six months.

EPA is soliciting comments on the current proposal by the Norden Company. Specifically, comments should address whether this proposal would have lesser impacts on the aquatic environment than the project which was originally proposed. In addition, EPA is interested in determining whether there are less environmentally damaging practicable alternatives to the proposed discharge which would have less adverse impact on the aquatic ecosystem while fulfilling the basic project purpose.

Dated: May 5, 1994.

Robert H. Wayland,

Director, Office of Wetlands, Oceans, and Watersheds.

[FR Doc. 94-11697 Filed 5-12-94; 8:45 am]

BILLING CODE 5660-50-P

[FRL-4883-7]

Availability of Report on the Costs and Benefits of Smoking Restrictions: An Assessment of the Smoke-Free Environment Act of 1993

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the availability of and opportunity to comment on a report, "The Costs and Benefits of Smoking Restrictions: An Assessment of the Smoke-Free Environment Act of 1993 (H.R. 3434)".

DATES: Written comments on this report must be submitted on or before August 11, 1994.

ADDRESSES: Comments should be mailed to Cost/Benefit Analysis, Indoor Air Division (6607J), Office of Air and Radiation, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460.

Copies of the report are available from the EPA Indoor Air Quality Information Clearinghouse, P.O. Box 37133, Washington, DC 20013-7133. 1-800-438-4318.

FOR FURTHER INFORMATION CONTACT: David H. Mudarri, Indoor Air Division, (6607J), Office of Air and Radiation, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. 202-233-9030.

SUPPLEMENTARY INFORMATION: In compliance with the "Radon Gas and Indoor Air Quality Research Act of 1986", under which the Environmental Protection Agency is directed to conduct research and disseminate information on all aspects of indoor air quality, this notice announces that the report described below is available for public review.

The Chairman of the House of Representatives Committee on Energy and Commerce Subcommittee on Health and the Environment requested that the U.S. Environmental Protection Agency analyze (quantitatively where possible) the compliance costs and the health and economic benefits of H.R. 3434. Specifically, the Agency was requested to assess the cost of compliance including provisions for smoking lounges; the value of benefits resulting from reduced exposure to environmental tobacco smoke and changes in smoking behavior including the value of lives saved; the value of increased productivity and reduced absenteeism; savings from reduced operation and maintenance costs; and savings in fire related injuries and property damage.

The Smoke-Free Environment Act of 1993 (H.R. 3434) would require that all residential buildings regularly entered by ten or more persons in the course of a week that bans smoking inside the building or restricts smoking to separately ventilated smoking rooms. The proposed legislation provides for

enforcement actions in the United States District Courts by an individual, government or other aggrieved entity and allows for fines of up to \$5,000 per day.

The report presents EPA's analysis and findings of the costs and benefits of implementing national legislation that would establish policies that would prohibit smoking indoors in specified buildings and/or provide for separately ventilated smoking lounges.

Dated: April 19, 1994.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 94-11695 Filed 5-12-94; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4884-5]

Massachusetts Marine Sanitation Device Standard for Coastal Waters of Falmouth and Mashpee

Notice of Determination

On March 10, 1994, notice was published that the State of Massachusetts had petitioned the Regional Administrator, Environmental Protection Agency, to determine that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the coastal waters of Waquoit Bay, that border the Towns of Falmouth and Mashpee, within the State of Massachusetts (56 FR 57891). The petition was filed pursuant to section 312(f)(3) of Pub. L. 92-500 as amended by Pub. L. 95-217 and Pub. L. 100-4.

Section 312(f)(3) states:

After the effective date of the initial standards and regulations promulgated under this section, if any State determines that the protection and enhancement of the quality of some or all of the waters within such States require greater environmental protection, such State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters, except that no such prohibition shall apply until the Administrator determines that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for such water to which such prohibition would apply.

The information submitted to me by the State of Massachusetts certified that there are two pump-out facilities available to service vessels in Waquoit Bay that border the coastal waters of Falmouth and Mashpee.

Pump-out facility No. 1 is located at the Edwards Boat Yard, on the Childs River in Falmouth. This facility will

provide stationary pump-out service and will be available seven days a week from 8:00 a.m. to 4:30 p.m. Memorial Day through Columbus Day. During the rest of the year, the pumpout facility will operate Monday through Friday from 8:00 a.m. until 4:30 p.m., and half days on Saturdays several weeks before Memorial Day and after Columbus Day. There will be a \$5.00 fee per pump-out.

Pump-out facility No. 2 is located at the Little River Boat Yard, on Seconsett Island in Mashpee. This facility will provide stationary/mobile pump-out service seven days a week from 7 a.m. to 7 p.m. Memorial Day through Columbus Day. Business hours at other times of the year will be Monday through Friday from 8 a.m. to 4:30 p.m. During the summer season, the mobile service will make a scheduled round of Waquoit Bay to provide service to moored boats throughout the bay, including transient boats located along the shores of Washburn Island. Mariners will be able to contact the operator by marine radio (Channel 09 VHF-FM) or visible signal to request a pump-out. The remainder of the time, the facility will be docked so that pump-out service will be available for any boats wishing to use it. There will be a \$5.00 fee per pump-out.

All pump-out waste will be stored in a 2000 gallon licensed tight tank at the Edward's Boat Yard. A licensed hauler will remove the waste and dispose of it in the Falmouth Sewage Treatment Plant which is approved by the Massachusetts Department of Environmental Protection to receive boat waste.

Marinas are found along the Childs and Little River and docks line the bay's tributaries and salt ponds. Currently, there are an estimated 2610 boats in Waquoit Bay and its tributaries and salt ponds with approximately 570 boats having some type of Marine Sanitation Device (MSD) based on their size classification. Waquoit Bay is 931 acres in size with a watershed of approximately 20 square miles.

There were no comments received by the Agency on the merits of the petition prior to the deadline for receipt of comments as stated in the March 10, 1994 Federal Register "Receipt of Petition" notice.

Based on an examination of the petition, and its supporting information which included a site visit by EPA Region I staff, and the fact that the Agency received no comments concerning the petition, I have determined that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for Waquoit Bay.

and its tributaries and salt ponds that border the Towns of Falmouth and Mashpee, within the State of Massachusetts, to qualify as a "No Discharge Area".

This determination is made pursuant to Section 312(f)(3) of Pub. L. 92-500, as amended by Pub. L. 95-217 and Pub. L. 100-4.

Dated: May 2, 1994.

John P. DeVillars,

Regional Administrator.

[FR Doc. 94-11696 Filed 5-12-94; 8:45 am]

BILLING CODE 6560-50-P

FARM CREDIT SYSTEM INSURANCE CORPORATION

Privacy Act of 1974; Establishment of New System of Records

AGENCY: Farm Credit System Insurance Corporation.

ACTION: Advance notice with request for comments; publication of proposed system notice for new systems of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Farm Credit Insurance Corporation (Corporation) is establishing Privacy Act systems of records and is publishing a complete notice of its inventory of systems. The publication of these proposed systems notices is one of the steps required to establish the new systems. The new systems of records facilitates the Corporation's ability to collect, maintain, use, and disclose information pertaining to individuals.

DATES: Written comments should be received by June 13, 1994. The Corporation filed a New Systems Report with Congress and the Office of Management and Budget (OMB) on May 6, 1994. This notice will be adopted without further publication on July 5, 1994, unless modified by a subsequent notice to incorporate comments received from the public.

ADDRESSES: Written comments may be mailed (in triplicate) to Mary A. Creedon, Chief Operating Officer, in care of Cindy Nicholson, Farm Credit System Insurance Corporation, McLean, Virginia 22102-0826. Copies of all communications received will be available for examination by interested parties in the offices of the Farm Credit System Insurance Corporation.

FOR FURTHER INFORMATION CONTACT: Ronald H. Erickson, Privacy Act Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102-

0826, (703) 883-4113, TDD (703) 883-4444, or

Jane Virga, Office of General Counsel, Farm Credit System Insurance Corporation, McLean, Virginia, 22102-0826, (703) 883-4071, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: As required by the Privacy Act of 1974, the Corporation has reviewed all systems of records and identified eight new systems.

The notice reflects designated points of contact for inquiring about the systems, accessing the records, and requesting amendments to the records. As noted below, the Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, is the custodian for some of the records pursuant to a delegation of authority from the Corporation.

The categories of new systems are: FCSIC-1, Corporation Internal Automated Personnel System, FCSIC-2, Employee Reports of Financial Interests and Employment, FCSIC-3, Employee Attendance, Leave, Personnel Actions, and Payroll Files, FCSIC-4, Employee Travel Files, FCSIC-5, Financial Management Records, FCSIC-6, Procurement Records, FCSIC-7, Personnel Security Files, and FCSIC-8, Correspondence Files.

Notice is hereby given that the Corporation adopts the Office of Personnel Management's (OPM) OPM/GOVT-1 and the OPM's Federal Register notice of OPM/GOVT-1 with respect to those personnel records that are maintained by the Corporation and described in OPM/GOVT-1. Individuals are referred to the OPM's Federal Register notice on the existence and character of OPM/GOVT-1. The citation is 57 FR 35705-35709, August 10, 1992, as amended from time to time. OPM's Federal Register notice sets out the routine uses of the records in OPM/GOVT-1. Individuals interested in reviewing and commenting on such routine uses are referred to 57 FR 35705-35709, August 10, 1992, as amended from time to time. Employee inquiries about OPM/GOVT-1 and employee requests for access or amendments to records described therein that are maintained by the Corporation may be directed to: Chief Operating Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102-0826.

As required by 5 U.S.C. 552a(r) of the Privacy Act, as amended, the Corporation has sent notice of this proposed system of records to the Office of Management and Budget, the Committee on Government Operations

of the House of Representatives, and the Committee on Governmental Affairs of the Senate. The notices are published in their entirety below.

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FCSIC-1	FCSIC Internal Automated Personnel System.
FCSIC-2	Employee Reports of Financial Interest and Employment.
FCSIC-3	Employee Attendance, Leave, Personnel Actions, and Payroll Records.
FCSIC-4	Employee Travel Files.
FCSIC-5	Financial Management Records.
FCSIC-6	Procurement Records.
FCSIC-7	Personnel Security Files.
FCSIC-8	Correspondence Files.

FCSIC-1

SYSTEM NAME:

FCSIC Internal Automated Personnel System.

SYSTEM LOCATIONS:

These records are located at the Farm Credit Administration with copies at the Farm Credit System Insurance Corporation, McLean, Virginia 22102-0826.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Corporation employees since March 1988.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information from Personnel Management Information and Telecommunications System of the Department of Treasury, including the employee's occupational series, grade, salary, position title, geographic location, work schedule, date of birth, sex, and similar information. The source for this data is the National Finance Center's United States Department of Agriculture Personnel Payroll System.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 2277a-7, 2277a-8.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in this record system may be used to furnish internal statistical reports and trend analyses for managing human resources.

(1) In the event that information in this record system indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, the relevant records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged

with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto.

(2) Information in this record system may be disclosed as a routine use to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a decision concerning the hiring or retention of an employee, the letting of a contract, or the issuance of a grant or other benefit.

(3) Information in this record system may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of and investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

(4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

(5) It shall be a routine use of the records in this system of records to disclose them to the Department of Justice or to disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when

- (a) The agency, or any component thereof; or
- (b) Any employee of the agency in his or her official capacity; or
- (c) Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or
- (d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the use of such records in the proceeding is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice or the disclosure of such records in the proceeding is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

(6) In the event that information in this record system is needed in the

course of presenting evidence to a court, magistrate, or administrative tribunal, the relevant records may be referred, as a routine use, to the appropriate person to use as evidence.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:
STORAGE:

Information stored electronically.

RETRIEVABILITY:

Electronically retrievable by name, social security number, and other identifiers such as sex, geographic location, occupational series, etc.

SAFEGUARDS:

Records are kept in a secure area with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

In accordance with National Archives and Records Administration General Records Schedule requirements.

SYSTEM MANAGER(S) AND ADDRESSES:

Chief Operating Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102-0826.

NOTIFICATION PROCEDURE:

All inquiries about this system of records shall be addressed to: Privacy Act Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102-0826.

RECORD ACCESS PROCEDURES:

Requests for access to a record shall be directed to: Privacy Act Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102-0826, as provided in 12 CFR 1403.3.

CONTESTING RECORD PROCEDURES:

Requests for amendments of a record shall be directed to: Privacy Act Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102-0826, as provided in 12 CFR 1403.7.

RECORD SOURCE CATEGORIES:

Information in this system of records either comes from the individual to whom it applies or comes from information supplied by agency officials.

FCSIC-2

SYSTEM NAME:

Employee Reports of Financial Interests and Employment—FCSIC.

SYSTEM LOCATION:

These records are located at the Farm Credit Administration with copies at the Farm Credit System Insurance Corporation, McLean, Virginia 22102-0826.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Corporation employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

"Public Financial Disclosure Report" and "Confidential Statement of Employment and Financial Interests" required of certain employees. Contains statement of financial interests of the employee and of members of his or her immediate household as well as any other statements or memorandums concerning other employment or financial interests of the Corporation employee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 12674, as amended by Executive Order 12731, and 5 U.S.C. App. 201, 205.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in this record system may be used by authorized personnel for ascertaining conflicts or apparent conflicts of interest, recommending or taking appropriate action, monitoring the agency's ethics program.

(1) In the event that information in this record system indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, the relevant records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto.

(2) Information in this record system may be disclosed as a routine use to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a decision concerning the hiring or retention of an employee, the letting of a contract, or the issuance of a grant or other benefit.

(3) Information in this record system may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the

information is relevant and necessary to the requesting agency's decision on the matter.

(4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

(5) It shall be a routine use of the records in this system of records to disclose them to the Department of Justice or to disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the use of such records in the proceeding is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice or the disclosure of such records in the proceeding is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

(6) In the event that information in this record system is needed in the course of presenting evidence to a court, magistrate, or administrative tribunal, the relevant records may be referred, as a routine use, to the appropriate person to use as evidence.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:
Records are maintained in file folders.

RETRIEVABILITY:

Records are maintained alphabetically by name.

SAFEGUARDS:

Records are kept in a locked cabinet except when being used by authorized personnel who are instructed as to their confidentiality and permitted use.

RETENTION AND DISPOSAL:

In accordance with National Archives and Records Administration General Records Schedule requirements for

employee reports of financial interests and employment.

SYSTEM MANAGER(S) AND ADDRESSES:

Designated Agency Ethics Official, Farm Credit System Insurance Corporation, McLean, Virginia 22102-0826.

NOTIFICATION PROCEDURE:

All inquiries about this system of records shall be addressed to: Privacy Act Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102-0826.

RECORD ACCESS PROCEDURES:

Requests for access to a record shall be directed to: Privacy Act Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102-0826, as provided in 12 CFR 1403.3.

CONTESTING RECORD PROCEDURES:

Requests for amendments of a record shall be directed to: Privacy Act Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102-0826, as provided in 12 CFR 1403.7.

RECORD SOURCE CATEGORIES:

Information in this system of records either comes from the employee to whom it applies or comes from information supplied by agency officials.

FCSIC-3

SYSTEM NAME:

Employee attendance, leave, personnel actions, and payroll records—FCSIC.

SYSTEM LOCATION:

These records are located at the Farm Credit Administration with copies at the Farm Credit System Insurance Corporation, McLean, Virginia 22102-0826.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Corporation employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of paper, electronic, and microfiche files containing payroll-related information for Corporation employees reported on a biweekly, year-to-date, and, in some cases, an annual basis. The records contain payroll and leave data for each employee including rate and amount of pay, personnel actions during payroll periods, hours worked, tax and retirement deductions, life insurance and health insurance deductions, savings allotments, savings bond and charity deductions, other financial deductions, mailing addresses, and home addresses. Records produced

electronically utilize software provided by the National Finance Center's United States Department of Agriculture Personnel Payroll System.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 2277a-7, 2277a-8.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in this record system may be used to prepare payroll and to meet Government payroll record keeping and reporting requirements, and for retrieving and supplying payroll and leave information as required for agency needs. In addition, information in this record system is used to furnish certain information (name, permanent or temporary status, most recent position, grade, or salary) to other Government agencies, commercial or credit organizations, or verification of employment to prospective employers.

(1) Information in this record system may be disclosed as a routine use to Federal, State, and local taxing authorities concerning compensation to employees or contractors for personal services; to the Office of Personnel Management, Department of the Treasury, Department of Labor, and other Federal agencies concerning pay, benefits, and retirement of employees; to Federal employees health benefits carriers concerning health insurance of employees; to financial organizations concerning employee savings account allotments and net pay to checking accounts; to State human resource offices administering unemployment compensation programs; to educational and training organizations concerning employee qualifications and identity for specific courses; and to heirs, executors, and legal representatives of beneficiaries.

(2) In the event that information in this record system indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, the relevant records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto.

(3) Information in this record system may be disclosed as a routine use to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or

other pertinent information, such as current licenses, if necessary to obtain information relevant to a decision concerning the hiring or retention of an employee, the letting of a contract, or the issuance of a grant or other benefit.

(4) Information in this record system may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of and investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

(5) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

(6) It shall be a routine use of the records in this system of records to disclose them to the Department of Justice or to disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the use of such records in the proceeding is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice or the disclosure of such records in the proceeding is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

(7) In the event that information in this record system is needed in the course of presenting evidence to a court, magistrate, or administrative tribunal, the relevant records may be referred, as a routine use, to the appropriate person to use as evidence.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in locked cabinets or electronically.

RETRIEVABILITY:

Paper records are filed alphabetically by name. Electronic records are accessed by social security number. Microfiche records are arranged by social security number within a pay period.

SAFEGUARDS:

Files are kept in areas which are locked after business hours. Access to records is limited to authorized individuals.

RETENTION AND DISPOSAL:

In accordance with National Archives and Records Administration General Records Schedule requirements for payroll-related records.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Operating Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102-0826.

NOTIFICATION PROCEDURE:

All inquiries about this system of records shall be addressed to: Privacy Act Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102-0826.

RECORD ACCESS PROCEDURES:

Requests for access to a record shall be directed to: Privacy Act Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102-0826, as provided in 12 CFR 1403.3.

CONTESTING RECORD PROCEDURES:

Requests for amendments of a record shall be directed to: Privacy Act Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102-0826, as provided in 12 CFR 1403.7.

RECORD SOURCE CATEGORIES:

Information in this system of records comes from the employee to whom it applies or comes from information supplied by Corporation employees and other authorized personnel.

FCSIC-4

SYSTEM NAME:

Employee Travel—FCSIC.

SYSTEM LOCATION:

Farm Credit System Insurance Corporation, McLean, Virginia 22102-0826.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Corporation employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Paper and electronic records relating to travel vouchers and supporting documentation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 2277a-7, 2277a-8.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information contained in this system of records is used to provide records of reimbursement to employees for expenses incurred while in official travel status.

(1) In the event that information in this record system indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, the relevant records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto.

(2) Information in this record system may be disclosed as a routine use to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a decision concerning the hiring or retention of an employee, the letting of a contract, or the issuance of a grant or other benefit.

(3) Information in this record system may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of and investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

(4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

(5) It shall be a routine use of the records in this system of records to disclose them to the Department of

Justice or to disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the use of such records in the proceeding is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice or the disclosure of such records in the proceeding is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

(6) In the event that information in this record system is needed in the course of presenting evidence to a court, magistrate, or administrative tribunal, the relevant records may be referred, as a routine use, to the appropriate person to use as evidence.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in cabinets or electronically.

RETRIEVABILITY:

Paper records are filed alphabetically by name.

SAFEGUARDS:

Paper files are kept in areas which are locked after business hours. Access to electronic system is limited to authorized employees.

RETENTION AND DISPOSAL:

In accordance with National Archives and Records Administration General Records Schedule requirements for financial records.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Specialist, Farm Credit System Insurance Corporation, McLean, Virginia 22102-0826.

NOTIFICATION PROCEDURE:

All inquiries about this system of record shall be directed to: Privacy Act

Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102-0826.

RECORD ACCESS PROCEDURES:

Requests for access to a record shall be directed to: Privacy Act Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102-0826, as provided in 12 CFR 1403.3.

CONTESTING RECORD PROCEDURES:

Requests for amendments of a record shall be directed to: Privacy Act Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102-0826, as provided in 12 CFR 1403.7.

RECORD SOURCE CATEGORIES:

Corporation employees and other individuals executing records.

FCSIC-5

SYSTEM NAME:

Financial Management Records—FCSIC.

SYSTEM LOCATION:

These records are located at the Farm Credit Administration, McLean, Virginia 22102-0826.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Corporation employees and individuals conducting business with the Corporation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of paper, electronic, and microfiche files supporting the Corporation financial management system, including employee travel advance records, records of budget formulation and execution, the Corporation administrative expenses, and other financial records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 2277a-7, 2277a-8.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This system of records serves as the source for collecting and recapping financial data to provide control over assets and liabilities, collection of revenues and disbursement of expenses and reports necessary for management and for other Government agencies.

(1) In the event that information in this record system indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, the relevant records may be referred, as a routine use, to the

appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto.

(2) Information in this record system may be disclosed as a routine use to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a decision concerning the hiring or retention of an employee, the letting of a contract, or the issuance of a grant or other benefit.

(3) Information in this record system may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of and investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

(4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

(5) It shall be a routine use of the records in this system of records to disclose them to the Department of Justice or to disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the use of such records in the proceeding is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice or the disclosure of such records in the proceeding is a use of the information contained in the records that is compatible with the

purpose for which the records were collected.

(6) In the event that information in this record system is needed in the course of presenting evidence to a court, magistrate, or administrative tribunal, the relevant records may be referred, as a routine use, to the appropriate person to use as evidence.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Records are stored in cabinets or electronically.

RETRIEVABILITY:

Paper records are arranged by SF1166a (Voucher and Schedule of Payments) voucher number within each year. Automated system can retrieve by name, vendor number, or social security number as applicable.

SAFEGUARDS:

Paper files are kept in file cabinets in areas which are locked after business hours. Access to electronic system is limited to authorized employees.

RETENTION AND DISPOSAL:

In accordance with National Archives and Records Administration General Records Schedule requirements for financial records.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Operating Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102-0826.

NOTIFICATION PROCEDURE:

All inquiries about this system of records shall be addressed to: Privacy Act Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102-0826.

RECORD ACCESS PROCEDURES:

Requests for access to a record shall be directed to: Privacy Act Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102-0826, as provided in 12 CFR 1403.3.

CONTESTING RECORD PROCEDURES:

Requests for amendments of a record shall be directed to: Privacy Act Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102-0826, as provided in 12 CFR 1403.7.

RECORD SOURCE CATEGORIES:

Corporation employees and other individuals doing business with Corporation.

FCSIC-6

SYSTEM NAME:

Procurement Records—FCSIC.

SYSTEM LOCATION:

These records are located at the Farm Credit Administration, McLean, Virginia 22102-0826.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals, corporations, and governmental entities who provide or may provide supplies or services to the Corporation by contract or purchase order.

CATEGORIES OF RECORDS IN THE SYSTEM:

Bids, offers, lease agreements, purchase orders, requisitions, and other pertinent written information related to purchase transactions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 2277a-7, 2277a-8; 40 U.S.C. 471 *et seq.*

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Information contained in this system of records is used by the Corporation as the basis for maintaining control of purchase transactions and to provide a minimum of opportunity for fraud as well as the maximum feasible opportunity for audit as related to the purchase of supplies and services obtained.

(1) In the event that information in this record system indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, the relevant records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto.

(2) Information in this record system may be disclosed as a routine use to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a decision concerning the hiring or retention of an employee, the letting of a contract, or the issuance of a grant or other benefit.

(3) Information in this record system may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of and investigation of an employee, the letting of a contract, or the issuance of a

license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

(4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

(5) It shall be a routine use of the records in this system of records to disclose them to the Department of Justice or to disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the use of such records in the proceeding is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice or the disclosure of such records in the proceeding is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

(6) In the event that information in this record system is needed in the course of presenting evidence to a court, magistrate, or administrative tribunal, the relevant records may be referred, as a routine use, to the appropriate person to use as evidence.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records filed: (1) In numerical order by purchase order or contract number; and (2) alphabetically by the name of the vendor.

SAFEGUARDS:

Maintained in area which is locked after business hours. Access to this record system is limited to employees and persons with contractual authority within the Corporation and the FCA.

RETENTION AND DISPOSAL:

In accordance with National Archives and Records Administration General Records Schedule requirements for procurement records.

SYSTEM MANAGER(S) AND ADDRESSES:

Chief Operating Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102-0826.

NOTIFICATION PROCEDURE:

All inquiries about this system of records shall be addressed to: Privacy Act Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102-0826.

RECORD ACCESS PROCEDURES:

Requests for access to a record shall be directed to: Privacy Act Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102-0826, as provided in 12 CFR 1403.3.

CONTESTING RECORD PROCEDURES:

Requests for amendments of a record shall be directed to: Privacy Act Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102-0826, as provided in 12 CFR 1403.7.

RECORD SOURCE CATEGORIES:

Individuals, corporations, or governmental entities who make bids or offers to the Corporation or enter into lease or other agreements with the Corporation. Employees who prepare contractual actions.

FCSIC-7**SYSTEM NAME:**

Personnel Security Files—FCSIC.

SYSTEM LOCATION:

These records are located at the Farm Credit Administration, McLean, Virginia 22102-5090.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Corporation employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Case files compiled during background investigations of employees in sensitive positions. The files include:

- (a) Security forms (SF 86, "Security Investigation Data for Sensitive Position"; and OPM Form 329-B, "Authority for Release of Information and Rediscovery");
- (b) Investigative report which includes credit check, check of police record, and interviews with neighbors, former supervisors, and coworkers;
- (c) Determination of suitability for security clearance by agency security officer; and

(d) Issuance of clearance statement.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 10450.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in this system of records is used to determine suitability for holding a sensitive position within the Corporation and to issue security clearance.

(1) In the event that information in this record system indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, the relevant records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto.

(2) Information in this record system may be disclosed as a routine use to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a decision concerning the hiring or retention of an employee, the letting of a contract, or the issuance of a grant or other benefit.

(3) Information in this record system may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of and investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

(4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

(5) It shall be a routine use of the records in this system of records to disclose them to the Department of Justice or to disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when

- (a) The agency, or any component thereof; or
- (b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the use of such records in the proceeding is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice or the disclosure of such records in the proceeding is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

(6) In the event that information in this record system is needed in the course of presenting evidence to a court, magistrate, or administrative tribunal, the relevant records may be referred, as a routine use, to the appropriate person to use as evidence.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Records are maintained in file folders.

RETRIEVABILITY:

Records are arranged alphabetically by name.

SAFEGUARDS:

Records are maintained in a locked safe in an area that is secured after business hours. Access to records is restricted to those employees whose official duties require access.

RETENTION AND DISPOSAL:

Files are transferred to OPM when employee leaves the agency.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Operating Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102-0826.

NOTIFICATION PROCEDURE:

All inquiries about this system of records shall be addressed to: Privacy Act Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102-0826.

RECORD ACCESS PROCEDURES:

Requests for access to a record shall be directed to: Privacy Act Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102-0826, as provided in 12 CFR 1403.3.

CONTESTING RECORD PROCEDURES:

Requests for amendments of a record shall be directed to: Privacy Act Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102-0826, as provided in 12 CFR 1403.7.

RECORD SOURCE CATEGORIES:

Information in this system of records comes from the individual to whom it applies, credit bureaus, police, neighbors, former supervisors and coworkers, etc.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is subjected to a specific exemption pursuant to 5 U.S.C. 552a(k)(2), to the extent there is included in the system investigatory material compiled for law enforcement purposes.

FCSIC-8**SYSTEM NAME:**

Correspondence Files—FCSIC.

SYSTEM LOCATION:

Farm Credit System Insurance Corporation, McLean, Virginia 22102-0826.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Corporation employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Letters, memorandums, and other documents pertaining to the operations of the Corporation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 2277a-7, 2277a-8.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) In the event that information in this record system indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, the relevant records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto.

(2) Information in this record system may be disclosed as a routine use to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as

current licenses, if necessary to obtain information relevant to a decision concerning the hiring or retention of an employee, the letting of a contract, or the issuance of a grant or other benefit.

(3) Information in this record system may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of and investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

(4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

(5) It shall be a routine use of the records in this system of records to disclose them to the Department of Justice or to disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the use of such records in the proceeding is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice or the disclosure of such records in the proceeding is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

(6) In the event that information in this record system is needed in the course of presenting evidence to a court, magistrate, or administrative tribunal, the relevant records may be referred, as a routine use, to the appropriate person to use as evidence.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Records are maintained in file folders

RETRIEVABILITY:

Records are arranged alphabetically by name.

SAFEGUARDS:

Records are maintained in a locked cabinet in an area that is secured after business hours.

RETENTION AND DISPOSAL:

In accordance with National Archives and Records Administration General Records Schedule requirements.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Specialist, Farm Credit System Insurance Corporation, McLean, Virginia 22102-0826.

NOTIFICATION PROCEDURE:

All inquiries about this system of records shall be addressed to: Privacy Act Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102-0826.

RECORD ACCESS PROCEDURES:

Requests for access to a record shall be directed to: Privacy Act Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102-0826, as provided in 12 CFR 1403.3.

CONTESTING RECORD PROCEDURES:

Requests for amendments of a record shall be directed to: Privacy Act Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102-0826, as provided in 12 CFR 1403.7.

RECORD SOURCE CATEGORIES:

Information in this system of records either comes from the individual to whom it applies or comes from information supplied by agency officials.

Dated: May 5, 1994.

Nan P. Mitchem,

Acting Secretary to the Board, Farm Credit System Insurance Corporation.

[FR Doc. 94-11444 Filed 5-12-94; 8:45 am]

BILLING CODE 6710-01-P

FEDERAL RESERVE SYSTEM**Interpretation of the Payments System Risk Reduction Policy; Daylight Overdrafts of Government-Sponsored Enterprises**

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interpretation.

SUMMARY: As part of its payments system risk reduction program, the Board is adopting an interpretation of its Policy Statement on Payments System Risk. Under the payments system risk reduction program, government-sponsored enterprises that maintain accounts at Reserve Banks should not incur daylight overdrafts in these accounts and are not permitted to adopt a positive daylight overdraft net debit cap. Furthermore, the Board interprets the Policy Statement on Payments System Risk to include government-sponsored enterprises under the policy on daylight overdraft fees. Until October 13, 1994, fees on daylight overdrafts in accounts of government-sponsored enterprises will be waived. A temporary exemption from daylight overdraft fees is granted for daylight overdrafts in principal and interest accounts of government-sponsored enterprises. This interpretation supports the Board's payments system risk reduction program by providing a comprehensive policy towards daylight overdrafts incurred by government-sponsored enterprises while at the same time recognizing the unique nature of the fiscal agency relationship between the Federal Reserve and these entities.

DATES: Effective April 28, 1994.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Marquardt, Assistant Director (202/452-2360), Paul Bettge, Manager (202/452-3174), Division of Reserve Bank Operations and Payment Systems; Stephanie Martin, Senior Attorney (202/452-3198), Legal Division; for the hearing impaired only: Telecommunications Device for the Deaf, Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION:

Background

The term "government-sponsored enterprise" (GSE) is generally used to refer to corporations chartered by Congress to perform certain financial market functions deemed to be in the public interest. These entities include, but are not limited to, the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), the Student Loan Marketing Association (Sallie Mae), and entities of the Federal Home Loan Bank System and the Farm Credit System. These GSEs are owned by private shareholders and their obligations are not guaranteed by the U.S. government.

Congress authorized the Reserve Banks to act as depositories, custodians, and fiscal agents for these entities. Under agreements with the GSEs, the

Reserve Banks issue and redeem the GSEs' debt and asset-backed securities over the Fedwire system, in addition to providing other payment services generally related to these fiscal agency services.

The Board's payments system risk (PSR) policies and guidelines have addressed daylight overdrafts by government-sponsored enterprises that maintain accounts with Federal Reserve Banks only in certain limited instances. In 1985, the Board determined that Federal Home Loan Banks should not be allowed a positive net debit cap and should be discouraged from incurring daylight overdrafts in their accounts with the Reserve Banks. In June 1986, the Board similarly determined that the Farm Credit System Banks should be discouraged from incurring overdrafts.

The Board has never addressed daylight overdrafts of other GSEs, including those for which the Reserve Banks act as fiscal agents in issuing and redeeming their securities. Further, when the Board approved in 1992 the policy of charging fees for daylight overdrafts beginning in April 1994, it did not address the question of whether GSEs would be subject to the fees. However, the policy did not exclude GSEs or any other class of account-holders from the fees.¹ In addition, in 1994, the Board adopted a penalty fee for daylight overdraft incurred by institutions that do not have regular discount window access, although GSEs were not included in this penalty fee policy.

The Federal Reserve is not obligated to provide intraday credit to the GSEs in the form of daylight overdrafts as part of its fiscal agency functions; indeed, the GSEs have generally agreed not to incur overdrafts in their accounts. However, many of the GSEs have nonetheless incurred daylight overdrafts. The Board believes that, with the advent of daylight overdraft fees for depository institutions on April 14, 1994, it is particularly important that the GSEs not be permitted unlimited free access to intraday Federal Reserve credit. Such access would represent a benefit not available to depository institutions and could serve to undermine the Board's payment system risk reduction program.

As a result, the Board interprets the Policy Statement on Payments System Risk to include GSEs under the policy on daylight overdraft fees. In addition, the Board has determined that a capital-based fee deductible, as permitted for

depository institutions, will not be permitted for the GSEs. These entities do not have regular access to the discount window and should not be permitted the same access to intraday credit as depository institutions. However, because a number of these entities have not been formally subject to the PSR policy in the past and have not previously been explicitly advised that daylight overdraft fees would apply to their accounts, the Board has determined that they should be afforded some period within which to make the necessary adjustments to their payment systems and practices. As a result, daylight overdraft fees for daylight overdrafts in GSEs' accounts will be waived until October 13, 1994.

Furthermore, the Board recognizes that, in large part, the GSEs' daylight overdrafts are related to regular payments of principal and interest (P&I) on securities that they issue through the Federal Reserve. These payments are initiated by the Reserve Banks, and the Federal Reserve's daylight overdraft posting rules specify that these payments will be made before 9:15 a.m. Eastern time. These posting times were primarily designed to grant depository institutions the benefit of P&I payments prior to debits being made to their accounts from their purchases of new issues of government securities. The GSEs typically do not fund debits to their accounts resulting from P&I payments until they issue new securities later in the day, causing daylight overdrafts in their Federal Reserve accounts.

To eliminate these daylight overdrafts, the Reserve Banks could delay making P&I payments on the GSEs' securities until sufficient funds were available in their accounts. This would likely require that the P&I payments be made later in the day. Delaying the P&I payments might increase the magnitude and duration of daylight overdrafts for the depository institutions that receive the corresponding credits.

For this reason, the Board is permitting a temporary exemption of overdrafts incurred in GSEs' P&I accounts (special accounts which are used only for the payment of principal and interest), until the potential benefits and drawbacks of shifting the timing of P&I payments can be analyzed. This analysis will be performed once the initial impact of daylight overdraft fees on depository institutions has been assessed. In addition, the Board has not ruled out future application of the daylight overdraft penalty fee to GSEs' daylight overdrafts.

¹ The Board's policy statement on daylight overdraft fees states that "each Reserve Bank will charge a fee for average daily daylight overdrafts in Federal Reserve accounts (emphasis added)."

Interpretation of the Policy Statement on Payments System Risk

Under the Board's payments system risk reduction program, government-sponsored enterprises that maintain accounts at Reserve Banks should not incur daylight overdrafts in these accounts and are not permitted to adopt a positive daylight overdraft net debit cap. Furthermore, the Board interprets the Policy Statement on Payments System Risk to include government-sponsored enterprises under the policy on daylight overdraft fees. A capital-based fee deductible is not permitted for government-sponsored enterprises. However, a temporary exemption from daylight overdraft fees is granted for daylight overdrafts in principal and interest accounts of government-sponsored enterprises. Fees on daylight overdrafts in accounts of government-sponsored enterprises will be waived until October 13, 1994.

By order of the Board of Governors of the Federal Reserve System, May 9, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94-11646 Filed 5-12-94; 8:45 am]

BILLING CODE 6210-01-P

Community First Financial Group, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has 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)).

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 to the Reserve Bank indicated for that application 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.

Comments regarding this application 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. *Community First Financial Group, Inc.*, English, Indiana; to acquire at least 17.50 percent of the voting shares of The New Washington State Bank, New Washington, Indiana.

Board of Governors of the Federal Reserve System, May 9, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94-11648 Filed 5-12-94; 8:45 am]

BILLING CODE 6210-01-F

First Bancshares of Texas, Inc.; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice 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 indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than June 2, 1994.

A. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *First Bancshares of Texas, Inc., Employee Stock Ownership Plan*, Tomball, Texas; to acquire 0.33 percent for a total of 19.57 percent of the voting shares of The First National Bank, Altanta, Texas, and thereby indirectly acquire The Hamilton National Bank, Hamilton, Texas, and Bank of Tyler, Tyler, Texas.

Board of Governors of the Federal Reserve System, May 9, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94-11649 Filed 5-12-94; 8:45 am]

BILLING CODE 6210-01-F

First Banks, 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 6, 1994.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First Banks, Inc.*, St. Louis, Missouri; to acquire St. Charles Federal Bancshares, Inc., St. Charles, Missouri, and thereby indirectly acquire St. Charles Federal Savings and Loan Association, St. Charles, Missouri, and thereby engage in acquiring and operating a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 9, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94-11650 Filed 5-12-94; 8:45 am]

BILLING CODE 6210-01-F

Shawmut National Corporation; Notice of Application to Engage *de novo* in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 2, 1994.

A. Federal Reserve Bank of Boston
(Robert M. Brady, Vice President) 600
Atlantic Avenue, Boston, Massachusetts
02106:

1. *Shawmut National Corporation*, Hartford, Connecticut; to expand the investment advisory activities of its subsidiary, *Shawmut Investment Advisers, Inc.*, Boston, Massachusetts, to include Canada. These activities are conducted pursuant to § 225.25(b)(4)(ii)-(v) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 9, 1994.

William W. Wiles,
Secretary of the Board.

[FR Doc. 94-11652 Filed 5-12-94; 8:45 am]

BILLING CODE 6210-01-F

GENERAL SERVICES ADMINISTRATION

Information Resources Management Service Federal Telecommunications Standards

ACTION: Notice of adoption of standards.

SUMMARY: The purpose of this notice is to announce the adoption of a family of Federal Telecommunications Standards (FED-STDs). FED-STD 1055, "Telecommunications: Interoperability Requirements for Meteor Burst Radio Communications Between Conventional Master and Remote Stations," FED-STD 1056, "Telecommunications: Interoperability Requirements for the Encryption of Meteor Burst Radio Communications," and FED-STD 1057, "Telecommunications: Interoperability Requirements for Meteor Burst Radio Communications Networks by Conventional Master Stations" are approved and will be published.

FOR FURTHER INFORMATION CONTACT: Mr. Robert T. Adair, Institute for Telecommunication Sciences, National Telecommunications and Information Administration, telephone (303) 497-3723.

SUPPLEMENTARY INFORMATION: (1) The General Services Administration (GSA) is responsible, under the provisions of the Federal Property and Administrative Services Act of 1949, as amended, for the Federal Standardization Program. On August 14, 1972, the Administrator of GSA designated the National Communications System (NCS) as the responsible agent for the development of telecommunications standards for interoperability of U.S. Government communications systems.

(2) On April 7, 1992, a notice was published in the *Federal Register* (57 FR 11731) that proposed FED-STD 1055 entitled "Telecommunications: Interoperability Requirements for Meteor Burst Radio Communications Between Conventional Master and Remote Stations"; FED-STD 1056 entitled "Telecommunications: Interoperability Requirements for the Encryption of Meteor Burst Radio Communications"; and FED-STD 1057 entitled "Telecommunications: Interoperability Requirements for Meteor Burst Radio Communications Between Networks by Conventional

Master Stations" were being proposed for Federal use and that comments were requested.

(3) The justification package as approved by the Deputy Assistant Secretary of Defense (Defense-wide C3), Office of the Assistant Secretary of Defense was presented to GSA by NCS with a recommendation for adoption of the standards. These data are a part of the public record and are available for inspection and copying at the Office of Technology and Standards, National Communications System, Washington, DC 20305-2010.

(4) A copy of each standard is provided as an attachment to this notice. Interested parties may purchase the standard from GSA, acting as agent for the Superintendent of Documents. Copies are for sale at the GSA Federal Supply Service Bureau (FSSB), Specifications Section, suite 8100, 490 East L'Enfant Plaza, SW., Washington, DC 20407; telephone (202) 755-0325.

Dated: April 13, 1994.

Francis A. McDonough,
Acting Commissioner.

Federal Standards 1055, 1056, and 1057 Telecommunications: Interoperability Requirements for Meteor Burst Communications

1. *Scope.* The terms and accompanying definitions contained in these standards are drawn from authoritative U.S. Government sources such as the Department of Defense and the National Telecommunications and Information Administration and several authoritative U.S. Government publications. The Meteor Burst Communications Subcommittee to the Federal Telecommunications Standards Committee (FTSC) has developed a family of technical specifications for use by systems that use meteor trails as the primary mechanism for communications.

1.2. *Applicability.* All Federal departments and agencies shall use Federal Standards FED-STD 1055, "Telecommunications: Interoperability Requirements for Meteor Burst Radio Communications Between Conventional Master and Remote Stations," FED-STD 1056, "Telecommunications: Interoperability Requirements for the Encryption of Meteor Burst Radio Communications," and FED-STD 1057, "Telecommunications: Interoperability Requirements for Meteor Burst Radio Communications Between Networks by Conventional Master Stations" in the design and procurement of all Meteor Burst Communication equipment to be used on Government authorized radio frequencies, except for (1) Equipment

used for remote sensing applications; (2) equipment employing spread spectrum modulation; (3) equipment that dynamically changes data rate during meteor trails. The use of these standards by all Federal departments and agencies is mandatory.

1.2. *Purpose.* The purpose of this standard is to improve the Federal acquisition process by providing Federal departments and agencies with a comprehensive, authoritative source for meteor burst communications.

2. *Requirements and Applicable Documents.* The radio characteristics, modulation, data rates, and message broadcast procedures and format defined in these standards are to be applied to the design and procurement of meteor burst communications equipment. These are a family of Federal Telecommunications Standards and each contains a list of other Federal standards that may be applicable to implementation of these standards.

3. *Use.* All Federal departments and agencies shall use these standards in the design and procurement of meteor burst communication equipment. Only after determining that a requirement is not included in these documents may other sources be used.

4. *Effective Date.* The use of these approved standards by U.S. Government departments and agencies is mandatory, effective 180 days following the publication date of this standard.

5. *Changes.* When a Federal department or agency considers that these standards do not provide for its essential needs, a statement citing inadequacies shall be sent in duplicate to the General Services Administration, Regulations Analysis Division (KMR), Washington, DC 20405, in accordance with the provisions of the Federal Information Resources Management Regulation, Subpart 201-20.3. The General Services Administration will determine the appropriate action to be taken and will notify the agency. Federal departments and agencies are encouraged to submit updates and corrections to these standards, which will be considered for the next revision of this standard. The General Services Administration has delegated the compilation of suggested changes to the National Communications System whose address is given below: Office of the Manager, National Communications System, Office of Technology and Standards, Washington, DC 20305-2010.

[FR Doc. 94-11308 Filed 5-12-94; 8:45 am]

BILLING CODE 6820-25-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

On Fridays, the Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following are those information collections recently submitted to OMB.

1. *Teenage Parent Demonstration Evaluation—Second Follow-Up—New—* The follow-up surveys of demonstration participants and control group members and assessments of their children will provide data critical to the comprehensive evaluation of the demonstration. The information will be used to document the demonstration's effectiveness in reducing long-term welfare dependency and promoting economic self-sufficiency. Respondents: Individuals or households. Burden Information for the Basic Questionnaire—*Total Number of Respondents:* 3,649; *Frequency of Response:* one time; *Average Burden per Response:* 50 minutes; *Estimated Annual Burden:* 3,029 hours.—*Burden Information for Child Assessment and Self-Administered Questionnaire—Total Number of Respondents:* 2,708; *Annual Frequency of Response:* one time; *Average Burden per Response:* 1.35 hours; *Estimated Annual Burden:* 3,656 hours.—*Total Burden:* 6,685 hours.

OMB Desk Officer: Allison Eydt. Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 619-0511. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: May 4, 1994.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 94-11546 Filed 5-12-94; 8:45 am]

BILLING CODE 4150-04-M

Administration on Aging

[Program Announcement No. AOA-94-2]

Fiscal Year 1994 Program Announcement; Availability of Funds and Request for Applications

AGENCY: Administration on Aging, HHS.

ACTION: Announcement of availability of funds and request for applications under the Administration on Aging's Discretionary Funds Program for research, demonstration, training, development, and related capacity-building activities.

SUMMARY: The Administration on Aging (AoA) announces its Fiscal Year (FY) 1994 Discretionary Funds Program (DFP) of knowledge building, program innovation and development, information dissemination, training, technical assistance, and related capacity-building efforts. The FY 1994 DFP is responsive to the major strategic initiatives of the Assistant Secretary for Aging and to specific mandates of the Older Americans Act, which focus on certain aging program areas and on the needs of vulnerable older population groups. Funding for AoA discretionary grants is authorized by Title IV of the Older Americans Act, Public Law 89-73, as amended.

This program announcement consists of three parts. Part I provides background information, discusses the purpose of the AoA Discretionary Funds Program, and documents its statutory funding authority. Part II describes the programmatic priorities under which AoA is inviting applications to be considered for funding. Part III 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 published as part of this announcement following Part III. No separate application kit is necessary for submitting an application. If you have a copy of this entire announcement, you have all the information and forms required to prepare and submit an application.

Grants will be made under this announcement subject to the availability of funds for the support of the priority area project activities described herein.

DATES: This announcement contains different deadline dates for the submission of applications, depending upon the priority area under which an application is submitted for competitive review and funding. For applications responding to one group of designated priority areas, the deadline date is July 12, 1994. For another group of specified

priority areas, the deadline for applications is October 7, 1994. One other priority area has multiple deadline dates. The potential applicant should check each priority area carefully to determine the deadline date for the application it intends to submit.

ADDRESSES: Application receipt point: U.S. 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-94-1.

FOR FURTHER INFORMATION CONTACT: Department of Health and Human Services, Administration on Aging, Office of Program Development, 330 Independence Avenue, SW., room 4278, Washington, DC 20201, telephone (202) 619-0441.

SUPPLEMENTARY INFORMATION:

Part I. Background

A. The Challenges of an Aging Society

According to the National Center for Health Statistics, life expectancy at birth for Americans in 1991 rose to a record 75.5 years. The Census Bureau predicts that by the year 2020 the average life expectancy will be 82 years for women and 74.2 years for men. At the turn of the century, only 4 percent of the American population was 65 and over. By 1990, it was 12 percent. Beginning in approximately 15 years, the percentage is projected to increase rapidly to 20 percent and then to increase slowly to about 21% by 2050 and 22% by 2060. By the year 2030, there will be more people age 65 and older than young people under age 15 in the population.

The baby boom generation, which will begin to reach retirement age in little more than a decade, now represents the largest age segment of the U.S. population, numbering approximately 75 million. The current older population, already noted for its heterogeneity, will be significantly more diverse with the aging of the baby boomers in the early decades of the 21st century. The great increase in the numbers and the diversity of the elderly, combined with dramatically different lifestyle changes, such as four-generation households and more women serving in both caregiving roles and the work force, are all important factors to consider in planning for an aging society.

If the Nation is to be well prepared for the burgeoning numbers of older persons at the turn of the century, and to be equally well equipped to take advantage of the opportunities those changes provide—and not be daunted

by the hard challenges—then today we must grasp the basic implications of an aging society, and act on the basis of those realizations. Our Nation has many different policies and agencies that impact on what people may or may not do when they retire. Although the Department of Health and Human Services provides the bulk of public financing for programs and benefits that directly or indirectly affect older persons, almost every federal agency is involved in providing services to older persons including the Departments of Housing and Urban Development, Transportation, Justice, Agriculture, Labor, Defense, Energy and Treasury. By creating the position of Assistant Secretary for Aging, the President and the Secretary of the Department Health and Human Services have provided a focal point for aging policy, whereby the disparate program responsibilities of federal government agencies can be linked into a more coherent vision of what is needed for an aging society.

B. Older Americans Act Responsibilities of the Assistant Secretary for Aging and the Administration on Aging

The Older Americans Act of 1965, as amended, is designed to provide assistance in the development of new or improved programs to help older persons, through grants to the States and tribal organizations for community planning and services and for research, demonstration and training projects. Through the Act, the Congress has declared that it is the responsibility of the Federal government, the States and Native American tribal organizations to assist older people as they endeavor to secure an adequate retirement income, the best possible physical or mental health services, suitable housing, long term care services, employment opportunities and participation in a wide range of civic, cultural, educational and recreational activities.

Title II of the Act declares, further, that it is the responsibility of the Assistant Secretary for Aging to serve as the effective and visible advocate for older individuals within the Department of Health and Human Services and with other departments, agencies, and instrumentalities of the Federal Government. Under Title II, the Assistant Secretary is charged with directly assisting the Secretary of Health and Human Services in all matters pertaining to problems of the aged and aging and with the responsibility to administer the formula and discretionary grant programs authorized by Congress under Titles III, IV, VI and VII of the Act.

1. The AoA Discretionary Funds Program

The Discretionary Funds Program authorized by Title IV of the Act constitutes the major research, demonstration, training and development effort of the Administration on Aging. Through this Title IV Program Announcement, the Assistant Secretary for Aging intends to draw special attention to the Discretionary Funds Program as an essential mechanism for: (a) improving programs and services to the elderly; (b) emphasizing several major initiatives that respond directly to the current and future challenges and opportunities of an aging society, and; (c) carrying out his responsibilities as a chief advocate for older persons.

The Title IV mandate is aimed, generally, at building knowledge, developing innovative model programs, and training personnel for service in the field of aging, and matching these resources to the changing needs of older persons and their families in the coming decades. AoA's research, demonstrations, training and other discretionary projects are focused on:

- Advancing our knowledge and understanding of current program and policy issues, such as community and in-home long-term care service systems and programs, significant to the well-being of the older population;
- Improving the effectiveness of Older Americans Act programs by testing new models, systems, and approaches for better providing and delivering services to older persons; and providing training, technical assistance, and information that will increase our ability to serve older Americans with skill, care, and compassion.

2. Coordination With Other Federal Agencies

In accordance with Title II of the Older Americans Act, the Assistant Secretary for Aging and the Administration on Aging (AoA) function as focal points within the Federal government for aging-related concerns. In that capacity, the Assistant Secretary advises the Secretary of Health and Human Services on matters affecting older Americans and provides consultation and information to units across the Federal government on the characteristics, circumstances, and needs of older persons. AoA has a strong commitment to working with other Federal agencies on policy and program development in issue areas of importance to older Americans. To carry out its national level program and advocacy responsibilities, AoA places

major emphasis on developing collaborative relationships with other Federal agencies aimed at coordinating diverse and wide-ranging Federal program resources and linking those resources to the similarly diverse needs of older persons.

Dating back two decades, AoA has worked hard to develop and implement a network of Federal Interagency Agreements to better serve older Americans, combining our resources with those of the Departments of Transportation, Housing and Urban Development, Labor, and Education, the Farmers Home Administration, and the Corporation for National and Community Service (formerly ACTION), as well as with other agencies within the Department of Health and Human Services, such as the Social Security Administration, the Health Care Financing Administration, the Administration for Children and Families, and the Public Health Service, including the National Institute on Aging.

These interagency collaborations represent a strategic coupling of AoA's resources to serve the nation's elderly, especially those at risk of losing their independence. AoA's Federal Interagency Agreements cover a spectrum of program efforts—in housing, transportation, health promotion, elder abuse, etc.—that closely parallel a number of the priority areas in this Discretionary Funds Program Announcement.

3. Dissemination of Title IV Project Results and Products

In keeping with the provisions of the Older Americans Act, all projects funded under Title IV are required to undertake vigorous steps to disseminate the results and products of their projects to appropriate audiences involved in promoting the well-being of older persons. This should include energetic marketing of products and results. Projects are strongly encouraged to utilize appropriate promotional media campaigns in order to insure that their outcomes receive the widest possible attention. Such campaigns should seek to educate consumers, providers (including the Aging Network), the private sector, and policy sector about their results and to promote use of their products. A special priority area in this Program Announcement further emphasizes the importance of dissemination and utilization of Title IV project findings, products, and results.

As described below in Part III, Section I.2, the most effective dissemination begins at the moment a project is conceptualized and includes the

involvement of potential user audiences throughout the project, particularly in the design of products. As part of their dissemination plan, applicants are also encouraged to consider the development, as appropriate, of brief products suitable for widespread dissemination to older persons, their families and other caregivers, and practitioners who serve older persons. Advice on ways to maximize the utilization of a proposed project may be obtained by contacting Saadia Greenberg at the AoA Office of Dissemination and Utilization at (202) 619-0441. Applicants may also be interested in obtaining a publication entitled, *Dissemination by Design*, which may be requested by calling the above number.

C. Major Strategic Initiatives

The Secretary of Health and Human Services has charged the Assistant Secretary for Aging with lead responsibility within the Department for four major strategic initiatives—home and community-based long-term care; older women; an aging blueprint for future generations; and nutrition and malnutrition. These initiatives are in concert with the Older Americans Act mandate to develop new and improved programs to help older persons. Through this Program Announcement, the Assistant Secretary is focusing Title IV Discretionary Funds support on each of these initiatives. (Full descriptions of the initiatives are available by contacting the Office of Program Development, Administration on Aging at 202-619-0441).

1. Home and Community Based Long Term Care

The home and community-based long-term care initiative responds to the central concern that persons with chronic illnesses and disabilities have the resources to live independently in their homes and communities as long as possible. One critical issue now being debated is how we can best ensure that government at all levels works in a more efficient and effective manner to help meet that concern. To focus attention on this and other key issues affecting home and community-based long-term care, the Assistant Secretary for Aging and the Administration on Aging convened a Health Care University in January 1994. The Health Care University provided a forum for (1) outlining the Assistant Secretary's home and community-based long-term care initiative; (2) encouraging the participants (including community, state, Tribal, and national organizations, agencies, and officials) to better

understand and fully discuss the Health Security Act legislation proposed by the President, and; (3) providing preliminary findings of the AoA home and community-based long-term care survey.

The home and community-based long term care initiative will focus on building a comprehensive policy on long-term care for all persons who need services, with a special emphasis on the elderly. Surveys show that older people overwhelmingly prefer to live in their own homes and communities, rather than in institutional settings, but many need home and community-based services to do so. Approximately 6.1 million older people living in the community experience difficulty with one or more activities of daily living such as eating, bathing, dressing, toileting, or transferring in or out of bed. However, less than half of these individuals receive any personal help. Through this Discretionary Funds Program (DFP) Announcement, AoA will provide leadership for the continued development of consumer-driven home and community-based systems of care.

2. Older Women

Efforts to improve the quality of life for America's older women comprise another of the Assistant Secretary's initiatives upon which this DFP Announcement will focus. Women comprise 60 percent of today's 65 plus population. Today, there are 18.3 million women, as compared to 12.6 older men. By the year 2000, it is expected that there will be five women for every two men over the age of 75. The special circumstances faced by older women are frequently overlooked. Almost three-quarters of all elderly persons living below poverty are women. Poverty is projected to be an even greater problem for women when the baby boom generation reaches retirement.

Although women live longer than men, the quality of their lives often deteriorates substantially in the later years due to illnesses, chronic conditions, falls and other injuries, and stresses of caregiving or of living alone. Some physical conditions which typically affect older women can be prevented if they are encouraged to adopt healthier lifestyles in the late middle years.

The Administration on Aging recognizes the need for a highly visible, well-coordinated effort which, through outreach, education, dissemination, advocacy and partnership-building, will focus on critical issues affecting older women including income security,

health, caregiving and housing. The older women's initiative will work to enhance the capacity of the Aging Network to effectively address older women's issues and explore the feasibility of developing intradepartmental and interagency partnerships to address the needs of older women. It will also endeavor to educate older women at the grass roots/local level, as well as the public and private sectors, about issues affecting older women; and reinforce the capacity of women to make significant contributions to society throughout the life cycle.

3. Nutrition and Malnutrition

The nutrition and malnutrition initiative of the Assistant Secretary will address the critical problem of malnutrition among the elderly. Recent surveys show that alarming numbers of older Americans are malnourished. At the same time, because of medical advances and the availability of community-based services, such as home delivered meals, more older persons have been able to remain independent and in their own homes, rather than having to be institutionalized. The Administration on Aging's nutrition and malnutrition initiative will focus attention on educating the public and private sectors to the growing problem of malnutrition, and finding ways to prevent its occurrence. As part of that effort, AoA is now supporting a synthesis of current knowledge concerning the nutritional status of older persons, as well as an analysis of public awareness of the issues of nutrition and malnutrition among the elderly.

The Administration on Aging will also focus its nutrition and malnutrition initiative on the current in-home and congregate meals programs supported under Title III and Title VI of the Older Americans Act. Key goals are: 1) increasing public awareness regarding the issues of adequate nutrition, malnutrition, hunger, and food insecurity and their interrelationships to health, independence, and quality of life of older individuals; 2) providing leadership in promoting a nutrition agenda for the future; 3) developing and promoting direct prevention and intervention strategies to enhance the nutritional status of older people, and; 4) developing integrated public policies to ensure greater access to appropriate food and nutrition services for older individuals. In support of these essential components of the nutrition and malnutrition initiative, the Assistant Secretary for Aging is investing approximately \$2.8 million

dollars in an evaluation of the National Nutrition Program for the Elderly funded under Title III of the Older Americans Act. A contract to perform the evaluation has been awarded to Mathematica Policy Research, Inc., of Princeton, N.J.

4. Blueprint for an Aging Society

Another major AoA initiative that the Program Announcement will address is development of a blueprint for how the Nation can and should now prepare for the retirement of future generations, particularly the baby-boom generation. As society ages, and the first of the baby boom generation reaches retirement age in the next decade, we must begin to plan for the impact that this aging cohort, and those following, will have on our society. Significant increases in the numbers and diversity of older persons, the complexity of claims on resources being made between generations, dramatically different lifestyle changes such as four generation households and more women serving in both caregiving roles and the work force—these are among the critical factors that must be addressed in planning for an aging society. In addition, society must learn to recognize that active and productive retirement is the norm.

In determining how best to address the needs of our aging society, we must examine not only the economic implications, but the social implications as well. The Blueprint will outline a framework for responding to the issues of future retirees by examining the aging of the baby boom cohort from a wide perspective, including issues such as the role of health and long-term care; the importance of supportive services such as housing and transportation; lifestyle choices and individual responsibility; the impact of demographic changes on family and social structures; diversity issues; and the economic realities of an aging society. This conceptual framework will assist the federal government in sorting out the options available to promote a more coordinated approach to our aging society.

Addressing the aging of society from this broad framework necessitates that we explore ways of working both within and outside of the Department of Health and Human Services to address these critical issues. The role of the Administration on Aging would include mounting an education campaign around savings and thrift issues, as well as physical fitness and health promotion. This education campaign would have as its focus making society aware of the opportunities and choices

available to older persons to remain productive and active citizens, as well as the contributions seniors make to this country.

D. Other Older Americans Act Mandates

Other areas of emphasis in this Title IV Discretionary Funds Program Announcement derive from certain specific mandates of the Older Americans Act, which concentrate discretionary funding resources on making specific aging programs more effective and on better serving vulnerable population groups. The priority program areas (in addition to long term care, nutrition, older women, and a future aging society) include multigenerational and intergenerational programs, volunteerism, and minority aging.

E. Technical Assistance Workshops for Prospective Applicants

Workshops will be held in Washington, D.C. and several other cities to provide guidance and technical assistance to prospective applicants. Please call the appropriate AoA contact person for the time and location of the workshop you are interested in attending.

City	AoA Contact Person(s)
Washington, D.C.	Alfred Duncker/ Saadia Greenberg, Albert Byrd/Irma Tetzloff, (202) 619- 0441.
Boston, Massachu- setts.	Thomas Hooker, (617) 565-1158.
New York, New York .	Judith Rackmill, (212) 264-2976.
Philadelphia, Penn- sylvania.	Paul E. Ertel, Jr., (215) 596-6891.
Atlanta, Georgia	Franklin Nicholson, (404) 331-5900.
Chicago, Illinois	Eli Lipschultz, (312) 353-3141.
Dallas, Texas	John Diaz, (214) 767-2971.
Kansas City, Missouri	Larry Brewster, (816) 374-6015.
Denver, Colorado	Percy Devine, (303) 844-2951.
San Francisco, Cali- fornia.	Frank Cardenas, (415) 556-6003.
Seattle, Washington ..	Chisato Kawabori, (206) 553-5341.

F. Statutory Authority

The statutory authority for awards made under the AoA Discretionary Funds Program is contained in Title II and Title IV of the Older Americans Act, (42 U.S.C. 3001 et seq.), as amended by the Older American Act Amendments of 1992, Pub.L.102-375, September 30, 1992.

G. Public Comments on this Announcement

AoA invites comments on this Discretionary Funds Program Announcement. In addition, because the field of aging is characterized by rapidly unfolding events, new data, findings and interpretations, and a diversity of issues important to older people, the Administration on Aging is considering the publication of two Discretionary Funds Program Announcements in Fiscal Year 1995, in early Winter and late Spring. We invite comments on that possibility as well. Please direct your comments to: Office of Program Development, Administration on Aging, 330 Independence Avenue, S.W., Washington, D.C. 20201.

Part II—Priority Areas

Part II of the Discretionary Funds Program (DFP) Announcement sets forth the priority areas under which applications will be considered for funding by the Administration on Aging. Part II also provides general guidelines concerning eligible applicants as well as project costs and duration. More specific instructions regarding eligibility, the federal share of project costs, project duration, and deadline dates for the submission of applications may be found under the individual priority areas.

Applications must be directly and explicitly responsive to the expressed concerns of the particular priority area under which they are submitted.

A. Eligible Applicants

As a general rule, any public or nonprofit agency, organization, or institution is eligible to apply under this Discretionary Funds Program Announcement. Where there are exceptions to this rule, they are specified in the appropriate priority area description. The Administration on Aging will not consider grant applications from individuals because they are ineligible to receive a grant award under the provisions of Title IV of the Older Americans Act. For-profit organizations are not eligible applicants, but may participate as subgrantees or subcontractors to eligible public or nonprofit agencies.

Any nonprofit organization applying under this program announcement 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.

B. Project Costs and Duration

Under each priority area, AoA has estimated the number of projects to be funded and offered guidelines regarding both the duration of those projects and the anticipated federal share of project costs. Because applications are reviewed on a competitive basis within priority areas, they are expected to be comparable in terms of cost and duration. Therefore, applicants are strongly urged to adhere to those guidelines.

C. Projects Funded Under Cooperative Agreement Awards

Under certain priority areas, AoA has indicated it will use the mechanism of the cooperative agreement in making awards. Under the cooperative agreement mechanism, AoA and each project grantee will share responsibility for managing that project.

The grantee organization will have the primary responsibility for developing and implementing the activities of the project. AoA will join with the grantee in deciding the major issues to be addressed by the project; use periodic briefings and ongoing consultation to share with the grantee its knowledge of the issues being addressed by the project as well as information about relevant activities being undertaken by others; provide feedback to the grantee about the usefulness to the field of its written products and information sharing activities; and participate as much as possible in the deliberations of the project advisory committee. The details of this relationship will be set forth in the cooperative agreement to be developed and signed by AoA and the prospective grantee prior to the issuance of the award.

D. List of Priority Areas

(1) Home and Community-Based Long Term Care

- 1.1 Consumer Participation in Home and Community Based Care
- 1.2 Capacity Building and Mentoring Program in Home and Community Based Care
- 1.3 Aging and Disability: Models for Coordinated Service Systems
- 1.4 Employment of Public Assistance Recipients in Home Care
- 1.5 National Long Term Care Policy and Resource Center on Housing and Supportive Services
- 1.6 Eldercare Locator

(2) Older Women

- 2.1 National Policy and Resource Center on Older Women
- 2.2 Protecting Older Women Against Domestic Violence

(3) Nutrition and Malnutrition Among the Elderly

3.1 National Policy and Resource Center on Nutrition and Aging

(4) Blueprint for An Aging Society

4.1 National Academy on Aging

(5) Other Older Americans Act Mandates

5.1 Responding to the Needs of Minority Elderly through National Minority Aging Organizations

5.2 National Volunteer Senior Aides/Family Friends Projects

5.3 Volunteer Service Credit Demonstrations

5.4 AoA Dissemination Projects

5.5 Field-Initiated Project Applications

(1) Home and Community-Based Long Term Care

1.1 Consumer Participation in Home and Community Based Care

To develop effective and efficient systems of home and community based care (HCBC), States must promote the informed participation of consumers in the planning, development and delivery of services. For consumers to have meaningful input, they need information and better organization. Consumers need to be informed about the complex issues relating to governance and management of the HCBC system, including linkages with the institutional and acute care systems; resource allocation and cost controls; access to services, including eligibility, assessment, and care planning and coordination; and the scope, organization and quality of services. This information should serve to empower consumers to become partners in the planning and implementation of state and community HCBC systems.

Of critical importance is the mobilization and organization of consumers at state and community levels. Effective input into systems development and implementation can be achieved only through the collaboration of individuals and interest groups at all levels within the State. Collective action by consumers, based on sound information, will result in consumer-driven HCBC which is available, accessible and appropriate in relation to defined needs within allocated resources.

The Administration on Aging is interested in receiving applications for conducting statewide demonstration projects resulting in replicable models of consumer involvement in the design, development, and implementation of home and community based care systems. Such models of consumer-

driven HCBC may be targeted to the elderly, or to the elderly in concert with other target populations (e.g. persons with disabilities).

Proposed projects should emphasize empowering individuals and groups at state and community levels to participate in the development of consumer-driven systems of home and community-based care. Applicants must identify the resources and mechanisms for developing and disseminating information, and for the mobilization and organization of individuals and groups to impact on HCBC policy, programs and services. Applicants should also focus on the development and implementation of mechanisms that would allow formal consumer input. Applications should address how proposed strategies will be targeted or modified to reach special populations such as low income and minority individuals and residents of rural areas. Innovative approaches are highly encouraged.

Proposals are invited from public and private non-profit organizations with demonstrated experience in representing and serving consumers of home and community based care. The Administration on Aging plans to make 4-6 awards with an approximate federal share of \$125,000 per year for an estimated project period of two (2) years. The *deadline date* for applications under this priority area is July 12, 1994.

1.2 Capacity Building and Mentoring Program in Home and Community Based Care

In the absence of a cohesive federal policy on long-term care, States have been in the forefront of developing home and community-based care infrastructures. The staff of certain State Agencies on Aging and Area Agencies on Aging have significant knowledge and experience in the design, promotion, and implementation of home and community based systems. At the same time, the development of state systems has been an uneven process, with some States having achieved comprehensive statewide programs of home and community-based care while others are just now beginning.

As highlighted in Part I of this Announcement, home and community based care is one of the Assistant Secretary for Aging's priorities. In the past, the Administration on Aging has funded substantial demonstration and research projects in this area and continues to do so. However, an understanding of, and experience in, the development of state home and community based care infrastructures

constitute a unique body of knowledge. It encompasses creating systems to assure quality of care, maximizing consumer choice and participation, developing financing mechanisms and budgetary systems, and understanding the pertinent policy environment. AoA's 1993 Home and Community Based Care Survey of all fifty States documented a variety of technical assistance and capacity-building needs in these areas.

Although research can identify critical issues and evaluate alternatives, it seldom addresses the practical, hands-on decisions that accompany the design and establishment of a statewide system. The definitive textbook or curriculum on how to build state home and community-based care infrastructures has yet to emerge. This priority area is based on the conviction that AoA can best facilitate the development of state home and community based infrastructures by supporting the exchange of accumulated knowledge, expertise, and hard-earned lessons. Accordingly, AoA is soliciting applications to design and administer a capacity-building/mentoring program in home and community based care.

The goal of the capacity-building/mentoring program is to assist States in the development of home and community-based care infrastructure by: (1) using the expertise and knowledge of State and Area Agency on Aging staff who have demonstrated leadership in creating innovative systems in their States; (2) drawing from other pertinent areas of knowledge and experience (e.g. the establishment of Medicaid waiver programs, Independent Living Centers, etc.) and; (3) providing peer consultation to States whose leadership has a commitment to improving their state system and recognizes the need for technical assistance.

Applicants must present an overall agenda and set of activities/approaches for conducting the project over a three year period, as well as provide a detailed first year plan for how the capacity-building/mentoring program will be developed, organized, and implemented. Applications must specify the mechanisms that the applicant intends to use to promote the hands-on exchange of expertise and peer consultation. These mechanisms could include but are not limited to sabbaticals, conferences, partial placement, on-site job placement, intergovernmental transfers, and other innovative techniques. Applicants should bear in mind that in order to accommodate both the needs of States receiving peer consultation and of those providing peer consultation, multiple approaches or mechanisms will most

likely be needed. In justifying their proposed courses of action, applicants should also demonstrate how these activities are designed to maximize the funds available to accomplish the stated goals.

AoA expects to fund one capacity-building/mentoring program in home and community based care with a federal share of approximately \$300,000 per year for three years. The *deadline date* for submitting applications under this priority area is October 7, 1994. Any public or private non-profit agency or organization is eligible to apply. However, the applicant must have extensive knowledge of home and community-based care systems and the ability to identify key capacity-building needs regarding state infrastructure, to select and recruit exemplary State and Area Agency on Aging staff to provide peer consultation, to match States with the appropriate peer consultants, and to coordinate all arrangements.

The applicant selected will be awarded a Cooperative Agreement for a three-year project period. AoA and the organization/institution selected will work cooperatively to design and implement the capacity-building/mentoring project. Each year AoA and the grantee will negotiate a scope of work with relevant time tables and objectives. The project shall have a director with an appropriate background and qualifications relevant to aging and disability, long term care, systems development, and policy studies who shall devote a minimum of 50% of his/her time to this position.

1.3 Aging and Disability: Models for Coordinated Service Systems

The ongoing debate about health care reform, long term care and disability are clear indicators of the need for the aging, disability and rehabilitation communities to work more closely together. The Administration on Aging seeks proposals from State and Area Agencies on Aging, State agencies serving the disabled, Tribal organizations, and national organizations and providers to examine the issues and establish models relating to the coordination of services for the frail elderly and the disabled, a promising recent development in several state systems.

Over the past few years, the Administration on Aging has established working relationships with organizations such as the Administration on Developmental Disabilities and the National Institute for Disability and Rehabilitation Research of the Department of Education to better serve older adults

with disabilities and their families. This priority area will extend these ties to the grass roots, state and local levels.

A recent analysis of information from State Agencies on Aging indicates that at least eighteen State Aging Agencies have some policy or program management responsibility for the disabled. The Administration on Aging wishes to further explore potential opportunities for interaction, coordination and joint partnerships between the aging network and the disability community.

Proposals submitted under this priority area relate to the development of a coordinated service system. Proposals must include evidence of collaboration between the aging community and network of organizations serving the disabled. Joint applications may be submitted.

Coordinated Service Systems

There seems to be a fairly common assumption that specific programs for the disabled and the elderly, which were established under separate legislation, are quite different from each other even though the policy objectives for the two target groups have some similarities. Programs for the elderly promote maximum independence through access to a comprehensive, community based service delivery system. Programs for the disabled place high value on enhancing personal autonomy, promoting consumer choice and supporting independence.

An examination of the similarities between the two programs raises speculation regarding "turf" issues and the legislative mandates regarding advocacy for the two constituent groups. In the interest of making programs more responsive and cost effective, a very different environment exists for strategizing about how to use available resources more effectively. The aging network preference for a "non-medical" model of home and community based long term care may raise some concern as to whether clients of the two programs have comparable needs. Some may view programs for the disabled as too closely tied to the medical or health care system. Another factor in this equation is how will an aging disabled population, which benefitted from rehabilitation programs initiated in the 1970s, affect demand for aging services as the disabled grow older.

Applications funded under this section should result in the development of effective and innovative models which demonstrate linkage of the aging and disability networks. These models can build on existing models that have been successfully

implemented by public and private organizations at the national, state and local levels. Projects may focus on various aspects of systems development such as access/care coordination, quality assurance, management of home and community based care, interagency coordination and the financing mechanisms employed by the two different groups.

In developing new models, successful applicants will seek the advice, input and cooperation of experts and practitioners in the aging and disability fields. Program activities may include conferences, work groups for the design of new approaches, and development of issue papers. Applications should include provision for wide dissemination of the new model and a plan for marketing the model to others in a manner which actively encourages and facilitates opportunities for replication.

Under this priority area, AoA expects to make approximately 4-6 awards with a federal share of up to \$150,000 each year for a period of approximately three years. The deadline date for submitting applications under this priority area is July 12, 1994.

1.4 Employment of Public Assistance Recipients in Home Care

Home care remains one of the fastest growing workforce areas in today's economy. This growth will only increase as the emphasis on home and community based long term care continues, especially if provisions for such care are included in a health care reform bill approved by the Congress. However, shortages of home care workers affect the access older and disabled persons have to needed care, as well as the continuity and quality of care they receive.

This priority area addresses the need for demonstrating approaches to increasing the size and stability of the home care workforce by employing public assistance recipients, a group of persons typically outside the workforce. It also reflects the Administration's commitment under proposed welfare reform to foster gainful work for those caught in the current welfare system.

Many past efforts to employ persons on welfare in the home care workforce have been unsuccessful. A major deterrent has been the perception—and in some States the reality—that welfare payments and Medicaid benefits exceed the wages and benefits offered by the home care industry. This priority area is intended to demonstrate that this deterrent and others can be overcome by replicating existing, proven approaches or developing new approaches for

employing welfare recipients in home care.

Examples of existing approaches that merit consideration for replication are described below. Information on these programs is available by calling the Office of Program Development at 202-619-0441.

- Denver Department of Social Services (DSS) project "Apprenticeships for Health Services Paraprofessionals"—This approach, funded two years ago by AoA, successfully trained, placed, and provided initial career advancement ladders for Aid to Families with Dependent Children (AFDC) recipients in nursing aide/home health aide positions. This was done in collaboration with the Department of Health and Human Services' Job Opportunities and Basic Skills (JOBS) program and the Department of Labor's first successful nurses assistant/home health aide apprenticeship program. One key to the success of the Denver project was creative mixing of Title IV discretionary funding with those of others available in the community, e.g. Job Training Partnership Act (JTPA), JOBS, and adult education, etc. The project also featured careful participant screening, extensive case management, mentoring, and supportive services, one year of training, internships, and apprenticeships resulting in an apprenticeship certification, guaranteed jobs and benefits, and guidance in future career paths.

- Cooperative Home Care Associates (CHCA)—The CHCA program was established in the South Bronx in 1985 as a worker-owned cooperative that allows employees to participate in decision making about all aspects of the organization. They primarily train and employ single mothers who have previously been on welfare. After new employees complete a trial period, they can become worker-owners by pledging a member-equity investment, which can be deducted from weekly pay. The agency's wages are among the highest in the home care industry and the agency provides raises based on seniority. All employees receive health insurance, paid vacation, and sick time. The agency has provided funding for senior paraprofessionals to become LPNs. The annual turnover is less than 20 percent, far below the industry average.

This priority area is designed to replicate and/or adapt the proven experiences of projects like those described above to new settings, or to demonstrate other innovative and promising approaches to employ public assistance recipients in home care programs. It is not intended to support the expansion of existing programs.

Proposals shall contain an evaluation component that effectively measures project outcomes, particularly in terms of employment, wages and benefits received, retention, and reduction in welfare benefits. Project findings should demonstrate a program approach that will be of use to State and Area Agencies on Aging, local employment, social service, and other service agencies around the country. The proposal should contain a nationwide effort to disseminate project results to the aging network and other relevant agencies and organizations.

State and Area Agencies on Aging, Tribal organizations, and other public and private non-profit organizations, institutions and agencies are eligible to submit an application under this priority area. As appropriate, applications should be developed in consultation with State and Area Agencies on Aging. The deadline date for submitting applications under this priority area is October 7, 1994. AoA intends to make approximately 2-3 awards under this priority area with a federal share of approximately \$150,000 per year for a project period of two years.

1.5 National Long Term Care Policy and Resource Center for Housing and Supportive Services

As the nation engages in a debate to develop a national long term care strategy, it is important to recognize that a successful strategy must include choices for a wide range of housing options to serve as an alternative to institutionalization. For several reasons, among them the high likelihood that it can and does function as a service delivery point, housing is a significant factor which can affect how long term care home and community based services are delivered and financed. Too frequently, the significance of housing options and living arrangements have not been taken into sufficient consideration in attempts to develop comprehensive, coordinated long term care systems.

Over the past several years AoA has supported a number of initiatives to expand elderly housing options. Our goal has been to increase the capacity of the aging network to work with other networks such as housing, finance, real estate, homebuilders, etc., and provide public education and information to the elderly and their families to make informed decisions about their housing choices. Important programmatic initiatives were launched in home equity conversion, shared housing, consumer housing information services, supportive services in federally assisted

housing, accessory apartments, land use and zoning, home modifications and models for State Agency on Aging leadership roles in federally assisted housing. AoA has worked in partnership with other organizations, such as the Robert Wood Johnson Foundation, to implement major initiatives in elderly housing.

Despite these many program efforts elderly housing continues to be a complex subject which requires ongoing attention. It involves numerous levels of government and many public and private agencies. Because of the complexity of the subject it has been difficult for the aging network and others to develop comprehensive and coordinated approaches. Program development has been inhibited by a lack of up-to-date information, knowledge, expertise, and resources.

Because housing and supportive services are vital and integral components of home and community based long term care services, this priority area seeks to establish a National Long Term Care Policy and Resource Center for Housing and Supportive Services. The Center's mission is to provide a focal point for the development of long term care home and community based services specializing in elderly housing and supportive services. In particular, applicants must demonstrate an awareness of the special housing needs of older women, minorities and elderly residents of public housing. Applicants must propose a strategy for addressing these issues and incorporating specific activities into their applications.

In September of 1993, the Administration on Aging, pursuant to Section 407 of the Older Americans Act Amendments of 1992, funded four applications to establish and operate National Resource Centers for Long Term Care. The Centers are responsible for conducting research, disseminating information, and providing training and technical assistance aimed at improving national, state, and local programs for the provision of home and community based long term care. The proposed National Long Term Care Policy and Resource Center for Housing and Supportive Services will complement and coordinate its efforts with the four current Centers, together constituting a broad, multifaceted source of knowledge, information, training, and technical assistance to national, state, and local organizations and agencies working to build a comprehensive, accessible, and effective long term care system.

The Center will support State and Area Agencies on Aging as they promote

the development of community based systems of services for older persons throughout their State. The Center will also assist AoA to develop successful strategies and approaches for coordinating program efforts with those programs administered by the Department of Housing and Urban Development that affect housing for the elderly and disabled.

The Center will focus its efforts on analyzing and synthesizing available knowledge; putting it in a format which is useful to planners, practitioners, and others; conducting training based upon it; and promoting the dissemination and utilization of this knowledge in efforts to expand housing options and supportive services for older persons. Special emphasis is to be placed upon those activities which support improved and close coordination between Older Americans Act programs and programs under the jurisdiction of the Department of Housing and Urban Development. This special emphasis should aid State and Area Agencies in gaining timely information about new legislative and policy issues related to federal housing programs. In addition, the following activities should be undertaken on a national scope:

1. Training and technical assistance to help agencies in the Aging Network and other organizations and agencies working in the field of long term care on policy and practice issues through such means as telephone consultation, written products and materials, teleconferencing, workshops, and conference presentations.

2. Public education and information dissemination that will result in effective sharing of the latest thinking, methods and findings with State Agencies on Aging, Area Agencies on Aging, legislative officials, service providers, researchers, educators, and the public. Applicants are encouraged to develop innovative media and marketing approaches to reaching elderly consumers and to targeting special audiences and key decision makers.

3. Knowledge building and policy analysis oriented toward results and products which have practical application and immediate use to those working on housing and supportive services, e.g., the development and/or modeling of a useful instrument or tool; preparation of educational, practice, and technical assistance materials; an analysis of key issues of concern relative to a particular subject. Applicants should have the capacity to meet the need for short-term policy analysis on topics relating to housing, supportive services, and long term care. Based on

a high level of knowledge and information synthesis, applicants should propose possible subjects for policy analysis but also demonstrate that they possess the capacity to respond flexibly and quickly to such needs.

Any public or nonprofit agency, organization, or institution is eligible to apply under this priority area. However, to merit serious consideration, an applicant must demonstrate that it has (1) extensive knowledge and experience in the area of housing and supportive services, (2) a record of relevant achievement in this area, and (3) the requisite organizational capability to carry out the activities of a Resource Center on a nationwide scale. AoA and the organization/institution selected to serve as the National Long Term Care Policy and Resource Center for Housing and Supportive Services will work cooperatively in the development of its scope of work and agenda of major events and activities. (However, applicants are expected to propose an agenda for the first and subsequent years based on their assessment of salient issues). The National Long Term Care Policy and Resource Center for Housing and Supportive Services shall have a Director with an appropriate background and qualifications in aging and policy studies who shall devote a minimum of 50% of her/his time to this position.

AoA expects to fund the National Long Term Care Policy and Resource Center for Housing and Supportive Services through a cooperative agreement award for a period of three years. The federal share of Center project costs will be \$300,000 for year one and \$400,000 per year for years two and three. The deadline date for submitting applications under this priority is July 12, 1994.

1.6 Eldercare Locator

In this fast-paced era where most women work outside the home and adult children of aging parents frequently live far from their aging relatives, it has become more and more imperative that older people and their caregivers have access to information about where to get services necessary to assist older persons in meeting their needs within their own communities. As the number of agencies and organizations providing home and community based services to older persons proliferates, there is a need to assist people in finding the right kind of service for their particular need. Especially useful would be information and assistance for frail elderly and their families on accessing home and

community based services. Frequently, people seeking service for their aged loved ones are not aware of where to get information about services that may be available nor are they aware of the existence of the network of aging services at the local level.

Information and assistance or information and referral as it may be more commonly known, is a mandated service under the Older Americans Act. Each Area Agency on Aging must provide this service either itself or through contract to serve the older population in its planning and service area. In a 1988 study of Information and Referral (I&R) systems funded by AoA, two problems were identified. First, significant variation was found in both the quality and quantity of I&R services available throughout the country. Second, people in local communities and particularly long-distance caregivers had difficulty in finding out about available services in the community in which their loved one resided. This feasibility study found strong support among State and Area Agencies on Aging for a national locator service to build on and not duplicate or replace the existing I&R services, a national locator service which would target long distance caregivers.

In response to these concerns, the Administration on Aging in 1990 funded the development and implementation of the Eldercare Locator. This national 800 telephone number is designed to help direct both local and long-distance caregivers to the appropriate source of information about services in every locality in the United States. Callers identify the county, city or zip code in which the older person lives and describe the type of services they are looking for. The operator then directs them to a local Information and Referral number, an Area Agency on Aging or the number of the particular service which has been identified and the caller makes the local contact.

The Eldercare Locator began service in December 1991 on a limited basis in the Northeast States. Over the next year, the Locator service was expanded in stages to other parts of the country, becoming nationwide in December 1992. The Locator serves all 50 States, Puerto Rico, the Virgin Islands, and the American Trust Territories. It is operational from 9 AM EST until 11 PM EST. In January, 1994, additional operators and telephone lines were added to increase the ability of the Locator to serve additional clients with reduced waiting times. Prior to January, 1994, the Locator was able to serve an average of 4000 callers a month. This figure will be significantly increased

with the addition of the new operators and lines and expanded times, although no figures were available at the time of publication of this announcement.

The Eldercare Locator is a part of an AoA Initiative begun in 1990 to improve access to and quality of I&R assistance that older people and their caregivers receive. The I&R Initiative focused on heightening recognition of the pivotal role this service plays in a comprehensive and coordinated system of community based long term care services. The AoA Initiative focused on enhancing: the quality of I&R systems; the professionalism of staff operating I&R systems; the visibility of I&R systems for older persons; access to existing I&R services; and the availability of I&R services to those elderly at risk of losing their independence. Under the Initiative, AoA funded both the Locator and a National Information and Referral Support Center which provides training and technical assistance to State and Area Agency on Aging Information and Referral programs and assists them in strengthening and expanding their services.

The Administration on Aging is soliciting proposals, under a new competition, to continue the Eldercare Locator and the National Information and Referral Support Center. Continued support for the Locator is aimed at strengthening and expanding its services, increasing public awareness and understanding of the Locator, and enhancing the access of older people and their caregivers to community based long term care services. In addition to the continuation and expansion of the basic Locator service, the following activities should be undertaken by the grantee:

- Continuous update of the database with a new survey of the Area Agencies on Aging to determine whether the database should be expanded and if so, how. The results of this survey should be reflected in further refinements of the database.
- An evaluation of the Locator service should be conducted within the first year. A previous evaluation of the service conducted prior to implementation of nationwide service indicated that 78% of users were satisfied with the service and would use it again. Since the service will have been operational for over two years by the time a new evaluation is undertaken, it is necessary to look at consumer satisfaction at this point in time as well as how the service could be improved. Other factors that should be examined are the efficiency and

effectiveness of the services compared to the overall cost per average call.

- Either as part of the evaluation or as a separate study, an investigation should be conducted on the impact of changing technology on the future of information-based services particularly as it would impact on the Eldercare Locator. For example, in the future, might it be feasible and what are the cost implications of patching callers directly through to local I&R services.

- A major public relations/publicity campaign should be conducted designed to reach the maximum number of older people and their caregivers informing them about the availability of the Locator. With the increasing number of Baby Boomers being put in the position of having to care for or find care for their aging parents, it is necessary to educate this group not only where to go to find services but what kind of services they should be looking for. One of the results of the evaluation that was conducted after the first six months of operation of the Locator indicated that use of the Locator by minority populations was limited. Special emphasis should be directed toward outreach to minority populations and increasing use of the Locator by these groups.

- In its public relations and outreach activities, the grantee should encourage participation and support by private and voluntary organizations.

- The Locator should consider the possibility of creating a linkage with the Department of Defense and its military family support centers. Frequently, military family support centers get inquiries from members of the military about their aging relatives and where to go to get services for them. This would be a logical area in which the grantee could promote the use of the Locator.

- With the advent of elder rights systems being formalized as a result of the implementation of Title VII of the Older Americans Act, the Locator should examine the possible role of Information and Referral services as a gateway to elder rights systems. As these systems develop, the Locator and the I&R Support Center should examine the potential of structuring relationships between these services.

Since the Locator depends on the maintenance of quality information and referral services at the state and local level, attention must continue to be focused on upgrading these services through training and technical assistance for state and local Information and Referral service programs. AoA proposes to continue and expand the National Information and Referral Support Center. The

Support Center should provide training and technical assistance, capacity building, long range development, assistance in system upgrade, implementation of standards for I&R services, and other services related to the maintenance of high quality service among state and local information and referral services. In addition, the Support Center should, in an advisory capacity, support the operation of the Locator and help coordinate the Locator with State Aging Agency and local information and referral networks.

The current Eldercare Locator project has been in operation since the summer of 1990 under the auspices of the National Association of Area Agencies on Aging. The National Information and Referral Support Center has been operated since the summer of 1990 by the National Association of State Units on Aging. Information regarding the Locator and the Information and Referral Support Center is available by calling the Office of Program Development, Administration on Aging at (202) 619-0441.

AoA expects to fund one cooperative agreement under this priority area with a federal share of approximately \$750,000 per year for a project duration of approximately three years. The deadline date for submitting applications under this priority is July 12, 1994. Eligibility is limited to public and private non-profit national organizations with experience in conducting national hotlines and dealing with the network of State and Area Agencies on Aging and State and Area Information and Referral Services. Coalitions of organizations are encouraged.

(2) Older Women

2.1 National Policy and Resource Center on Older Women

Because of their longevity and lengthier retirement periods, the health, economic and social problems of the elderly are more often problems of women. As described earlier in this document under the Assistant Secretary's Initiative on Older Women, older women are clearly a population at risk. It is imperative that policy makers at all levels, aging organizations, other national organizations, and service providers begin to recognize and respond to the unique needs and concerns of older women.

Under this priority area, the Administration on Aging is soliciting proposals for the establishment of a National Policy and Resource Center for Older Women. The Center is expected to assist the Administration on Aging in

focusing national attention on the contributions and problems of older women, with particular emphasis on the issues of income security, caregiving, health, and housing.

As the population ages, one of the primary challenges facing decision makers will be how to enhance the quality of life for older women, the vast majority of the older population. Without specific interventions and strategies designed to improve the status of current and future generations of older women, they will continue to face higher poverty rates, to bear a disproportionate share of caregiving burdens—frequently without access to caregiving when they need it—and to suffer from more chronic illnesses.

Single elderly women are particularly at risk. A 1991 report of the Advisory Council on Social Security projects that single elderly women in the baby boom generation will have lower levels of income and wealth than single elderly men or elderly couples. In fact, the economic well-being of single elderly women will continue to decline relative to that of elderly couples.

Younger and mid-life women must realize that their decisions and actions now will have a considerable impact on how they live as older women. Society in general needs to reinforce the capacity of older women to contribute and to be less dependent upon public benefits as they age.

AoA believes that a National Policy and Resource Center for Older Women can play a significant role in fostering a nationwide dialogue about how to improve the status of older women. The goals of the National Policy and Resource Center for Older Women are to encourage greater national responsiveness to the concerns of older women through the identification of critical issues; to educate key actors such as older women themselves, policy makers, the Aging Network, and national aging and women's organizations; and to prepare relevant policy analyses.

Applicants under this priority area must discuss the overall agenda and activities of the Center over a three year period and provide a detailed first year plan for how the Center will address caregiving, income security, housing, and health issues as they relate to older women. The program design should clearly demonstrate how individual activities and projects are part of and contribute to the development of a comprehensive approach to improving the quality of life for America's older women.

In addition, applicants must show how they will carry out the following activities:

1. Consumer Education and Dissemination

All consumer education and dissemination activities should focus on transmitting information on caregiving, health, income security, housing and other relevant issues to older women at the grassroots level. Many useful materials and products have been developed but have not reached the older women who would benefit from them. Applicants are encouraged to develop innovative approaches to consumer education and dissemination. Also, proposals should specify how they will work with the Aging Network as well as other networks to disseminate relevant information to women at the local level. In particular, education efforts should recognize the diversity of older women in terms of race, ethnicity, class, and other factors.

2. Education and Technical Assistance

Education and technical assistance activities should target members of the Aging Network and national women's organizations as well as policy makers at all levels. Both aging and women's organizations need to become more responsive to the needs of older women and to recognize their areas of common interest. Policy makers at all levels must realize the necessity of planning not only for an aging society but also for a society that will be predominantly female and old.

3. Knowledge Building and Policy Analysis

Research, development, and policy analysis should be oriented toward results and products which have practical application and immediate use to those working on older women issues, e.g., the development and/or modeling of a useful instrument or tool; preparation of educational, practice, and technical assistance materials; an analysis of key issues of concern relative to a particular subject. Applicants should have the capacity to meet the need for short-term policy analysis on topics relating to older women. Based on a high level of knowledge and information synthesis, applicants should propose possible subjects for policy analysis but also demonstrate that they possess the capacity to respond flexibly and quickly to such needs.

Any public or nonprofit agency, organization, or institution is eligible to apply under this priority area. However, to merit serious consideration, an

applicant must demonstrate that it has (1) extensive knowledge of and experience in older women issues, policies, and programs; (2) a record of relevant achievement in this area; and (3) the requisite organizational capability to carry out the activities of a Resource Center on a nationwide scale.

AoA expects to fund the National Policy and Resource Center for Older Women through a cooperative agreement award for a three year period, with a federal share of approximately \$300,000 for the first year; \$400,000 for the second year; and \$400,000 for the third year. AoA and the organization/institution selected to serve as the National Policy and Resource Center for Older Women will work cooperatively in the development of its scope of work and agenda of major events and activities. (However, applicants are expected to propose an agenda for the first and subsequent years based on their assessment of salient issues). The National Policy and Resource Center for Older Women shall have a Director with an appropriate background and qualifications in aging and policy studies who shall devote a minimum of 50% of her/his time to this position. The deadline for submission of applications under this priority area is October 7, 1994.

2.2 *Protecting Older Women Against Domestic Violence*

Physical and sexual violence against women is a serious problem. Millions of women are assaulted by their intimate partners each year. Nearly one quarter of women in the United States will be abused by a current or former partner some time during their lives. This violence causes serious physical, psychological, and social consequences for these women.

Domestic violence is an ongoing, debilitating experience with profound dehumanizing consequences: the battering of body and soul; the increased isolation from the outside world; the toll on personal freedom, and; the foreboding sense that countervailing resources are beyond one's grasp. Whenever a woman is placed in physical danger or controlled by threat or use of physical force, she has been abused. The risk is greatest when a woman is separated from supportive networks. Physical/sexual abuse is recurrent and escalates in frequency and severity. It is often accompanied by emotional and psychological abuse.

Older women who experience domestic violence are in a unique situation, compared to younger women. They may have endured a violent

relationship for years or the abuse may begin late in the life of a relationship, brought on by age-related changes in either or both partners, such as retirement or declining physical and mental health. In trying to leave a violent relationship, older women face obstacles that are different from those faced by younger battered women, obstacles linked to family relationships, health, employment, finances, and to the psychological costs of starting over late in life.

Although older battered women can turn to the domestic violence/domestic abuse system, few do. With some notable exceptions, most local domestic violence programs do not address the needs or concerns of older women. Efforts focus on younger women and women with children. Staff are not familiar with the aging process. In addition, the majority of shelters have not been accessible to older women with physical disabilities, although the Americans with Disabilities Act (ADA) of 1992 will undoubtedly provide an impetus for change.

Applications are invited from public and non-profit organizations engaged in implementing either local domestic abuse programs or statewide domestic violence programs. Applications should include the following:

- (1) A plan for providing services designed to meet the physical, psychological, and economic needs of older women, including physically disabled women;
 - (2) A plan that demonstrates a coordinated systems approach to gaining the cooperation of community agencies such as aging services providers, domestic violence shelters, religious institutions, health, emergency medical services, mental health, legal services, law enforcement, and criminal justice;
 - (3) A plan that includes cross training between aging and domestic violence organizations;
 - (4) An endorsement of the program by the Area Agency on Aging if the program is local, an endorsement by the State Agency on Aging if the program is statewide; and
 - (5) A plan for measuring the amount of linkages being established between the aging and domestic violence organizations, the numbers of older women being reached through outreach programs, and the number of older women being effectively served.
- Among the key elements which should be considered for inclusion in a coordinated system to protect older women against domestic violence are (1) safe housing, advocacy, and support of women, (2) criminal justice system

action, (3) effective civil protection, (4) counseling/education groups for the men who batter, (5) systems cooperation, and (6) coordination, participation by, and accountability to battered women.

All public and nonprofit agencies and organizations are eligible to apply under this priority area. Applicants must demonstrate a strong knowledge base and an extensive experience of providing services to women who are victims of domestic violence. Preference will be given to applicants with demonstrated extensive experience in providing services to older women. As appropriate, applicants are encouraged to develop close linkages with State and Area Agencies on Aging in the development of the application and the implementation of the project.

AoA expects to fund approximately 3-5 projects under this priority area with a federal share of approximately \$125,000 per year and an estimated project period of two (2) years. The deadline date for submission of applications under this priority area is July 12, 1994.

(3) Nutrition and Malnutrition Among the Elderly

3.1 National Resource and Policy Center on Nutrition and Aging

Optimal nutritional status is essential to the well-being, health, independence, and quality of life for everyone, from well, healthy individuals to frail, vulnerable, functionally impaired individuals. Access to adequate food that provides essential nutrients is a daily issue for all Americans, but becomes a more significant issue if an individual is elderly.

Most experts agree that adequate nutrition is vital to helping older individuals remain independent, avoiding premature nursing home placement or using expensive health care services. Appropriate nutrition promotes health, prevents or delays the onset of disease, aids in recovery from illness and trauma, reduces incidence of hospitalization and rehospitalization, helps delay further declines in already functionally impaired individuals, fosters continued independent living in the community, and even plays a role in helping individuals who are terminally ill.

The Assistant Secretary for Aging and the Administration on Aging have important responsibilities for promoting good nutrition and preventing malnutrition in the nation's older population. This priority area, which calls for the establishment of a National Resource and Policy Center on Nutrition

and Aging, underscores the need for better knowledge, better information, and better trained personnel to better serve malnourished older persons. Under the Older Americans Act, AoA and the aging and nutrition service network of 57 State Units on Aging, 670 Area Agencies on Aging, 224 Title VI Grantees, and 15,000 nutrition sites serve approximately 243,150,000 meals to approximately 3.5 million people. Yet a study by the Urban Institute (November-1993) indicates that although community nutrition programs are reaching some of the at-risk older population, only about one-third of those in need are currently being served and that these programs are stretched to their financial limit.

Recognizing both the importance of good nutrition for all older Americans and that nutrition services are an integral component of home and community based long term care services, the Assistant Secretary on Aging has established a Nutrition/Malnutrition Initiative that focuses on the prevention of malnutrition and food insecurity and the promotion of good nutritional practices. The Initiative places responsibility on AoA to undertake four interrelated strategies:

(1) Increasing the awareness of consumers, providers, administrators, and policymakers regarding the importance of good nutrition among the aging population and its role in home and community based long term care services;

(2) Providing leadership among various agencies and organizations including the aging and nutrition networks in promoting a nutrition agenda for the future;

(3) Developing and promoting direct prevention and intervention strategies which will enhance the nutritional status of older individuals and nutrition programs at all levels; and

(4) Developing public policies which will ensure greater access to appropriate food and nutrition services for older individuals, especially low-income, minority, and those at nutritional risk.

The Administration on Aging and the National Resource and Policy Center on Nutrition and Aging, to be established under this priority area, will work through a Cooperative Agreement in implementing the Nutrition/Malnutrition Initiative to promote and improve nutritional and health status for older Americans. The Center will focus on the following three activities:

(1) Information Dissemination: Applications should include effective methods for sharing the latest thinking, methods and findings regarding nutrition/malnutrition and the elderly

with the Aging Network, service providers, researchers, educators, private industry and the public. The Center will also be responsible for developing a media campaign to educate consumers, providers, the private sector and policy makers about the issues and interrelationships of adequate nutrition, malnutrition, hunger and food insecurity on health, independence, and quality of life for older individuals. Applications must describe what outcomes and impacts are anticipated as a result of the information dissemination efforts;

(2) Training and Technical Assistance: Applications should describe how the Center will assist agencies in the Aging Network and other organizations and agencies that work in the field of nutrition and aging to develop effective strategies for preventing malnutrition and promoting good nutrition at the community level. Such activities should include encouraging leadership within communities to identify and strengthen community supports; developing strategies to enable these entities to intervene in innovative ways, developing direct prevention and intervention strategies, and; encouraging new partnerships with the private sector. Applications must describe what outcomes and impacts are anticipated as a result of the training and technical assistance efforts;

(3) Knowledge Building and Policy Analysis: Applications should describe how the proposed Center proposes to assist AoA and the Aging Network through the conduct of research for improving the nutritional well being of older adults particularly the vulnerable and at risk populations. Research is to be limited to short term studies with practical and useful products that develop, enhance, or promote knowledge of and solutions to issues surrounding malnutrition and nutrition with respect to older people. Applications must describe what outcomes and impacts are anticipated as a result of the research and policy development efforts. Applicants should have the capacity to meet the need for short-term policy analysis on topics relating to nutrition/malnutrition and the elderly. Based on a high level of knowledge and information synthesis, applicants should propose possible subjects for policy analysis but also demonstrate that they possess the capacity to respond flexibly and quickly to such needs.

AoA and the organization/institution selected to serve as the National Policy and Resource Center on Nutrition and Aging will work cooperatively in the

development of its scope of work and agenda of major events and activities. (However, applicants are expected to propose an agenda for the first and subsequent years based on their assessment of salient issues). AoA will share with the Center information on other federally supported projects and activities relevant to malnutrition, nutrition, and the elderly. The Center shall have a Director with an appropriate background and qualifications in aging and policy studies who shall devote a minimum of 50% of her/his time to this position.

AoA expects to fund the National Policy and Resource Center on Nutrition and Aging through a cooperative agreement award for a period of three years. The federal share for the first year will be \$300,000 with second and third year federal funding at \$400,000 per year. The deadline date for submission of applications under this priority is October 7, 1994. Eligible applicants for the Center are public and private non-profit organizations with knowledge and experience regarding nutrition, malnutrition, nutrition programs and nutritional needs of the elderly.

(4) Blueprint for an Aging Society

4.1 National Academy on Aging

The Administration on Aging is soliciting proposals, under a new competition, for the continuation of the National Academy on Aging, which was established with funding from the Administration on Aging in FY 1991. The Academy has and will continue to serve as a valuable source of knowledge and guidance on the critical future issues shaping a blueprint for an aging society. It has brought together leaders in American society to discuss and debate emerging aging trends and issues, as well as strategies regarding how they and their organizations can better meet the challenges inherent in the graying of America. The Academy has achieved national recognition as an impartial national forum for policy analysis and debate on the major policy issues of our current and future aging society.

Leaders and decision makers are increasingly aware of the challenges in responding knowledgeably and effectively to the growth and change in our nation's older population. Leaders at national, state, and community levels—from public, private, and voluntary sectors alike—must become more cognizant of the transformations now taking place toward an aging society, and be able to provide wise and timely decisions affecting the elderly.

Decision makers will be especially challenged by the growing numbers of two different generational segments of our aging population: (1) Older persons at risk of losing their independence and; (2) the baby-boom generation—a cohort of more than 70 million individuals born between 1946 and 1964, who will begin to reach retirement age in the first decade of the 21st century. These two groups have different substantive expectations as well as different time perspectives regarding such salient issues and challenges of an aging society as income maintenance, health security, caregiving, and housing. The needs of vulnerable at-risk older persons are immediate and tangible, and the challenges to society on their behalf are in many ways those described earlier in this Program Announcement under the Assistant Secretary for Aging's Home and Community Based Long Term Care Initiative.

The challenge to the baby-boom generation, and to the nation as a whole, is to prepare now to meet their not-too-distant future resource needs, to act now in an intelligent and sensible fashion so that their independence is sustained in the future. This challenge is more fully described under the Assistant Secretary for Aging's Initiative to Develop a Blueprint for an Aging Society, also described earlier in this Program Announcement.

The goals of the Academy are to encourage greater national leadership on aging issues through the clarification of critical issues in the field of aging, the thoughtful analysis and informed discussion of those issues in public forums, and the reporting of those policy analyses and debates to key decisionmakers. The Academy should promote discussion of nationwide approaches to these issues and challenges for the use and benefit of the Academy participants and as input to the policy deliberations of federal, state, and local governments. The major outcome of Academy events and activities should be an analytical and educational framework for better informing leaders, policy officials, and the public about the need to plan comprehensively for the growing and diverse numbers of older Americans in the 21st century.

Applications should include the basics of a four-year plan for the Academy with a detailed first year agenda of symposia, seminars, public forums, research, and analysis relative to emerging national aging issues. The applicant should also plan on establishing short term working groups of experts organized around key aging issues whose tasks will be to conduct

independent policy analyses resulting in policy papers for the consideration of executive and legislative officials, and others focused on aging issues. The program design for the Academy should encourage the exchange of ideas and information that will stimulate creativity and innovation in programs and methods for meeting the needs of the elderly. Attention should be devoted to bringing together participants with diverse points of view who are cognizant of the most recent policy issues and background materials pertinent to the topic focus of discussion.

Participants in the program activities developed by the Academy should be drawn from aging as well as non-aging organizations, from both the private and public sectors. They should, however, share both an interest in aging issues and a capacity for shaping future aging programs and policies. Participants from the field of aging may include executives of State and Area Agencies on Aging and Tribal organizations, leaders in service provision, executives of national aging organizations, as well as researchers, educators, futurists and others in the field of aging. Participants drawn from outside the field of aging are expected to be composed of individuals with an impact on and interest in aging issues and the needs of older persons at risk. This second group includes subject matter and policy area experts, business leaders, executives from national organizations (non-aging), and leaders of public and voluntary agencies, elected and appointed public officials, labor unions, religious bodies, civic groups, and educational institutions. It is expected that through the programs offered by the Academy, these leaders will gain an enriched, more comprehensive understanding of the elderly and of the challenges of shaping national, state, community, and organizational responses to their needs. It is also expected that, through their involvement, participants will contribute their knowledge, experience and insight on aging issues vital to the formation of enlightened national policy.

Applicants for the National Academy on Aging award must be qualified to provide the high level of knowledge and the expert analysis of issues expected of a prominent national forum for crystallizing our thinking and advancing our agenda regarding the future aging society. The applicant should propose a faculty whose collective expertise spans the broad range of policy and program issues in aging. It should describe how the Academy program is designed to focus attention on the salient issue of

preparing the baby boom generation for their coming retirement in an aging society and on such other significant subjects as home and community based long term care, older women, and nutrition/malnutrition. In that regard, the Academy will be assisted by AoA in coordinating its agenda and scope of work, as appropriate, with the efforts of AoA-supported Resource Centers and projects.

One of the major tasks of the Academy will be to stimulate public officials, the business community, and individuals to prepare comprehensively for retirement in the 21st century. The successful applicant must, therefore, set forth a scope of work, and demonstrate the capacity, to analyze and synthesize a diverse set of factors and strategies for the consideration of the public, private, and voluntary sectors in planning for the aging of the baby-boom cohort and beyond.

Other features of the Academy include the following:

- The applicant selected will be awarded a Cooperative Agreement for a four-year project period. Under the Cooperative Agreement award mechanism, the Academy will not conduct its activities on behalf of AoA but rather on a cooperative basis with AoA.

- AoA will advise the organization/institution selected to serve as the National Academy on Aging on the development of the Academy's agenda. However, applicants are expected to propose an agenda for the first and subsequent years based on their assessment of salient contemporary and future aging policy issues.

- The National Academy of Aging shall have its own organizational identification and visibility within the structure of the performing organization.

- The National Academy on Aging shall have a Director with an appropriate background and qualifications in aging and policy studies who will devote at least 50% of her/his time to this position.

Appropriately qualified individuals shall be appointed to the Academy's faculty in full, part time, or consultant positions.

- An Advisory Committee will be established to provide overall direction and guidance to the Academy in developing its agenda of major events and substantive activities.

Under the cooperative agreement award instrument, the awardee organization will have the primary responsibility for developing and implementing the activities of the Academy. The Assistant Secretary for Aging and AoA will share with the

Academy responsibility for clarifying the specific issues to be addressed by the Academy and for establishing the short term working groups of experts to be organized around key aging policy issues. AoA will, through periodic briefings and ongoing consultation, share with the Academy its knowledge of the issues being addressed by the Academy as well as information about relevant activities being undertaken by others, and provide feedback to the Academy about the usefulness to the field of its programs, forums, and other activities. The details of this relationship will be set forth in the cooperative agreement to be developed and signed prior to issuance of the award.

AoA expects to fund the National Academy on Aging through a cooperative agreement under this priority area with a federal share of approximately \$500,000 per year for a project duration of approximately four years. The deadline date for submitting applications under this priority area is July 12, 1994.

AoA funds are to be used to support the administration of the Academy, the cost of conducting core research, conference planning and meeting management, evaluation, and dissemination/utilization activities, including educational programs and living expenses of those attending. As the Academy becomes more established, the strong expectation of AoA is that the organizational sponsor of the Academy will develop additional sources of support. A plan for those sources of support and for becoming self-sufficient must be spelled out in the application, as well as an evaluation plan that reflects efforts for continuous improvement of Academy functions and activities and periodic independent examination of the impact of its work.

The current National Academy on Aging has been in operation since late 1991 under the auspices of the Maxwell School of Citizenship and Public Affairs at Syracuse University. The principal aging policy issues addressed by the Academy have been income security, long term care, older women, and the implications of demographic change in an aging society. Information regarding the work of the Academy is available by calling the Office of Program Development, Administration on Aging at (202) 619-1269.

(5) Other Older Americans Act Mandates

5.1 Responding to the Needs of Minority Elderly Through National Minority Aging Organizations

Throughout its history, the Older Americans Act has assigned a high priority to the development and provision of services to those older individuals who are in greatest economic or social need, with particular attention to individuals whose status is low income or minority. Consistent with this legislative mandate, the Assistant Secretary for Aging has established four major initiatives which have special relevance to low income minority older persons. The four initiatives, which are described in detail elsewhere in this Title IV Program Announcement are: (1) Home and Community Based Long Term Care; (2) Special Concerns of Older Women; (3) Nutrition/Malnutrition Among the Elderly; and (4) Developing a Blueprint for Future Aging Generations. This priority area is intended to underscore the stake of minority aging populations in efforts now underway to advance these initiatives and to enlist national minority aging organizations in these efforts to better serve and represent minority elders.

The growth of the older population, the impending acceleration of that growth rate when the baby boom generation reaches retirement age, and the implications of these developments have attracted considerable public attention. What has not been impressed upon us so strongly is the diverse composition of our growing older population. While today, 44 million persons are over the age of 60, 14 percent of these older persons are minority. By the year 2030: older whites are expected to grow by 197 percent; older African Americans will grow by 300 percent; and older Hispanics will grow by 395 percent. Immigration is a primary factor in this projected growth. Combined with projections that older Pacific-Asian and Native American persons will grow by 200 to 300 percent, these numbers will make minority elders total about 25 percent of the older population in 2030.

When we fully realize the potential impact of these numbers and the accompanying diversity they reflect, both among and within future older populations, a number of key minority aging issues take on new dimensions. Minority elders continue to experience a number of barriers to home and community based long term care; the gaps in income, health, caregiving, and housing faced by older minority women

have reached crisis proportions; minority elders are more likely to be malnourished and need better access to nutrition programs and services; minority older persons are a litmus test of whether we, as a nation, can plan well for a diverse and equitable aging society in this decade and well into the 21st century.

National minority aging organizations—representing older persons, professionals, advocates, program planners—that have the capacity, the experience, and the conviction to work for and with minority elders are a vital source of leadership and action in addressing minority aging issues. They have essential roles to play:

- (1) In ensuring that home and community based care is accessible and available to at-risk minority elderly;
- (2) In meeting the special concerns of minority older women;
- (3) In targeting nutrition services to malnourished minority elderly; and
- (4) In securing for minority elderly a fair opportunity to serve and be served in a diverse and equitable future aging society.

Applicants under this priority area should demonstrate that their proposed projects will produce specific strategies, with measurable outcomes, for dealing with one or more of the four (4) issue areas outlined above. The applicant should make clear who will undertake what action under the proposed project; what the outcome, results, and intended benefits will be; and what the potential is for the replication and reinforcement of the strategies being proposed. In particular, the applicant must demonstrate that it has concrete plans for continuation of the proposed strategy and project activities after the demonstration period has been completed. Thus, the effort being proposed by the applicant must not only make tangible and significant differences in the lives of minority elderly, these changes must be seen as having a lasting impact.

Eligible applicants under this priority area are national minority aging organizations with extensive knowledge and experience in serving, representing, and working with minority elderly. AoA expects to fund approximately five (5) projects under this priority area for a two-year period with an approximate federal share of \$150,000 for the first year and \$100,000 for the second year of the project. The deadline date for submitting applications under this priority area is July 12, 1994.

5.2 National Volunteer Senior Aides/ Family Friends Projects

An estimated five to seven million children suffer from chronic health conditions/disabilities; approximately one to two million of them need help (because of disability) with activities such as feeding, dressing, or bathing themselves. About 90 percent of these children are cared for at home. Public/formal resources for such care are in scarce supply. Furthermore, the informal, supportive, traditional bonds within extended families and communities are not as available as in the past. Additional resources are needed. Drawing upon the experience and good will of older volunteers is one way to help alleviate some of the overwhelming burden that the families of disabled children so frequently face.

Older volunteers can be a significant resource for the families of severely disabled or chronically ill children. This has been demonstrated in recent years by the *Family Friends* Program of the National Council on Aging (NCOA) and by the *Volunteer Senior Aides* Program of the Administration on Aging (AoA). (The latter was modeled upon the former.) These two intergenerational programs match mature and caring volunteers with children who have special needs because of disability or chronic illness and with children/families who are otherwise in distress.

The Family Friends program for children with disabilities or chronic illnesses was established, in 1986, by NCOA, with funding support from the Robert Wood Johnson Foundation. In 1990, the program diversified by helping another at-risk group, the rural poor (Rural Family Friends Help Families in Distress). That same year, NCOA introduced Family Friends into homeless shelters for families and children. Then, in 1992, Family Friends took on a new challenge—to give social and emotional support to families of babies who are HIV-positive.

In 1991, AoA began implementation of the Volunteer Senior Aides (VSA) Program pursuant to the legislative mandate of Section 10404 of the 1989 Omnibus Budget Reconciliation Act (OBRA). Section 10404 authorized this program for community-based demonstrations to determine to what extent volunteer senior aides, by providing basic medical assistance and support to disabled/chronically ill children and their families, can reduce the cost of care for such children.

Program funds became available with the FY 1991 Appropriation Bill for the Department of Health and Human Services (DHHS), which provided

funding under Section 1110 of the Social Security Act. Within DHHS, AoA was then assigned responsibility for program administration and awarded grants supporting six three-year community-based VSA demonstration projects. The six grantees are:

- The Los Angeles County Area Agency on Aging (Los Angeles, CA) in collaboration with Jewish Family Services of Los Angeles and Huntington Memorial Hospital of Pasadena;
- The CrossRoads of Iowa Area Agency on Aging (Des Moines, IA), in collaboration with the Easter Seal Society of Iowa;
- The Region IV Area Agency on Aging (St. Joseph, MI), in collaboration with the local Foster Grandparents Program;
- The Philadelphia Corporation for Aging (Philadelphia, PA), in cooperation with Temple University's Center for Intergenerational Learning and Institute on Disabilities;
- The County of Riverside Office on Aging (Riverside, CA); and
- The Mid-America Regional Council (MARC) Area Agency on Aging (Kansas City, MO) in collaboration with the Children's Mercy Hospital and the University of Missouri's University Affiliated Program for Developmental Disabilities.

The last of these, MARC, is also conducting evaluative research on the VSA Program. The National Council on the Aging, drawing upon its experience with Family Friends, provides technical assistance, training, and capacity-building services to the VSA demonstrations.

Because of the continuing need for and the proven success of the Family Friends/VSA, program, AoA is now soliciting applications to develop and implement VSA projects in additional communities. Proposed projects should demonstrate the use of Volunteer Senior Aides to assist families of disabled/chronically ill children, thereby reducing the cost of care for such children. These projects should effectively employ the unique skills, varied experience, good will, and availability of older volunteers in assisting the Nation's children who are severely disabled or chronically ill.

VSA Project Parameters

Volunteer Senior Aides projects, usually tri-generational, are designed to benefit everyone involved. The children, who have serious, chronic illnesses or disabilities and range in age from infancy to 12 years, receive physical care, self-help instruction, emotional support, and nurturing. Their siblings may receive greater attention or

may benefit indirectly as their family is strengthened. The parents (or, in some cases, grandparents) of these children are given encouragement and respite—intangibles that they need to carry on. The volunteers—aged 55 and older—have a mission and are rewarded with a sense of personal pride and accomplishment. They become less isolated, more involved in the community, and develop an affectionate relationship with their new “granddaughters” or “grandsons” and/or other family members. The community is strengthened by older citizens voluntarily providing supportive services to younger citizens. Health care costs are reduced. And people learn to rely on each other, connecting with an “extended family” in this era of disconnected families.

Family Friends or VSAs are extensively trained to find the best way to help a family. The type of help depends upon what's needed at the time. They may tutor the child, teach personal care and self-help skills, or take the child to recreational/cultural events. These volunteers often act as advocates, serving as “case coordinator” and speaking on behalf of the family to the various professionals who plan and manage the child's care. They also provide social and emotional support and, in many cases, respite to weary parents. (Respite is provided only when the child is medically stable and by agreement of parents, project director, and volunteer and is limited to half of the time the volunteer spends with the child.)

- VSA/Family Friends essential program components include:

- Recruitment, screening, interviewing, and careful selection of volunteers;
- Recruitment, interviewing, and selection of families/children;
- Sixty (60) hours of intensive training for volunteers;
- Careful matching of volunteers with families, based on compatibility, proximity/transportation, personal styles and needs, health of volunteer, schedules, and language barriers;
- Supervision of volunteers;
- Fundraising and promotion of the program; and
- Project evaluation.

Two types of project applications may be submitted for review and funding consideration under this priority area:

5.2A—Demonstration Projects; and
5.2B—Technical Assistance Project.

5.2A Demonstration Projects

AoA plans to fund approximately six (6) demonstration projects under this sub-priority area at a federal share of

approximately \$70,000 per year for a project period of up to approximately three (3) years. The deadline date for submitting applications under this sub-priority area is July 12, 1994. Eligible applicants are restricted to public or non-profit community-level agencies, organizations, or institutions in communities where Family Friends or VSA projects have not previously been funded. Each proposal should include participation of both a health care facility and a social service agency. Proposals should include participation in the project by a project advisory board or committee.

Proposals should follow the Family Friends/VSA paradigm, briefly outlined above but thoroughly documented in materials available from NCOA's Family Friends Resource Center. Recommended materials include: *Bringing Family Friends to Your Community*, a manual detailing a step-by-step approach to developing and implementing these projects; and *Family Friends—A Program Guide*. Prospective applicants may call or write the Family Friends Resource Center at Telephone: (202) 479-6675, Fax: (202) 479-0735, Address: Family Friends Resource Center, National Council on the Aging, 409 Third Street, S.W., Washington, D.C. 20024.

Demonstration projects funded under this priority area will receive technical assistance and guidance in the development and implementation of their projects from the project funded under priority area 5.2B.

5.2B Technical Assistance Project

AoA plans to award one project grant under this sub-priority area to provide technical assistance and training to the new demonstration projects. Applicants for this grant must demonstrate an extensive knowledge base relating to Family Friends and strong experience in providing technical assistance and training to such projects. On the basis of its strong knowledge base and its assessment of the progress of the demonstration projects, the grantee will be expected to assist projects in implementing their demonstrations and to offer recommendations for future program initiatives.

The application must include a plan for assisting approximately six (6) demonstration projects. Plans should include at least one site visit to each project and a “cluster” meeting for the new model projects funded under priority area 5.2A. The successful applicant under this section is responsible for assisting the six (6) funded projects with the following:

- (1) Providing timely and relevant background information regarding effective Family Friends programming;
- (2) Training and technical assistance in developing Family Friends programs;
- (3) Assisting in strategic planning for the long term continuation of the programs; and
- (4) Conduct research studies on the VSA Program.

Funding for this award will be for approximately \$80,000 per year for a project period of up to three (3) years. The deadline date for submitting applications under this sub-priority area is July 12, 1994.

5.3 Volunteer Service Credit Demonstrations

Under this priority area, the Administration on Aging is soliciting applications from public agencies and nonprofit organizations to test new models and replicate existing models of the volunteer service credits concept. A primary focus should be on home and community based services that help at-risk elders to continue to live in their homes, e.g. shopping, transportation, telephone reassurance and friendly visiting, light housekeeping, and respite care. Preference will be given to model projects which significantly involve low-income, minority, and rural elderly.

The basic service credit concept is to give volunteers a unit of credit for each service hour performed, regardless of the type of service, in the expectation that accrued credits will be redeemed for services by the volunteers at some future time of need. A centralized accounting system must be maintained to keep track of credits and match up volunteers with recipients. As a practical matter, limitations on the number and type of services offered are necessary as are rules that govern accumulation and use of credits. After initial start-up and operation, a steady and continuing source of core financial assistance is needed to (1) administer the system, (2) guarantee redemption of built-up credits in those cases when the type of immediate service need cannot be met by the volunteer services then available, and (3) off-set credit deficits incurred when recipients, because of illness or other circumstances, cannot repay the services provided to them with volunteer effort.

The Administration on Aging has funded several service credit demonstration projects in the past. Most recently five (5) two-year service credit demonstrations were funded along with a technical assistance project. AoA funded projects specifically designed to help volunteers become more involved in helping older people in their

communities. Of the demonstration sites funded, several utilized churches as a base for the recruitment of volunteers. One project linked service credits in a business and industry setting. Applicants may wish to contact the AoA funded service credit projects to learn more about the specifics of the grants. Information regarding these demonstrations may be obtained by contacting the Office of Program Development at (202) 619-0441.

The purpose of this priority area is to test the feasibility of implementing the service credit concept in new areas and to replicate existing models in new sites. Among the possible areas for testing and replicating the service credit concept are (1) corporate retirement benefit programs; (2) programs under the sponsorship of fraternal organizations; (3) social and health maintenance insurance programs where volunteer services are credited with partial payment in lieu of fees and premiums under newly-designed community long term care service packages; (4) low income housing programs in which residents provide services to low-income minority elderly; (5) programs in residential retirement communities; (6) programs involving union retirees; (7) employer based service credit projects under which employees assist the elderly in their community and (8) church-based service credit programs involving assistance to low-income minority elderly.

Applicants are encouraged to solicit co-sponsoring community organizations, including youth groups to donate volunteer services to individuals who cannot become full participants of the service credit program or to compensate older volunteers with services not provided by participants in the service credit program. Projects using co-sponsoring organizations must incorporate this support in a manner that does not detract from the central feature of the service credit concept of having older persons earn volunteer credits in exchange for future services when they are needed. Accordingly, enrollment of volunteers eligible to be full participants in the program should be limited to persons age 55 and over (spouses excepted).

AoA plans to fund approximately five (5) model volunteer service credit projects at a federal share of approximately \$50,000 per year for a period of approximately 17 months. Projects should be designed as models for testing the effectiveness of innovative approaches to volunteerism through utilization of the service credit concept. Successful applicants must

provide a detailed plan for the management and operation of the service credit demonstration, including documentation of approaches to be used in attracting public and/or private sector support for making the project self-sufficient after federal funding has ended. The *deadline date* for submitting applications under this priority area is *July 12, 1994*.

5.4 AoA Dissemination Projects

Each year, AoA invests substantial Older Americans Act Title IV resources in grant and cooperative agreement projects to conduct research, demonstrations, and training to improve the quality and availability of services and programs that are vital to the well-being of at-risk older persons. Dissemination is a basic component of each of these projects. Every Title IV project is required to conduct appropriate dissemination of project results as part of its work plan. For the many projects which are essentially knowledge transfer activities (e.g., technical assistance, public/professional education), dissemination is the key component.

Enhanced dissemination is still needed, however, to maximize the utility of Title IV projects. The urgency to improve the effectiveness and availability of services is especially pronounced as both fiscal constraints and the number of older Americans increase. The ultimate goal of this priority area is to maximize the utilization of Title IV project products and results that can directly benefit older Americans in need of services.

Dissemination projects are expected to be especially energetic in their marketing of products and results. Projects are expected to utilize appropriate promotional, public relations, and media campaigns in order to insure that their outcomes receive the widest possible attention. Such campaigns should seek to educate consumers, providers (including the Aging Network), the private sector, and policy sector about their results and to promote use of their products. These efforts will be considered a key indicator of the scope of the impact of the proposed project.

The AoA Dissemination Projects funded under this priority area are also expected to foster greater awareness of the challenges of an aging society and of the contributions, real and potential, that aging programs make in responding to those challenges. These awareness-building efforts may take several forms, including the development and dissemination of materials keyed to decision-making points on a particular

aging issue and the use of appropriate communication mechanisms.

Two types of project applications may be submitted for review and funding consideration under this priority area:

A. Enhanced Dissemination of Product(s) of Significant Value

A major purpose of this priority area is to support more extensive dissemination of Title IV products of significant value. In the course of performing their work, grantees sometimes develop especially valuable products which warrant dissemination beyond that originally contemplated or for which dissemination opportunities are found which were not envisioned earlier. Grantees who are convinced that such products are needed, and of demonstrated value to the aging network and/or others involved in improving the availability, effectiveness, and quality of aging services, may apply under this section for funding. (This opportunity applies to both current and former grantees whose projects were completed within two years of the publication of this announcement).

Applicants may address the dissemination of either a single product or more than one product from a single project. In this context, the term "product" may include the "Final Report" as well as other project products such as manuals, handbooks, curricula, brochures, technical assistance materials, reports, audio-visual materials, etc. Applicants applying for enhanced dissemination projects must submit a copy of the product(s) to be disseminated along with each copy of their application. (For audio visual products, only a single copy of the product need to be submitted). This attachment is in addition to the page limit which applies to all applications; however, the application narrative itself may not exceed the limits described below in Part III.

B. Syntheses of "Cluster" Projects Results and Products

A second purpose of this priority area is to support the development and dissemination of syntheses of project products/results from earlier Title IV project "clusters" (e.g., projects funded under the same priority area of a previous AoA Discretionary Funds Program announcement). Projects in a cluster may vary widely in terms of approach, outcomes, and products, but all deal with the same subject matter or problem area. A synthesis of needed and useful products/results of these projects may well have synergistic value, and a multiplier effect, in generating

knowledge and substantiating best practices which can be applied to the benefit of older Americans.

Such a synthesis may take various forms. An applicant may synthesize exemplary products as produced—or change the form of the product to maximize utilization. Creative adaptations may be needed. A compilation of relevant demonstration or research results (and/or recommendations) from the cluster may be what is needed. Applicants are encouraged to be innovative in their response to this priority area. The need for the synthesis should be demonstrated. A strategy for promoting utilization must be included as part of the application.

Applicants proposing to synthesize the results of clusters of past projects must submit a general description of the past projects and their outcomes not to exceed five (5) pages in length. This cluster description should be in the form of an *attachment* which is in addition to the page limit which applies to all applications. However, the application narrative itself may not exceed the limits described below in Part III.

Applications of either of the types described above should carefully specify not only what dissemination activities are to be performed but also: (1) Why the product(s) is important, (2) to whom it is important, (3) what would be the results and benefits of dissemination and utilization of the product(s), and (4) what specific actions such as training or technical assistance would the proposed project undertake to assist those who wish to adapt or adopt the products and/or the recommendations contained in the products. Prospective applicants are cautioned that this priority area may not be used simply to finish or extend the basic work of a previously funded project (under the guise of dissemination) or to undertake the *basic* dissemination which is required as part of the work plan of all Title IV grantees.

In preparing applications under this priority area, applicants may find useful the publication *Dissemination by Design* which was produced as part of an AoA Title IV project. Interested applicants who do not already have a copy of this publication may obtain one by contacting AoA's Office of Program Development (OPD) at (202) 619-0441. (There is no requirement to use this particular reference in the development of your application.)

Applicants may also request an information sheet on the AoA-supported National Aging Dissemination Center, which works with AoA to promote

dissemination of the products of Title IV grantees. The Center is available to provide technical assistance on dissemination and utilization to prospective applicants under this priority area. Prospective applicants are encouraged to utilize this resource. The Director of the Center is Theresa Lambert. She can be reached at (202) 898-2578. Projects funded under this priority area will be expected to work cooperatively with the Dissemination Center or any similar resource to be established in the future.

Applicants under this priority area are limited to current and former Title IV grantees and cooperative agreement awardees. AoA expects to fund approximately five (5) dissemination projects under this priority area. The federal share of awards will range from approximately \$25,000 to \$50,000, depending upon the level of activity proposed, for a project period of approximately seventeen (17) months. The *deadline date* for submitting applications under this priority area is *July 12, 1994*.

5.5 Field-Initiated Project Applications

The Older Americans Act, Title IV, Section 401, authorizes the Assistant Secretary for Aging to support projects:

To expand the Nation's knowledge and understanding of aging and the aging process, to design and test innovative ideas in programs and services for older individuals, and publicly disseminate the results of [such innovative projects], to replicate such programs and services under [the Older Americans Act], and to help meet the needs for trained personnel in the field of aging. . . .

Each of the priority areas that has been presented in this Discretionary Funds Program (DFP) Announcement is focused on a subject of current or emerging significance to our nation's older population. These priority areas describe with some particularity the nature of the activity to be undertaken, the type, scope, duration, and funding amount of the project and, in some instances, the applicants eligible to compete.

Under this priority area for Field-Initiated Project Applications, the focus remains on issues that matter greatly to older people, but not necessarily those issue areas (home and community based long term care, older women, etc.) that have already received considerable emphasis in this DFP. This priority area is intended for proposed project initiatives that reflect a deep-seated interest in any policy, program, or related issue of importance to older Americans. In a similar vein, the Administration on Aging fully

recognizes, that there are many creative ideas, innovative approaches, training/technical assistance/dissemination efforts, etc., which do not readily fit the designated Priority Areas of this Discretionary Funds Program Announcement. This priority area is also intended to be responsive to proposals embodying those ideas, approaches, and efforts.

Field-initiated applications for *new grant awards* are invited under the following functional sub-categories: (1) Special event/conference proposals; (2) research and demonstration (R&D) projects, and; (3) education, training, and technical assistance efforts. Current AoA grantees seeking large-scale supplemental awards (supplements that would exceed 25% of their current project award and/or extend their project period beyond three months) must also compete under this priority area to be eligible for funding. To ensure that to the maximum extent possible competition will be between proposals of a comparable scope and nature of activity, applications will be grouped according to the appropriate sub-category and be evaluated, scored, and ranked within each of these subcategories:

- (1) special event/conference proposals;
- (2) research and demonstration (R&D) projects;
- (3) education, training, and technical assistance efforts, and;
- (4) large-scale supplements to currently active AoA funded project grants (supplements that would exceed 25% of their current project award and/or extend their project period beyond three months).

Applicants are reminded that they are competing under a national program of gerontological training, research, demonstrations, and centers as authorized by Title IV of the Older Americans Act. Therefore, field-initiated applications will be screened by AoA to assure that they are not local service projects, but rather are responsive to issues of national significance and will result in findings, reports, and products with national implications. In addition, each field-initiated application will be screened to determine that it is not, in essence, the same application that was recently disapproved by AoA for funding. Applicants should wait a minimum of six months before resubmitting an application for consideration under another review and award cycle.

AoA has established deadlines at fixed Fiscal Year quarterly intervals for the submission of field-initiated applications under this Discretionary

Funds Program Announcement. The first deadline is *October 7, 1994*. Subsequent deadlines are *January 13, 1995, April 14, 1995, and July 14, 1995*. Applicants will be informed of their funding status within 60 days of the pertinent deadline date.

Although the number of field-initiated proposals approved for funding can not be estimated beforehand, applicants should be advised that only a limited amount of Title IV funds will be reserved for this priority area and only applications of outstanding merit will be considered for funding. The federal share of project costs per year is expected to fall within the following approximate ranges: \$20,000 to \$40,000 for special events/conferences; \$50,000 to \$100,000 depending upon the nature of the proposed research, demonstration, training, technical assistance, or related effort; \$50,000 and above for *large-scale supplements* to current grants. The duration of new project awards could range from one (1) to two (2) years. Large scale supplements are limited to a maximum period of twelve (12) months.

Part III—Information and Guidelines for the Application Process and Review

Part III 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 Administration on Aging (AoA). General guidelines on applicant eligibility were provided in Part I. Specific eligibility guidelines were provided in Part II under certain priority areas.

A. General Information

1. Review Process and Considerations for Funding

Within the limits of available federal funds, AoA makes financial assistance awards consistent with the purposes of the statutory authorities governing the AoA Discretionary Funds Program and this Announcement. 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. *Screening*: To insure that minimum standards of equity and fairness have been met, applications which do not meet the screening criteria listed in Section D below, *will not* be reviewed and will receive *no* further consideration for funding.

c. *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 F, below. This independent review of applications is performed by panels consisting of qualified persons from outside the federal government and knowledgeable non-AoA federal government officials. The scores and judgments of these expert reviewers are a major factor in making award decisions.

d. *Other Comments*: AoA may solicit views and comments on pending applications from other federal departments and agencies, State and Area Agencies on Aging, interested foundations, national organizations, experts, and others, for the consideration of the Assistant Secretary for Aging in making funding decisions.

e. *Other Considerations*: In making funding award decisions, the Assistant Secretary for Aging will pay particular attention to applications which focus on older persons with the greatest economic and social need, with particular attention to the low-income minority elderly. Final decisions will also reflect the equitable distribution of assistance among geographical areas of the nation, and among rural and urban areas. The Assistant Secretary for Aging also guards against wasteful duplication of effort in making funding decisions.

f. *Other Funding Sources*: AoA reserves the option of discussing applications with, or referring them to, other federal or non-federal funding sources when this is determined to be in the best interest of the federal government or the applicant.

g. *Decision-Making Process*: After the panel review sessions, applicants may be contacted by AoA 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 DDCM 3-785).

h. *Timeframe*: Applicants should be aware that the time interval between the deadline for submission of applications and the award of a grant is at least two months and often three months or more 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

This Program Announcement contains different deadline dates for the submission of applications, depending upon the priority area under which an application is submitted. Please check each priority area carefully to determine the deadline date for the application you plan to submit. Applications must be either sent or hand-delivered to the address specified in Section D, below. Hand-delivered applications are accepted during the normal working hours of 9:00 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. The Office of Administration and Management will notify each late applicant that its application will not be considered under the applicable grant review competition.

AoA may extend a deadline date for applications because of acts of God, such as floods, hurricanes or earthquakes, when there is widespread disruption of the mail, or when AoA determines an extension to be in the best interest of the government. Depending upon the precipitating factor(s), the extension will apply to *all* potential applicants in the area affected by the natural disaster, or to *all* potential applicants across the nation. Notice of the extension will be published in the **Federal Register**.

C. Grantee Share of the Project

Under the Discretionary Funds Program, AoA does not make grant awards for the entire project cost. Successful applicants must, at a

minimum, contribute one (1) dollar, secured from non-federal sources, for every three (3) dollars received in federal funding. The non-federal share must equal at least 25% of the total project cost. Applicants should note that, among applications of comparable technical merit, the greater the non-federal share the more favorably the application is likely to be considered.

The one exception to this cost sharing formula is for applications from American Samoa, Guam, the Virgin Islands or the Northern Mariana Islands. Applicants from these territories are covered by Section 501(d) of Public Law 95-134, as amended, which requires the Department to waive "any requirement for local matching funds under \$200,000."

The non-federal share of total project costs for each budget period may be in the form of grantee-incurred *direct or indirect* costs, third party in-kind contributions, and/or grant related income. Indirect costs may not exceed those allowed under federal rules established, as appropriate, by OMB Circulars A-21, A-87, and A-122. If the required non-federal share is not met by a funded project, AoA will disallow any unmatched federal dollars. A common error is to match 25% of the federal share rather than 25% of the entire project cost.

D. 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 either of the two criteria described below will not be reviewed and will receive no further consideration. 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. Applications must be submitted by the deadline date specified in the priority area under which the application is submitted for competitive review and funding consideration. It is incumbent upon the applicant to clearly indicate under what priority area the application is intended for consideration. Applications must be postmarked by midnight, or hand-delivered by 5:30 p.m., Eastern Time, on the deadline date of the relevant priority area, to: 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: AoA-94-1.

2. Applicants must meet all eligibility requirements specific to the priority area under which they have submitted their application. (It bears repeating that, for everyone's benefit, the applicant should be sure that the priority area has been clearly identified in the application).

Only Those Applications Meeting These Screening Requirements Will Be Assigned to Reviewers

In addition to these screening requirements, the applicant is strongly advised to adhere to the following standards in preparing the application:

- (1) The application should not exceed forty (40) 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 40 page limitation: (1) Standard Form (SF) 424, SF 424A (including up to a four page budget justification) and SF 424B; (2) the certification forms regarding lobbying; debarment, suspension, and other responsibility matters; and drug-free workplace requirements; (3) proof of non-profit status; (4) indirect cost agreements; (5) attachments submitted as directed under priority area 5.4.

The following portions of the application are subject, in the aggregate, to the forty (40) page limitation:

- Summary description (suggested length: one page);
- Narrative (suggested length: twenty-five to thirty pages);
- Applicant's capability statement, including an organization chart, and vitae for key project personnel (suggested length: five to ten pages) and;
- Letters of commitment and cooperation (suggested length: four pages).

All applications will be checked against the aggregate forty (40) page limitation. Any material, of whatever content, in excess of the forty (40) pages will be withheld from the reviewers.

E. Funding Limitations on Indirect Costs

1. Training projects awards to institutions of higher education and other non-profit institutions are limited to a federal reimbursement rate for indirect costs of eight (8) percent of the total allowable direct costs or, where a current agreement exists, the

organization's negotiated indirect cost rate, whichever is lower. Differences between the applicant's approved rate and the 8% limitation may be used as federal cost sharing. See Section J-2, Item 6j, below.

2. For all other applicants, indirect costs generally may be requested only if the applicant has a negotiated indirect cost rate with the Department's Division of Cost Allocation or with another federal agency. Applicants who do not have a negotiated indirect cost rate may apply for one in accordance with DHHS procedures and in compliance with relevant OMB Circulars.

F. Evaluation Criteria

Applications which pass the screening will be evaluated by an independent review panel of at least three individuals. These reviewers, experts in the field, are from academic institutions, non-profit organizations, state and local government, and, upon occasion, federal government agencies other than AoA. Based on the specific programmatic considerations set forth in the priority area under which an application has been submitted, the reviewers will comment on and score the applications, focusing their comments and scoring decisions on the criteria below.

Applications are scored by assigning a maximum of 100 points across four criteria:

- (1) Purpose and Need for Assistance (20 points),
- (2) Approach/Method—Workplan and Activities (30 points)
- (3) Anticipated Outcomes, Evaluation and Dissemination (30 points),
- (4) Level of Effort (20 points).

1. Purpose and Need for Assistance, Weight: 20 points

a. Does the proposed project clearly and adequately respond to the announcement priority area under which it was submitted?

b. Does the application adequately and appropriately describe and document the key problem(s)/condition(s) relevant to its purpose? Is the proposed project justified in terms of the most recent, relevant, and available information and/or knowledge?

c. Does the applicant adequately and appropriately describe the needs of special population groups—low income, minority, women, disabled, rural—in addressing problem(s)/condition(s) relevant to its proposal?

2. Approach/Method—Workplan and Activities, Weight: 30 points

a. Does the proposal clearly express and organize a workplan that systematically includes specific objectives, tasks, and activities which are responsive to the statement of needs and purpose?

b. Does the workplan include a detailed timeline for accomplishment of tasks and objectives? Is the sequence and timing of events logical and realistic?

c. Are the roles and contribution of staff, consultants, and collaborative organizations clearly defined and linked to specific objectives and tasks? Does the workplan specify who will be responsible for managing the project; for the preparation and dissemination of project results, products, and reports; and for communications with the Administration on Aging should the project be approved for funding?

3. Anticipated Outcomes, Evaluation and Dissemination Weight: 30 points

a. Are the expected project benefits and/or results clearly identified, realistic, and consistent with the objectives of the project? Are outcomes likely to be achieved and will they significantly benefit older persons through improvement in policy or practice, and/or contribute knowledge to theory and research?

b. Is the plan for project evaluation clear and relevant to the scope of activity proposed? Does this plan identify the type of data to be collected and the method of analysis to be used in measuring project achievement and significance?

c. Does the proposal include a plan for dissemination which is likely to increase the awareness of project activities and events during project performance? Is this plan adequate for communicating project outcomes and products to all appropriate audiences?

4. Level of Effort, Weight: 20 points

a. Are vitae provided for the project director(s), key staff and consultants that document their qualifications to conduct their designated roles?

b. Is the time commitment of the proposed project director sufficient to assure proper direction, management and completion of the project? Is the time commitment of other key staff sufficient to assure completion of the project as proposed?

c. Is the budget justified with respect to the adequacy and reasonableness of resources requested? Are budget line items consistent with workplan objectives?

d. Are letters from outside organizations included and do they express clear commitment and responsibility from the organizations regarding their roles and contributions as described in the workplan?

e. Are the writers of the proposal identified and will they be involved in its oversight and implementation? If not, is there a logical explanation for their non-participation?

G. 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;

- A copy of the applicant's indirect cost agreement, as necessary;

- Project summary description;

- Program narrative;

- Organizational capability statement and vitae;

- Letters of Commitment and Cooperation;

- A copy of the *Check List of Application Requirements* (See Section K, below) with all the completed items checked.

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*. Do not include extraneous materials such as agency promotion brochures, slides, tapes, film clips, etc. It is not feasible to include such items in the review process. They will be discarded if submitted as part of the application.

H. Communications with AoA

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 and the priority area should be referred to in all subsequent communication with AoA concerning the application. If acknowledgment is not received within

seven weeks after the deadline date, please notify the Office of Program Development by telephone at (202) 619-0441.

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 AoA staff to provide a timely response to inquiries about a specific application unless the identification number and the priority area are given.

Applicants are advised that, prior to reaching a decision, AoA will not release information to an applicant other than that its application 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 approval or disapproval of the application.

I. Background Information and Guidance for Preparing the Application

1. Current Projects and Previous Project Results

In the Program Narrative of the application (see Section J-6 below), applicants are expected to demonstrate familiarity with recent and ongoing activity related to their project proposal. With respect to AoA-supported discretionary grant projects, information on *current AoA projects* may be obtained by contacting the Office of Program Development at 202/619-0441. Regarding *completed AoA projects*, copies of all AoA discretionary grant final reports and printed materials are sent to: the National Aging Dissemination Center; the National Technical Information Service (NTIS), a clearinghouse and document source for federally sponsored reports; Ageline Database, a bibliographic database service sponsored by the American Association of Retired Persons, available online through BRS and DIALOG; and the U.S. Government Printing Office Library Program, a catalog and microfiche service for 1400 depository libraries located throughout the United States.

Information concerning access to the bibliographic and document referral services provided by these clearinghouses can be obtained through most public and academic libraries. For direct information, use the following contacts:

(1) National Aging Dissemination Center, National Association of State Units on Aging, 1225 I Street NW., suite 725, Washington, DC 20005, (202) 898-2578.

The Dissemination Center maintains a computerized database of descriptions of recent AoA grant products including reports, studies, training materials, technical assistance documents, and audio-visual products. Staff are available to scan the database for products and tailored printouts may be requested. The Center has also established a product repository of over 1000 products generated under Title IV grants. The repository serves as a backup source for original documents from which duplicates can be produced when copies are no longer available from the grantees. Information about products and searches of this database can be requested by telephone (800-989-6537) and by written request. In addition, the database will also be available via modem for on-line searches (800-989-2243).

(2) National Technical Information Service, 5265 Port Royal Road, Springfield, VA 22161 (703) 487-4600.

(3) Ageline Database (a) BRS Customer Service, 8000 Westpark Drive, McLean, VA 22102 (800) 345-4BRS.

(b) DIALOG Customer Service, 3460 Hillview Avenue, Palo Alto, CA 94304 (800) 3DIALOG (415) 858-2700 (in California).

(4) U.S. Government Printing Office, Acquisition Unit, Library Programs Service, North Capitol and H Streets NW., Washington, DC 20401 (202) 275-1070.

2. Dissemination and Utilization

The purposes and expectations associated with Title IV discretionary projects extend well beyond the immediate confines of a particular project's local impact. Projects should have a ripple effect in the field of aging in terms of replicating their design, utilizing their results, and applying their benefits to a widening circle of older persons. This section suggests certain principles of dissemination to be considered in developing your application:

- the most useful projects make dissemination and utilization a central, not peripheral, component of the project;
- dissemination starts at the beginning of a project not when it is completed;
- potential users should be involved in planning the project, if possible, and products developed with the needs of potential users in mind;
- dissemination is a networking process;
- at a minimum, dissemination includes getting your final products into the hands of appropriate users and

making presentations at conferences; and

- coordination with other related projects may increase the chances of your products being used.

J. Completing the Application

In completing the application, please recognize that the set of standardized forms and instructions is prescribed by the Office of Management and Budget (approved under OMB control number 0348-0043) and is not perfectly adaptable to the particulars of AoA's Discretionary Funds Program. First-time applicants, in particular, may have some misgivings that they have not crossed the final "t" or dotted the last "i" of their application. Any applicant should, of course, take reasonable care to avoid technical errors in completing the application, but the substantive merits of the project proposal are the determining factors. In these instructions, we offer several pointers aimed at clarifying matters, overcoming difficulties, and preventing the more common technical mistakes made by applicants. If the need arises, please call (202) 619-0441 for assistance.

Forms SF 424, SF 424A, SF 424B, and the certification forms (regarding lobbying; debarment, suspension, and other responsibility matters; and drug-free workplace requirements) have been reprinted as part of this Federal Register announcement for your convenience in preparing the application. Single-sided copies of all required forms must be used for submitting your application. You should reproduce single-sided copies from the reprinted form and type your application on the copies. Please do not use forms directly from the Federal Register announcement as they are printed on both sides of the page.

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:

Top Left of Page. In the box provided, enter the number of the priority area under which the application is being submitted.

Item 1. Preprinted on the form.

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. Preprinted on form.

Item 9. Preprinted on form.

Item 10. Preprinted on form.

Item 11. The title should describe concisely the nature of the project. Avoid repeating the title of the priority area or the name of the applicant. Try not to exceed 10 to 12 words and 120 characters including spaces and punctuation.

Item 12. Preprinted on form.

Item 13. Enter the desired start date for the project, beginning on or after September 1, 1994 and the desired end date for the project. Projects may be from 17 to 48 months in duration. Check the description of the priority area under which you are applying for the expected project duration.

Item 14. List the applicant's Congressional District and the District(s), if any, directly affected by the proposed project.

Item 15. All budget information entered under item #15 should cover either: (1) the total project period if that period is 12 months or less; or (2) just the first 12 months if the project period is for 24, 36, or 48 months. The applicant should show the federal grant support requested under sub-item 15a. Sub-items 15b-15e are considered cost-sharing or "matching funds". The value of third party in-kind contributions should be entered in sub-items 15c-15e, as applicable. It is important that the dollar amounts entered in sub-items 15b-15e total at least 25 percent of the total project cost (total project cost is equal to the requested federal funds plus funds from non-federal sources).

Check: Please check item 15 to make sure you have presented budget amounts only for the first year if you are proposing a multi-year project. A common error is to present budget totals for a full project period of 24, or 36, or 48 months in item 15.

Item 16. Preprinted on form.

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 AoA 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 covering (1) the total project period if that period is 17 months or less or (2) the first 12 months if the project period is for 24, 36, or 48 months.

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 separate *budget justification* should be included which shows, preferably in the form of a table, the breakdown of budget cost items by federal and non-federal shares and fully explains and justifies each of the major budget items, personnel, travel, other, etc., as outlined below. The budget justification should not exceed four typed pages and should immediately follow SF 424A.

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.

Justification: Identify the principal investigator or project director, if known. Specify the key staff, their titles, and time commitments in the budget justification.

Line 6b—Fringe Benefits: Enter the total costs of fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a breakdown of amounts and percentages that comprise fringe benefit costs, such as health

insurance, FICA, retirement insurance, etc.

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.

Justification: Include the total number of trips, destinations, length of stay, transportation costs and subsistence allowances.

Line 6d—Equipment: Enter the total costs of all equipment to be acquired by the project. For state and local governments, including federally recognized Indian Tribes, "equipment" is non-expendable tangible personal property having a useful life of more than two years and an acquisition cost of \$5,000 or more per unit. For all other grantees, the threshold for equipment is \$500 or more per unit.

Justification: Equipment to be purchased with federal funds must be justified as necessary for the conduct of the project. The equipment, or a reasonable facsimile, must not be otherwise available to the applicant or its sub-grantees. The justification also must contain plans for the use or disposal of the equipment after the project ends.

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 the total costs of all contracts, including (1) procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and, (2) contracts with secondary recipient organizations including delegate agencies. Also include any contracts with organizations for the provision of technical assistance. Do not include payments to individuals on this line.

Justification: Attach a list of contractors indicating the name of the organization, the purpose of the contract, and the estimated dollar amount. If the name of the contractor, scope of work, and estimated costs are not available or have not been negotiated, indicate when this information will be available. Whenever the applicant/grantee intends to delegate a substantial part (one-third, or more) of the project work to another agency, the applicant/grantee must provide a completed copy of Section B, Budget Categories for each contractor, along with supporting information.

Line 6g—Construction: Leave blank since new construction is not allowable and federal funds are rarely used for either renovation or repair.

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 costs, 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: Enter the total amount of indirect charges (costs), if any. If no indirect costs are requested, enter "none." Indirect charges may be requested if: (1) the applicant has a current indirect cost rate agreement approved by the Department of Health and Human Services or another federal agency; or (2) the applicant is a State or local government agency. *Applicants other than state and local governments are requested to enclose a copy of this agreement. Local and state governments should enter the amount of indirect costs determined in accordance with HHS requirements.* When an indirect cost rate is requested, these costs are included in the indirect cost pool and should not be also charged as direct costs to the grant.

In the case of training grants to other than state or local governments (as defined in 45 CFR Part 74), federal reimbursement of indirect costs will be limited to the lesser of the negotiated (or actual) indirect cost rate or 8 percent of the amount allowed for total project (federal and non-federal) direct costs exclusive of any equipment charges, rental of space, tuition and fees, stipends, post-doctoral training allowances, contractual items, and alterations and renovations. As part of the justification, applications subject to this limitation should specify that the federal reimbursement will be limited to 8%.

For training grant applications, the entry for line 6j should be the total indirect costs being charged to the project. The federal share of indirect costs is calculated as shown above. The applicant's share is calculated as follows:

(a) Calculate total project indirect costs (a*) by applying the applicant's approved indirect cost rate to the total project (federal and non-federal) direct costs.

(b) Calculate the federal share of indirect costs (b*) at 8 percent of the amount allowed for total project (federal and non-federal) direct costs exclusive

of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, alterations and renovations.

(c) Subtract b* from a*. The remainder is what the applicant can claim as part of its matching cost contribution.

Line 6k—Total: Enter the total amounts of Lines 6i and 6j.

Line 7—Program Income: Estimate the amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Describe the nature, source, and expected use of income in the Level of Effort section of the Program Narrative.

Section C—Non-Federal Resources

Line 12—Totals: 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

This section should be completed only if the total project period exceeds 17 months.

Line 20—Totals: Enter the estimated required federal funds (exclude estimates of the amount of cost sharing) for the period covering months 13 through 24 under column "(b) First;" and, if applicable, for months 25 through 36 under "(c) Second," for months 36 through 48 under "(d) Third."

Section F—Other Budget Information

Line 21—Direct Charges: Not applicable

Line 22—Indirect Charges: Enter the type of indirect rate (provisional, predetermined, final or fixed) to be in effect during the funding period, the base to which the rate is applied, and the total indirect costs.

Line 23—Remarks: Provide any other explanations or comments deemed necessary.

3. SF 424B—Assurances

SF 424B, Assurances—Non-Construction Programs, contains assurances required of applicants under the Discretionary Funds Program of the Administration on Aging. 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 (a) 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 two identifiers: (1) the name of the applicant organization as shown in SF 424, item 5 and (2) the priority area as shown in the upper left hand corner of SF 424. Please limit the summary description to one page with 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 project, the approaches to be used and the outcomes expected. At the end of the summary, list major products that will result from the proposed project (such as manuals, data collection instruments, training packages, audio-visuals, software packages). The project summary description, together with the information on the SF 424, becomes the project "abstract" which is entered into AoA's computer data base. The project description provides the reviewer with an introduction to the substantive parts of the application. Therefore, care should be taken to produce a summary which accurately and concisely reflects the proposal.

6. Program Narrative

The Program Narrative is the critical part of the application. It should be clear, concise, and, of course, responsive to the priority area 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 F above. The format of the narrative should, in fact, parallel the criteria, beginning with an integrated discussion of (A) the project's purpose(s), relevance, and significance, which answers the questions of why the

project should be undertaken and what it intends to accomplish. The next section of the narrative provides a detailed explanation of (B) the approach(es)/methodology the project will follow to achieve its purpose(s), leading to a discussion of (C) the anticipated outcomes/results/benefits of the project, how these will be evaluated, disseminated, and utilized. The narrative concludes with (D) the level of effort needed to carry out the project, in terms of the Project Director and other key staff, funding, and other resources.

Please have the narrative typed on one side of 8½" x 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 "Objectives 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 K, below) is consistent with that approved under OMB control number 0937-0189.

7. Organizational Capability Statement and Vitae for Key Project Personnel

The organizational capability statement should describe how the applicant agency (or the particular division of a larger agency which will have responsibility for this project) is organized, the nature and scope of its work and/or the capabilities it possesses. This description should cover capabilities of the applicant not included in the program narrative. It may include descriptions of any current or previous relevant experience or describe the competence of the project team and its record for preparing cogent and useful reports, publications, and other products. An organizational chart showing the relationship of the project to the current organization should be included. Vitae should be included for key project staff only.

K. Checklist for a Complete Application

The checklist below should be typed on 8½" x 11" plain white paper, completed and included in your application package. It will help in properly preparing your application.

Checklist

I have checked my application package to ensure that it includes or is in accord with the following:

- ___ One original application plus two copies, each stapled securely (no folders or binders) with the SF 424 as the first page of each copy of the application;
- ___ SF 424; SF 424A—Budget Information (and accompanying Budget Justification); SF 424B—Assurances; and Certifications;
- ___ SF 424 has been completed according to the instructions, signed and dated by an authorized official (item 18);
- ___ The number of the priority area under which the application is submitted has been identified in the box provided at the top left of the SF 424;
- ___ As necessary, a copy of the current indirect cost rate agreement approved by the Department of Health and Human Services or another federal agency;
- ___ Proof of nonprofit status, as necessary;
- ___ Summary description;
- ___ Program narrative;
- ___ Organizational capability statement and vitae for key personnel;
- ___ Letters of commitment and cooperation, as appropriate.

L. Points to Remember

1. There is a forty (40) 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 D.

2. You are required to send an original and two copies of an application.

3. Indicate the priority area in the box at the top left hand corner of the SF 424.

4. The summary description (1,200 characters or less) should accurately reflect the nature and scope of the proposed project.

5. To meet the cost sharing requirement (see Section C above), you must, at a minimum, match \$1 for every \$3 requested in federal funding to reach 25% of the *total* project cost. For example, if your request for federal funds is \$90,000, then the required minimum match or cost sharing is \$30,000. The total project cost is \$120,000, of which your \$30,000 share is 25%.

6. Indirect costs of training grants may not exceed 8%.

7. 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.

8. Do *not* include letters which endorse the project in general and perfunctory terms. In contrast, letters which describe and verify tangible commitments to the project, e.g., funds, staff, space, should be included.

9. If duplicate applications are submitted under different priority areas,

AoA reserves the right to select the single priority area under which it will be reviewed.

10. If more than one project application is submitted, each should be submitted under separate cover.

11. 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.

12. Each application must be mailed by midnight, or hand-delivered by 5:30 p.m., Eastern Time, on the deadline date specified in the priority area under which the application is being submitted for review and funding consideration. Mail or hand-deliver the application to: 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: AoA-94-2

Dated: May 9, 1994.

Fernando Torres-Gil,
Assistant Secretary for Aging.

BILLING CODE 4150-04-U

APPLICATION FOR
FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application <input type="checkbox"/> Construction <input checked="" type="checkbox"/> Non-Construction		2. DATE SUBMITTED	Applicant Identifier
Preapplication <input type="checkbox"/> Construction <input type="checkbox"/> Non-Construction		3. DATE RECEIVED BY STATE Not Applicable (NA)	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) <input type="checkbox"/>	
8. TYPE OF APPLICATION: <input checked="" type="checkbox"/> New <input type="checkbox"/> Continuation <input type="checkbox"/> Revision If Revision, enter appropriate letter(s) in box(es): <input type="checkbox"/> <input type="checkbox"/> A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration Other (specify):		A. State B. County C. Municipal D. Township E. Interstate F. Intermunicipal G. Special District H. Independent School Dist. I. State Controlled Institution of Higher Learning J. Private University K. Indian Tribe L. Individual M. Profit Organization N. Other (Specify) _____	
		8. NAME OF FEDERAL AGENCY: Administration on Aging	
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 9 3 0 4 8		11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:	
TITLE: Special Programs for the Aging-- Title IV			
12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.): Nation-wide Applicability			
13. PROPOSED PROJECT: Start Date Ending Date		14. CONGRESSIONAL DISTRICTS OF: a. Applicant b. Project	
15. ESTIMATED FUNDING:		16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?	
a. Federal	\$.00	a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE _____	
b. Applicant	\$.00	b. NO. <input checked="" type="checkbox"/> PROGRAM IS NOT COVERED BY E.O. 12372 <input type="checkbox"/> OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW	
c. State	\$.00		
d. Local	\$.00		
e. Other	\$.00		
f. Program Income	\$.00	17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT? <input type="checkbox"/> Yes If "Yes," attach an explanation. <input type="checkbox"/> No	
g. TOTAL	\$.00		
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	

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OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A — BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		Total (g)
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	
1.		\$	\$	\$	\$	\$
2.						
3.						
4.						
5. TOTALS	93,048	\$	\$	\$	\$	\$

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)	\$	\$	\$	\$	\$
7. Program Income	\$	\$	\$	\$	\$

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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	FUTURE FUNDING PERIODS (Years)			4th Quarter
		1st Quarter	2nd Quarter	3rd Quarter	
13. Federal	\$	\$	\$	\$	\$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	\$	\$	\$	\$	\$
SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT					
(a) Grant Program	FUTURE FUNDING PERIODS (Years)				
	(b) First	(c) Second	(d) Third	(e) Fourth	
16.	\$	\$	\$	\$	
17.					
18.					
19.					
20. TOTALS (sum of lines 16 - 19)	\$	\$	\$	\$	
SECTION F - OTHER BUDGET INFORMATION (Attach additional Sheets if Necessary)					
21. Direct Charges:	22. Indirect Charges:				
23. Remarks					

SF 424A (4-88) Page 2
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APPLICATION FOR FEDERAL ASSISTANCE		1.8	2. DATE SUBMITTED July 10, 1994	Applicant Identifier
1. TYPE OF SUBMISSION: Application <input type="checkbox"/> Construction <input checked="" type="checkbox"/> Non-Construction Preapplication <input type="checkbox"/> Construction <input type="checkbox"/> Non-Construction		3. DATE RECEIVED BY STATE Not Applicable (N.A.)		State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY		Federal Identifier
5. APPLICANT INFORMATION				
Legal Name: XYZ Organization			Organizational Unit: Division on Aging	
Address (give city, county, state, and zip code): 1234 Fowles Avenue Great Town, Montana 56789			Name and telephone number of the person to be contacted on matters involving this application (give area code): Priscilla Smith (012) 345-6789	
6. EMPLOYER IDENTIFICATION NUMBER (EIN): 2 3 - 8 7 6 5 4 3 2			7. TYPE OF APPLICANT: (enter appropriate letter in box) <input checked="" type="checkbox"/> N 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) <u>Nonprofit Agency</u>	
8. TYPE OF APPLICATION: <input checked="" type="checkbox"/> New <input type="checkbox"/> Continuation <input type="checkbox"/> 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: 9 3 0 4			11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT: Better Services for Older Americans	
12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.): Nation-wide Applicability				
13. PROPOSED PROJECT: Start Date: 09/01/94 Ending Date: 08/31/96		14. CONGRESSIONAL DISTRICTS OF: a. Applicant: 1-2 b. Project: 1-3		
15. ESTIMATED FUNDING:		16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?		
a. Federal	\$ 100,000.00	a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____		
b. Applicant	\$ 33,333.00	b. NO. <input checked="" type="checkbox"/> PROGRAM IS NOT COVERED BY E.O. 12372		
c. State	\$.00	<input type="checkbox"/> OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW		
d. Local	\$.00			
e. Other	\$.00			
f. Program Income	\$.00	17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT? <input type="checkbox"/> Yes If "Yes," attach an explanation. <input checked="" type="checkbox"/> No		
g. TOTAL	\$ 133,333.00			
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 Samuel Jones		b. Title Executive Director		c. Telephone number 765-432-1098
d. Signature of Authorized Representative		e. Date Signed July 7, 1994		

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OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A — BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		Total (g)
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	
1.		\$	\$	\$	\$	\$
2.						
3.						
4.						
5. TOTALS	93.048	\$	\$	\$ 100,000	\$ 33,333	\$ 133,333

SECTION B — BUDGET CATEGORIES

Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY		Total (5)
	(1)	(2)	
a. Personnel	\$	\$	\$ 70,000
b. Fringe Benefits			20,000
c. Travel			5,000
d. Equipment			1,000
e. Supplies			2,333
f. Contractual			5,000
g. Construction			N.A.
h. Other			10,000
i. Total Direct Charges (sum of 6a - 6h)			113,333
j. Indirect Charges			20,000
k. TOTALS (sum of 6i and 6j)	\$	\$	\$ 133,333
7. Program Income	\$	\$	\$

SAMPLE

LE

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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)	\$ 33,333	\$	\$	\$	\$ 33,333
SECTION D - FORECASTED CASH NEEDS					
Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	
13. Federal	\$	\$	\$	\$	\$
14. Nonfederal					
15. TOTAL (sum of lines 13 and 14)	\$	\$	\$	\$	\$
SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT					
(a) Grant Program	FUTURE FUNDING PERIODS (Year)				(e) Fourth
	(b) First	(c) Second	(d) Third	(e) Fourth	
16.	\$	\$	\$	\$	\$
17.					
18.					
19.					
20. TOTALS (sum of lines 16-19)	\$ 100,000	\$	\$	\$	\$
SECTION F - OTHER BUDGET INFORMATION (Attach additional Sheets if Necessary)					
21. Direct Charges:					
22. Indirect Charges:					
23. Remarks:					

S

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OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

- Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
- Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
- Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
- Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
- Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
- Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of 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.
- Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
- Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
- Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE	
APPLICANT ORGANIZATION		DATE SUBMITTED

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
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NOTE: If Disclosure Forms are required, please contact: Margaret A. Tolson, Director; Grants Management Division; 330 Independence Avenue, S.W., Room 4644 -COHEN; Washington, D.C. 20201-0001

Certification Regarding Debarment, Suspension, and Other
Responsibility Matters - Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and believe that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and

(d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - Lower Tier Covered Transaction." provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and
Voluntary Exclusion - Lower Tier Covered Transactions
(To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - Lower Tier Covered Transactions," without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

U.S. Department of Health and Human Services
Certification Regarding Drug-Free Workplace Requirements
Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(Continued on reverse side of this sheet)

HHS—Certification Regarding Drug-Free Workplace Requirements—continued from reverse page

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantees may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code) _____

Check if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

Signature _____ Date _____

Title _____

Organization _____

DGMO Form#2 Revised May 1990

Centers for Disease Control and Prevention

[Announcement Number 432]

RIN 0905-ZA57

Health Promotion and Disease Prevention Research Centers Cooperative Agreements; Availability of Funds for Fiscal Year 1994**Introduction**

The Centers for Disease Control and Prevention (CDC) announces the availability of funds in fiscal year (FY) 1994 for Health Promotion and Disease Prevention Research Centers cooperative agreements.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to all the health priority areas in Health Promotion, Health Protection, and Preventive Services. (For ordering a copy of "Healthy People 2000," see the Section **WHERE TO OBTAIN ADDITIONAL INFORMATION.**)

Authority

This program is authorized under Sections 1706 (42 U.S.C. 300u-5) and 317(k)(3) (42 U.S.C. 247b(k)(3)), of the Public Health Service Act, as amended.

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Eligible Applicants

Eligible applicants are academic health centers; defined as schools of public health, medicine, or osteopathy; that have:

A. Multidisciplinary faculty with expertise in public health and which have working relationships with relevant groups in such fields as public health, medicine, psychology, nursing, social work, education, and business.

B. Graduate training programs relevant to disease prevention.

C. Core faculty in epidemiology, biostatistics, social sciences, behavioral and environmental health sciences, and health administration.

D. Demonstrated curriculum in disease prevention.

E. Capability for graduate training in public health or residency training in preventive medicine.

Eligible applicants may enter into contracts, including consortia agreements (as described in the PHS Grants Policy Statement), as necessary to meet the essential requirements of this program and to strengthen the overall application.

Availability of Funds

Approximately \$500,000 (direct and indirect costs) is available in FY 1994 to fund one new prevention center program.

It is expected that the award will begin on or about September 30, 1994, and will be made for a 12-month budget period within a project period of up to four years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

At the request of the applicant, Federal personnel may be assigned to a project in lieu of a portion of the financial assistance.

The amount of this award may not be adequate for the support of all Prevention Center activities and other sources of funds may be necessary.

Purpose

The purpose of this program is to support health promotion and disease prevention research focusing on the prevention of the major causes of death and disability and promote health practices that lead to more effective State and local programs.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under A. (Recipient Activities), and CDC shall be responsible for conducting activities under B. (CDC Activities).

A. Recipient Activities

1. Conduct and evaluate one or more demonstration projects in health promotion and disease prevention or preventive health services, or both, in defined communities or target populations.

2. Conduct a demonstration project in health promotion and disease prevention with a State or local health or education department.

3. Establish collaborative activities with appropriate organizations, individuals, and State health or education agencies.

4. Establish an advisory committee to provide input on major program activities. The committee should include scientists, health care providers, health officials, voluntary health organizations, and consumers.

5. Coordinate and collaborate with other PHS supported research programs to prevent duplication and enhance overall efforts.

B. CDC Activities

1. Collaborate as appropriate with recipient in all stages of the project.

2. Provide programmatic and technical assistance.

3. Participate in improving program performance through consultation based on information and activities of other projects.

4. Provide scientific collaboration.

5. At the request of the applicant, assign Federal personnel in lieu of a

portion of the financial assistance to assist with developing the curriculum and training, or conducting other specific necessary activities.

Evaluation Criteria

Applications will be evaluated through a dual review process. The first review will be a peer evaluation of the scientific and technical merit of the application conducted by the Prevention Centers Grant Review Committee. The second review will be conducted by senior Federal staff, who will consider the results of the first review, national program needs, and relevance to the mission of CDC.

Awards will be made based on priority score rankings by the peer review, recommendations based upon program review by senior Federal staff, and the availability of funds.

A. The Prevention Center Grants Program Objective Review Committee may recommend approval or disapproval based on the intent of the application and the following criteria:

1. Prevention Center Theme (5 points)

The extent to which the theme will result in innovative approaches or interventions to meet health priorities, emerging health needs, health needs of an identified demographic group, or combination thereof.

2. Overall Program Plan (15 points)

The extent to which the overall program plan has clear objectives that are specific, measurable, and realistic, and makes effective use of Center resources to advance the Center's theme.

3. Specific Project Plans (55 points)

The technical and scientific merits of the proposed projects, the potential to achieve the stated objectives and the extent to which the applicant's plans are consistent with the purpose of the program.

a. Core activities (10 points)

b. Demonstration projects (20 points)

c. Collaborative project with State/local health or education department (15 points)

d. Prevention Research Training (10 points)

4. Evaluation Plan (5 points)

The extent to which the overall prevention center theme and objectives will be evaluated in regard to progress, efficacy, and cost benefit.

5. Management and Staffing Plan (15 points)

The extent to which the applicant demonstrates the ability and capacity to carry out the overall theme, objectives, and specific project plans.

6. Institutionalization Plan (5 Points)

The Center's plan for institutionalization of the prevention center within the parent organization.

7. Budget (not scored).

The extent to which the budget and justification are consistent with the program objectives and purpose. Centers are strongly urged to include a plan for obtaining additional resources that lead to institutionalization of the Center.

B. Review by senior Federal staff

Further review will be conducted by Senior Federal staff.

Factors to be considered will be:

1. Results of the peer review.
2. Program needs and relevance to national goals.
3. Budgetary considerations.

Funding Priorities

Priority will be given to funding those applicants who will aid in maintaining an equitable geographic distribution of Centers. In addition, a priority will be given to applications focused on the public health needs of rural populations.

Public comments are not being solicited regarding the funding priority because time does not permit solicitation and review prior to the funding date.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants should contact their State Single Point of Contract (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC

for each affected State. A current list of SPOCs is included in the application kit. If SPOCs have any State process recommendations on applications submitted to CDC, they should send them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Atlanta, Georgia 30305, no later than 60 days after the application deadline date. The Program Announcement Number and Program Title should be referenced on the document. The granting agency does not guarantee to "accommodate or explain" State process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.135.

Other Requirements

A. Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

B. Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations, 45 CFR part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

C. Animal Subjects

If the proposed project involves research on animal subjects, the applicant must comply with the "PHS Policy on Human Care and Use of Laboratory Animals by Awardee Institutions." An applicant organization proposing to use vertebrate animals in PHS-supported activities must file an Animal Welfare Assurance with the Office for Protection from Research

Risks at the National Institutes of Health.

Application Submission and Deadlines

A. Preapplication Letter of Intent

Potential applicants should submit a non-binding letter of intent to apply to the Grants Management Officer (whose address is given in this section, Item B). It should be postmarked no later than May 31, 1994. The letter should identify the announcement number being referenced, title and a brief description of the proposed Center, and the names and addresses of the principal investigators. The letter of intent does not influence review or funding decisions, but it will enable CDC to plan the review more efficiently.

B. Applications

The original and five copies of the application PHS Form 398 must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mailstop E-13, Atlanta, Georgia 30305, on or before June 22, 1994.

C. Deadlines

Applications shall be considered as meeting the deadline above if they are either:

1. Received on or before the deadline date; or

2. Sent on or before the deadline date and received in time for submission to the independent review group.

(Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

D. Late Applications

Applications which do not meet the criteria in C.1. or C.2. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

To receive additional written information call (404) 332-4561. You will be asked to leave your name, address, and phone number and will need to refer to Announcement Number 432. You will receive a complete program description, information on application procedures, and application forms. If you have questions after reviewing the contents of all the

documents, business management technical assistance may be obtained from Georgia L. Jang, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E-13, Atlanta, Georgia 30305, telephone (404) 842-6814.

Programmatic technical assistance may be obtained from Diane H. Jones, Ph.D., Project Officer, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop K-30, Atlanta, Georgia 30341-3724, telephone (404) 488-5395, or via INTERNET: DHJ1@CCDOD1.EM.CDC.GOV or BITNET: CDCD@EUMVM1.

Please refer to Program Announcement Number 432 when requesting information and submitting an application.

Potential applicants may obtain a copy of "Healthy People 2000" (Full Report; Stock number 017-001-00474-0) or "Healthy People 2000" (Summary Report; Stock number 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325, telephone (202) 783-3238.

Dated: May 6, 1994.

Ladene H. Newton,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94-11632 Filed 5-12-94; 8:45 am]

BILLING CODE 4163-18-P

[CDC-481]

Cooperative Agreement With the Republic of the Marshall Islands

Summary

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1994 funds for a cooperative agreement with the Republic of the Marshall Islands (RMI) to conduct an epidemiologic evaluation of thyroid disease and exposure to radioactive fallout from United States atomic weapons testing conducted in the South Pacific. Approximately \$350,000 is available in FY 1994 to support this cooperative agreement. It is expected that the award will begin on or about July 1, 1994, and will be awarded for a 12-month budget period within a 3-year project period. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made

on the basis of satisfactory progress and the availability of funds.

The purpose of this cooperative agreement is to support an epidemiologic study. This study will be designed to investigate the possible relationships involving thyroid diseases in Marshall Islands residents and past environmental exposures to radioactive fallout from the United States Atomic Weapons Testing Program conducted in the Marshall Islands between 1946 and 1958.

CDC will provide guidance on program management and administrative matters; assist in developing and final approval of the study protocol; assist in assessing historical records for morbidity and mortality; provide on-site assistance in both planning and implementation phases; provide on-site consultation and assistance in monitoring the collection and handling of information; assist in the statistical and epidemiologic analysis of the data; assist in interpreting the study findings; and assemble a peer review committee to review the project protocol.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Environmental Health. (For ordering a copy of "Healthy People 2000," see the section WHERE TO OBTAIN ADDITIONAL INFORMATION.)

Authority

This program is authorized under the Public Health Service Act, section 301(a) [42 U.S.C. 241(a)], as amended.

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Eligible Applicant

Assistance will be provided only to the RMI for conducting this study. No other applications are solicited. The Program Announcement and application kit have been sent to RMI.

RMI is the most appropriate organization to conduct the work under this cooperative agreement because:

1. The RMI, under previous funding from the United States Government through the Compact of Free

Association, is conducting a Nationwide Radiological Study to determine the extent of residual contamination from atomic weapons tests on individual islands in the Republic. These data will be essential for determining historical radiation exposures in Marshall Islands residents participating in this study of thyroid morbidity. The data from this study are the property of the Government of the Marshall Islands and are not available for public use.

2. The RMI has already assembled a consortium of the best qualified health physicists, thyroid disease specialists, and administrators from various institutions to conduct this study. These experts not only represent a high degree of experience in health physics and thyroid disease studies, but they represent the principal participants in past research of the residents of the Republic of the Marshall Islands.

3. The Ministry of the Interior and Outer Island Affairs, RMI, will be able to provide inter-island radio communications, translations to Marshallese language, and logistical support for this study.

4. The RMI has the legal responsibility for disease control in the Marshall Islands under the laws of the Republic.

Executive Order 12372 Review

This application is not subject to review by Executive Order 12372, Intergovernmental Review of Federal Programs.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number (CFDA) for this project is 93.283.

Other Requirements

A. Paperwork Reduction Act

Projects involving the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

B. Human Subjects

This project involves research on human subjects; therefore, applicant must comply with the Department of Health and Human Services Regulations (45 CFR part 46) regarding the protection of human subjects. Assurance

must be provided that demonstrates the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit. If required, the RMI could establish the review of this project through its own institutional review committee.

Where To Obtain Additional Information

If you are interested in obtaining additional information regarding this project, please refer to Announcement Number 481 and contact Georgia Jang, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Atlanta, Georgia 30305, telephone (404) 842-6814, for business management technical assistance.

A copy of "Healthy People 2000" (Full Report, Stock No. 017-001-00474-0) or "Healthy People 2000" (Summary Report, Stock No. 017-001-00473-1) referenced in the SUMMARY may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325, telephone (202) 783-3238.

Dated: May 6, 1994.

Ladene H. Newton,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94-11633 Filed 5-12-94; 8:45 am]

BILLING CODE 4163-18-

[Announcement Number 461]

West Virginia Health Promotion and Disease Prevention Research Centers Cooperative Agreements; Availability of Funds for Fiscal Year 1994

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of funds in fiscal year (FY) 1994 for cooperative agreements with up to two Health Promotion and Disease Prevention Research Centers in the State of West Virginia. One of these centers must address the special health promotion and disease prevention needs of residents of rural communities.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement

is related to priority areas in Health Promotion, Health Protection, and Preventive Services. (For ordering a copy of "Healthy People 2000," see the Section WHERE TO OBTAIN ADDITIONAL INFORMATION.)

Authority: This program is authorized under Sections 1706 (42 U.S.C. 300u-5) and 317(k)(3) (42 U.S.C. 247b(k)(3)) of the Public Health Service Act, as amended.

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Eligible Applicants

Assistance will be provided only to academic health centers; defined as a school of public health, medicine, or osteopathy; located in the State of West Virginia that have:

- Multidisciplinary faculty with expertise in disease prevention and health promotion and which has working relationships with relevant groups in such fields as public health, medicine, psychology, nursing, social work, education, and business.
- Graduate training programs relevant to disease prevention.
- Core faculty in epidemiology, biostatistics, social sciences, behavioral and environmental health sciences, and health administration.
- Demonstrated curriculum in disease prevention.
- Capability for graduate training in public health or residency training in preventive medicine.

Eligible applicants may enter into contracts, including consortia agreements (as described in the PHS Grants Policy Statement), as necessary to meet the essential requirements of this program and to strengthen the overall application.

Congress, through Senate Report 103-143, directed CDC to "fund three or four new Prevention Centers, with at least two concentrating on rural health." The report further recommended that one of those sites be in West Virginia. CDC will announce the availability of funds for the establishment of a remaining center in Program Announcement 432 separately.

Availability of Funds

Approximately \$1,000,000 is available in FY 1994 to fund up to two new Health Promotion and Disease Prevention Research Centers in West Virginia. It is expected that the average

award will be \$500,000 (including both direct and indirect costs), ranging from \$300,000 to \$600,000.

It is expected that the awards will begin on or about September 30, 1994, and will be made for a 12-month budget period within a project period of up to four years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

At the request of the applicant, Federal personnel may be assigned to a project in lieu of a portion of the financial assistance.

The amount of this award may not be adequate for the support of all Prevention Center activities and other sources of funding may be necessary.

Purpose

The purpose of this program is to support health promotion and disease prevention research that focuses on the prevention of the major causes of death and disability and promote health practices that lead to more effective State and local programs.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under A. (Recipient Activities), and CDC will be responsible for the activities under B. (CDC Activities).

A. Recipient Activities

- Conduct and evaluate one or more demonstration projects in health promotion and disease prevention or preventive health services, or both, in defined communities or targeted populations.
- Conduct a demonstration project in health promotion and disease prevention with a State or local health or education department.
- Establish collaborative activities with appropriate organizations, individuals, and State health or education agencies.
- Establish an advisory committee to provide input on major program activities. The committee should include scientists, health-care providers, health officials, voluntary health organizations, and consumers.
- Coordinate and collaborate with other PHS supported research programs to prevent duplication and enhance overall efforts.

B. CDC Activities

- Collaborate as appropriate with recipient in all stages of the project.
- Provide programmatic and technical assistance.

3. Participate in improving program performance through consultation based on information and activities of other projects.

4. Provide scientific collaboration.

5. At the request of the applicant, assign Federal personnel in lieu of a portion of the financial assistance to assist with developing the curriculum, training, or conducting other specific necessary activities.

Evaluation Criteria

Applications will be evaluated through a dual review process. The first review will be a peer evaluation of the scientific and technical merit of the application conducted by the Prevention Centers Grant Review Committee. The second review will be conducted by senior Federal staff, who will consider the results of the first review, national program needs, and relevance to the mission of CDC. Awards will be made on the basis of priority score rankings by the peer review, recommendations based on program review by senior Federal staff, and the availability of funds.

A. The Prevention Center Grants Program Objective Review Committee may recommend approval or disapproval based on the intent of the application and the following criteria:

1. Prevention Center Theme (5 Points)

The extent to which the theme will result in innovative approaches or interventions to meet health priorities, emerging health needs, health needs of an identified demographic group, or combination thereof.

2. Overall Program Plan (15 Points)

The extent to which the overall program plan has clear objectives that are specific, measurable, and realistic, and makes effective use of Prevention Center resources to advance the Center's theme.

3. Specific Project Plans (55 Points)

The technical and scientific merits of the proposed projects, the potential to achieve the stated objectives and the extent to which the applicant's plans are consistent with the purpose of the program.

- Core activities (10 points)
- Demonstration projects (20 points)
- Collaborative project with State and local health or education department (15 points)
- Prevention Research Training (10 points)

4. Evaluation plan (5 Points)

The extent to which the overall Prevention Center theme and objectives

will be evaluated in regard to progress, efficacy, and cost benefit.

5. Management and Staffing Plan (15 Points)

The extent to which the applicant demonstrates the ability and capacity to carry out the overall theme, objectives, and specific project plans.

6. Institutionalization Plan (5 Points)

The Center's plan for institutionalization of the Prevention Center within the parent organization.

7. Budget (Not Scored)

The extent to which the budget and justification are consistent with the program objectives and purpose. Prevention Centers are strongly urged to include a plan for obtaining additional resources that lead to institutionalization of the Center.

B. Review by senior Federal staff—Further review will be conducted by senior Federal staff. Factors to be considered will be:

- Results of the peer review.
- Program needs and relevance to national goals.
- Budgetary considerations.

Funding Priority

Based on congressional appropriation language, priority will be given to funding applications that focuses on the public health needs of rural populations.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC for each affected State. A current list of SPOCs is included in the application kit. If SPOCs have any State process recommendations on applications submitted to CDC, they should send them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Atlanta, GA 30305, no later than 60 days after application due date. The Program Announcement Number and Program Title should be referenced on the

document. The granting agency does not guarantee to "accommodate or explain" State process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.135.

Other Requirements

A. Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

B. Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations, 45 CFR Part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

C. Animal Subjects

If the proposed project involves research on animal subjects, the applicant must comply with the "PHS Policy on Human Care and Use of Laboratory Animals by Awardee Institutions." An applicant organization proposing to use vertebrate animals in PHS-supported activities must file an Animal Welfare Assurance with the Office for Protection from Research Risks at the National Institutes of Health.

Application Submission and Deadlines

A. Applications

The original and five copies of the application PHS Form 398 must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E-13, Atlanta, GA 30305, on or before June 22, 1994.

B. Deadlines

Applications shall be considered as meeting the deadline above if they are either:

1. Received on or before the deadline date; or
2. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

C. Late Applications

Applications that do not meet the criteria in B.1. or B.2. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

A complete program description, information on application procedures, an application package, and business management technical assistance may be obtained from Georgia L. Jang, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mailstop E-13, Atlanta, GA 30305, telephone (404) 842-6814. Programmatic technical assistance may be obtained from Diane H. Jones, Ph.D., Project Officer, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop K-41, Atlanta, GA 30341-3724, telephone (404) 488-5395, or via INTERNET: DHJ1@CCDOD1.EM.CDC.GOV or BITNET: CDCDJ@EUMVM1.

Please refer to Program Announcement Number 461 when requesting information and submitting an application.

Potential applicants may obtain a copy of "Healthy People 2000" (Full Report, Stock No. 017-001-00474-0) or "Healthy People 2000" (Summary Report, Stock No. 017-001-00473-1) referenced in the "INTRODUCTION" through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325, telephone (202) 783-3238.

Dated: May 6, 1994.

Ladene H. Newton,
Acting Associate Director for Management
and Operations Centers for Disease Control
and Prevention (CDC).
[FR Doc. 94-11631 Filed 5-12-94; 8:45 am]
BILLING CODE 4163-18-P

Food and Drug Administration

[Docket No. 94N-0164]

Drug Export; ^{PR}Acticin (Tretinoin 0.025% Gel USP)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Penederm Inc., has filed an application requesting approval for the export of the human drug ^{PR}Acticin (Tretinoin 0.025% Gel USP) 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, Center for Drug Evaluation and Research (HFD-313), 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 Penederm Inc., 320 Lakeside Dr., suite A, Foster City, CA 94404, has filed an application requesting approval for the export of the human drug ^{PR}Acticin

(Tretinoin 0.025% Gel USP) to Canada. ^{PR}Acticin (Tretinoin 0.025% Gel USP) is indicated for topical application in the treatment of acne vulgaris, primarily where comedones, papules and pustules predominate. The application was received and filed in the Center for Drug Evaluation and Research on March 7, 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. 94-11624 Filed 5-12-94; 8:45 am]
BILLING CODE 4160-01-F

[Docket No. 94N-0165]

Drug Export; Intraoral Fluoride Releasing Device

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Southern BioSystems, Inc., has filed an application requesting approval for the export of the human drug Intraoral Fluoride Releasing Device to Italy. **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, Center for Drug Evaluation and Research (HFD-313), 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 Southern BioSystems, Inc., 110 40th St. North, Birmingham, AL 35222, has filed an application requesting approval for the export of the human drug Intraoral Fluoride Releasing Device to Italy. Intraoral Fluoride Releasing Device is indicated for long-term controlled release of fluoride to reduce dental caries. The application was received and filed in the Center for Drug Evaluation and Research on March 4, 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

re delegated 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. 94-11625 Filed 5-12-94; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 94N-0167]

Drug Export; Estrapel (Estradiol) Pellets 25 mg

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Bator Pharmacal Co., Inc., has filed an application requesting conditional approval for the export of the human drug Estrapel (estradiol) Pellets 25 milligrams (mg) to Great Britain.

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, Center for Drug Evaluation and Research (HFD-313), 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 Bator Pharmacal Co., Inc., 70 High St., Rye, NY 10580, has filed an application requesting conditional approval for the export of the human drug Estrapel

(estradiol) Pellets 25 mg to Great Britain. Estrapel (estradiol) Pellets 25 mg is indicated for major post-menopausal symptoms due to estrogen deficiency, including prevention of post-menopausal osteoporosis in hysterectomized patients. The application was received and filed in the Center for Drug Evaluation and Research on April 5, 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 re delegated 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. 94-11642 Filed 5-12-94; 8:45 am]

BILLING CODE 4160-01-F

Advisory Committee Meeting; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration is announcing an amendment to the notice of a meeting of the Biological Response Modifiers Advisory Committee which is scheduled for May 25 and 26, 1994. This meeting was announced in the *Federal Register* of April 15, 1994 (59 FR 18134 at 18135). The amendment is being made to remove one agenda item and to remove the closed committee deliberations portion from the meeting. There are no other changes. This amendment will be announced at the beginning of the open portion of the meeting.

FOR FURTHER INFORMATION CONTACT:

William Freas or Pearline Muckelvene, Center for Biologics Evaluation and Research (HFM-21), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301-594-1054.

SUPPLEMENTARY INFORMATION: In the Federal Register of April 15, 1994, FDA announced that a meeting of the Biological Response Modifiers Advisory Committee would be held on May 25 and 26, 1994. On page 18135, in the third column, under "Type of meeting and contact person" and "Open committee discussion" portions of the agenda are amended to read as follows:

Type of meeting and contact person. Open public hearing, May 25, 1994, 10:30 a.m. to 11:15 a.m., unless public participation does not last that long; open committee discussion, 11:15 a.m. to 5:30 p.m.; open public hearing, May 26, 1994, 8 a.m. to 8:45 a.m., unless public participation does not last that long; open committee discussion, 8:45 a.m. to 3 p.m.; William Freas or Pearline Muckelvene, Center for Biologics Evaluation and Research (HFM-21), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301-594-1054.

Open committee discussion. The committee will discuss issues related to the safety and efficacy of hematopoietic support regimens in the setting of myelotoxic chemotherapy.

Dated: May 9, 1994.

Linda A. Suydam,

Interim Deputy Commissioner for Operations,
[FR Doc. 94-11641 Filed 5-12-94; 8:45 am]

BILLING CODE 4160-01-F

Public Health Service**Final Notice Regarding Section 602 of the Veterans Health Care Act of 1992 Entity Guidelines**

AGENCY: Public Health Service, HHS.

ACTION: Final notice.

INFORMATION: Section 602 of Public Law 102-585, the "Veterans Health Care Act of 1992," enacted section 340B of the Public Health Service Act, "Limitation on Prices of Drugs Purchased by Covered Entities." Section 340B provides that a manufacturer who sells covered outpatient drugs to eligible entities must agree to charge a price that will not exceed the amount determined under a statutory formula. The purpose of this notice is to inform interested parties of final program guidelines regarding eligible covered entities.

FOR FURTHER INFORMATION CONTACT:

Marsha Alvarez, R.Ph., Director, Drug Pricing Program, Bureau of Primary

Health Care, Health Resources and Services Administration, East West Towers rm 10-3A1, Bethesda, Maryland 20814, Phone: (301) 594-4353.

EFFECTIVE DATE: June 13, 1994.

SUPPLEMENTARY INFORMATION:**(A) Background**

Proposed entity guidelines were announced in the Federal Register at 58 FR 68922 on December 29, 1993. A comment period of 30 days was established to allow interested parties to submit comments. The Office of Drug Pricing received 7 letters with comments concerning confidential drug pricing information, retroactive discounts, drug diversion, audit requirements, entity participation, group purchasing, purchasing agents, manufacturer contracts, and 4 general comments.

The following section presents a summary of all major comments, grouped by subject, and a response to each comment. All comments were considered in developing this final notice. Changes were also made to increase clarity and readability.

(B) Comments and Responses*Confidential Drug Pricing Information*

Comment: Establish specific sanctions for entities which knowingly make unauthorized disclosures.

Response: No change. The quoted price or the actual price given by the manufacturer to the covered entity is not confidential. Covered entities do not have access to confidential drug pricing information (i.e., average manufacturer price and best price).

Eligibility for Retroactive Discounts

Comment: Do not impose a deadline on requesting retroactive discounts.

Response: No change. It is a reasonable administrative decision to establish a time limit for requesting refunds. Manufacturers were given sufficient time in which to implement the discount program, and entities were given an adequate opportunity to elect whether to participate in the program. An entity may preserve its right to retroactive discounts, after the deadline, by sending each manufacturer a letter requesting such refunds and providing adequate documentation of drug purchases.

Comment: Exclude from eligibility for retroactive discounts any disproportionate share hospital (DSH) which purchased its outpatient drugs through a group purchasing organization (GPO).

Response: No change. The Office of Drug Pricing considers the outpatient

drug purchases of DSHs bought through a GPO or any group purchasing arrangement ineligible for retroactive discounts.

Comment: Allow covered entities to request an extension of the deadline for retroactive discounts for good cause (e.g., offsite DSH clinics whose eligibility has not yet been determined).

Response: We have amended part 3 of the notice to permit a DSH outpatient clinic which was not participating in a GPO or any group purchasing arrangement during the period for which it is requesting retroactive discounts to preserve its right by sending manufacturers a letter requesting such refunds and providing adequate documentation of purchases.

Comment: Extend the deadline for those manufacturers which have refused to give PHS pricing to the date on which the manufacturer begins discounting its covered outpatient drugs in accordance with the law.

Response: No change. At every opportunity, the Office of Drug Pricing has communicated its willingness to assist entities with problems of accessing PHS pricing. It has responded to all entity complaints dealing with manufacturer noncompliance. We believe that one year is a reasonable time in which to have resolved any difficulty with pricing access.

Comment: Require manufacturers to respond within 30 days to requests for retroactive discounts, even if the response is just a request for additional information, or face possible termination from the Medicaid program.

Response: No change. Because this issue deals with manufacturer guidelines, it is beyond the scope of this notice. However, should a covered entity have difficulty obtaining retroactive discounts, we encourage the entity to contact the Office of Drug Pricing for assistance.

Comment: Establish that a DSH, which did not submit its Medicaid provider number for the period for which it is requesting retroactive discounts, would be ineligible for the refund.

Response: No change. A DSH which did not submit its Medicaid provider number may still be eligible for retroactive discounts if it (1) did not bill Medicaid for the drugs, (2) billed for covered outpatient drugs using an all-inclusive rate, or (3) has adequate documentation proving that drugs for which retroactive discounts are being requested did not generate Medicaid rebates.

Drug Diversion

Comment: Develop and publish a mechanism whereby manufacturers can report to the Office of Drug Pricing when they suspect an entity of diversion.

Response: No change. The Office of Drug Pricing has currently developed a proposed dispute resolution process which will be published in the *Federal Register* with a public comment period.

Comment: Require PHS preclearance of all safeguard systems developed by entities to deter diversion and require this information to be supplied to the manufacturers upon request.

Response: No change. Guidelines concerning separate purchasing accounts and dispensing records are quite specific, and procedures in these areas need no prior approval. If a manufacturer believes that a covered entity is involved in drug diversion, it has the statutory authority to audit the entity records that directly relate to drugs of that manufacturer purchased at PHS pricing. Proposed audit guidelines have been developed and will be published in the *Federal Register* with a public comment period.

Comment: Issue criteria for measuring the adequacy of the safeguards.

Response: No change. If a manufacturer believes that a covered entity has established inadequate safeguards and is involved in drug diversion, then the manufacturer can either audit the entity or file a complaint with the Office of Drug Pricing.

Comment: Develop a broad definition of "patient" to include all necessary services provided to individuals served by the covered entities.

Response: No change. The notice does not address the definition of patient. The Office of Drug Pricing is in the process of developing a definition of patient, which will be published in the *Federal Register*. Public comment will be invited, and this comment will be considered at that time.

Comment: Do not require separate inventories, as this would place a hardship on most hospitals.

Response: No change. There is no requirement for separate inventories.

Comment: Do not permit entities to develop alternate tracking systems or develop criteria for these systems by March 1, 1994.

Response: No change. It is essential that the Office of Drug pricing maintain some flexibility during this period of implementation. Because these alternate tracking systems require prior approval from the Office of Drug pricing before they can be implemented, sufficient

control is maintained. The Office will develop criteria at a later date and welcomes all suggestions.

Audit Requirements

Comment: Specify the statutory basis for the Secretary to authorize manufacturer audit guidelines.

Response: We have amended part 5 of the notice to include a reference to section 340B(a)(5)(C) of the PHS Act, which gives the Secretary the authority to establish procedures relating to the number, duration, and scope of manufacturer audits.

Comment: Move quickly to develop procedures to allow manufacturers to audit records of entities' purchases of covered outpatient drugs and of Medicaid claims for reimbursement for such drugs.

Response: No change. The Office of Drug Pricing is developing proposed audit guidelines which will be published in the *Federal Register* with public comment invited. All comments regarding suggested audit procedures, currently received, will be considered at that time.

Entity Participation

Comment: An entity should be viewed as not participating in the program (and therefore as ineligible to receive its discounts) if it has not given its Medicaid provider number of the Office of Drug Pricing.

Comment: We have amended part 2 of the notice to require entities to provide one of the following: (1) A pharmacy Medicaid number (the number which the entity uses to bill Medicaid for medications), or (2) their all-inclusive Medicaid number (e.g., "FQ" number), or (3) notification that it does not bill Medicaid for all outpatient drugs. These numbers will be posted on the electronic bulletin board (Electronic Data Retrieval System or EDRS), maintained by the Office of Drug Pricing, to indicate which covered entities have elected to participate in the program. For access to the EDRS call (301) 549-4992.

Comment: All covered entities should be required to notify manufacturers 30 days before they wish to access PHS pricing.

Response: We have amended part 6 of the notice to provide that entities will be added to or deleted from the eligibility list on a quarterly basis only. The Office of Drug Pricing will update the list 2 weeks before each calendar quarter, giving lead time for pricing changes and appropriate communications with wholesalers, GPOs, and purchasing agents.

Group Purchasing Arrangements

Comment: Allow eligible DSHs to continue GPO participation for manufacturers who are not offering PHS pricing and prohibit GPO participation with respect to all complying manufacturers.

Response: No change. Generally, we have found that entities are receiving PHS pricing. The Office of Drug Pricing has, at every opportunity, communicated its willingness to assist entities when there are problems with accessing PHS pricing. The Office has investigated all complaints of manufacturer noncompliance immediately and was and is willing to take appropriate enforcement action if necessary. This is the proper course for dealing with any manufacturer non-compliance, rather than attempting to compensate for continued non-compliance by disregarding the statutory GPO provisions.

Purchasing Agents

Comment: Distinguish clearly between a purchasing agent and a GPO for purposes of the DSH/GPO prohibition, only.

Response: We have amended part 8 of the notice to distinguish a purchasing agent from a group purchasing arrangement for purposes of the DSH/GPO prohibition. A purchasing agent would not be considered operating as a group purchasing arrangement if the following conditions are met: (1) the purchasing agent is not associated with a group purchasing organization; (2) no collective bargaining by a group of hospitals occurs; (3) the negotiations of PHS pricing are separate activities for each individual DSH; (4) a separate agreement with each DSH is executed; (5) as part of the agreement, there will be no sharing or pricing information; and (6) all final decisions concerning product and price acceptance will be made by each individual DSH.

Comment: Do not require manufacturers to sell directly to a purchasing agent, a GPO, or a contract pharmacy, but solely to covered entities and their wholesalers.

Response: No change. It is a customary business practice for manufacturers to sell to intermediaries as well as directly to the entity. Entities often use purchasing agents or contract pharmacies, or participate in GPOs. By placing such limitations on sales transactions, manufacturers could be discouraging entities from participating in the program.

Manufacturers may not single out covered entities from their other customers for restrictive conditions that

would undermine the statutory objective.

Manufacturer Contracts Which Require Entity Compliance

Comment: Permit a manufacturer to require the covered entities to sign a contract containing only the manufacturer's normal business policies (e.g., routine information necessary to set up and maintain an account) if this is a usual business practice of the manufacturers.

Response: We have amended part 11 of the notice to state that this prohibition against a contract between a manufacturer and a covered entity regarding entity compliance with section 340B provisions or the Office of Drug Pricing program guidelines does not encompass entity/manufacture contracts that contain provisions relating to normal business activities, requests for standard information, or other appropriate contract provisions.

Comment: Declare null and void provisions in manufacturer contracts signed by entities pursuant to section 340B which deal with assurances of entity compliance with section 340B.

Response: No change. While the Office of Drug Pricing has no legal authority to declare null and void provisions of contracts between covered entities and manufacturers, it is our position that manufacturers may not enforce such provisions.

General

Comment: Post Medicaid provider numbers of all eligible DSH outpatient clinics on the electronic bulletin board.

Response: No change. The Office of Drug Pricing has developed proposed criteria to determine the eligibility of DSH outpatient clinics. These criteria will be published in the **Federal Register**, and the public will be invited to comment.

Comment: Might certain activity generate a new Medicaid Best Price?

Response: No change. Because the Health Care Financing Administration (HCFA) Medicaid Rebate Program deals with Best Price calculations, the Office of the Drug Pricing will refer all Best Price questions to the agency. For further information in this regard, please call Al Beachley, Branch Chief, Medicaid Drug Rebate Operations Branch, HCFA, at (410) 966-3225.

Comment: Establish a procedure whereby manufacturers will be able to determine which purchasing groups are eligible to purchase on behalf of covered entities and receive the PHS pricing.

Response: We have amended part 7 of the notice to require any group which purchases covered outpatient drugs at

OHS pricing on behalf of an eligible covered entity to have written authority from the entity to purchase its covered outpatient drugs. The purchasing group must provide documentation of this purchase authority to the manufacturer upon request. This rule does not supersede the statutory limitations regarding DSH participation in GPOs or group purchasing arrangements.

Comment: Establish a prime vendor program designating certain wholesalers to service PHS covered entities similar to programs established with the Department of Veterans Affairs (VA), Department of Defense (DOD), and the Bureau of Prisons (BOP).

Response: No change. The Office of Drug Pricing is in the early stages of developing a pilot prime vendor program and has considered, among others, the various programs of VA, DOD, and BOP.

(C) Revised Entity Guidelines

Set forth below are the final entity guidelines, revised based on the analysis of the comments described above.

(1) Confidential Drug Pricing Information

"Confidential drug pricing information" includes both "best price" and "average manufacturer price." The quoted price and the actual price given by the manufacturer to the covered entity are not confidential.

(2) Duplicate Discount/Rebate Potential

First, a covered entity billing on a cost basis for drug purchases must provide the Office of Drug Pricing with a pharmacy Medicaid number (the number which the entity uses to bill Medicaid for medications). Second, a covered entity using an all-inclusive rate (either per encounter or visit) must submit its all-inclusive Medicaid number (e.g., "FQ" number). Third, if a covered entity does not bill Medicaid for outpatient drugs, then the entity must notify the Office of this decision. Fourth, a large facility which houses many different clinics, only several of which are eligible, must obtain a separate Medicaid provider number for the eligible clinics. For those States which cannot generate additional Medicaid provider numbers for entities, covered entities must discuss an alternative arrangement with the States to accomplish this objective.

This information will be posted on the Electronic Data Retrieval System (EDRS), maintained by the Office of Drug Pricing, to indicate which covered entities have elected to participate in the program. For access to the EDRS call (301) 594-4992.

If a drug is purchased by or on behalf of a Medicaid beneficiary, the amount billed may not exceed the entity's actual acquisition cost for the drug, as charged by the manufacturer at a price consistent with the Veterans Health Care Act of 1992, plus a reasonable dispensing fee established by the State Medicaid agency.

(3) Eligibility for Retroactive Discounts

Until 30 days after publication of this notice, eligible covered entities included on the initial eligibility list may request retroactive discounts (discounts, rebates, or account credit) for covered outpatient drugs purchased retroactive to December 1, 1992. Entities added to the eligibility list at a later date may only request discounts retroactive to the date of their inclusion on the list. Of the entities listed on the eligibility list, only the following may request these discounts: The covered entity that—(1) has billed for covered outpatient drugs using an all-inclusive rate (either per visit or per encounter), or (2) has not billed Medicaid for covered outpatient drugs since December 1, 1992, (or since its inclusion on the eligibility list), or (3) has submitted its Medicaid provider number and is requesting refunds for subsequent periods, or (4) has adequate documentation proving that drugs for which a retroactive discount is being requested have not generated Medicaid rebates.

A DSH is not eligible for retroactive discounts for covered outpatient drugs purchased through a group purchasing organization (GPO) or any group purchasing arrangement. Any DSH outpatient clinic which is or will be eligible for retroactive discounts may preserve its rights by sending manufacturers a letter requesting such refunds and providing adequate documentation of purchases.

(4) Entity Guidelines Regarding Drug Diversion

Covered entities are required not to resell or otherwise transfer outpatient drugs purchased at the statutory discount to an individual who is not a patient of the entity. There are several common situations in which this might occur. First, if individuals other than patients of the covered entity obtain covered outpatient drugs from its pharmaceutical dispensing facility, the entity must develop and institute adequate safeguards to prevent the transfer of discounted outpatient drugs to individuals who are not eligible for the discount (e.g., separate purchasing accounts and dispensing records). Second, a larger institution which

contains an eligible entity within its structure is required to establish separate purchasing accounts and maintain separate dispensing records for the eligible entity. Third, the covered entity itself may not use the covered outpatient drug in excluded services (e.g., inpatient services). If an entity offers services excluded from the drug discount program, the entity must develop a separate method for purchasing and dispensing drugs for excluded services.

The covered entity may, at its option, develop an alternative system, short of tracking each discounted drug through the purchasing and dispensing process, by which it can prove compliance. If an alternate system of tracking is proposed to be used, this system must be approved by the Drug Pricing Program. The Office will develop criteria for alternative systems at a later date and welcomes all suggestions.

(5) Audit Requirement

All entities receiving statutory prices are required to maintain records of purchases of covered outpatient drugs and of any claims for reimbursement submitted for such drugs under title XIX of the Social Security Act. The entity must permit HHS and the manufacturer to audit any record of a covered drug purchase that was subject to the discount, as provided by section 340B(a)(5)(C) of the PHS Act. Manufacturer audits will be conducted in accordance with procedures developed by the Secretary of HHS. The Office of Drug Pricing is developing proposed audit guidelines which will be published in the *Federal Register* with public comment invited. The notice will address only audits related to purchases as a covered entity; it does not address other audit requirements related to participation in State Medicaid programs or receipt of Federal funding.

(6) Entity Participation

Covered entity participation in the section 340B drug discount program is voluntary. Once an entity has elected to participate in the program, it must wait to enter or withdraw from the program until the next official updating of the eligible entity list. The Office of Drug Pricing will update this list two weeks before each calendar quarter. The entity must comply with all program guidelines until the date it is removed from the eligibility list.

(7) Group Purchasing

A DSH may participate in a group purchasing arrangement for inpatient drug use without affecting its eligibility to purchase section 340B discounted

drugs. If a DSH participates in a GPO or other group purchasing arrangement for covered outpatient drugs, the DSH will no longer be an eligible covered entity and cannot purchase covered outpatient drugs at the section 340B discount prices.

States, or other groups, which purchase drugs for covered entities (other than disproportionate share hospitals) are not included on the list of covered entities; however, they are eligible to purchase at the section 340B discount if the following requirements are met: (1) the group purchasing arrangement must be comprised of only covered entities, (2) if group purchasing arrangements contain entities which are not eligible for the discount, separate purchasing accounts and dispensing/distribution must be maintained, and (3) the purchasing group has written authority from the covered entity to purchase covered outpatient drugs on its behalf.

(8) Purchasing Agents

A covered entity is permitted to use a purchasing agent without forfeiting its right to the section 340B drug discounts. If a purchasing agent is used, the arrangement must be in writing and the terms of the agent's relationship with the entity must be clearly defined. The entity and the agent should decide whether the agent simply negotiates the drug purchasing contracts on behalf of the entity or actually receives drug shipments for distribution to the entity. If the latter, the transfer of purchased pharmaceuticals from an agent to the entity would not be viewed as drug diversion.

For purposes of the DSH/GPO prohibition only, a purchasing agent may be distinguished from and would not be considered operating as a GPO or other group purchasing arrangement if the following conditions are met: (1) the purchasing agent is not associated with a GPO or other purchasing arrangement; (2) no collective bargaining by a group of hospitals occurs; (3) the negotiations for PHS pricing are separate activities for each individual DSH; (4) a separate agreement with each DSH is executed; (5) as part of the agreement, there will be no sharing of pricing information; and (6) all final decisions concerning product and price acceptance will be made by each individual DSH.

(9) Definition of Covered Outpatient Drug

Section 1927(k)(2) of the Social Security Act defines "covered outpatient drug" to include most drugs and biologicals which may be dispensed only by prescription and which require

approval by the Food and Drug Administration or a license under section 351 of the PHS Act. Section 1927(k)(3) limits the definition of "covered outpatient drug" to exclude certain settings (e.g., such services as emergency room, hospice, dental, physician, nursing facilities, x-ray, lab, and renal dialysis) in some instances. In these settings, if a covered drug is included in the per diem rate (i.e., bundled with other payments in an all-inclusive, per visit, or an encounter rate), it will not be included in the section 340B discount program. However, if a covered drug is billed and paid for instead as a separate line item as an outpatient drug in a cost basis billing system, this drug will be included in the program.

(10) Dealing Direct or Through a Wholesaler

If a manufacturer has customarily dealt directly with a particular covered entity, then requiring the manufacturer to continue this form of purchasing with the covered entity is reasonable. When dealing directly with a covered entity, manufacturers must offer covered outpatient drugs at or below the section 340B discount prices. If a manufacturer customarily uses a wholesaler as a means of distribution, then requiring the manufacturer to continue this form of purchasing with covered entities is also reasonable. If the manufacturer's drugs are available to covered entities through wholesalers, the discount must be made available through that avenue. Manufacturers may not single out covered entities from their other customers for restrictive conditions that would undermine the statutory objective. Manufacturers must not place limitations on the transactions (e.g., minimum purchase amounts) which would have the effect of discouraging entities from participating in the discount program.

(11) Manufacturer's Contracts Requiring Entity Compliance

A manufacturer may not condition the offer of statutory discounts upon an entity's assurance of compliance with section 340B provisions. Covered entity assurances regarding the following activities may not be required: (1) eligibility to participate in the program; (2) utilization of covered outpatient drugs only in authorized services; (3) maintaining the confidentiality of the drug pricing information; (4) permitting the manufacturers to audit purchase, inventory, and related records prior to the publication of approved PHS guidelines; and (5) submitting information related to drug acquisition,

purchase, and inventory systems. Entities are not required to sign agreements assuring manufacturers of their compliance with section 340B provisions. (If a manufacturer asks a covered entity whether the entity is in fact participating in the section 340B discount program, the entity must supply the manufacturer with this information). This prohibition does not include provisions that address customary business practice, request standard information, or include other appropriate contract provisions.

Dated: May 9, 1994.

John H. Kelso,

Acting Administrator, Health Resources and Services Administration.

[FR Doc. 94-11643 Filed 5-12-94; 8:45 am]

BILLING CODE 4160-15-P-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-94-1917; FR-3350-N-83]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact Barbara Richards, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1-800-927-7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its

inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless v. Veterans Administration*, No. 88-2503-OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A-10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to defer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the

determination of unsuitability should call the toll free information line at 1-800-927-7588 for detailed instructions or write a letter to Barbara Richards at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), and the date of publication in the *Federal Register*, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Navy: John J. Kane, Deputy Division Director, Dept. of Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332-2300; (703) 325-0474; GSA: Leslie Carrington, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405; (202) 208-0619; U.S. Air Force: Bob Menke, Area-MI, Bolling AFB, 172 Luke Avenue, suite 104, Washington, DC 20332-5113; (202) 767-6235; Dept. of Transportation: Ronald D. Keefer, Director, Administrative Services & Property Management, DOT, 400 Seventh St. SW., room 10319, Washington, DC 20590; (202) 366-4246; Corps of Engineers: Pete Digel, Headquarters, Army Corps of Engineers, Attn: CERE-MC, room 4224, 20 Massachusetts Ave. NW., Washington, DC 20314-1000; (202) 272-1753; Dept. of Interior: Lola D. Knight, Property Management Specialist, Dept of Interior, 1849 C St. NW., Mail stop 5512-MIB, Washington, DC 20240; (202) 208-4080; (These are not toll-free numbers).

Dated: May 6, 1994.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 05/13/94

Suitable/Available Properties

BUILDINGS (by State)

Arkansas

Murray Overlook & Info. Center
McClellan-Kerr Arkansas River
Navigation Project
Little Rock Co: Pulaski AR 72203-
Landholding Agency: GSA
Property Number: 549410007
Status: Excess

Comment: 1003 sq. ft.; 1 story with basement;
bldg. on 4.80 acres includes paved parking;
concrete; needs rehab.; most recent use—
info. center/observation area
GSA Number: 7-D-AR-548

California

Bldg. 31447
Naval Air Weapons Station
China Lake Co: Kern CA 93555-6001
Landholding Agency: Navy
Property Number: 779420007
Status: Excess
Comment: 670 sq. ft. trailer, limited utilities,
1 story, off-site use only, most recent use—
electronics/communications systems lab.

Idaho

Hilton Dorm "C"
Marsing Job Crop
Marsing Co: Owyhee ID 83639-
Landholding Agency: Interior
Property Number: 619410006
Status: Unutilized
Comment: 13,658 sq. ft.; 2 story brick frame;
most recent use—residence, off-site
removal only.

Texas

Portion of Fort Wolters
NW corner of Leavenworth & Lee Road
Mineral Wells Co: Parker & Palo P TX 76067-
Landholding Agency: GSA
Property Number: 549410006
Status: Excess
Comment: 2 story, wood frame/painted
galvanized sheet siding bldg. on 2.18 acres;
needs rehab.; presence of friable asbestos
in pipe insulation; most recent use—
gymnasium
GSA Number: 7-GR-TX-548BB
LAND (by State)

Arizona

Tract No. APO-SRP-RB-5
Mesa Co: Maricopa AZ 85213-
Location: 2000' south of Thomas Road at Val
Vista Drive
Landholding Agency: Interior
Property Number: 619410005
Status: Unutilized
Comment: 0.57 acre; 20 foot strip of land
which is 1,026 ft. long

California

Elder Creek Weather Station Co: Tehama CA
Location: Sec. 21, Twp. 24N, Range 7W
Landholding Agency: Interior
Property Number: 619410003
Status: Unutilized
Comment: 0.54 acres; no known potential
utilities; most recent use—weather station
site
L-4 Reservoir
La Quinta Co: Riverside CA 92253-
Location: Borders Adams St., 1/4 mile north
of Calle Tampico
Landholding Agency: Interior
Property Number: 619410004
Status: Excess
Comment: 1.69 acres; concrete reservoir;
most recent use—water retention

Suitable/Unavailable Properties

LAND (by State)

Washington

Former Stadium Homes site
1701 28th Avenue, South
Seattle Co: King WA 98144-
Landholding Agency: GSA
Property Number: 549410005

Status: Excess
Comment: 1.46 acres; most recent use—
highway equipment storage; potential for
city utility services; land slopes
GSA Number: 10-H-WASH-543

Unsuitable Properties

BUILDINGS (by State)

Arkansas

Bldg. 301/M. Coleman Residence
114 Earhart
Hot Springs Co: Garland AR 71901-
Landholding Agency: Interior
Property Number: 619420004
Status: Surplus
Reason: Extensive deterioration
Bldg. 302/C. Ridgeway Residence
137 Stonebridge
Hot Springs Co: Garland AR 71901-
Landholding Agency: Interior
Property Number: 619420005
Status: Surplus
Reason: Extensive deterioration
Bldg. 303/D. Stevens Residence
110 Earhart
Hot Springs Co: Garland AR 71901-
Landholding Agency: Interior
Property Number: 619420006
Status: Surplus
Reason: Extensive deterioration

Indiana

Arnold's Creek Access Site #8
Markland Locks and Dam
Rising Sun Co: Ohio IN 47040-
Landholding Agency: COE
Property Number: 319420001
Status: Unutilized
Reason: Extensive deterioration

North Carolina

Bldg. 255, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308-2003
Landholding Agency: 189420019
Status: Unutilized
Reason: Secured Area. Extensive
deterioration
Bldg. 370, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308-
20003
Landholding Agency: Air Force
Property Number: 189420020
Status: Unutilized
Reason: Secured Area. Extensive
deterioration
Bldg. 904, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308-2003
Landholding Agency: Air Force
Property Number: 189420021
Status: Unutilized
Reason: Secured Area. Extensive
deterioration
Bldg. 910, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308-2003
Landholding Agency: Air Force
Property Number: 189420022
Status: Unutilized
Reason: Secured Area. Extensive
deterioration
Bldg. 912, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308-2003
Landholding Agency: Air Force
Property Number: 189420023
Status: Unutilized

Reason: Secured Area. Extensive
deterioration
Bldg. 914, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308-2003
Landholding Agency: Air Force
Property Number: 189420024
Status: Unutilized
Reason: Secured Area. Extensive
deterioration
USCG Gentian (WLB 290)
Fort Macon State Park
Atlantic Beach Co: Carteret NC 27601-
Landholding Agency: DOT
Property Number: 879420007
Status: Excess
Reason: Secured Area
[FR Doc. 94-11630 Filed 5-12-94; 8:45 am]
BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service**

**Availability of the Draft Environmental
Assessment and Land Protection Plan
Proposed Establishment of Cossatot
National Wildlife Refuge, Sevier
County, Arkansas**

AGENCY: Fish and Wildlife Service,
Interior.

ACTION: Notice of availability of the draft
environmental assessment and land
protection plan for the proposed
establishment of Cossatot National
Wildlife Refuge.

SUMMARY: This notice advises the public
that the U.S. Fish and Wildlife Service,
Southeast Region, proposes to establish
a national wildlife refuge in the vicinity
of Sevier County, Arkansas. The
purpose of the proposed refuge is to
protect and manage up to 30,000 acres
of bottomland hardwoods and their
associated fish and wildlife in
southwestern Arkansas. A Draft
Environmental Assessment and Land
Protection Plan for the proposed refuge
has been developed by Service
biologists in coordination with the State
of Arkansas, the Sevier County Judge,
the U.S. Army Corps of Engineers, the
Soil Conservation Service, and The
Nature Conservancy. The assessment
considers the biological, environmental,
and socioeconomic effects of
establishing the refuge. The assessment
also evaluates four alternative actions
and their potential impacts on the
environment. Written comments or
recommendations concerning the
proposal are welcomed and should be
sent to the address below.

DATES: Land acquisition planning for
the project is currently underway. The
draft assessment and land protection
plan will be available to the public for
review and comment on May 16, 1994.

Written comments must be received no later than June 17, 1994, to be considered.

ADDRESSES: Comments and requests for copies of the assessment and further information should be addressed to Mr. Charles R. Danner, Chief, Branch of Project Development, Office of Refuges and Wildlife, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Atlanta, Georgia 30345.

SUPPLEMENTARY INFORMATION: The primary objectives of the proposed Cossatot National Wildlife Refuge are to (1) preserve wetland and bottomland hardwood habitat for a natural diversity of wildlife, (2) provide habitat for neotropical migratory birds, (3) provide wintering habitat for migratory waterfowl, (4) provide breeding and nesting habitat for wood ducks, and (5) provide opportunities for compatible public outdoor recreation, such as hunting, fishing, hiking, birdwatching, and environmental education and interpretation.

The proposed refuge area lies in the floodplain between the Cossatot and Little Rivers in Sevier County, Arkansas. Pond Creek and Little Creek meander through the area and several scenic oxbow lakes, lined with cypress trees, are prominent. Beavers have created numerous small ponds and flooded depressions. The habitat is primarily bottomland hardwoods with scattered pines.

About 25,722 acres or 85 percent of the proposed refuge area is owned by the Weyerhaeuser Corporation and has been offered for sale or exchange to the Service. Weyerhaeuser has extensive land holdings in Arkansas and Oklahoma which are being managed for the production of pine timber. The proposed refuge area is primarily a low bottomland hardwood site that Weyerhaeuser has determined to be surplus to its future management needs. The remaining lands (approximately 4,300 acres) within the proposed refuge boundary are owned by about 30 private landowners.

The Service proposes to acquire these lands through fee title purchases and/or land exchanges. Acquisition of these lands would be pursued under the authority of the Emergency Wetland Resources Act of 1986, unless special legislation is provided to facilitate the possible exchange of lands between the Weyerhaeuser Corporation and the Federal government.

Dated: April 26, 1994.

James W. Pulliam, Jr.,
Regional Director.

Harold W. Benson,
Acting Regional Director.

[FR Doc. 94-11639 Filed 5-12-94; 8:45 am]
BILLING CODE 4310-55-M

Notice of Intent (Notice) To Prepare an Environmental Impact Statement for Proposed U.S. Fish and Wildlife Service Habitat Protection Activities in Selected Areas Within the Western Portions of Washington, Oregon, and Northern California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: This Notice advises the public the U.S. Fish and Wildlife Service (Service) intends to gather information necessary for the preparation of an Environmental Impact Statement (EIS); "U.S. Fish and Wildlife Service Habitat Protection in Selected Areas of the Middle-Upper Pacific Coast." This Notice is being furnished pursuant to Council on Environmental Quality Regulations for Implementing National Environmental Policy Act (NEPA) Regulations (40 CFR 1508.022).

WRITTEN COMMENTS INFORMATION: Interested agencies, organizations, and individuals are encouraged to provide written comments to the Service during the scoping period. Written comments should be received within 45 days after publication of this Notice. Address comments to the EIS Team Leader as shown below.

FOR FURTHER INFORMATION CONTACT: Paul Benvenuti, EIS Team Leader, Planning Branch, Division of Realty, U.S. Fish and Wildlife Service, 911 Northeast 11th Avenue, Portland, Oregon 97232-4181, (503) 231-2231.

SUPPLEMENTARY INFORMATION: The purpose of the proposed action is to identify and implement a strategy for Service habitat protection activities in support of the Pacific Coast Joint Venture (Joint Venture) through the year 2010.

The Joint Venture is a nonfederal coalition of private groups and government agencies that strives to coordinate efforts to protect and maintain important wetlands and related habitats on the Pacific Coast of North America, from northern California to northern British Columbia. Its efforts are directed toward supporting the waterfowl management goals of the North American Plan, maintenance of biological diversity, protection of

endangered and otherwise sensitive wildlife, and maintenance and enhancement of anadromous fish and other native fish and shellfish populations.

The Service proposes to support the goals of the Joint Venture by ensuring increased habitat protection at selected target areas identified in the Pacific Coast Joint Venture Strategic Plan (Strategic Plan). Such protection could take the form of easements, leases, cooperative agreements, or fee title purchases from willing sellers.

Loss and degradation of estuarine and freshwater and wetland habitats have contributed significantly to decline in populations of many of the region's wildlife species. In some areas, development has eliminated thousands of hectares of tidal wetlands.

This EIS will explore a range of alternative methods for protecting wildlife habitat within the Joint Venture. Some of the possible alternatives could emphasize cooperative efforts in which most lands remain in private ownership, other alternatives may recommend fee title land acquisition from willing sellers and the establishment of new units of the National Wildlife Refuge System.

The alternatives examined in the EIS will be limited to the habitat protection activities of the Service. The activities of other Joint Venture partners will not be considered, since they are not Federal actions or contain Federal actions (such as grants or permits) that cannot be controlled or adequately foreseen by the Service.

The actions under consideration are limited to those areas identified in the Strategic Plan and do not consider possible actions beyond the year 2010.

This EIS will focus on the methods of habitat protection. The scope and timing of possible future site specific operational planning efforts cannot be predicted at this time since it depends on which protection methods are used, the willingness of landowners to participate, and the availability of funding.

Significant issues identified for review include: natural resource impacts, recreation and public use impacts, agricultural industry impacts, forest industry impacts, fishing industry impacts, and other socioeconomic impacts.

The Service urges all interested parties to provide comments regarding this proposed scope for the EIS, the alternatives to be developed, and the potential significant environmental impacts which may occur from the implementation of alternative actions.

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C., et seq.), Council for Environmental Quality Regulations for Implementing NEPA (40 CFR part 1500, et seq.), and other appropriate Federal regulations and Service policies for compliance with those regulations.

Dated: May 6, 1994.

Don Weathers,

Acting Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 94-11634 Filed 5-12-94; 8:45 am]

BILLING CODE 4310-65-M

Bureau of Land Management

[UT-942-04-4210-06; UTU-036431, UTU-3333, UTU-42513, UTU-48777, and UTU-50082]

Termination of Recreation and Public Purpose Classifications Carbon and Emery Counties, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action terminates Recreation and Public Purpose (R&PP) Classifications with the following serial numbers, UTU-036431, UTU-3333, UTU-42513, UTU-48777, and UTU-50082. The lands will be opened to the public land laws generally, including the mining and mineral leasing laws except as noted below.

EFFECTIVE DATE: May 13, 1994.

FOR FURTHER INFORMATION CONTACT:

Mark Mackiewicz, Price River Resource Area, 900 North 700 East, Price, Utah 84501, (801) 637-4584, or Brad Groesbeck, Moab District Office, 82 East Dogwood Drive, P.O. Box 970, Moab, Utah 84532, (801) 259-6111.

SUPPLEMENTARY INFORMATION: The Recreation and Public Purpose classifications on the following described lands are hereby terminated:

[UTU-036431]

Salt Lake Meridian

T. 14 S., R. 10 E.,

Sec. 23, NW $\frac{1}{4}$ NE $\frac{1}{4}$.

Containing 40.00 acres in Carbon County.

[UTU-3333]

Salt Lake Meridian

T. 13 S., R. 9 E.,

Sec. 35, NW $\frac{1}{4}$ NW $\frac{1}{4}$.

Containing 40.00 acres in Carbon County.

[UTU-42513]

Salt Lake Meridian

T. 14 S., R. 10 E.,

Sec. 14, E $\frac{1}{2}$ SE $\frac{1}{4}$.

Sec. 23, NE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$.

Containing 200.00 acres in Carbon County.

[UTU-48777]

Salt Lake Meridian, Utah

T. 22 S., R. 6 E.,

Sec. 4, lot 8, excluding parcels 1-B and 1-C.

Containing 39.95 acres in Emery County.

[UTU-50082]

Salt Lake Meridian, Utah

T. 16 S., R. 10 E.,

Sec. 33, NW $\frac{1}{4}$ NW $\frac{1}{4}$.

Containing 40.00 acres in Emery County.

Classifications UTU-036431, UTU-3333 and UTU-50082 segregated the public land from all other forms of appropriation under the public land laws, including location under the mining laws, and leasing under the mining leasing laws.

Classifications UTU-42513 and UTU-48777 segregated the public lands from all other forms of appropriation under the public land laws, including location under the mining laws, but not from mineral leasing.

At 10 a.m. on June 13, 1994, the lands described above will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on June 13, 1994, shall be considered as simultaneously filed at the time. Those received thereafter shall be considered in the order of filing.

At 10 a.m. on June 13, 1994, the lands will be opened to location and entry under the United States mining laws and where applicable to the operations of the mineral leasing laws (UTU-036431, UTU-3333 and UTU-50082), subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by state law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: May 9, 1994.

G. William Lamb,

Acting State Director.

[FR Doc. 94-11672 Filed 5-12-94; 8:45 am]

BILLING CODE 4310-DQ-M

[CA-068-94-4191-04]

Emergency Closure of Public Lands; California

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Correction of notice of emergency closure of certain public lands.

SUMMARY: This correction changes the notice of Emergency Closure of Public Lands; California published April 22, 1994 (59 FR 78; pp. 19202-19203). In column one, paragraph one, first complete sentence of page 19203, " * * * coarse materials * * *" is changed to " * * * coarse materials * * *".

Dated: May 6, 1994.

Karla K.H. Swanson,

Area Manager.

[FR Doc. 94-11635 Filed 5-12-94; 8:45 am]

BILLING CODE 4310-40-M

[CO-050-4350-08]

Notice of Emergency Closure

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Emergency Closure of Cathedral Spires in Douglas County, Colorado to all public use from May 1 through July 31, 1994.

SUMMARY: Notice is hereby given that effective May 1, 1994, public lands described below are closed to all public use. Under the authority and requirement of 43 CFR 8364.1, and in conformance with the principles established by the National Environmental Policy Act of 1969 and the Federal Land Policy and Management Act of 1976. This closure affects 240 acres of public lands in Jefferson County located in T. 7 S., R. 70 W., 6th PM, Sec. 20: W $\frac{1}{2}$ E $\frac{1}{2}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, and the NE $\frac{1}{4}$ SW $\frac{1}{4}$. The purpose of this closure is to protect critical nesting habitat for the federally listed endangered peregrine falcon. These restrictions do not apply to emergency, law enforcement and Federal, State or other government personnel who are in the area for official or emergency purposes and who are expressly authorized or otherwise officially approved by BLM. Any person who fails to comply with this closure

order may be subject to the penalties provided by 43 CFR 8360.0-7 which includes fines not to exceed \$1000 and/or imprisonment not to exceed 12 months. Notice of this closure will be posted at the site and at the Canon City District Office.

DATES: This emergency closure is in effect from May 1 to July 31, 1994 and shall remain in effect unless revised, revoked or amended.

ADDRESSES: Comments can be directed to the Area Manager, Royal Gorge Resource Area, 3170 East Main, Canon City, CO 81212 or District Manager, Canon City District Office, P.O. Box 2200, Canon City, Co 81215-2200.

FOR FURTHER INFORMATION CONTACT: L. Mac Berta, Area Manager at (719) 275-0631.

Stuart L. Freer,

Associate District Manager.

[FR Doc. 94-11667 Filed 5-12-94; 8:45 am]

BILLING CODE 4310-JB-M

[WO-220-94-4320-01-241A]

Draft Environmental Impact Statement for Rangeland Reform '94 and Request for Public Comment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with section 202 of the National Environmental Policy Act of 1969, the Department of the Interior, Bureau of Land Management (BLM), with the cooperation of the U.S. Department of Agriculture, Forest Service, has prepared a draft environmental impact statement (EIS) for Rangeland Reform '94. BLM and the Forest Service are proposing to change policies and regulations within their Federal rangeland management programs. These actions are intended to improve and restore a significant portion of rangeland ecosystems and to improve and maintain biodiversity, while providing for sustainable development on lands administered by the two agencies. The two agencies are also proposing to revise the formula used to determine fees charged for grazing livestock on Federal lands in the 17 western states. By this notice, the public is informed that the draft EIS is available and that interested individuals may obtain copies by request.

DATES: Written comments on the draft EIS must be postmarked no later than August 11, 1994. Comments received after this date may not be considered in preparation of the final EIS. Oral and/or written comments may also be

presented at public hearings to be held in the West during the public comment period. Dates and locations of public hearings on the draft EIS will be announced separately from this notice of availability.

ADDRESSES: Comments on the draft EIS should be sent to: Rangeland Reform '94, P.O. Box 66300, Washington, DC 20035-6300.

FOR FURTHER INFORMATION CONTACT: Write to the above address or call Jim Fox, Bureau of Land Management, (202) 452-7740, or Jerry McCormick, Forest Service, (202) 205-1457. To obtain a copy of the draft EIS, please call or visit your nearest BLM Resource Area office or Forest Service Forest office.

SUPPLEMENTARY INFORMATION: The last major revisions to 43 CFR part 4100, including establishment of the current fee formula in regulations, occurred in 1988. Since then, new information on range practices and conditions has been generated by various studies and General Accounting Office audits. In response, the Departments of the Interior and Agriculture have initiated a proposal for rangeland reform, including specific regulatory language.

The draft EIS addresses several areas of rangeland management reform, including, but not limited to: the Federal formula for calculating grazing fees, subleasing, unauthorized use (trespass), public participation, suspended and extended nonuse, appeals, disqualification, issuing grazing preference and permits, prohibited acts, permit or lease tenure, BLM grazing advisory boards, range improvement ownership, establishment of an ecosystem framework for rangeland management, and the establishment of standards and guidelines for grazing.

The draft EIS is a national-level, programmatic EIS. It documents the ecological, economic, and social impacts that would result from alternative fee formulas and from reforming, or not reforming, other elements of the federal rangeland management program. Five management alternatives are considered in detail: Current Management (No Action), BLM-Forest Service Proposed Action, Livestock Production, Environmental Enhancement, and No Grazing. Seven grazing fee formula alternatives are also analyzed: Current Public Rangeland Improvement Act (PRIA) (No Action), Modified PRIA, BLM-Forest Service Proposed Action, Regional Fees, Federal Forage Fee, PRIA with Surcharges, and Competitive Bidding.

Management Alternative 1, Current Management (No Action) would

continue existing policies, regulations, and management practices within both BLM's and the Forest Service's rangeland management programs.

Management Alternative 2, the BLM-Forest Service Proposed Action, would change many elements of the agencies' current rangeland policies, regulations, and management practices. The Proposed Action includes national requirements that provide the basis for developing state or regional standards and guidelines for managing livestock grazing in rangeland ecosystems administered by BLM. The Forest Service would continue to formulate standards and guidelines for rangeland management while it prepares national forest land and resource management plans. BLM would replace grazing advisory boards with resource advisory councils, which would address a broader range of concerns, while still ensuring local participation in rangeland management decisions. Both agencies would implement policies to manage rangeland resources using an ecosystem approach. The Proposed Action would also establish consistent BLM and Forest Service programs to improve ecological conditions while maintaining opportunities for long-term sustainable development.

Management Alternative 3, Livestock Production, would place more control of rangeland management in local communities. Although BLM and the Forest Service would not give up their responsibilities under laws and regulations, local community involvement in grazing advisory boards would play a lead role in making decisions about public rangelands management planning, implementation, and evaluation. Under this alternative, both agencies would have grazing advisory boards. BLM standards and guidelines would be developed at the local level by grazing advisory boards, while the Forest Service would continue to formulate standards and guidelines when it prepares national forest land and resource management plans. Goals and objectives for rangeland ecosystems would be set at the local level through consultation with grazing advisory boards. As under other alternatives, regulation changes would make BLM and Forest Service program administration more efficient and consistent.

Management Alternative 4, Environmental Enhancement, would authorize livestock grazing only in areas where enough data shows resource condition standards and goals are being met. This alternative places greater emphasis on managing all uses, including livestock grazing, to sustain

ecosystem biodiversity and ecological processes. Some areas would be closed to grazing; wilderness, designated critical habitat for threatened and endangered species, developed recreation sites, and areas of unacceptable rangeland health. Under this alternative, BLM and the Forest Service would adopt and implement national standards and guidelines aimed at maintaining ecosystem health. Joint BLM-Forest Service advisory councils would be set up on an ecoregion basis. As under other alternatives, regulation changes would make BLM and Forest Service program administration more efficient and consistent.

Management Alternative 5, No Grazing, would eliminate grazing on public lands over a 3-year phase-out period. BLM and the Forest Service would continue developing policies and procedures for promoting ecosystem management. Where needed, the agencies could use livestock to manage vegetation to achieve resource objectives. None of the other livestock grazing management measures considered in the other four alternatives would be needed.

Fee Alternative 1, Current PRIA (No Action), consists of a base value of \$1.23 per animal unit month (AUM) that is updated annually using three indexes: change in forage value, change in beef cattle prices, and prices paid for selected items purchased by permittees. The annual fee would not differ by more than 25 percent from the fee charged in the previous year.

Fee Alternative 2, Modified PRIA, would use the same base as PRIA, \$1.23, but would differ in using an index for all production costs rather than selected production costs. The annual fee would not differ by more than 25 percent from the fee charged in the previous year.

Fee Alternative 3, BLM-Forest Service Proposed Action, would adopt a fee formula using a base value (\$3.96) updated annually by a Forage Value Index. The \$3.96 base value represents a midrange between the results obtained through the use of two methods for estimating a fair base value. The proposed fee would be phased in over the years 1995 through 1997. Thereafter, annual increases or decreases in the grazing fee resulting from changes in the forage value index would be limited to 25 percent of the amount charged the previous year to provide for a measure of stability that would facilitate business planning.

This proposal would establish 1996 as the base year for the forage value index. The forage value index would not be used to annually adjust the fee in response to market conditions until the

year 1997. This proposed rule would establish the 1995 grazing fee at \$2.75, and the 1996 grazing fee at \$3.50. Thereafter the fee would be calculated, using the base value of \$3.96 multiplied by the revised forage value index. By definition, the forage value index in the year 1997 would equal one; yielding a 1997 grazing fee of \$3.96. In subsequent years the calculated fee would depend on the changes in the market rate for private grazing land leases as reflected by the forage value index.

Fee incentive criteria would be developed during the first 2 years of a 3-year fee phase-in period. The third year of the phase-in would not be implemented until the incentive criteria are developed. Instead a base value of \$3.50 would be substituted in 1997. Fee Alternative 4, Regional Fees, is the same as the proposed action fee, except that a different base value would be applied to six pricing regions. The regional base values would be derived from the 1983 Federal Land Forage Appraisal (updated in 1992). The regional base values would be annually updated using the Forage Value Index. The annual fee would not differ by more than 25 percent from the fee charged in the previous year.

Fee Alternative 5, Federal Forage Fee Formula, was developed by the Western Livestock Producers Alliance. It is based on a 3-year average of private grazing land lease rates for 16 western states. The formula uses multipliers of private land lease rates and deducts the updated 1966 nonfee costs described in the proposed fee alternative. That amount is multiplied by the percentage difference of cash receipts per cow for federal and nonfederal livestock producers. The annual fee would not differ by more than 25 percent from the fee charged in the previous year.

Fee Alternative 6, PRIA with Surcharges, would use the fee under the PRIA fee alternative (\$1.86 for 1993) and add a surcharge to cover the cost of administering the grazing program at the local Forest Service and BLM administrative level. Each year the fee would be limited to twice the fee produced by the PRIA formula. After a 1-year phase-in, the surcharge would not differ by more than 10 percent from the previous year's surcharge.

Fee Alternative 7, Competitive Bidding System, would use competitive bidding to set grazing fees. The successful bidder would be required to adhere to the terms of the permit and perform specific management practices and facilities maintenance. The terms of the permit would be part of the bid process, allowing bidders themselves to estimate the market value of the forage.

Public participation has occurred throughout the EIS process. A Notice of Intent was filed in the *Federal Register* on July 13, 1993. The scoping period was reopened for an additional 60 days through August 13 and September 20, 1993, *Federal Register* notices.

Dated: May 5, 1994.

Jonathan P. Deason,
Director, Office of Environmental Policy and Compliance.

[FR Doc. 94-11364 Filed 5-12-94; 8:45 am]

BILLING CODE 4310-84-P

Bureau of Mines

Meeting of the Committee on Mining and Mineral Resources Research

The Committee on Mining and Mineral Resources Research will meet from 8:30 a.m. to 5 p.m. (or completion of business) on Monday, June 13, 1994, in the third floor Conference Room, U.S. Bureau of Mines, 810 7th Street NW., Washington, DC 20241. The proposed agenda is:

1. Welcome and introductions.
2. Approval of the minutes of the meeting of October 27, 1993.
3. Status of program to restructure the U.S. Bureau of Mines.
4. Review of congressional actions affecting the Mineral Institute Program.
5. Review and approval of the 1994 Mineral Institute Program grant awards.
6. Discussion of the content of the next Update to the National Plan for Research in Mining and Mineral Resources.
7. New business.

Written statements concerning agenda subjects are welcome. This meeting is open to the public but entrance to the Bureau of Mines requires pre-identification. To ensure entrance to the Bureau of Mines conference room or to provide written statements for the meeting, visitors must contact the Office of Mineral Institutes, U.S. Bureau of Mines, 810 Seventh Street NW., Washington, DC 20241, telephone 202-501-9295, Internet mininsts@gwuvvm.gwu.edu, no later than noon, Friday, June 10, 1994.

Dated: May 6, 1994.

Hermann Enzer,
Acting Director.

[FR Doc. 94-11638 Filed 5-12-94; 8:45 am]

BILLING CODE 4310-53-M

National Park Service

Acceptance of Concurrent Jurisdiction

AGENCY: National Park Service, Interior.
ACTION: Notice.

SUMMARY: Notice is hereby given of jurisdiction changes in Accomack County, Virginia, that affects Federally managed lands and waters within Assateague Island National Seashore, Chincoteague National Wildlife Refuge, and Wallops Island National Wildlife Refuge.

DATES: Concurrent jurisdiction on the above mentioned lands and waters pursuant to the Deed of Cession, as further discussed below, became effective upon acceptance by the National Park Service and the United States Fish and Wildlife Service, and the subsequent recording of the Deed in Accomack County, Virginia on December 17, 1993, at 1:20 p.m.

SUPPLEMENTARY INFORMATION: On December 17, 1993, a Deed of Cession of jurisdiction changes in Accomack County, Virginia was recorded in the Clerk's Office of the Circuit Court of Accomack County, Virginia at 1:20 p.m. The Deed of Cession cedes to the United States concurrent jurisdiction over those portions of Assateague Island National Seashore, managed by the National Park Service, and Chincoteague National Wildlife Refuge and Wallops Island National Wildlife Refuge, managed by the United States Fish and Wildlife Service. Acting upon a request of the National Park Service and the United States Fish and Wildlife Service to convey concurrent jurisdiction over lands and waters situated within the administrative boundaries of the above mentioned Federal reserves, the Deed of Cession was signed on February 24, 1993, by then Governor of Virginia, the Honorable L. Douglas Wilder, and by then attorney General of Virginia, Stephen D. Rosenthal, pursuant to the authority conferred upon them by section 7.1-21 of the Code of Virginia. The jurisdiction cession was accepted on September 15, 1993 by Roger G. Kennedy, Director of the National Park Service, and Richard N. Smith, Deputy Director of the United States Fish and Wildlife Service, Department of the Interior, pursuant to the authority conferred by section 255 of title 40 of the United States Code.

Dated: April 18, 1994.

Michael Finley,

Acting Associate Director, Operations
National Park Service.

[FR Doc. 94-11628 Filed 5-12-94; 8:45 am]

BILLING CODE 4310-70-M

Gulf Islands National Seashore Advisory Commission

AGENCY: National Park Service, Gulf Islands National Seashore.

ACTION: Notice of advisory commission meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Commission Act (Pub. L. 92-463, 86 Stat. 770, 5 U.S.C. app. 2 Section 10), that a meeting of the Gulf Islands National Seashore Advisory Commission will be held at 1:30 p.m. to 4 p.m., at the following location and date.

DATES: June 3, 1994.

LOCATION: Gulf Islands National Seashore, 3500 Park Road, Ocean Springs, Mississippi 39564.

FOR FURTHER INFORMATION, CONTACT: Jerry A. Eubanks, Superintendent, Gulf Islands National Seashore, 1801 Gulf Breeze Parkway, Gulf Breeze, Florida 32561-1801.

SUPPLEMENTARY INFORMATION: The Commission was established pursuant to Public Law 91-660, January 8, 1971. The purpose of the Gulf Islands National Seashore Advisory Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of the Gulf Islands National Seashore, and on matters relating to zoning within the Seashore.

The matters to be discussed at this meeting include:

- (1) Superintendent's Annual Report.
- (2) Status of Natural Resource Management Projects.
- (3) Status of Cultural Resource Management Projects.
- (4) Other business.

This meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and it is expected that not more than 20 persons will be able to attend the meeting in addition to the commission members. Any member of the public may file with the Commission a written statement concerning the matters to be discussed. Written statements may also be submitted to the Superintendent at the address above. Minutes of the meeting will be available at Park Headquarters for public inspection approximately 4 weeks after the meeting.

Dated: April 7, 1994.

C.W. Ogle,

Acting Regional Director, Southeast Region.

[FR Doc. 94-11629 Filed 5-12-94; 8:45 am]

BILLING CODE 4310-70-M

Petroglyph National Monument Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee

Act, Public Law 92-463, that a meeting of the Petroglyph National Monument Advisory Commission will be held at 2 p.m., Thursday, June 23, 1994, at the Technical-Vocational Institute, Board Room 100, Smith Brasher Hall, 717 University Boulevard, Southeast, at the Technical Albuquerque, New Mexico.

The Petroglyph National Monument Advisory Commission was established pursuant to Public Law 101-313, establishing Petroglyph National Monument, to advise the Secretary of the Interior on the management and development of the monument and on the preparation of the monument's general management plan.

The matters to be discussed at this meeting include:

- Election of Officers
- Superintendent's Report
- Update on General Management Plan
- Public Comment
- New Business

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come, first-served basis. Any member of the public may file a written statement concerning the matters to be discussed at the commission meeting with the Superintendent, Petroglyph National Monument.

Persons who wish further information concerning the meeting, or who wish to submit written statements may contact Stephen Whitesell, Superintendent, Petroglyph National Monument, 123 4th Street SW., room 101, Albuquerque, New Mexico 87102, telephone 505/766-8375.

Minutes of the commission meeting will be available for public inspection six weeks after the meeting at the office of Petroglyph National Monument.

Dated: May 4, 1994.

John E. Cook,

Regional Director, Southwest Region.

[FR Doc. 94-11627 Filed 5-12-94; 8:45 am]

BILLING CODE 4310-70-M

Bureau of Reclamation

Developing the San Joaquin River Comprehensive Plan and Environmental Impact Statement

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare a comprehensive plan and environmental impact statement and notice of public scoping meetings.

SUMMARY: Pursuant to the Central Valley Project Improvement Act (CVPIA) and

the National Environmental Policy Act (NEPA) of 1969, as amended, the Bureau of Reclamation (Reclamation) working jointly with the Fish and Wildlife Service (Service) proposes to prepare a San Joaquin River Comprehensive Plan (CP) and environmental impact statement (EIS). The EIS will analyze the direct, indirect, and cumulative effects associated with fish, wildlife, and habitat restoration actions to be identified in the CP.

DATES: Comments are requested concerning the scope of analysis in developing the CP and associated EIS. Written comments must be postmarked no later than July 8, 1994. Scoping meetings will be held on dates and at the addresses listed below.

ADDRESSES: Written comments should be addressed to Valerie Curley, at the Bureau of Reclamation, South-Central California Area Office (SCC-411), 2666 North Grove Industrial Drive, suite 106, Fresno, California 93727-1551.

Four public scoping meetings have been scheduled. The meetings are designed to solicit public input to assist Reclamation and the Service in identifying issues, concerns and alternatives, and the overall scope of the CP and the EIA. The scoping meetings will be held at the following locations:

- Monday, June 13, 1994—Scoping session: 7:30 p.m. to 9:30 p.m., Ramada Inn, 3535 Rosedale Highway, Bakersfield, California.
- Tuesday June 14, 1994—Scoping session: 7:30 p.m. to 9:30 p.m., Ramada Inn, 324 East Shaw Avenue, Fresno, California.
- Wednesday June 15, 1994—Scoping session: 2 p.m. to 4 p.m., Sierra Inn, 2600 Auburn Boulevard, Sacramento, California.
- Thursday, June 16, 1994—Scoping session: 7:30 p.m. to 9:30 p.m., Holiday Inn, 1612 Sisk Road, Modesto, California.

An information exhibit will be on display for the public to obtain general information 1 hour prior to each scoping meeting.

FOR FURTHER INFORMATION CONTACT: Valerie Curley, Bureau of Reclamation, South-Central California Area Office, SCC-411, 2666 North Grove Industrial Drive, suite 106, Fresno, California 93727-1551, telephone: (209) 487-5118, faxogram (209) 487-5397, or Meri Moore, Fish and Wildlife Service, 2800 Cottage Way, E-1831, Sacramento, California 95825-1898, telephone: (916) 978-4613, faxogram: (916) 978-5294. The hearing impaired may call (209) 487-5933.

SUPPLEMENTARY INFORMATION: Pursuant to section 3406(c)(1) of the CVPIA, an

EIS will be prepared which will evaluate the environmental effects of the alternative ways of implementing the measures developed in the CP. The CP will address fish, wildlife, and habitat concerns on the San Joaquin River including but not limited to the improvements that would be needed to reestablish where necessary and sustain naturally reproducing anadromous fisheries from Friant Dam to its confluence with the San Francisco Bay/Sacramento-San Joaquin Delta Estuary. It will be developed in cooperation with the California Department of Fish and Game and in coordination with the San Joaquin River Management Program under development by the State of California. It will incorporate, among other relevant factors, the potential contributions of tributary streams as well as the alternatives being investigated in the course of preparing the Stanislaus River Basin and Calaveras River Water Use Program EIA/Environmental Impact Report, currently underway pursuant to CVPIA section 3406(c)(2).

The alternatives will be developed during the scoping and planning process and will be evaluated in the environmental documentation. The range of alternatives will include No Action. The CP and draft EIS are expected to be completed and available for review and comment early in 1996. The data generated pursuant to other CVPIA activities may be used in the development of the CP and EIS. The data developed and analyzed in the CP and EIS may be used in the Friant Water Contract Renewal process pursuant to CVPIA section 3404(c)(1) at some future date.

Note: Anyone requiring special accommodations should contact Valerie Curley at the above phone number. Please call as far in advance of the meetings as possible, and no later than June 6, 1994, to enable the agencies to meet your needs. If a request cannot be honored, the requester will be notified.

Dated: May 9, 1994.

Terry P. Lynott,
Acting Director, Program Analysis Office.
[FR Doc. 94-11636 Filed 5-12-94; 8:45 am]

BILLING CODE 4310-94-M

INTERSTATE COMMERCE COMMISSION

[Sec. 5a Application No. 118 (Amendment No. 1), et al.]

EC-MAC Motor Carriers Service Association, Inc., et al.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed amendments to agreements.

SUMMARY: The Commission has received seven separate applications from motor carrier rate bureaus to expand the territorial scope of their collective ratemaking activities.¹ The rate bureaus all seek to expand from their present regional ratemaking authority to nationwide authority. These requests raise common issues, and we will consolidate them. We seek public comments on them, which may be filed on any individual amendment or collectively as to all the amendments. If we receive additional applications, we anticipate consolidating them with this proceeding. By this notice we are vacating the schedules published at 59 FR 18416 (April 18, 1994) and 59 FR 22683 (May 2, 1994) for filing public comments on EC-MAC Motor Carriers Service Association, Inc.'s and Middlewest Motor Freight Bureau, Inc.'s applications, respectively, for approval to amend their ratemaking agreements.

DATES: The due date for filing comments and serving them on the various representatives in this consolidated proceeding is June 13, 1994. The due date for replies is June 28, 1994. This notice is effective on May 13, 1994.

ADDRESSES: An original and 15 copies of comments should be sent to: Sec. 5a Application No. 118 (Amendment No. 1), Et Al., EC-MAC Motor Carriers Service Association, Inc., Et Al., Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC, 20423. Copies should also be sent to applicants' representatives:

EC-MAC Motor Carriers Service Association, Inc., John W. McFadden, Jr., McFadden, Bunce & Flint, Suite 1210, 1600 Wilson Boulevard, Arlington, VA 22209.

Middlewest Motor Freight Bureau, Inc., Bryce Rea, Jr., Rea, Cross & Auchincloss, 1920 N Street, NW., Suite 420, Washington, DC 20036.

S.D. Schwartzberg, General Counsel, Southern Motor Carriers Rate Conference, Inc., 1307 Peachtree Street, NE., Atlanta, GA 30309.

¹ EC-MAC Motor Carriers Service Association, Inc., Sec. 5a Application No. 118 (Amendment No. 1), Middlewest Motor Freight Bureau, Inc., Sec. 5a Application No. 34 (Amendment No. 8), Southern Motor Carriers Rate Conference, Sec. 5a Application No. 46 (Amendment No. 19), The New England Motor Rate Bureau, Inc., Sec. 5a Application No. 25 (Amendment No. 8), Pacific Inland Tariff Bureau, Inc., Sec. 5a Application No. 22 (Amendment No. 7), Rocky Mountain Carriers, Sec. 5a Application No. 60 (Amendment No. 10), and Niagara Frontier Tariff Bureau, Inc., Sec. 5a Application No. 45 (Amendment No. 13) (collectively, applicants).

Jack W. Fraser, Executive Vice President, The New England Rate Bureau, Inc., 80 Blanchard Road, P.O. Box 3380, Burlington, MA 01803-0880.

Pacific Inland Tariff Bureau, Inc., Bryce Rea, Jr., William E. Kenworthy, Rea, Cross & Auchincloss, 1920 N Street, NW., Suite 420, Washington, DC 20036.

Don R. Devine, Rocky Mountain Tariff Bureau, Inc., P.O. Box 5746 Denver, CO 80217.

Warren D. Gawley, Registered Practitioner, Niagara Frontier Tariff Bureau, Inc., P.O. Box 548, Buffalo, NY 14225.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 927-5660. [TDD for the hearing impaired: (202) 927-5721.]

SUPPLEMENTARY INFORMATION: Copies of the applications and amendments are available for inspection and copying at the Office of the Secretary, Interstate Commerce Commission, 12th Street and Constitution Avenue NW., Washington, DC 20423, and from applicants' counsels.

Authority: 49 U.S.C. 10321 and 10706 and 5 U.S.C. 553.

Decided: May 10, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, Commissioners Simmons and Morgan.

Sidney L. Strickland, Jr.,
Secretary.

[FR Doc. 94-11824 Filed 5-12-94; 8:45 am]
BILLING CODE 7035-01-P

Motor Passenger Carrier or Water Carrier Finance Applications Under 49 U.S.C. 11343-11344

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties of, or acquire control of motor passenger carriers or water carriers under 49 U.S.C. 11343-11344. The applications are governed by 49 CFR part 1182, as revised in *Pur., Merger & Cont.—Motor Passenger & Water Carriers*, 5 I.C.C. 2d 786 (9189). The findings for these applications are set forth at 49 CFR 1182.18. Persons wishing to oppose an application must follow the rules under 49 CFR part 1182, subpart B. If no one timely opposes the application, this publication automatically will become the final action of the Commission.

MC-F-20528, filed April 12, 1994.
OLYMPIA TRAILS BUS COMPANY, INC.—PURCHASE—LIFE LINE TOURS, INC., AND REGENCY CHARTER, INC.
Applicant's representative: John R.

Sims, Jr., suite 775, 1275 K Street, NW., Washington, DC 20005. (202) 842-1741
Olympia Trails Bus Company, Inc. (Olympia) (MC-138146), seeks approval of its purchase of the interstate operating rights of Life Line Tours, Inc. (Life Line) in Certificate No. MC-166030 Sub 1, issued June 2, 1986, and of Regency Charter, Inc. (Regency) in Certificate No. MC-160839 Sub 2, issued October 29, 1991, authorizing the transportation of passengers, over regular and irregular routes. Temporary authority under 49 U.S.C. 11349 was granted May 2, 1994.

Sidney L. Strickland, Jr.,
Secretary.

[FR Doc. 94-11742 Filed 5-12-94; 8:45 am]
BILLING CODE 7035-01-P

Agricultural Cooperative Notice to the Commission of Intent To Perform Interstate Transportation for Certain Nonmembers

May 10, 1994.

The following notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. The rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the notice, Form BOP-102, with the Commission within 30 days of its annual meeting each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, DC 20423. The notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC.

(A)

- (1) Northwest Agricultural Cooperative Association, Inc. (N.A.C.A., Inc.).
- (2) 920 SE 9th Avenue, Ontario, OR 97914.
- (3) 920 SE 9th Avenue, Ontario, OR 97914.
- (4) Jerry Ready, P.O. Box 1, Ontario, OR 97914.

(B)

- (1) Western Co-op Transport Association.

(2) East Highway 212, Montevideo, MN 56265.

(3) East Highway 212, Montevideo, MN 56265.

(4) Gerald L. Morrow, P.O. Box 794, Montevideo, MN 56265.

Sidney L. Strickland, Jr.,
Secretary.

[FR Doc. 94-11743 Filed 5-12-94; 8:45 am]
BILLING CODE 7035-01-P

[Docket No. AB-213 (Sub-No. 4)]

Canadian Pacific Limited—Abandonment—Between Skinner and Vanceboro, Maine

AGENCY: Interstate Commerce Commission.

ACTION: Notice of final scope of study for environmental impact statement.

SUMMARY: This notice announces the final scope of study prepared in response to written comments, as well as oral comments given at public meetings, for the environmental impact statement to be prepared for the above proceeding. Written comments on the final scope are requested.

DATES: Written comments on the final scope of work are due June 13, 1994.

ADDRESSES: Phillis Johnson-Ball, Interstate Commerce Commission, Section of Environmental Analysis, Room 3221, 12th and Constitution Avenue, NW, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Phillis Johnson-Ball (202) 927-6213 or Vicki Dettmar (202) 927-6211.

SUPPLEMENTARY INFORMATION: Canadian Pacific Limited has filed an application with the Commission seeking authority to discontinue and abandon all freight and passenger rail operations over 201.2 miles of rail line between Skinner and Vanceboro (The Skinner-Vanceboro Line) in the Maine counties of Franklin, Somerset, Piscataquis, Penobscot, Aroostook, and Washington. The proposed abandonment activities would include the discontinuance of rail service over the entire line; the diversion of traffic to motor carriers or other railroads; and the salvage of all rails, ties, railroad-related appurtenances, and standing structures.

We believe that if the Commission approves the abandonment, this action would constitute a major Federal action having the potential to significantly affect the quality of the human environment. Therefore, we will prepare an environmental impact statement (EIS). A notice of intent to prepare an EIS and to hold public scoping meetings for this proceeding was published on February 22, 1994. The notice requested

comments in writing or orally at public scoping meetings that were held in Woodland, Maine and Bangor, Maine on March 15 and March 16, 1994, respectively. Over 50 parties provided comment and/or attended the scoping meetings. In accordance with the Commission's environmental rules at 49 CFR 1105, the final scope of study is summarized below.

SUMMARY OF THE SCOPE OF STUDY:

Abandonment and salvage activities may significantly affect the environment in the project area. Based on the comments and our initial evaluation, the proposed abandonment may result in a number of environmental impacts. These impacts include:

Land Use Impacts
Transportation Impacts
Energy Impacts
Air Quality Impacts
Noise Impacts
Impacts to Public Health and Safety
Impacts to Biological Resources
Impacts to Water Resources
Socioeconomic Impacts from Physical Environmental Changes
Impacts to Historic and Cultural Resources
Impacts to Recreational Resources

We want to make it clear here that the EIS will only analyze the environmental effects that relate to this abandonment proposal. The environmental review process is not the proper forum for analyzing the "need" for or the economic merits of a proposed project. It is through the development of a separate evidentiary record that addresses the merits of the proposed abandonment that the Commission considers issues of economic impact and the impacts to rural and community development as required by 49 U.S.C. 10903 (a) (2).

Copies of the complete scope of study have been served on all the parties to this proceeding. A copy of the scoping document may be obtained by contacting Phillis Johnson-Ball at (202) 927-6213 or Vicki Dettmar at (202) 927-6211.

A notice of availability of the draft EIS will be announced in the Federal Register and served on parties to the proceeding.

By the Commission, Elaine K. Kaiser,
Chief, Section of Environmental Analysis.
Sidney L. Strickland, Jr.
Secretary.

Scope of Environmental Impact Statement; Docket No. AB-213 (Sub-No. 4); Canadian Pacific Limited—Abandonment—Between—Skinner and Vanceboro, Maine; Executive Summary; Description of Proposed Action and Alternatives

1. Summary of the existing rail line

2. Description of the proposed action
3. Description of alternatives
 - a. Partial abandonment
 - b. Discontinuance of service without abandonment
 - c. No action (denial of the proposal)

Description of Existing Environment

Specific description including existing land use, transportation, physiography and soil, water resources, biological resources, air quality, noise, socioeconomic setting, historic and cultural resources, and recreational resources in the project area.

Environmental Analysis of Proposed Action and Alternatives

A. Land Use Impacts

1. Analysis of impacts from increased land development following abandonment of the right-of-way (ROW).
2. Evaluation of the change in existing land use of the ROW, railroad yards, and stations.
3. Assessment of disturbances to adjacent properties during salvage activities.
4. Concerns regarding unauthorized recreational vehicle use along the abandoned ROW.
5. Need for disposal requirements for salvaging debris.
6. Possibility of unauthorized waste and debris disposal along the ROW.
7. Native American concerns regarding impacts to land use activities of the Indian Township and Pleasant Point reservations of the Passamaquoddy Tribe, and the Penobscot Nation at Indian Island.

B. Transportation and Safety Impacts

1. Assessment of the transportation and safety impacts associated with the loss of rail service to existing shippers.
2. Assessment of rail and motor carrier transportation alternatives and anticipated impact of rerouted traffic on alternative rail lines and/or roadways.
3. Evaluation of the impact of rerouted passenger traffic.
4. Evaluation of the impact of loss of this rail service on transportation safety, including the occurrence of accidents and release of hazardous materials.

C. Energy Impacts

1. Assessment of impacts on transportation of any energy resources.
2. Anticipated impacts on any recyclable commodities.
3. Impact on overall energy consumption and efficiency that would result from increased use of trucks.

D. Water Resource Impacts

1. Possible water quality impacts from erosion and sedimentation that would

be associated with building and bridge removal and other salvage activities.

2. Analysis of the disturbance of soil and vegetation in water bodies, floodplains, and/or wetlands that could result during bridge removal and other salvage activities.

3. Evaluation of the need for continued culvert maintenance to minimize flooding and water quality impacts from beaver and ice dams.

4. Anticipated impacts from the possible failure or collapse of bridge abutments.

5. Possible water quality degradation in recreational lakes that could result from lakeside land development.

6. Water quality degradation that could result from accidental releases of hazardous materials in motor carrier transportation.

7. Impacts from contaminated soil resulting from prior leaks, derailments, and fueling that occurred along the ROW and possible need for soil and groundwater sampling.

E. Impacts on Biological Resources

1. Assessment of the impact of salvage activities on any threatened and endangered species in the vicinity of the ROW.
2. Discussion of concerns regarding disturbance of vegetation in adjacent wetlands and floodplains during bridge removal and other salvage activities.
3. Evaluation of the impact of erosion and sedimentation during building and bridge removal and other salvage activities on aquatic wildlife and habitat.
4. Analysis of changes in beaver populations and activities along the ROW.
5. Concerns regarding the impact of increased traffic on wildlife along Route 9 and at the Moosehorn National Wildlife Refuge.
6. Possibility of the need for continued culvert maintenance to minimize wetland impacts from changes in hydrologic (i.e., water level) conditions.
7. Assessment of the impact to wildlife following abandonment of rail service.
8. Potential impacts to wildlife that could result from the unauthorized uses of abandoned ROW.

F. Air Quality Impacts

1. Analysis of the elimination of current locomotive emissions along the ROW following abandonment.
2. Effects of possible increased emissions due to rail line salvage operations.
3. Explanation of increased air pollutant emissions that could result

from additional truck traffic, especially in current non-attainment areas.

G. Noise Impacts

1. Analysis of the impact from noise that may be generated by salvage equipment and post-abandonment maintenance equipment.
2. Concerns regarding the impact of abandonment on noise quality in the vicinity of road crossings.
3. Impacts from noise that may be generated by increased vehicular traffic on Route 9 and other roads.

H. Impacts on Socioeconomics

Evaluation of social and economic impacts resulting from changes in the physical environment due to salvage activities or the diversion of traffic.

I. Impacts on Historic and Cultural Resources

1. Impacts to structures (buildings and bridges) that may be eligible for listing on the National Register of Historic Places and archaeological resources.
2. Potential need for a Memorandum of Agreement between the Maine Historic Preservation Commission, Interstate Commerce Commission, Advisory Council of Historic Preservation, and Canadian Pacific Limited.
3. Assessment of impact of increased truck traffic on the Calais Historic District.

J. Impacts on Recreational Resources

1. Effects of salvage activities and elimination of train noises and intrusions on wildlife and other recreational resources.
2. Effects of abandonment on opportunities for hunting, fishing, and bird watching.
3. Potential for use of the abandoned ROW as a multi-use recreational trail.
4. Assessment of impact of bridge removal on recreational opportunities along the ROW.
5. Impact of possible unauthorized recreational vehicle use and increased human activity on existing wildlife and habitat conditions.

Proposed Mitigation

1. Necessary and appropriate mitigation.

[FR Doc. 94-11740 Filed 5-12-94; 8:45 am]
BILLING CODE 7035-01-P

[Amendment No. 1 to Directed Service Order No. 1515]

Cedar River Railroad Company— Directed Service Order Charles City Railway Lines, Inc

AGENCY: Interstate Commerce
Commission.

ACTION: Amendment to Directed Service
Order.

SUMMARY: The Charles City Railway Lines, Inc. (CCRY), was shut down by its management effective with the close of business February 24, 1994, due to a lack of operating funds. There are two principal shippers located on the 3.6-mile CCRY line. On March 4, 1994, the Commission issued Directed Service Order No. 1515, authorizing the Cedar River Railroad Company (CRR) to operate the CCRY lines for 60 days under certain terms and conditions contained in that order. The Commission was notified on May 4, 1994, of CRR's willingness to continue that operation.

In view of the need for continued rail service over CCRY's lines and CRR's willingness to provide directed service without compensation from the Federal government, this decision grants an extension of the interim service authority to CRR for 180 days.

This action will not significantly affect either the quality of the human environment or energy conservation.

Decided: May 6, 1994.

By the Commission, Chairman McDonald,
Vice Chairman Phillips, Commissioners
Simmons, and Morgan.
Sidney L. Strickland, Jr.,
Secretary.

[FR Doc. 94-11741 Filed 5-12-94; 8:45 am]
BILLING CODE 7035-01-P

[Supplemental Order No. 1 to Directed Service Order No. 1516]

Dardanelle & Russellville Railroad Co.—Authorized To Operate—Lines of Arkansas Midland Railroad Co.

AGENCY: Interstate Commerce
Commission.

ACTION: Extension of directed service
order.

SUMMARY: In 1992, the Arkansas Midland Railroad Company (AMR) acquired four unconnected rail lines totalling 131 miles from the Union Pacific Railroad Company (UP). Each of the branch lines acquired by AMR extends from the same North/South UP line in central Arkansas. On one of the branch lines, the Norman Branch, there are five active shippers (International

Paper Company, Gifford-Hill & Company, Barksdale Lumber Company, Bean Lumber Company, and G&S Roofing Products Company, Inc.), and one inactive shipper (Cargill). The Norman Branch extends approximately 52.9 miles from its connection with UP at Gardon, AR, to the end of the line at Birds Mill, AR.

On December 15, 1993, the AMR embargoed 31 miles of the Norman Branch line from Pikes Junction to Birds Mill as a result of storm damage. This embargo affected Barksdale Lumber, Bean Lumber, and G&S Roofing. On February 22, 1994, AMR embargoed approximately 17 additional miles of the line, which affected service to Gifford Hill & Company located at Delight, AR.

On March 28, 1994, the Commission issued Service Order No. 1516 for 30 days pursuant to 49 U.S.C. 11123 (a), authorizing the Dardanelle & Russellville Railroad Company (DRRC) and its newly formed non-carrier subsidiary, the Caddo, Antoine, Little Missouri Railroad Company (CALM) to operate approximately 49 miles of the AMR Norman Branch line currently under embargo. The Order also authorized DRRC/CALM to utilize trackage rights over approximately 3 miles of the remaining portion of the Norman Branch, which AMR continues to operate, in order to reach a connection with the Union Pacific Railroad Company (UP).

DATES: Effective Date: Supplemental Order No. 1 to Directed Service Order No. 1516 shall become effective at 11:59 p.m., April 27, 1994.

Expiration Date: Unless otherwise modified by order of the Commission, Directed Service Order No. 1516, as amended, will expire at 11:59 p.m., October 24, 1994.

FOR FURTHER INFORMATION CONTACT: Bernard Gaillard (202) 927-5500 or Melvin F. Clemens, Jr. (202) 927-5538; TDD for hearing impaired: (202) 927-5721.

SUPPLEMENTARY INFORMATION: There continues to be an immediate need for rail service over the AMR's Norman Branch, especially considering the urgency of aggregate shipments to the State of Louisiana for a highway construction project and the service needs of other shippers. AMR has indicated that it is willing to allow continued operations by DRRC/CALM over the Norman Branch line under the Terms and Conditions contained herein. DRRC/CALM has expressed a willingness to rehabilitate the line to the extent necessary and to provide service to shippers and to continue its

operations. AMR and DRRC/CALM have agreed amongst themselves as to the terms of the trackage rights arrangement. Based upon these circumstances and the statutory requirements, an emergency service order under 49 U.S.C. 11123 continues to be appropriate, and is responsive to the shippers' service needs.

In view of the need for continued rail service over AMR's Norman Branch, and DRRC/CALM's willingness to provide this service and limited track rehabilitation, this decision grants the requests of interested parties for interim service authority to DRRC/CALM on the Terms and Conditions noted below for a period of 180 days.

The emergency nature of the situation compels us to conclude that advance public notice and hearings would be impractical and contrary to the immediate public interest, and that the modified hearing procedure conducted during the order's initial 30-day term satisfied the statutory hearing requirement at 49 U.S.C. 11123(a)(2). Accordingly, we exercise our authority under 49 U.S.C. 11123(a)(1) to waive further advance public notice in the present circumstances.

We believe this authority to be necessary at least for an additional 180-day period. Any interested party may file comments on this action during this period relating to the necessity and appropriateness of continuing this order in effect. All filings should be addressed to Bernard Gaillard, Director, Office of Compliance and Consumer Assistance, Interstate Commerce Commission, Washington, DC 20423; and in the lower left hand corner of the envelope in large letters should be printed, "OCCA-4412." An original and 10 copies should be filed of all statements.

Supplemental Order No. 1 to Service Order No. 1516 shall be effective at 11:59 p.m., April 27, 1994.

Unless otherwise modified by the Commission, Supplemental Order No. 1 to Service Order No. 1516 will expire at 11:59 p.m., on October 24, 1994.

DRRC/CALM's authority under Service Order No. 1516 is expressly conditioned upon its agreeing to:

- (1) Indemnify AMR for any liability that might occur as a result of DRRC/CALM's operation of AMR's northern line segment;
- (2) Assume responsibility for maintenance of the northern line segment;
- (3) Compensate AMR for the 3-mile overhead trackage rights required to effect interchange with the UP at Gurdon, AR, at a mutually agreed upon and commercially reasonable rate beginning June 1, 1994.

No further compensation during the extended period of this order is contemplated.

In accordance with the above, operations by DRRC/CALM may continue on the terms and conditions described herein and upon notice to the Commission by DRRC/CALM that conditions continue to exist which allow safe operations over pertinent portions of the Norman Branch.

In operating AMR's line, DRRC/CALM shall use its own cars and operating equipment, or cars of other AMR connections as agreed to by those connections.

In providing service under this service order, DRRC/CALM shall comply with the requirements of 49 U.S.C. 11123(a)(3) with respect to AMR employees required for this operation.

Rates and charges shall be those applicable to the line and in effect at the time DRRC/CALM commenced operations. DRRC/CALM shall not seek changes in AMR rates and charges during the initial period of this order. All revenues from such charges shall accrue to the account of DRRC/CALM during the effective period of this order, and shall not constitute assets of AMR.

Any rehabilitation, operational, or other costs related to the authorized operations shall be the sole responsibility and liability of DRRC/CALM. Any such costs or expenditures shall not be deemed an obligation or liability of the United States Government. DRRC/CALM shall hold the United States Government harmless from any claim arising out of the authorized operations.

Any operational difficulties associated with the authorized operations shall be resolved by DRRC/CALM and any other affected party through negotiated agreement, or, if the parties cannot reach agreement, by the Commission. Any initiation of operations by any entity other than DRRC/CALM over the AMR lines shall occur only after approval by the Commission and upon 30-days' notice to the Commission and AMR. This 30-day transition period would apply also to operation commenced pursuant to the Commission's approval of Finance Docket No. 32479.

We find:

1. DRRC/CALM has requested the Commission to permit it to provide continued rail service over those portions of the AMR lines included in the Norman Branch which it determines to be operationally safe.

2. To prevent transportation and economic disruptions in this area of Arkansas, and to assure the immediate continued movement of critically needed commodities to adjoining regions of the United States including Louisiana, it is necessary for the

Commission to authorize DRRC/CALM to operate over AMR's Norman Branch line including 3 miles of overhead trackage under 49 U.S.C. 11123, conditioned upon a waiver of any compensation from the Federal government and DRRC/CALM's agreement to hold the United States Government and AMR harmless from any claim arising out of the authorized operations.

This action will not significantly affect either the quality of the human environment or energy conservation.

It is ordered:

1. Based upon its undertaking to do so upon the terms and conditions noted herein, DRRC/CALM is authorized under 49 U.S.C. 11123 to enter upon and operate AMR's Norman Branch including 3 miles of overhead trackage rights pursuant to the terms of this service order and its agreements with AMR.

(a) Operations by DRRC/CALM on the lines of AMR authorized in this decision may continue provided it gives appropriate notification to the Commission that the lines to be operated remain safe for that operation. Operations by DRRC may continue for 180 days from the effective date of this decision unless it is sooner modified.

2. Operations performed under authority of this order shall conform to the directions and conditions prescribed herein.

3. All submissions filed in this proceeding should refer to Service Order No. 1516 and should be sent to the Commission's headquarters at 12th Street and Constitution Avenue, N.W., Washington, D.C. 20423. Any filings made in this proceeding should include an original and 10 copies.

4. The provisions of this decision shall apply to intrastate, interstate, and foreign commerce.

5. The Commission retains jurisdiction to modify, supplement, or reconsider this decision at any time.

6. Notice to the general public of this decision shall be given by publication in the *Federal Register*. The decision will be served on the Federal Railroad Administration, the Association of American Railroads, American Short Line Railroad Association, DRRC/CALM, AMR, and UP.

7. This decision and order shall become effective at 11:59 p.m., on April 27, 1994.

8. Unless otherwise modified by the Commission, this order will expire at 11:59 p.m., on October 24, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, Commissioners Simmons, and Philbin. Commissioner

Philbin did not participate in the disposition of this proceeding.

Sidney L. Strickland, Jr.

Secretary.

[FR Doc. 94-11744 Filed 5-12-94; 8:45 am]

BILLING CODE 7035-01-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances Notice of Application; Correction

In the Federal Register (FR Doc. 94-7167) Vol. 59, No. 59 at page 14426, March 28, 1994, the listing of controlled substances should have included Tetrahydrocannabinols (7370) and Methylphenidate (1724) for Mallinckrodt Specialty Chemicals Company, Mallinckrodt & Second Streets, St. Louis, Missouri 63147.

Dated: May 6, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94-11664 Filed 5-12-94; 8:45 am]

BILLING CODE 4410-09-M

Importation of Controlled Substances; Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on January 28, 1994, Noramco of Delaware, Inc., Division of McNeilab, Inc., 500 Old Swedes Landing Road, Wilmington, Delaware 19801, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Opium, raw (9600)	II
Poppy Straw Concentrate (9670) ...	II

Any manufacturer holding, or applying for, registration as a bulk

manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than June 13, 1994.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745-46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: May 6, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94-11665 Filed 5-12-94; 8:45 am]

BILLING CODE 4410-09-M

Importation of Controlled Substances; Notice of Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with section 1311.42 of title 21, Code of Federal Regulations (CFR), notice is hereby given that on January 21, 1994, Sanofi Winthrop L.P., DBA Sanofi Winthrop Pharmaceutical, 200 East Oakton Street, Des Plaines, Illinois 60018, made application to the Drug Enforcement

Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Codeine (9050)	II
Hydromorphone (9150)	II
Meperidine (9230)	II
Morphine (9300)	II

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (30 days from publication).

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745-46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: May 6, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94-11666 Filed 5-2-94; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR**Employment and Training Administration**

[TA-W-29,463]

Geosignal, Incorporated; Denver, CO; 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 Geosignal, Incorporated, Denver, Colorado. 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-29,463; Geosignal, Incorporated, Denver, Colorado (April 29, 1994)

Signed at Washington, DC this 2nd day of May, 1994.

Marvin M. Fooks,

Director, Office of Adjustment Assistance.

[FR Doc. 94-11451 Filed 5-12-94; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-27,776]

Halliburton Geophysical Services, Incorporated, a/k/a Halliburton Company, a/k/a Halliburton Energy Services, Headquartered in Houston, TX; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance applicable to all workers of Halliburton Geophysical Services, Inc., headquartered in Houston, Texas and operating at various other locations. The notice was issued on October 23, 1992 and published in the *Federal Register* on November 17, 1992 (57 FR 54256).

The certification notice was amended on April 18, 1994. The amended notice was published in the *Federal Register* on April 29, 1994 (59 FR 22176).

At the request of the State Agency, the Department reviewed the certification again for workers of the subject firm. Halliburton restructured their organization which caused Halliburton Geophysical Services, Inc. to be known as Halliburton Company as well as Halliburton Energy Services. Claimants had wages reported under all three companies.

Accordingly, the Department is amending the certification to show the correct name of the worker group.

The amended notice applicable to TA-W-27,776 is hereby issued as follows:

All workers of Halliburton Geophysical Services, Inc., a/k/a Halliburton Company, a/k/a Halliburton Energy Services, headquartered in Houston, Texas and operating at various other locations in the below cited states who became totally or partially separated from employment on or after August 17, 1991 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974:

TA-W-27,776A Alaska
 TA-W-27,776B California
 TA-W-27,776C Colorado
 TA-W-27,776D Louisiana
 TA-W-27,776E Mississippi
 TA-W-27,776F Nevada
 TA-W-27,776G New Mexico
 TA-W-27,776H Oregon
 TA-W-27,776I Texas
 TA-W-27,776J Washington
 TA-W-27,776K Wyoming

Signed at Washington, DC, this 4th day of May 1994.

Violet L. Thompson,

Deputy Director, Office of Trade Adjustment Assistance.

[FR Doc. 94-11684 Filed 5-12-94; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[94-028]

Performance Review Board, Senior Executive Service

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Membership of SES Performance Review Board.

SUMMARY: The Civil Service Reform Act of 1978, Public Law 95-454 (Section 405) requires that appointments of individual members to a Performance Review Board be published in the *Federal Register*.

The performance review function for the Senior Executive Service in the National Aeronautics and Space Administration is being performed by the NASA Performance Review Board (PRB) and the NASA Senior Executive Committee. The latter performs this function for senior executives who report directly to the Administrator or the Deputy Administrator, members of the PRB, and executives in the Office of the Inspector General. The following individuals are serving on the Board and the Committee:

Performance Review Board

Wesley L. Harris, Chairperson, Associate Administrator for Aeronautics, NASA Headquarters
 Vicki A. Novak, Executive Secretary, Director, Personnel Division, NASA Headquarters
 George E. Reese, Deputy General Counsel, NASA Headquarters
 Robert W. Brown, Deputy Associate Administrator for Human Resources and Education, NASA Headquarters
 Thomas N. Tate, Non-NASA Member
 C. Howard Robins, Jr., Deputy Associate Administrator for Space Systems Development, NASA Headquarters
 Michael D. Christensen, Deputy Associate Administrator for Management Systems and Facilities, NASA Headquarters
 Bryan D. O'Connor, Deputy Associate Administrator (Space Shuttle), NASA Headquarters
 Arnauld E. Nicogossian, Deputy Associate Administrator for Life and Microgravity Sciences and Applications, NASA Headquarters
 Peter T. Burr, Deputy Director, NASA Goddard Space Flight Center
 James A. Thomas, Deputy Director, NASA Kennedy Space Center
 H. Lee Beach, Jr., Deputy Director, NASA Langley Research Center
 Stuart J. Fordyce, Deputy Director, NASA Lewis Research Center
 Gerald W. Smith, Deputy Director, NASA Stennis Space Center.

Senior Executive Committee

J.R. Dailey, Chairperson, Associate Deputy administrator, NASA Headquarters
 Spence M. Armstrong, Associate Administrator for Human Resources and Education, NASA Headquarters
 Wesley L. Harris, Associate Administrator for Aeronautics, NASA Headquarters
 Thomas P. Murphy, Non-NASA Member.

Dated: May 4, 1994.

Daniel S. Goldin,
Administrator.

[FR Doc. 94-11682 Filed 5-12-94; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting; Presenting and Commissioning Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Presenting and Commissioning

Advisory Panel (Artists' Projects Regional Initiatives Section) to the National Council on the Arts will be held on June 13, 1994. The panel will meet from 9 a.m. to 5:30 p.m. in room M-14, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 4 p.m. to 5:30 p.m. for a Policy and Guidelines Discussion.

The remaining portion of this meeting from 9 a.m. to 4 p.m. is 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, this session 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 202/682-5436.

Dated: May 10, 1994.

Yvonne M. Sabine,
Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94-11737 Filed 5-12-94; 8:45 am]

BILLING CODE 7537-01-M

Meeting; Theater Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (Artistic Advancement/Special Projects Section) to the National Council on the Arts will be held on June 2, 1994. The panel will meet from 9:30 a.m. to 7 p.m. in room 730, at the Nancy Hanks Center, 1100

Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 9:30 a.m. to 10 a.m. for Introductory Remarks and Review Criteria and from 5:30 p.m. to 7 p.m. a Policy and Guidelines Discussion.

The remaining portion of this meeting from 10 a.m. to 5:30 p.m. is 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, this session 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 202/683-5496, 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 10, 1994.

Yvonne M. Sabine,
Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94-11736 Filed 5-12-94; 8:45 am]

BILLING CODE 7537-01-M

Meeting; Theater Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (National Resources/Services to the Field Section) to the National Council on the Arts will be held on June 9, 1994. The panel will meet from 9 a.m. to 5:30 p.m. in room 730, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 4 p.m. to 5:30 p.m. for a Guidelines and Policy Discussion.

The remaining portion of this meeting from 9:30 a.m. to 4 p.m. is 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, this session 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 10, 1994.

Yvonne M. Sabine,
Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94-11735 Filed 5-12-94; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL LABOR RELATIONS BOARD

National Labor Relations Board Advisory Committee on Agency Procedure

AGENCY: National Labor Relations Board.

ACTION: Notice of establishment of National Labor Relations Board Advisory Committee on Agency Procedure.

In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. app. 2 (1972), and 29 CFR 102.136 (1993), and after consulting with and obtaining the approval of the Committee Management Secretariat of

the General Services Administration and the Office of Management and Budget, the National Labor Relations Board has determined that the establishment of a National Labor Relations Board Advisory Committee on Agency Procedure is necessary and in the public interest. Except as hereinafter noted and until further notice, the Agency adopts and will follow the Federal Advisory Committee Management Regulations for the operation of this and future advisory committees (41 CFR 101-6.1001-101.61035 (1993)).

The purpose of the Committee is to provide input and advice to the Board and General Counsel on changes in Agency procedures that will expedite case processing and improve Agency service to the public. The Committee will function solely as an advisory body and in compliance with the terms of the Federal Advisory Committee Act and its charter will be filed in accordance with the provisions of the Act.

The Committee will consist of 50 members divided into two panels, one composed of 25 Union-side representatives and the other of 25 Management-side representatives. Membership on the panels will be broadly representative of persons who represent labor and management before the Agency, and members will be selected for their expertise in representing labor and management before the Agency. Balance of Committee composition will be ensured through geographical, ethnic minority and women representatives, and through representation by the Co-Chairs of the NLRB Practice and Procedure Committee of the Labor and Employment Law Section of the American Bar Association. Appointments will be for two years unless otherwise directed by the Chairman of the Board. Committee members will be required to bear their own costs for travel and other expenses in connection with their participation on the Committee.

Generally, the two panels of the Committee will meet separately. The date, place and time of the panel meetings will be published in the Federal Register. The notice will also announce whether the meetings are open or closed to public attendance, and if closed, the reasons why. A session of the Committee will consist of one scheduled meeting of each panel. When the panels meet on different dates, the adjournment of the latter of the two panels will constitute an adjournment of that session of the Committee. Within 30 days of that adjournment, any member of the public may present

written comments to the Committee on the matters considered during the previous session.

Written comments should be submitted to the Committee's Management Officer and Designated Federal Official, Miguel Gonzelez, Executive Assistant to the Chairman, National Labor Relations Board, 1099-14th Street, NW., suite 11104, Washington, DC 20570-0001; Telephone: (202) 273-2864.

William B. Gould IV,
Chairman.

[FR Doc. 94-11606 Filed 5-12-94; 8:45 am]

BILLING CODE 7545-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-317 AND 50-318]

Baltimore Gas and Electric Company; Environmental Assessment and Finding of no Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR-53 and DPR-69, issued to Baltimore Gas and Electric Company (the licensee) for operation of the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, located at the licensee's site in Calvert County, Maryland.

Environmental Assessment

Identification of Proposed Action

The proposed amendments would revise Figure 5.1-1, Site Boundary Map, and Figure 5.1-2, Low Population Zone Map, in the Technical Specifications (TSs). The revisions are needed to correct the discrepancy between the current site property lines and the property lines as shown on TS Figure 5.1-1 and Figure 5.1-2. This discrepancy resulted from the purchase of land subsequent to issuance of the plant operating licenses and the failure to update the TSs to reflect the change in site property lines.

The proposed action is in accordance with the licensee's application for amendment dated September 29, 1992, as supplemented by letters dated October 22, 1993, and November 11, 1993.

Need for the Proposed Action

The proposed changes to the TSs are required to correct the discrepancy between the current site property lines and the property lines as shown on Figure 5.1-1 and Figure 5.1-2 in the TSs. This discrepancy resulted from the

purchase of six parcels of land subsequent to issuance of the plant operating licenses and the failure to update the TSs to reflect the change in property lines. The original site covered 1135 acres. With the addition of the six new parcels of land, the site now covers 2108 acres.

Environmental Impacts of the Proposed Action

The 2108 acre Calvert Cliffs site includes forest and farmland which surround the plant. The land's primary purpose is to serve as a natural buffer between the plant and the local community. Over 1500 acres of the site are covered with woodlands. The remaining acreage is made up of various open areas, a 50-acre recreational facility, and a working farm of about 100 acres. The six parcels of land that were acquired by the licensee subsequent to issuance of the plant operating licenses are comprised of shoreline property, woodlands, and farmland.

The proposed revisions to TS Figure 5.1-1 and Figure 5.1-2 are administrative in nature in that they will update the TSs to accurately reflect the current site boundary. The proposed amendments will not change plant equipment, operation or procedures, and do not adversely affect the probability or the consequences of any accident at this facility. The proposed amendments also do not affect radiological effluents from the facility or the radiation levels at the facility. Although the exclusion area as defined in 10 CFR part 100 has been increased, the property addition does not change the licensee's offsite dose calculations. Therefore, the Commission concludes that there are no significant radiological impacts associated with the proposed amendments.

There are no persons who reside on any of the new parcels and the acquired property does not contain sites of historical, archaeological or scenic significance. The licensee's Land Management Program implements certain forestry and farming practices that are intended to preserve the site's land resources and natural habitats. There are three focal areas of the program; fire prevention, significant laws and regulations, and wildlife considerations. Salient aspects of these focal areas are summarized below.

In the area of fire prevention, the licensee has implemented a program to replace large stands of Virginia Pine trees with better quality trees to reduce the potential for fire. A system of fire roads has also been developed throughout the property and firefighting equipment has been strategically placed

along these roads to assist personnel in the event of a fire. A property grid system has been established to determine the location and extent of a fire once discovered.

With respect to significant laws and regulations, environmental laws in the State of Maryland are focused on promoting good soil conservation practices, improving the quality of the Chesapeake Bay, and preserving endangered species and other animals unique to the area. To avoid erosion and keep land productive, the licensee uses practices such as contour plowing, applying pesticides and fertilizer properly, rotating crops, minimizing tilling, and growing a cover crop during the winter for all farming operations.

The Chesapeake Bay Critical Areas Law strictly governs the use of land within 100 feet of, and all tributaries leading into, the Chesapeake Bay. The law was enacted to prevent the continued deterioration of the Bay by controlling future development and water runoff containing harmful quantities of sediment, fertilizers, pesticides, and toxic metals from agricultural fields and other developed land adjacent to the Bay. The licensee complies with Calvert County's Critical Area Plan. Four of the new parcels of land have land which falls in the critical area.

The Calvert Cliffs site is regulated by the Federal "Endangered Species Act," 16 U.S.C. 1531. This act requires landowners to preserve those areas inhabited by species protected by this act. At Calvert Cliffs, the Tiger Beetle and Bald Eagle are protected. Two species of the Tiger Beetle are found along the beach area at Calvert Cliffs; the Northeastern Beach Tiger Beetle and the Puritan Tiger Beetle. A family of Bald Eagles is located in the southern portion of the Calvert Cliffs site.

The Calvert Cliffs site is home for a wide variety of wildlife, including two animal species considered endangered. Their habitat is largely preserved on more than three-fourths of the 2108 acres at Calvert Cliffs. By implementing sound forestry practices the licensee endeavors to ensure that the necessary food, nesting areas, and cover are provided to support the animals that live at Calvert Cliffs. The licensee has several plans in place to ensure that the habitats of the various wildlife species are preserved.

The proposed revisions to the TSs will merely update the TSs to reflect the current site boundary and will not affect the utilization of the six new parcels of land or implementation of the licensee's Land Management Program. The proposed amendments will also not

affect nonradiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendments.

The Notice of Consideration of Issuance of Amendment and Opportunity for Prior Hearing in connection with this action was published in the *Federal Register* on October 28, 1992 (57 FR 48813). No request for hearing or petition for leave to intervene was filed following this notice.

Alternatives to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated. The principal alternative would be to deny the requested amendments. Such action would not enhance the protection of the environment.

Alternate Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, dated April 1973.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request to modify the TSs. The NRC staff consulted with the State of Maryland regarding the environmental impact of the proposed action. The State of Maryland had no comments regarding this proposed action.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated September 29, 1992 as supplemented by letters dated October 22, 1993, and November 11, 1993. These letters are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document room located at the Calvert County Library, Fourth

Street, Prince Frederick, Maryland, 20678.

Dated at Rockville, Maryland, this 5th day of May 1994.

For the Nuclear Regulatory Commission.

Robert A. Capra,

Director, Project Directorate I-1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94-11654 Filed 5-12-94; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-247]

Consolidated Edison Company of New York, Inc.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of 10 CFR part 50, Appendix J, Paragraph III.D.3, Type C tests, to the Consolidated Edison Company of New York, Inc. (the licensee), for the Indian Point Nuclear Generating Unit No. 2, located in Westchester County, New York.

Environmental Assessment

Identification of Proposed Action

The licensee would be exempt from the requirements of 10 CFR part 50, appendix J, Paragraph III.D.3, to the extent that an extension would be allowed for performing Type C leak rate tests on containment isolation valves. These leak rate tests are currently required to be performed at intervals no greater than 2 years. The exemption would allow Type C leak rate tests to be performed at intervals no greater than 30 months.

By letter dated January 28, 1994, the licensee requested an amendment to the Technical Specifications (TSs) and an exemption from the Code of Federal Regulations (CFR) requirements to allow Type C leak rate tests to be performed at intervals no greater than 30 months.

Need for the Proposed Action

The licensee commenced operating on 24-month fuel cycles, instead of the previous 18-month fuel cycles, starting with fuel cycle 12. Fuel cycle 12 started in April 1993. The requirements of 10 CFR part 50, appendix J, Paragraph III.D.3, indicate the Type C leak rate tests must be performed during each reactor shutdown for refueling at intervals no greater than 2 years (24 months). In order to conform with this regulation, the licensee could be required to shutdown Indian Point Nuclear Generating Unit No. 2 and enter a forced outage prior to the next refueling outage.

The NRC staff had previously recognized that certain regulations would not accommodate fuel cycles longer than 18 months. Consequently, the NRC staff issued Generic Letter (GL) 91-04, "Changes in Technical Specification Surveillance Intervals to Accommodate a 24-Month Fuel Cycle." This GL provides guidance to licensees on how to prepare requests for TS amendments and regulation exemptions which are needed to accommodate 24-month fuel cycles. The licensee's letter of January 28, 1994, followed the guidance of GL 91-04.

Environmental Impacts of the Proposed Action

The proposed exemption does not increase the probability or consequences of accidents previously analyzed and the proposed exemption does not affect facility radiation levels or facility radiological effluents. The requested exemption is based, in part, on increasing the margin to the allowed combined leakage limit for Type B and C tests by 25 percent. In addition, the licensee has reviewed the results of previous leak rate tests performed at Indian Point Nuclear Generating Unit No. 2, and provided a basis for concluding that containment leakage will be maintained within acceptable limits with a maximum test interval of 30 months. The NRC staff has determined that the licensee's submittal is consistent with the guidance provided in GL 91-04. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption only involves leak rate tests on containment isolation valves. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there is no significant nonradiological environmental impact associated with the proposed exemption.

Alternatives to the Proposed Action

Since the Commission has concluded that there are no significant environmental effects that would result from the proposed exemption, any alternatives with equal or greater environmental impacts need not be evaluated. The principal alternative would be to deny the licensee's request for exemption. Such action would not reduce the environmental impacts of plant operations.

Alternate Use of Resources

This action does not involve the use of any resources not previously considered in the "Final Environmental Statements Related to the Operation of Indian Point Nuclear Generating Plant Unit No. 2," dated September 1972.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's submittal that supports the proposed exemption discussed above. The NRC staff consulted with the State of New York regarding the environmental impact of the proposed exemption. The State of New York had no comments regarding this proposed action.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the exemption under consideration.

For further details with respect to this action, see the licensee's application for exemption dated January 28, 1994, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Detailed at Rockville, Maryland, this 6th day of May 1994.

For the Nuclear Regulatory Commission.

Robert A. Capra,

Director, Project Directorate I-1, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94-11655 Filed 5-12-94; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-397]

Washington Public Power Supply System; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuing an amendment to Facility Operating License No. NFP-21 issued to Washington Public Power Supply System (the licensee) for operation of the Nuclear Project No. 2 (WNP-2) plant, located in Benton County, Washington.

The proposed amendment would (1) revise TS 3/4.4.2 and 3/4.5.1 to require

main stream system and automatic depressurization system safety/relief valve (SRV) surveillance testing within 12 hours after steam pressure and flow are adequate to do the testing; and (2) revise TS Table 4.3.7.5-1 to require SRV position indicator surveillance testing within 12 hours after steam pressure and flow are adequate to do the testing.

The intent of the change is to clarify when the 12-hour time period begins. The licensee is also making a change to the TS SRV basis to clarify that testing SRVs at low power means testing them when there is adequate steam pressure and flow.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The Supply System has evaluated the proposed changes against the above standards as required by 10 CFR 50.91(a) and concluded that the change does not:

(1) Involve a significant increase in the probability or consequences of any accident previously evaluated.

The potential delay in confirming safety relief valve (SRV), SRV position indication (acoustic monitor, valve stem position indicators, and tailpipe temperature instruments), and ADS operability during plant startup should not result in any change to the expected satisfactory completion of the required surveillance tests. Surveillance testing that is conducted during the plant shutdown sequence, and during shutdown, provides reasonable assurance that the SRVs will function when required. Under the proposed change, plant test conditions would not be different than in the past since testing was not begun until adequate pressure for the duration of the test was achieved.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve a design change nor do they involve changes outside the scope of the existing test requirements. No new failure modes are introduced as a result of the proposed changes. The acoustic monitors merely provide indication that an SRV is open. They do not provide an actuation signal. Alternate mechanisms of SRV position indication exist, i.e., reactor water level changes, reactor pressure changes, main turbine bypass valve position, SRV tail pipe temperature, suppression pool level, and suppression pool temperature. The time delay prior to operability verification will not affect Technical Specification requirements.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Involve a significant reduction in a margin of safety.

The proposed changes have no impact on the operability or performance requirements of the SRVs, including the ADS function, as they do not change the lift setpoints or minimum number of valves required to be operable. The effect of delaying the starting point of the time clock is not expected to affect completion of the required tests. ADS/SRV position indication availability will not be significantly affected by the proposed change since the additional 48 hours per refueling cycle of not verifying SRV, SRV position indication, and ADS SRV operability occurs at low power with the High Pressure Core Spray and Reactor Core Isolation Cooling systems available. Additionally, there is a high probability that the SRVs would perform their intended function if required even though they have not been declared operable.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. Normally, the Commission will not issue the amendment until the 30-day notice period expires. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public

and State comments received. Should the Commission take this action, it will publish a notice of issuance in the *Federal Register* and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this *Federal Register* notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11555 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By June 13, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the local public document room located at the Richland Public Library, 955 Northgate Street, Richland, Washington 99352. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall 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. The petition

should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made 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 of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final

determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-248-5100 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Theodore R. Quay, Director, Project Directorate IV-3: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to M. H. Phillips, Jr., Esq., Winston & Strawn, 1400 L Street NW., Washington, DC 20005-3502, the licensee's attorney.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated May 5, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the local public document room located at

the Richland Public Library, 955 Northgate Street, Richland, Washington 99352.

Dated at Rockville, Maryland, this 10th day of May 1994.

For the Nuclear Regulatory Commission.

L. Mark Padovan,

Acting Project Manager, Project Directorate IV-3, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94-11786 Filed 5-12-94; 8:45 am]

BILLING CODE 7580-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-34018; File No. SR-DTC-94-04]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change Relating to the Implementation of the Interactive Capabilities and of the Electronic Mail Features of the Enhanced Institutional Delivery System

May 5, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,¹ notice is hereby given that on April 13, 1994, The Depository Trust Company ("DTC") 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 primarily by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of procedures for electronic mail features and for the interactive use of DTC's enhanced Institutional Delivery ("ID") system.²

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any

¹ 15 U.S.C. 78s(b)(1) (1988).

² The enhanced ID system concept was approved in an earlier Commission order. The order specified that each individual feature of the enhanced ID system would be the subject of a separate filing under section 19(b)(1) of the Act. Securities Exchange Act Release No. 33466 (January 12, 1994), 59 FR 3139 [File No. SR-DTC-93-07] (order approving concept of enhanced ID system).

comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change will enable ID system users to use the ID system interactively with the capability of accomplishing all ID system processing within a single business day. ID system users will have the option to continue to use the ID system in a batch mode.

The proposal also seeks to implement two electronic mail features. These features will enable ID system users to send and receive "notification of order execution" and "institution instruction" messages. A notification of order execution can be sent by a broker-dealer to communicate the details of an order execution to an institution. If the institution accepts the notification of order execution, the institution can send the broker-dealer an institution instruction containing information, such as the allocation of block trades, which is needed by the broker-dealer to enter trade data into the ID system for the preparation of confirmations. Currently, broker-dealers and institutions make telephone calls or send facsimile transmissions to communicate this information.

The proposed rule change is consistent with the requirements of section 17A of the Act and the rules and regulations thereunder because the proposed rule change will further automate the process by which securities transactions are cleared and settle and thereby will facilitate the prompt and accurate clearance and settlement of securities transactions. The proposal also is consistent with section 17A in that because the proposed rule change enhances DTC's existing ID system it will be implemented consistently with the safeguarding of securities and funds in DTC's custody or control or for which DTC is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The interactive capability and electronic mail features have been developed through widespread consultations with securities industry members. Written comments from DTC participants or others have not been solicited on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety 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.

DTC requests accelerated effectiveness for the proposed rule change pursuant to section 19(b)(2) of the Act so that the proposed rule change can be implemented as soon as possible. Recently, the Commission adopted Rule 15c6-1 under the Act which, effective June 1, 1995, establishes three business days as the standard settlement timeframe for broker-dealers.³ The proposed rule change, particularly the interactive capability of the ID system, will facilitate three business day settlement. Accelerated effectiveness of the proposed rule change will enable ID system users to become accustomed to the ID system well in advance of conversion to a three business day settlement cycle.

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

³ For a detailed description and discussion of the conversion to a three business day settlement cycle, refer to Securities and Exchange Commission Release Nos. 33-7022, 34-33023, and IC-19768 (October 13, 1993), 58 FR 52891 [File No. S7-5-93] (order adopting Commission Rule 15c6-1).

change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR-DTC-94-04 and should be submitted by June 3, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁴

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 94-11698 Filed 5-12-94; 8:45 am]
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[Release No. 34-34026; File No. SR-PSE-94-3]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to Its Capital Requirements for Equity Specialists

May 9, 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 January 14, 1994, the Pacific Stock Exchange, Inc. ("PSE" 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 self-regulatory organization. On March 8, 1994, the PSE submitted to the Commission Amendment No. 1 to the proposed rule change.¹ On April 1, 1994, the PSE submitted to the Commission Amendment No. 2 to the proposed rule change.² The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

¹ 17 CFR 200.30-3(a)(12) (1992).

² See letter from Michael D. Pierson, Senior Attorney, Market Regulation, PSE, to Louis A. Randazzo, Attorney, Office of Derivative and Exchange Oversight, SEC, dated March 4, 1994. Amendment No. 1 made various clarifying amendments to the proposed rule change.

³ See letter from Michael D. Pierson, Senior Attorney, Market Regulation, PSE, to Louis A. Randazzo, Attorney, Office of Derivative and Exchange Oversight, SEC, dated March 28, 1994. Amendment No. 2 made further clarifying amendments to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to amend its rules relating to the capital requirements for specialists. The proposal states that if an Exchange specialist firm is subject to the Aggregate Indebtedness Requirement Under Rule 15c3-1,³ such firm must maintain a minimum net capital of not less than \$200,000.⁴ The proposal establishes a lesser minimum net capital requirement for broker-dealers in specialist posts that are backed by more than one broker-dealer. Finally, the Exchange is proposing to amend its rules in response to recent amendments adopted by the Commission to its net capital rules for Exchange specialists.⁵

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 governing 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

(1) Purpose

Pursuant to recent amendments to Commission Rule 15c3-1,⁶ on April 1, 1994, the Exchange's equity specialists became subject to the Commission's net capital rule.⁷ Accordingly, the Exchange is proposing to amend its rules to reflect the elimination of exemption from that

³ The Aggregate Indebtedness Standard under Rule 15c3-1 states that no broker or dealer, other than one that elects the Alternative Standard, shall permit its aggregate indebtedness to all other persons to exceed 1500 percent of its net capital (or 800 percent of its net capital for 12 months after commencing business as a broker or dealer). See 17 CFR 240.15c3-1(a)(1)(i) (1993).

⁴ The term "net capital", as used in the PSE proposal, means net capital as defined by Commission Rule 15c3-1. Rule 15c3-1 defines net capital as the net worth of a broker or dealer, adjusted by certain adjustments prescribed in Rule 15c3-1. See 17 CFR 240.15c3-1(c)(2) (1993).

⁵ According to proposed PSE Rule 2.1, Commentary .03, the proposed amendments to Rules 2.1(b) and (c) will become effective on July 1, 1994. See Amendment No. 1, *supra* note 1.

⁶ 17 CFR 240.15c3-1 (1993).

⁷ See Securities Exchange Act Release No. 32737 (August 11, 1993), 58 FR 43555 (August 17, 1993).

Rule.⁸ The Exchange is also proposing to establish an additional requirement that its equity specialist firms that are subject to the Aggregate Indebtedness Requirement under Rule 15c3-1 must maintain a minimum net capital of \$200,000. Equity specialist firms subject to the Alternative Net Capital Requirement would be required to comply with subsection (a)(1)(ii) of Rule 15c3-1.⁹ The Exchange is also proposing further amendments to clarify these new requirements and to establish related procedures for specialist firms whose net capital falls below certain levels. The Exchange believes that the proposed amendments are appropriate to assure that the customers and creditors of its equity specialists are protected from monetary losses and delays in the event of a specialist's failure.

(a) *Elimination of specialist exemption.* The Exchange is proposing to amend PSE Rule 1.8(a), which currently identifies the following members as exempt from the Exchange's net capital rule: any floor broker, market maker in listed options, or specialist, registered with the Exchange in any such capacity, who is exempt from the minimum net capital requirements prescribed by Rule 2.1 (Capital Requirements). The Exchange is proposing to delete "specialists" from this list and to add "lead market makers in listed options" to the list.¹⁰ This

⁸ On August 11, 1993, the Commission amended Rule 15c3-1, in part, to make the Commission's net capital rule applicable to certain specialists that are currently exempt from the rule (the amended Rule makes the Commission's net capital rule applicable to all specialists other than options market makers). See Securities Exchange Act Release No. 32737, *supra* note 7.

⁹ As of April 1, 1994, the Commission's net capital rule requires the Exchange's equity specialists to maintain net capital, under the aggregate indebtedness method, equal to a minimum of \$100,000 (\$75,000 until June 30, 1994) and, under the alternative method, equal to a minimum of \$250,000 (\$200,000 until July 1, 1994). See Securities Exchange Act Release No. 32737, *supra* note 7. Rule 15c3-1(a)(1)(ii) contains the Alternative Standard, which states in part, that a broker or dealer shall not permit its net capital to be less than the greater of \$250,000 or 2 percent of aggregate debit items computed in accordance with Exhibit A to Rule 15c3-3. See 17 CFR 240.15c3-1(a)(1)(ii) (1993).

¹⁰ In the Commission's release adopting amendments to Rule 15c3-1 (the net capital rule), the Commission stated that it does not believe that it is necessary to apply the net capital rule to options market makers because, on an individual basis, they are not as integral to the proper functioning of the markets in their securities. The release further states that specialists other than options market makers perform several functions that options market makers do not, including the maintenance of a specialist's book containing a listing of all orders away from the current market price and the dissemination of accurate quotations in their specialty securities. Moreover, the exchanges that use options specialists look to a

amendment is intended to make the Exchange's rules conform to the recent amendments to the Commission's net capital rule.¹¹

(b) *Specialist subject to aggregate indebtedness requirement.* The Exchange is proposing to adopt a rule that, notwithstanding the requirements of the Commission's net capital rule, would require each of its specialist firms that are subject to the Aggregate Indebtedness Requirement of Rule 15c3-1 to maintain a minimum net capital of not less than \$200,000. The proposed rule further provides that if at any time a specialist firm's net capital falls below \$200,000, such firm shall promptly notify the Financial Compliance Department of the Exchange and, in addition, such firm shall not operate as a specialist with net capital of between \$150,000 and \$199,999 for more than 60 days unless such firm (a) obtains from the Vice President, Regulation, or a senior officer of the Exchange written consent to continue to operate as a specialist; and (b) takes corrective action including, but not limited to, actively seeking financing to correct its net capital deficiency.¹²

The proposal further provides that if such a specialist firm's net capital falls below \$150,000, such firm shall be subject to remedial action including, but not limited to, the loss of specialist privileges.

With regard to joint accounts, the proposal provides that if a specialist post is backed by more than one broker-dealer, then each such broker-dealer subject to the Aggregate Indebtedness Requirement of Rule 15c3-1 must maintain a minimum net capital of \$150,000. If at any time such a broker-dealer's net capital falls below \$150,000,

single specialist or specialist unit to handle all trade whereas options market makers compete with other market makers. See Securities Exchange Act Release No. 32737, *supra* note 7. Options lead market makers on the Exchange floor compete with other market makers for orders and do not maintain a specialist book containing a list of all orders away from the current market price. Accordingly, the Exchange believes that options lead market makers should be treated as options market makers that are exempt from Commission Rule 15c3-1 and therefore, have been exempted from the Exchange capital regulations.

¹¹ The proposal also adds Commentary .04 to Rule 2.1, which states that members exempt from the provisions of subsections (b), (c) and (d) of Rule 2.1 are set forth in Rule 2.8(a).

¹² Pursuant to amendments to the Commission's net capital rule, effective April 1, 1994, Exchange equity specialists became subject to the Commission's net capital rule. See Securities Exchange Act Release No. 32737, *supra* note 7. As a result, Exchange equity specialists are required to comply generally with the provisions of the Commission's early warning notification procedures as codified in Section 17a-11 under the Act.

such broker-dealer shall promptly notify the Financial Compliance Department of the Exchange and, in addition, such broker-dealer shall not operate as a specialist with net capital between \$120,000 and \$149,999 for more than 60 days unless such firm (a) obtains from the Vice President, Regulation, or a senior officer of the Exchange written consent to continue to operate as a specialist; and (b) takes corrective action including, but not limited to, actively seeking financing to correct its net capital deficiency. In addition, if such broker-dealer's net capital falls below \$120,000, such broker-dealer shall be subject to remedial action including, but not limited to, the loss of specialist privileges.

(c) *Specialists subject to the alternative net capital requirements.* The Exchange is proposing to provide in its rules that specialist firms subject to the Alternative Net Capital Requirement must comply with the requirements of Rule 15c3-1(a)(1)(ii). The Exchange is further proposing to state that if a specialist post is backed by more than one broker-dealer then each such broker-dealer that is subject to the Alternative Net Capital Requirement must comply with the requirements of Rule 15c3-1(a)(1)(ii).

(d) *Other proposed changes.* The Exchange is proposing to make the following additional changes to its rules on capital requirements for specialists: First, the Exchange is proposing to clarify its rules by providing in Rule 2.1 that the new net capital requirements will be in addition to the Specialist Post Capital requirement of Rule 2.2.¹³ Second, the proposal provides that the Exchange shall promptly notify the Equity Floor Trading Committee of any specialist firm's net capital deficiency and of any action taken by the Vice President, Regulation, or senior officer of the Exchange in connection therewith. Third, the proposal further provides that each specialist firm shall report its net capital to the Exchange in a form and manner prescribed by the Exchange.¹⁴

¹³ Rule 2.2 provides, in part, that members registered as specialists shall at all times maintain for each specialist post a minimum of \$150,000 in either cash or marketable securities or an amount equal to 25% of the sum of the market value of its securities positions, both long and short, whichever is greater.

¹⁴ The proposal also adds clarifying language to Rule 2.1(a), which states, among other things, that pursuant to the provisions of Rule 17a-11 under the Act, each member organization shall promptly notify the Commission if the member organization's net capital does not equal or exceed the appropriate minimum required by SEC Rule 15c3-1 or if notice is otherwise required by SEC Rule 17a-11.

(2) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and section 6(b)(5), in particular, in that it promotes just and equitable principles of trade and protects investor and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments 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 publication of this notice in the **Federal Register** or within such other 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 the 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 at the Commission's Public Reference Room, 450 Fifth Street, NW, Washington DC 20549. Copies of the filing will also be available for inspection and copying at the principal

office of the PSE. All submissions should refer to File No. SR-PSE-94-3 and should be submitted by June 3, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 94-11702 Filed 5-12-94; 8:45 am]
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[Release No. 34-34027; File No. SR-MSRB-94-4]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Procedures for Submitting Information on Political Contributions Pursuant to Rule G-37

May 9, 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 April 22, 1994, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The purpose of the proposed rule change is to provide procedures for submitting information on political contributions pursuant to rule G-37. The Board has requested accelerated approval of the proposed rule change in order to allow for the timely submission of, and public access to, information concerning political contributions. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. The Commission also finds good cause for granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board is filing a proposed rule change to establish procedures relating to the submission of information to the Board pursuant to rule G-37, on political contributions and prohibitions on municipal securities business.

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 Board 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

On April 7, 1994, the Commission approved Board rule G-37 on political contributions and prohibitions on municipal securities business.¹ Rule G-37(e)(ii) provides that reports on contributions made and municipal securities business engaged in during the reporting period must be submitted to the Board on Form G-37, in accordance with Board rule G-37 filing procedures, quarterly, with due dates determined by the Board. In its rule G-37 filing, the Board noted that it was developing appropriate rule G-37 filing procedures to allow for public access to the information to be submitted on Form G-37.² The current proposed rule change establishes procedures for brokers, dealers and municipal securities dealers for filing with the Board information relating to political contributions as required by rule G-37.³ The proposal also establishes procedures for filing voluntary information relating to political contributions.⁴

The proposal requires dealers to file two copies of Form G-37, and to submit such forms within thirty (30) calendar days after the end of each calendar quarter. These dates correspond to January 31, April 30, July 31, and October 31. The Board will maintain one copy of each Form G-37 off-site for back-up purposes, and will maintain the second copy of each Form G-37 at its Public Access Facility ("PAF") in Virginia, where it will be available to the public for review and

¹ Securities Exchange Act Release No. 33868 (April 7, 1994), 59 FR 17621 (April 13, 1994). Rule G-37 became effective April 25, 1994.

² See Securities Exchange Act Release No. 33482 (January 14, 1994), 59 FR 3389.

³ In order to assist dealers in complying with rule G-37 filing requirements, the Board intends to develop an informal "Procedures Manual" which will contain the relevant forms and procedures.

⁴ Brokers, dealers, municipal securities dealers, or others may voluntarily submit to the Board additional information relating to political contributions provided that such information is submitted in accordance with Board rule G-37 filing procedures.

photocopying.⁵ The Board also will maintain a database of reports filed by each dealer (as well as any other party voluntarily submitting information on political contributions), so that any member of the public may telephone the Board's offices to inquire whether a particular dealer (or other party) has submitted a report pursuant to rule G-37.⁶ To further enhance public access to this information, the Board will provide a list of companies that offer document retrieval and mailing services. As the Board gains experience with rule G-37 submission procedures, and as the informational needs of the municipal market change with regard to political contributions, the Board will seek to expand the access and services available to the public.

While the rule G-37 procedures will result in many dealers filing forms at or about the same time, the Board believes that it can adequately process this information in a timely manner. However, if such processing becomes unduly burdensome for the Board, then it may consider staggering dealer submission due dates in the future. In addition, if the number of voluntary submissions substantially increases the Board's costs of processing this information, then it may consider charging a filing fee to cover some of the expenses associated with certain of this voluntarily submitted information. Finally, the Board, in the future, may review the necessity for, and propriety of, charging an access fee for the forms filed, if any, pursuant to rule G-37.

The Board believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act, which provides that the Board's rules shall be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

⁵ The Board will charge 20 cents per page plus sales tax, if applicable, for photocopying. This is the same pricing structure currently used for photocopying official statements and advance refunding documents at the PAF.

⁶ In addition to the dealer's name, the information available through the database will include, among other things, the quarterly period covered by the report and summary information on political contributions. Although rule G-37 requires dealers to report certain summary information concerning contributions, it does not require disclosure of the names of individual municipal finance professionals or executive officer contributors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, since it will apply equally to brokers, dealers, and municipal securities dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Board has requested that the Commission find good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after publication of the notice of filing in the *Federal Register*. The Board believes that accelerated approval is necessary to facilitate timely submission of, and public access to, information concerning political contributions by allowing dealers to comply with these requirements by the first reporting deadline of July 31, 1994.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Board, and, in particular, with Section 15B(b)(2)(C) and (G) of the Act.⁷ Section 15B(b)(2)(C) authorizes the MSRB to adopt rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and, in general, to protect investors and the public interest. Section 15B(b)(2)(G) authorizes the MSRB to adopt rules that prescribe the records to be made and kept by municipal securities dealers and the periods for which such records shall be preserved.

The proposal establishes appropriate due dates and procedures for filing with the Board information concerning political contributions required by rule G-37(e)(ii). The Commission also finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the

notice of filing in the *Federal Register*. Accelerated approval is appropriate to facilitate the timely submission of, and public access to, information concerning political contributions by allowing dealers to comply with the reporting requirements, pursuant to rule G-37, by the first reporting deadline of July 31, 1994.

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 relations to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the Board. All submissions should refer to File No. SR-MSRB-94-4 and should be submitted by June 3, 1994.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 U.S.C. 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

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⁷ Sections 15B(b)(2)(C), (G); 15 U.S.C. §§ 78o-4(b)(2)(C), (G).

⁸ 15 U.S.C. 78s(b)(2).

[Release No. 34-34021; International Series Release No. 664; File No. SR-NASD-94-25]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice and Order Granting Accelerated Approval to Proposed Rule Change Extending the Informational Linkage With the Stock Exchange of Singapore Ltd. for Six Months

May 6, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934¹ ("Act"), notice is hereby given that on April 26, 1994, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD hereby files, pursuant to Section 19(b)(1) of the Act and Rule 19b-4 thereunder, for Commission authorization to extend the operation of its Pilot Program with the Stock Exchange of Singapore Limited ("SES") for six months. The Pilot Program currently consists of an interchange of closing price and volume data on up to 35 Nasdaq securities that also may be traded through the SES's facilities (collectively, "Pilot Securities"). With the thirteen hour time difference (twelve hours during EDT), the trading hours of the SES and NASD markets do not overlap. The end-of-day information being exchanged under the Pilot Program may assist in the establishment of opening prices the following business day. The Pilot Program currently involves no automated order routing or execution capabilities, and no such capability will be established during the proposed extension.

The Commission originally authorized operation of the NASD-SES Pilot Program for a two-year term² that was extended most recently through May 12, 1994.³ Commission approval of the instant filing would permit continuation of this Pilot Program through November 12, 1994. During this interval, no more than 35 Nasdaq issues

will be included in this Pilot Program. That figure corresponds to the number originally authorized at the inception of the Pilot Program in 1988. As noted in File No. SR-NASD-93-28, the SES information being transmitted to the NASD reflects the SES's use of an order-driven trading system (known as the "CLOB").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD-SES Pilot Program commenced operation with the Commission's approval of File No. SR-NASD-87-40 on March 14, 1988. The principal features of this Program were fully described in Section 1 of that Form 19b-4, which description is hereby incorporated by reference.⁴

The current authorization of the NASD-SES Pilot Program will expire on May 12, 1994. The NASD, on its own as well as on the SES's behalf, hereby requests that the Commission approve a further extension of the Pilot Program for six months, expiring on November 12, 1994.

During the proposed extension, each market will transmit to the other static price/volume information compiled at the end of each trading day on approximately 35 Nasdaq securities which are also traded on the SES. The NASD will transmit for each Pilot Security the closing inside quotes, cumulative volume, last sale price and the closing quote of every Nasdaq market maker in each of the Pilot Securities (collectively referred to as "NASD information"). In recognition of the SES's use of the order-driven CLOB system, the SES will transmit the following data elements for each Pilot security: closing price (i.e., the price of the final transaction in the CLOB on that business day), the highest and lowest

prices at which transactions were effected, and the aggregate volume (collectively referred to as "SES information").⁵ Because all trading of Pilot Securities on the SES occurs in the CLOB, the price information sent to the NASD will reflect the prices of actual trades consummated by the automated matching of buy and sell orders resident in the CLOB system.

The CLOB is a fully automated trading system that was instituted by the SES in 1989. Prior to that time, the SES employed a quote-driven, market maker system similar to the Nasdaq Stock Market. Orders to buy and sell securities are entered into the CLOB through some 1,800 trading terminals on the premises of approximately 26 SES member firms. The CLOB provides an electronic limit order file with open orders ranked by price and time in each security. When the terms of two orders match, the CLOB generates an automated execution accompanied by confirmations back to the originating brokers.

As noted in File No. SR-NASD-93-28, the SES intends to incorporate the Pilot Securities into "CLOB International." The latter is a separate section of the SES market system for the trading of foreign issues that are not listed on the SES. These securities trade through the CLOB in the same manner as SES-listed securities. CLOB International currently includes the stocks of Malaysian, Hong Kong, and Philippine issuers. The SES regards inclusion of the Pilot Securities in CLOB International as a logical step in the progression of the Pilot Program. Further, the SES believes that this step could stimulate greater trading interest in Nasdaq securities among Singapore investors. Accordingly, both the NASD and the SES desire to continue the Pilot Program.

The incorporation of Pilot Securities into CLOB International will not alter the basic operation of the Pilot Program, namely, the interchange of static, end-of-day information on the Pilot Securities. SES information will continue to be offered only to subscribers of Nasdaq Level 2/3 services.⁶ Similarly, NASD information transmitted to Singapore will be available only on the terminals used by SES members to access the CLOB. The original linkage agreement between the NASD and the SES will remain in effect for the term of the extended Pilot

⁵ If no trades are effected in a Pilot security on a given day, the SES will transmit no data on that issue even if bids or offers had been entered into the CLOB for possible execution.

⁶ To retrieve this information, a Nasdaq subscriber must enter a discrete query through a Nasdaq Workstation device.

¹ 15 U.S.C. 78s(b)(1) (1988).

² See Release No. 34-25457 (Mar. 14, 1988), 53 FR 9156 (Mar. 21, 1988).

³ See Release No. 34-33061 (Oct. 15, 1993), 58 FR 54617 (Oct. 22, 1993).

⁴ See also Release No. 34-25065 (Oct. 28, 1987), 52 FR 42167 (Nov. 3, 1987).

Program. That agreement, which provides for the sharing of regulatory information as needed, is believed adequate given the limited nature and limited scope of the Pilot Program.

Finally, the NASD acknowledges that any further enhancement to the Pilot Program, including the introduction of automated order routing and execution facilities, would require concurrent authorizations from the Commission and the Monetary Authority of Singapore. No such enhancement is planned for implementation during the requested extension.

The NASD believes that Sections 11A(a)(1) (B) and (C), 15A(b)(6), and 17A(a)(1) of the Act provide the statutory basis for this proposed rule change. Subsections (B) and (C) of Section 11A(a)(1) set forth the Congressional goals of achieving more efficient and effective market operations, the availability of information with respect to quotations for securities and the execution of investor orders in the best market through the application of new data processing and communications techniques. Section 15A(b)(6) requires, among other things, that the rules of the NASD be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market. Finally, Section 17A(a)(1) reflects the Congressional goals of linking all clearance and settlement facilities and reducing costs involved in the clearance and settlement process through new data processing and communications techniques. The NASD submits that extension of the Pilot Program will further these ends by providing the cooperative regulatory environment and operating experience needed for advancement of these goals in the context of internationalization of securities markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The extended Pilot Program will permit the continued exchange of static market data on a limited group of Nasdaq securities between the NASD and the SES on a non-exclusive basis. The costs of supporting the Pilot Program are nominal, and the sponsoring markets absorb their respective costs. The market information being exchanged by the NASD and SES under the Pilot Program is deemed to constitute an exchange of equivalent value. Hence, no additional fee is paid by NASD and SES member

firms for receipt of the static data being provided on Pilot Securities.

The NASD submits that neither the structure nor operation of the present Pilot Program poses any burden on competition.

C. Self-Regulatory Organization's Statement on Comment on the Proposed Rule Change Received From Members, Participants, or Others

The NASD did not solicit or receive written comments on this rule proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD requests that the Commission find, pursuant to Section 19(b)(2) of the Act, good cause for approving the proposed rule change prior to the 30th day after the date of publishing notice of the filing and, in any event, by May 12, 1994. The NASD believes that accelerated approval is appropriate for the following reasons: (1) The experimental character of the Pilot Program and the need to maintain continuity in its operation; (2) the commitment not to make any significant operational changes during the requested extension absent Commission approval; (3) the limited nature of the Pilot Program, both in terms of the number of Pilot securities and the amount of market information being exchanged; and (4) the limited utility of end-of-day, static information to the NASD and SES member firms capable of accessing, respectively, SES and NASD information. Moreover, during the period of the proposed extension, the sponsoring markets remain committed to exchange regulatory information whenever the need arises. Finally, if accelerated approval is not granted, the sponsors will be obliged to terminate this experimental program before its potential benefits can be realized in relation to the globalization of securities markets.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of Sections 11A(a)(1) (B) and (C), 15A(b)(6), 17A(a)(1) and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publishing of notice of filing thereof. The Commission believes that accelerated approval is appropriate to maintain continuity in the Pilot Program and to allow the sponsors to continue to assess the impact of the trading of these

securities in the international section of the SES's order-driven market system. Further, the Pilot Program is of a limited nature and no substantive changes will be implemented during the proposed extension. Accordingly, the Commission believes that the Pilot Program should not be terminated under these circumstances.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD.

All submissions should refer to File Number SR-NASD-94-25 and should be submitted by June 3, 1994.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved for a period of six months, through November 12, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 94-11700 Filed 5-12-94; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. IC-20284; 812-7939]

New York Life Institutional Funds, Inc., et al.; Application

May 9, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: New York Life Institutional Funds, Inc. (the "Company"), The MainStay Funds (the "Trust"), and NYLIFE Distributors, Inc. ("Nylife Distributors").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from sections 2(a)(32), 2(a)(35), 18(f)(1), 18(g), 18(i), 22(c), and 22(d) of the Act and rule 22c-1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order that would permit the Company and the Trust to (a) issue multiple classes of shares representing interests in the same portfolio of securities and (b) assess and, under certain circumstances, waive a contingent deferred sales charge ("CDSC") on redemptions of shares. The order will supersede previous orders that permitted the assessment of a CDSC.

FILING DATE: The application was filed on June 9, 1992, and amended on August 6, 1992, November 12, 1992, January 27, 1994, and May 5, 1994. 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 June 3, 1994, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, 51 Madison Avenue, New York, New York 10010.

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. The Company and the Trust are open-end management investment companies consisting of multiple series. Nylife Distributors serves as distributor for the Company and the Trust. New York Life Insurance Company ("New

York Life"), MacKay-Shields Financial Corporation, Monitor Capital Advisors, Inc., and Quorum Capital Management Limited serve as investment advisers to individual series of the Company and the Trust. New York Life serves as administrator to the Company, and Nylife Distributors serves as administrator to the Trust. Nylife Distributors, MacKay-Shields Financial Corporation, Monitor Capital Advisors and Quorum Capital Management are wholly owned subsidiaries of New York Life.

2. Applicants request that relief also extend to all series of the Company or the Trust that may be created in the future and to other registered open-end management investment companies for which Nylife Distributors, or any entity that controls, is controlled by or is under common control with Nylife Distributors, may serve as investment adviser or distributor (collectively these investment companies, the Company, and the Trust are the "Funds").

A. The Multiple Class Distribution System

1. Applicants propose to establish a multi-class distribution system to enable each of the Funds to create an unlimited number of classes of shares. Classes could be offered in connection with a 12b-1 plan (a "12b-1 Plan"), a non-rule 12b-1 administrative services arrangement ("Administrative Services Arrangement"), neither a 12b-1 Plan nor an Administrative Services Arrangement, or a combination of these options. These classes also could be subject to different sales loads. Classes offered subject to differing types of sales loads would provide investors the option of purchasing shares that would either be subject to a conventional front-end sales load (the "Front-End Option"), subject to a CDSC (the "Deferred Option"), subject to a combination of a front-end load and a CDSC (the combination option), any of which could be coupled with a 12b-1 Plan or an Administrative Services Arrangement, or not subject to any sales charges.

2. Under Administrative Services Arrangements, Funds may enter into agreements ("Administrative Services Agreements") with organizations to provide services to the clients of the organization, who beneficially own shares of a particular class. Alternatively, a Fund may enter into an Administrative Services Agreement with the Fund's administrator to provide services to class shareholders. With respect to each class of shares, the Fund would pay an organization or the administrator for its services in

accordance with its particular Administrative Services Agreement (such payments are "Administrative Services Payments") and the expense of such payments would be borne entirely by the beneficial owners of the class of shares to which each such Administrative Services Agreement relates.

3. Expenses incurred by a Fund may not be attributable to a particular portfolio or to a particular class of share of a portfolio ("Corporate Level Expenses"). Certain expenses may be attributable to a portfolio but not attributable to any particular class of the portfolio's shares ("Fund Expenses"). Corporate Level and Fund Expenses will be allocated among the classes of shares based on the value of their relative net assets at the beginning of the day. In addition to the cost of 12b-1 and/or Administrative Service Payments, each class will bear certain expenses specifically attributable to the particular class ("Class Expenses"), as provided in condition 1 below.

4. Applicants wish to have the ability to convert shares of one class to those of another class, subject to conditions 5 and 16 below. For example, shares of a Deferred Option class could convert after a specified period of time to shares of the Front-End Option class in the same portfolio. For purposes of conversion to Front-End Option shares, all shares in a shareholder's account that had been purchased through the reinvestment of dividends and other distributions paid in respect of Deferred Option shares would be considered to be held in a separate sub-account. Each time any Deferred Option shares in the shareholder's fund account convert to Front-End Option shares, a *pro rata* portion of the Deferred Option shares then in the sub-account also would convert to Front-End Option shares. The portion would be determined by the ratio that the shareholder's Deferred Option shares converting to Front-End Option shares bears to the shareholder's total Deferred Option shares not acquired through dividends and distributions.

5. Applicants propose that each class of shares sold without a front-end sales load or subject to a CDSC be permitted to be exchanged for shares of a class sold without a front-end sales load or subject to a CDSC in the same or another Fund. Each class of shares sold with a front-end sales load or subject to a CDSC would be only exchanged for the same class of shares in a different Fund. The exchange privileges would be operated in accordance with rule 11a-3 under the Act.

B. The CDSC

1. Applicants request an exemption from sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act, and rule 22c-1 thereunder, to permit the Funds to assess a CDSC on redemptions of certain classes of shares, and to permit the Funds to waive the CDSC for certain types of redemptions. The requested exemption will supersede three prior orders.¹ Each Fund's particular CDSC schedule may vary, but the sum of any front-end sales charge, CDSC, and asset based sales charge will not exceed the maximum sales charge provided in article III, section 26(d) of the Rules of Fair Practice of the National Association of Securities Dealers, Inc. ("NASD").

2. The CDSC will not be imposed on shares that were purchased more than a specified period of years prior to their redemption or on shares derived from the reinvestment of distributions. Furthermore, no CDSC will be imposed on an amount that represents an increase in the value of the shareholder's account resulting from capital appreciation above the amount paid for shares purchased during the CDSC period. In determining whether a CDSC is applicable, it will be assumed that a redemption is made first of shares representing capital appreciation, second of shares derived from reinvestment of dividends and capital gains distributions, and finally of other shares held by the shareholder for the longest period of time.

3. Applicants request the ability to waive or reduce the CDSC (a) on redemptions following the death or disability, as defined in section 72(m)(7) of the Internal Revenue Code of 1986, as amended (the "Code"), of a shareholder if redemption is made within one year of death or disability of a shareholder; (b) in connection with distributions permitted to be made under the Code without penalty from an individual retirement account or other qualified retirement plan, other than tax-free rollovers or transfers of assets; (c) in connection with redemptions of shares purchased by active or retired officers, directors or trustees, partners and employees of the Funds, the distributor or affiliated companies, by members of the immediate families of such persons, by dealers having a sales agreement with the distributor, or any trust, pension, profit sharing plan for the benefit of such persons; (d) on

redemptions by New York Life or an affiliate thereof; (e) in connection with redemptions of shares made pursuant to a shareholder's participation in any systematic withdrawal plan adopted by a Fund; (f) in connection with redemptions by accounts established with an initial purchase order of \$1 million or more; (g) in connection with redemptions effected by separate accounts or advisory accounts managed by New York Life or an affiliated company; (h) in connection with redemptions by tax-exempt employee benefit plans resulting from the adoption or promulgation of any law or regulation pursuant to which continuation of the investment in the Funds would be improper; (i) in connection with redemptions effected by registered investment companies by virtue of transactions with a Fund; (j) in connection with redemptions by any state, county, or city, or any instrumentality, department, authority or agency thereof and by trust companies and bank trust departments; (k) on redemptions made for the purpose of funding a loan to a participant in a tax-qualified retirement plan permitted to make such loans; (l) on transfers to (i) other funding vehicles sponsored or distributed by New York Life or an affiliated company or (ii) guaranteed investment contracts, regardless of the sponsor, within a retirement plan; (m) on redemptions made to meet required distributions by a charitable remainder trust under section 664 of the Code; and (n) on redemptions by living revocable trusts.

Applicants' Legal Analysis

1. Applicants request an exemption under section 6(c) of the Act from sections 18(f)(1), 18(g), and 18(i) of the Act to issue multiple classes of shares representing interests in the same portfolio of securities. Applicants believe that any implementing the multiple class distribution system, the Funds would be able to facilitate the distribution of their shares and provide a broad array of services without assuming excessive accounting and bookkeeping costs. Applicants also believe that the proposed allocation of expenses and voting rights in the manner described above is equitable and would not discriminate against any group of shareholders. The proposed arrangement does not involve borrowings, and does not affect the Funds' existing assets or reserves. The proposed arrangement also will not increase the speculative character of the shares of a Fund.

2. Applicants also request an exemption under section 6(c) from

sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act and rule 22c-1 thereunder permitting applicants to assess and, under certain circumstances, waive a CDSC on redemptions of shares. Applicants submit that their request permits shareholders purchasing a class of shares subject to a CDSC to have the advantage of greater investment dollars working for them from the time of their purchase of shares of the Funds than if a sales load were imposed at the time of purchase.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

A. Multiple Class Distribution System

1. Each class of shares will represent interests in the same portfolio of investments of a Fund, and be identical in all respects, except as set forth below. The only differences between the classes of shares of a Fund relate solely to: (a) The method of financing certain Class Expenses, which are limited to (i) transfer agency fees identified by the transfer agent as being attributable to a specific class of shares; (ii) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses, and proxies to current shareholders of a specific class; (iii) blue sky registration fees incurred by a class of shares; (iv) SEC registration fees incurred by a class of shares; (v) the expense of administrative personnel and services as required to support the shareholders of a specific class; (vi) litigation or other legal expenses relating solely to one class of shares; and (vii) directors'/ trustees' fees incurred as a result of issues relating to one class of shares; (b) expenses assessed to a class resulting from 12b-1 and Administrative Services Payments; (c) voting rights as to matters exclusively affecting one class of shares, except as provided in condition (5) below; (d) exchange features; (e) conversion features; and (f) class designation differences. Any additional incremental expenses not specifically identified above which are subsequently identified and determined to be properly allocated to one class of shares shall not be so allocated until approved by the SEC pursuant to an amended order.

2. The directors of the Company, trustees of the Trust, and the directors/trustees of any subsequently created Funds (collectively, "Directors/ Trustees"), including a majority of the independent Directors/Trustees, will approve the offering of multiple classes of shares (the "Multi-Class System").

¹ MacKay-Shields MainStay Series Funds, Investment Company Act Release Nos. 15038 (Apr. 3, 1986) (notice), 15078 (Apr. 30, 1986) (order), 15718 (May 5, 1987) (notice), and 15758 (May 29, 1987) (order) and *The Mainstay Funds*, Investment Company Act Release Nos. 20046 (Jan. 21, 1994) and 20104 (Mar. 1, 1994).

The minutes of the respective meetings of the Directors/Trustees regarding the deliberations of the Directors/Trustees with respect to the approvals necessary to implement the Multi-Class System will reflect in detail the reasons for the Directors/Trustees' determination that the proposed Multi-Class System is in the best interests of both the Funds and their shareholders.

3. The initial determination of the Class Expenses that will be allocated to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the board of Directors/Trustees of the Funds including a majority of the Directors/Trustees who are not interested persons of the Fund. Any person authorized to direct the allocation and disposition of monies paid or payable by a Fund to meet Class Expenses shall provide to the board of Directors/Trustees, and the Directors/Trustees shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

4. On an ongoing basis, the Directors/Trustees, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Fund for the existence of any material conflicts between the interests of the various classes of shares. The Directors/Trustees, including a majority of the independent Directors/Trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. Each Fund's adviser and distributor will be responsible for reporting any potential or existing conflicts to the Directors/Trustees. If a conflict arises, the Fund's adviser and distributor at their own cost will remedy such conflict up to and including establishing a new registered management investment company.

5. If a Fund implements any amendment to its 12b-1 Plan (or, if presented to shareholders, adopts or implements any amendment of a non-rule 12b-1 shareholder services plan) that would increase materially the amount that may be borne by class of shares (for purposes of the Application, "Class X") under the plan, existing shares of a class of shares that converts into Class X shares after a period of time (for purposes of the application, "Class Y") will stop converting into Class X unless the Class Y shareholders, voting separately as a class, approve the proposal. The Directors/Trustees shall take such action as is necessary to ensure that existing Class Y shares are exchanged or converted into a new class of shares ("New Class X"), identical in all material respects to Class X as it

existed prior to implementation of the proposal, no later than the date such shares previously were scheduled to convert into Class X. If deemed advisable by the Directors/Trustees to implement the foregoing, such action may include the exchange of all existing Class Y shares for a new class ("New Class Y"), identical to existing Class Y shares in all material respects except that New Class Y will convert into New Class X. New Class X or New Class Y may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in any manner that the Directors/Trustees reasonably believe will not be subject to federal taxation. In accordance with condition (4), any additional cost associated with the creation, exchange, or conversion of New Class X or New Class Y shall be borne solely by the adviser and the distributor. Class Y shares sold after the implementation of the proposal may convert into Class X shares subject to the higher maximum payment, provided that the material features of the Class X plan and the relationship of such plan to the Class Y shares are disclosed in an effective registration statement.

6. The Administrative Services Arrangements will be adopted and operated in accordance with the procedures set forth in rule 12b-1(b) through (f) as if the expenditures made thereunder were subject to rule 12b-1, except that shareholders need not enjoy the voting rights specified in rule 12b-1.

7. The Directors/Trustees of the Fund will receive quarterly and annual statements concerning distribution and servicing expenditures complying with paragraph (b)(3)(ii) of rule 12b-1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any distribution or servicing fee charged to that class. Expenditures not related to the sale or servicing of a particular class will not be presented to the Directors/Trustees to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent Directors/Trustees in the exercise of their fiduciary duties.

8. Dividends paid by a Fund with respect to each class of its shares will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except that plan payments made by a class under its 12b-1 Plan or Administrative Services Arrangement and any Class Expenses will be borne exclusively by that class.

9. The methodology and procedures for calculating the net asset value and dividends and distributions of the various classes and the proper allocation of expenses among the classes has been reviewed by an expert (the "Expert") who has rendered a report to applicants, which has been provided to the staff of the SEC, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to applicants that the calculations and allocations are being made properly. The reports of the Expert will be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The workpapers of the Expert with respect to such reports, following request by the Funds (which the Funds agree to provide), will be available for inspection by the SEC staff upon written request by a senior member of the Division of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert is a "request on policies and procedures placed in operation" and the ongoing reports will be "reports on policies and procedures placed in operation and tests of operating effectiveness" as defined and described in SAS No. 70 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

10. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value, dividends and distributions, and sales loads of the various classes of shares and the proper allocation of expenses among the classes of shares and this representation has been concurred with by the Expert in the initial report referred to in condition (9) above and will be concurred with by the Expert or an appropriate substitute Expert on an ongoing basis at least annually in the ongoing reports referred to in condition (9) above. Applicants will take immediate corrective measures if this representation is not concurred in by the Expert, or appropriate substitute Expert.

11. The prospectuses of each class of a Fund will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing Fund shares may receive different compensation with respect to one particular class of shares over another in that Fund.

12. Each Fund's distributor will adopt compliance standards as to when each class of shares may appropriately be sold to particular investors. Applicants will require all persons selling shares of the Funds to agree to conform to such standards.

13. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the Directors/Trustees with respect to the Multi-Class System will be set forth in guidelines which will be furnished to the Directors/Trustees.

14. Each Fund will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales charges, deferred sales charges, and exchange privileges (if any) applicable to each class of shares in every prospectus, regardless of whether all classes of shares are offered through each prospectus. Each Fund will disclose the respective expenses and performance data applicable to all classes of shares in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Fund as a whole generally and not on a per class basis. Each Fund's per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Fund. To the extent that any advertisement or sales literature describes the expenses and/or performance data applicable to any class of shares, it will also disclose the respective expenses and/or performance data applicable to all classes of shares. The information provided by applicants for publication in any newspaper or similar listing of a Fund's net asset value or public offering price will present each class of shares separately.

15. Applicants acknowledge that the grant of the requested exemptive order will not imply SEC approval, authorization of, or acquiescence in any particular level of payments that applicants may make pursuant to any 12b-1 Plan or Administrative Services Arrangement in reliance on the exemptive order.

16. Any conversion of shares from one class to another will be based on the relative net assets of the two classes, without the imposition of any sales load, fee, or other charge. After conversion, the converted shares will be

subject to an asset-based sales charge and/or service fee (as those terms are defined in Article III, Section 26 of the NASD's Rules of Fair Practice), if any, that in the aggregate are lower than the asset-based sales charge and service fee to which they were subject prior to the conversion.

B. CDSC

1. Applicants will comply with the representations in the application concerning the CDSC and the provisions of proposed rule 6c-10 under the Act² as such rule is currently proposed and as it may be repropounded, adopted, or amended.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 94-11703 Filed 5-12-94; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-34022; File No. SR-NYSE-94-7]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by New York Stock Exchange, Inc., Relating to the Extension of Rule 103A—Specialist Stock Reallocation—Until May 9, 1995

May 6, 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 10, 1994, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. At the same time, the Commission is granting temporary accelerated approval to the proposal pursuant to Section 19(b)(2) of the Act.¹

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the effectiveness of Rule 103A (Specialist Stock Reallocation) for an additional year until May 9, 1995.

² Investment Company Act Release No. 16619 (Nov. 2, 1988).

¹ 15 U.S.C. 78s(b)(2) (1988).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The intent of Rule 103A is to encourage a high level of market quality and performance in Exchange listed securities. Rule 103A grants authority to the Exchange's Market Performance Committee ("MPC") to develop and administer systems and procedures, including the determination of appropriate standards and measurements of performance, designed to measure specialist performance and market quality on a periodic basis to determine whether or not particular specialist units need to take actions to improve their performance.² Based on such determinations, the MPC is authorized to conduct a formal Performance Improvement Action in an appropriate case.

On May 10, 1993, the SEC extended the effectiveness of Rule 103A until May 9, 1994.³ In this order, the Commission

² The Commission originally approved the implementation of the Rule 103A pilot program in Securities Exchange Act Release No. 25681 (May 9, 1988), 53 FR 17287 (May 16, 1988) (order approving File No. SR-NYSE-87-25) and subsequently extended the effectiveness of Rule 103A in Release Nos. 28215 (July 17, 1990) ("July 1990 Order"), 55 FR 30060 (July 24, 1990) (order approving File No. SR-NYSE-90-24); 29180 (May 8, 1991), 56 FR 22498 (order approving File No. SR-NYSE-91-14) and 32285 (May 10, 1993), 58 FR 28905 (May 17, 1993) ("May 10 Order"). The July 1990 Order also approved various substantive revisions to Rule 103A including, among other things, enhancing the performance criteria for administrative messages received through the Designated Order Turnaround ("DOT") system, and, at the same time, extended the effectiveness of the revised Rule 103A until May 9, 1991 [see Securities Exchange Act Release No. 28215]. Subsequently, on February 27, 1991 the Commission approved the NYSE's proposal to adopt relative performance standards into the Rule 103A program [see Securities Exchange Act Release No. 28923 (February 27, 1991), 56 FR 9993 (order approving File No. SR-NYSE-90-44)].

³ See Securities Exchange Act Release No. 32285, *supra* note 2.

stated its belief that the Exchange should develop objective performance standards to measure specialist performance.⁴ In this regard, the Commission recently approved, on a one-year pilot basis, an objective measure of specialist performance dealing with specialist utilization of capital for market-making.⁵ This measure of performance focuses on a specialist unit's use of its own capital in relation to the total dollar value of trading activity in the unit's stocks. Tiered rankings based on a unit's capital utilization are provided to the Exchange's Allocation Committee as one of the objective measures it considers in allocating stocks to specialist units under its Allocation Policy and Procedures.

The Exchange, with the assistance of outside consultants, continues to work to develop additional objective measures of specialist performance. As Rule 103A is working well, the Exchange requests that its effectiveness be extended for an additional year, until May 9, 1995.

2. Statutory Basis

The statutory basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed extension of Rule 103A is consistent with these objectives in that it will allow the Exchange to continue to administer the rule on an uninterrupted basis ensuring quality specialist performance.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

⁴ The Commission notes that the Exchange's current evaluation criteria under Rule 103A.10 include objective standards that measure specialist performance at the opening (both regular and delayed), systematized order turnaround, and the timeliness of a unit's response to status requests. Specialist performance also is measured by the Exchange's Specialist Performance Evaluation Questionnaire. However, objective market making measures currently are not included in the Rule 103A program.

⁵ See Securities Exchange Act Release No. 33369 (December 22, 1993), 58 FR 69431 (December 30, 1993). This measure of performance has not to date been incorporated into the Rule 103A evaluation program. See note 17, *infra*.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-94-7 and should be submitted by June 3, 1994.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The rules of the Exchange, in addition to the rules set forth under the Act, impose certain obligations upon the specialist unit, including, but not limited to, the maintenance of fair and orderly markets.⁶ Because specialist units play a crucial role in providing stability, liquidity and continuity to the trading of stocks on the Exchange, the Commission believes that effective oversight, including periodic evaluation of the specialists' performance, is important to the maintenance of a fair and efficient marketplace. Critical to this oversight is the specialist performance evaluation process embodied in Rule 103A.

In the May 10 Order, the Commission reiterated its desire for the Exchange to develop objective measures of market making performance and incorporate such measures into the proposed rule

⁶ See generally NYSE Rule 104; Rule 11b-1 under the Act, 17 CFR 240.11b-1 (1993).

change to extend the Rule 103A pilot.⁷ The Commission's request was consistent with its previous orders approving the extension of the Rule 103A pilot program. In fact, the Exchange informed the Commission that it had employed the services of an outside expert to study the feasibility of adopting such objective measures of specialist performance.⁸ To date, however, the Exchange has not finished its development of objective measures of market making performance. Indeed, in the proposed rule change, the Exchange states that it continues to work to develop additional objective performance standards. The Exchange requests that the Commission extend the effectiveness of the rule for an additional year because the rule is working well. However, the proposal herein to extend Rule 103A until May 9, 1995, does not include objective measures of market making performance as the Commission originally and requested.

Even though the proposal lacks objective market marking performance standards, the Commission has determined to approve the proposal to extend the effectiveness of Rule 103A for an additional year in light of the significant enhancements the NYSE has made to the Rule 103A program thus far, and the substantial time and resources the Exchange already has dedicated to the development of objective criteria. The revision to Rule 103A, adopted in July, 1990⁹, the subsequent adoption of relative performance standards¹⁰, and the refinement of existing standards¹¹ have augmented the Exchange's ability to evaluate specialist performance. In this regard, the Commission also notes that the Exchange has developed a new measure of capital utilization by specialists, even though that measure has not yet been incorporated in to the Rule 103A evaluation criteria.¹²

As noted in previous orders,¹³ the Commission stated that the mature status of the Intermarket Trading System ("ITS"), as a market structure facility, warrants the incorporation of ITS turnaround and trade-through

⁷ See Securities Exchange Act Release No. 32285, *supra* note 2.

⁸ See Securities Exchange Act Release No. 28215, *supra* note 2 and letter from Robert J. McSweeney, Senior Vice President, Market Surveillance, NYSE, to Sharon Lawson, Assistant Director, Commission, dated August 31, 1992 ("August 1992 letter").

⁹ See Securities Exchange Act Release No. 30676 (May 7, 1992), 57 FR 20544 (May 13, 1992).

¹⁰ *Id.*

¹¹ See Securities Exchange Act Release No. 32045 (March 24, 1993), 58 FR 16896 (March 31, 1993).

¹² See *supra* note 5.

¹³ See Securities Exchange Act Release Nos. 30676, 29180, 28215, and 25681 *supra* note 2.

concerns¹⁴ into the NYSE's Rule 103A performance standards. The NYSE has responded to the Commission's request that it incorporate ITS turnaround and trade-through concerns into Rule 103A.¹⁵ In this regard, the Exchange stated that ITS matters are more appropriately addressed by means of the Exchange's regulatory processes rather than by its performance measurement system. According to the Exchange, it has emphasized to speciality that all ITS commitments to trade are expected to be executed, and will take appropriate regulatory action if specialists are deficient in this matter. Moreover, the Exchange states that trade-throughs are not always the responsibility of the specialist and, therefore, would not appear to be an appropriate measure of specialist performance. In the Exchange's view, the current ITS trade-through resolution process works well, and is the appropriated means for addressing ITS trade-through concerns.¹⁶ Despite the contentions of the Exchange, the Commission believes that evaluating the ITS turnaround and trade-through concerns can be a valid measurement of specialist performance and should be incorporated into the evaluation process. For example, the NYSE should measure how many times NYSE specialists trade-through other markets and how often specialists' ITS commitments expire. Although we agree with the NYSE that these factors should be addressed, where appropriate, by regulatory action, we also believe these factors can be a valid indication of specialist performance in the current trading environment.

The Commission continues to believe that the Exchange should develop objective performance standards that would measure accurately the traditional indicia of specialist performance, namely, market depth, price continuity and dealer participation and stabilization. The Commission continues to encourage the NYSE to incorporate objective standards into the Rule 103A program prior to or simultaneous with the NYSE's future proposal to extend the effectiveness of Rule 103A or adopt the Rule on a permanent basis.¹⁷

¹⁴ ITS Plan, Section 8(d)(i) and (ii), (as last amended March 9, 1993).

¹⁵ See August 1992 letter *supra* note 9.

¹⁶ *Id.*

¹⁷ In this regard, the Commission expects the NYSE to submit to the Division of Market Regulation, by February 28, 1995, a proposed rule change pursuant to Rule 19b-4 under the Act, 17 CFR 240.19b-4, to extend the Rule 103A pilot or make the Rule permanent. As emphasized above, this proposed rule change should include objective measures of market making performance that have

The Commission has reviewed carefully the NYSE's proposed rule change and, for the above reasons, believes that the proposal is consistent with the requirements of sections 6 and 11 of the Act¹⁸ and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes that the proposal is consistent with the section 6(b)(5) requirement that the rules of the Exchange be designed to promote just and equitable principles of trade, perfect the mechanism of a free and open national market system, and, in general, further investor protection and the public interest. Further, the Commission finds that the proposal is consistent with section 11(b) of the Act,¹⁹ and Rule 11b-1 thereunder,²⁰ which allow securities exchanges to promulgate rules relating to specialists consistent with the maintenance of fair and orderly markets.

Specifically, the Commission believes that the NYSE's Rule 103A performance evaluation process provides the Exchange with the means to identify and correct poor specialist performance. Accordingly, the evaluation process is critical to the NYSE's duty to ascertain whether specialists are maintaining fair and orderly markets in their assigned securities, as required pursuant to Exchange rules and the Act, and the rules and regulations thereunder. Moreover, the possibility of a performance improvement action as a result of the evaluation process, in addition to the use of the evaluation results in stock allocation decisions, should help motivate and provide incentives for specialists to maintain and improve their market making performance for the benefit of investors. In summary, extension of Rule 103A's effectiveness until May 9, 1995 will

been developed by the outside experts retained by the Exchange.

In this regard, as of December 1994, the NYSE should have a full year's experience with the new capital utilization measure. Assuming that the experience with the capital utilization measure is good, the NYSE should incorporate the new measure in the Rule 103A evaluation prior to the Exchange's next request for an extension or permanent approval.

The Commission also expects the Exchange to submit to the Division, by February 28, 1995, a status report on the implementation of Rule 103A. The report should contain data, for each quarter of 1994, on (1) the number of specialists that fell below acceptance levels of performance for each category; (2) the number of performance improvement actions commenced; (3) the number of units subjected to informal counseling to improve performance; and (4) a list of stocks reallocated due to substandard performance under the Rule and the Particular unit involved.

¹⁸ 15 U.S.C. 78f and 78k (1988).

¹⁹ 15 U.S.C. 78k(b) (1988).

²⁰ 17 CFR 240.11b-1 (1993).

provide the Exchange with the ability to continue evaluating specialist performance on an uninterrupted basis, which should enhance market quality and performance in Exchange listed securities. During the pilot, the Exchange should continue to consider and develop objective measures which evaluate both ITS matters and market making performance.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission believes it is appropriate to approve the proposed rule change on an accelerated basis so that the Exchange can continue to administer, on an uninterrupted basis, its Rule 103A evaluation process. During the one year extension of the Rule, the Commission expects the NYSE to continue its examination of the efficacy of its current specialist evaluation procedures, as well as determine whether to extend the pilot for a further period or, in the alternative, approve Rule 103A on a permanent basis. Finally, a substantial portion of current Rule 103A was noticed for the full statutory period in 1987, and the Commission did not receive any adverse commentary on the revised Rule 103A program.²¹ Further, interested persons were invited to comment on the past proposals to extend the effectiveness of Rule 103A, the most recent of such proposals being the extension of Rule 103A until May 9, 1994. The Commission received no comments on these proposals. The Commission believes, therefore, that granting accelerated approval of the proposed rule change is appropriate and consistent with section 6 of the Act.²²

V. Conclusion

For the reasons set forth above, the Commission finds that the proposed rule change is consistent with sections 6(b)(5) and 11(b) under the Act, and Rule 11b-1 thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act²³ that the proposed rule change (SR-NYSE-94-7) is approved for the period ending May 9, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁴

²¹ See Securities Exchange Act Release Nos. 24919 (September 15, 1987), 52 FR 35821 (notice of filing of File No. SR-NYSE-87-25); and 25681 (May 9, 1988), 53 FR 17287 (order approving File No. SR-NYSE-87-25).

²² 15 U.S.C. 78f (1988).

²³ 15 U.S.C. 78s(b)(2) (1988).

²⁴ 17 CFR 200.30-3(a)(12) (1993).

[FR Doc. 94-11701 Filed 5-12-94; 8:45 am]
BILLING CODE 8010-01-M

[Investment Company Act Rel. No. 20283;
812-8946]

Select Advisors Trust, et al.;
Application

May 6, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Application for exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: Select Advisors Trust ("Trust I") and Select Advisors Trust II ("Trust II"), on behalf of themselves and any registered open-end investment companies that are part of the same group of investment companies and: (a) Whose principal underwriter is the Distributor (as defined below), or a principal underwriter that is under common control with the Distributor, and (b) which hold themselves out to investors as being related for purposes of investment and investor services (the "Trusts")¹ and Interactive Financial Solutions, Inc. (the "Distributor").
RELEVANT ACT SECTIONS: Order requested under section 6(c) for exemptions from sections 2(a)(32), 2(a)(35), 22(c), and 22(d) and rule 22c-1.

SUMMARY OF APPLICATION: Applicants seek an order to permit the Trusts to assess a CDSC on certain redemptions of shares, and to waive the CDSC in certain cases.

FILING DATE: The application was filed on April 22, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving 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 on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a

hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 318 Broadway, Cincinnati, Ohio 45202.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Staff Attorney, at (202) 942-0573, or Robert A. Robertson, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. The Trusts are diversified, open-end management investment companies. Trust I currently has eight series: Emerging Growth Fund, International Equity Fund, Growth & Income Fund, Balanced Fund, Income Opportunity Fund, Bond Fund, Municipal Bond Fund, and Standby Reserve Fund. Trust II currently has seven series: Emerging Growth Fund, International Equity Fund, Growth & Income Fund, Balanced Fund, Income Opportunity Fund, Bond Fund, and Municipal Bond Fund. The series of Trust I and Trust II are referred to collectively as the "Series."

2. The Trusts invest the assets of each of their Series (with the exception of the Standby Reserve Fund) in a corresponding portfolio that is a series of the Select Advisors Portfolios (the "Portfolio Trust"), an open-end management investment company which currently offers seven series. Investments in the Portfolio Trust are made through the Signature Financial Group, Inc. ("Signature") Hub and Spoke® financial service method. The Portfolio Trust on behalf of each portfolio, and Trust I on behalf of the Standby Reserve Fund, have entered into an investment advisory agreement with Touchstone Investment Advisors, Inc. (the "Adviser") and an administrative services and fund accounting agreement with Signature. The Trusts have entered into an agreement for administrative services and fund accounting services with Signature and a distribution agreement with the Distributor.

3. Shares of Trust I (other than Standby Reserve Fund, which has no sales charge) are offered at net asset value plus a front-end sales charge at a rate of up to 5.75% of the offering price. Each Series of Trust I (other than Standby Reserve Fund) also imposes a

rule 12b-1 distribution fee at an annual rate of up to .25% of its average daily net assets. No front-end sales charge is payable with respect to purchases of \$1,000,000 or more of shares of Trust I. Shares of Trust II are offered without an initial sales charge, but are subject to rule 12b-1 distribution and shareholder services fees at an annual rate of up to 1% of each Series' average daily net assets. Applicants now propose to allow the Trusts to impose a CDSC on certain redemptions of shares and to waive the CDSC under certain circumstances.

4. Under the proposed CDSC arrangement, applicants generally will impose a CDSC of 1% on redemptions of shares of Trust I which have been acquired without a sales charge through a purchase of \$1,000,000 or more and are redeemed within one year of their purchase. Applicants also propose to impose a CDSC of 1% on redemption of shares of Trust II made within one year of their date of purchase. Applicants in the future may decide to increase or reduce the CDSC percentage, shorten the applicable holding period, or create a scheduled range of CDSC percentages. Any future changes or variations will be disclosed in each affected prospectus and will not affect any shares of the Trusts that were issued prior to the disclosure thereof.

5. The CDSC will be equal to a percentage of the lesser of (a) the net asset value of the shares at the time of purchase, or (b) the net asset value of the shares at the time of redemption. No CDSC will be imposed on amounts derived from capital appreciation, shares purchased through the reinvestment of dividends or capital gains distributions. In determining whether a CDSC is applicable, it will be assumed that shares not subject to the CDSC are redeemed first and that other shares are then redeemed in the order purchased.

6. No CDSC will be imposed on exchanges or Trust shares in compliance with rule 11a-3. If, however, the shares acquired in an exchange are redeemed within one year following the original investment, the CDSC will be assessed. No CDSC will be imposed on shares purchased prior to the date the SEC grants the requested order.

7. The Distributor will provide a *pro rata* refund, out of its own assets, of any CDSC paid in connection with a redemption of shares of a Trust (by crediting such refunded CDSC to the shareholder's account) if, within 90 days of such redemption, all or any portion of the redemption proceeds are reinvested in shares of the Trusts. The reinvested amount will be subject to the CDSC applicable prior to the

¹ A registered open-end investment company of the same group of investment companies as Trust I and Trust II includes companies organized in the future and existing companies whose board of directors or board of trustees in the future determines to establish a contingent deferred sales charge ("CDSC") as described below. Applicants undertake that any such company will be subject to each of the conditions contained in the application.

redemption, and the CDSC time period will run from the original investment date but will be extended by the number of days between the redemption and reinvestment date.

8. The CDSC will be waived or reduced in the following instances: (a) In connection with distributions from qualified retirement plans and other employee benefit plans qualified under section 401(a) of the Internal Revenue Code (the "Code"); (b) distributions from a custodial account under section 403(b)(7) of the Code or an individual retirement account (an "IRA") due to death, disability, or attainment of age 59½; (c) a tax-free return of an excess contribution to an IRA; (d) for any partial or complete redemptions following death or disability (as defined in section 72(m)(7) of the Code) of a shareholder from an account in which the deceased or disabled is named, provided the redemption is made within one year of death or initial determination of disability; (e) involuntary redemptions as described in each prospectus; and (f) redemptions by (i) current or retired directors, trustees, partners, officers, and employees of Trust I, Trust II, the Portfolio Trust, the Distributor, the Advisor, family members of these persons, and trusts or plans primarily for such persons, (ii) trustees or other fiduciaries purchasing shares for certain retirement plans; and (iii) participants in pension, profit-sharing or employee benefit plans that are sponsored by the Distributor and its affiliates.

Applicants' Legal Conclusion

Applicants submit that the proposal to impose a CDSC is fair, in the public interest and the interest of the Trust's shareholders, and consistent with the protection of investors and the purposes fairly intended by the policy and the provisions of the Act. Consequently, applicants request an order of the Commission pursuant to section 6(c) of the Act for an exemption from sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act and rule 22c-1 thereunder to the extent necessary to permit the proposed CDSC arrangement.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Applicants will comply with the provisions of proposed rule 6c-10 under the Act, Investment Company Act Release No. 16169 (Nov. 2, 1988), as such rule is currently proposed and as it may be repropounded, adopted, or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-11704 Filed 5-12-94; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-26047]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

May 6, 1994.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by May 31, 1994, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified or any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

The Southern Development and Investment Group (70-8173)

The Southern Development and Investment Group, Inc., a non-utility subsidiary of The Southern Company ("Southern"), a registered holding company, and Southern, each of 64 Perimeter Center East, Atlanta, Georgia 30346, have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b) and 13(b) of the Act and Rules 45, 50(a)(5), 81, 87, 90 and 91 thereunder.

Southern proposes to invest up to \$275 million in Development from time to time through December 31, 1998 in order to fund the following activities, as discussed in more detail below: (a) To

enable Development to develop, construct, and acquire an energy management prototype network (\$175 million); (b) to provide Development with necessary working capital in connection with its research and development and technical consulting activities, as well as to pay other general and administrative expenses (\$50 million), including—(i) Funding to commercialize POWERcall (\$10 million of the total \$50 million) and (ii) payment of predevelopment costs associated with potential investments in other energy management facilities and energy recovery facilities (\$10 million of the total \$50 million); and, (c) to finance the costs of equipment and/or provide customer financing of equipment in connection with energy management and efficiency services provided by Development (\$50 million).

Southern proposes to acquire, and Development proposes to issue and sell, common stock and notes up to \$275 million from time to time through December 31, 1998, with maturities no later than December 31, 2003. Such loans will bear an interest rate equal to a rate not to exceed the prime rate in effect on the date of the loan at a bank designated by Southern. In addition, Development proposes to convert the notes to capital contributions (through Southern's forgiveness of the debt evidenced thereby). Alternatively, Southern proposes to make up to \$275 in cash capital contributions to Development from time to time through December 31, 1998.

Development proposes to issue and sell to third parties, and Southern proposes to guarantee, up to \$275 million in notes or other recourse liabilities from time to time through December 31, 1998, the maturities of which will not extend past December 31, 2003. The loans evidenced by such notes will be made with an interest rate not to exceed 3% over the lender bank's prime rate.

Development proposes to acquire promissory notes evidencing the debt of customers in connection with financing energy management and efficiency equipment. Further, Development may assign evidences of customer indebtedness to Southern in consideration of a reduction in the amount of outstanding notes, in which case the aggregate amount of outstanding customer indebtedness held by Southern would be added to the aggregate amount of outstanding notes issued by Development and held by Southern for purposes of the proposed \$50 million limit.

Southern proposes to provide performance guarantees and to

undertake other contractual obligations with respect to the performance and other obligations of Development under contracts and bids with third parties. Southern proposes to provide guarantees in an aggregate amount outstanding at any one time of \$200 million through December 31, 2003; provided, that any guarantees or indemnifications outstanding at December 31, 2003 shall continue until expiration or termination in accordance with their terms. For purposes of computing the above limitation, neither Southern's agreements to provide guarantees or indemnifications of sureties of Development which have not actually been issued, nor Development's joint venture partner's respective shares of any joint venture obligations or indemnification of sureties of the joint venture, shall be counted. In addition, Southern and Development request that they have the flexibility to negotiate specific guarantees and similar provisions and arrangements with third parties, and indemnifications of sureties, as the need to do so arises, without further Commission authorization.

Development proposes to enter into new service agreements with Southern Company Services, Inc. ("Services") and each of the operating electric utility companies (each an "Operating Company", collectively, "Operating Companies") that will be substantially identical to the existing agreements between Development and Services.

Development proposes to undertake activities, including advertising and marketing studies, additional pilot tests, testing of various manufacturers' equipment, and purchases of equipment and software enhancements, among other activities, with a view to commercializing POWERcall and related customer services¹ throughout Alabama and Georgia and in the Gulf region of Mississippi and Florida. Development also requests authority to enter into agreements with utilities that are interconnected with Southern System companies pursuant to which Development would offer POWERcall and related services to the customers of

¹ POWERcall is described as a utility customer service involving the installation of a device at a customer's premises which would monitor and automatically report power outages to a utility's operations center. Development states that it is investigating the additional capabilities of the monitoring device and its related software to determine the commercial feasibility of providing certain monitoring services in addition to POWERcall. Such additional services would include both energy-related services, such as automated meter reading and temperature monitoring, and other services, such as fire, intrusion and health alarm services.

such non-affiliated utilities. Development proposes to invest up to \$10 million in connection with these activities.

Development also requests authority to develop, purchase, construct, own and operate a prototype energy management communications network² at various locations within the Southern System. Development requests authority to invest up to \$175 million in equity investments in such prototype systems, which would cover design and marketing costs and the costs of building, purchasing, or leasing fiber and coaxial cable lines and related equipment, facilities and properties.

Development proposes to make available the balance of the bandwidth capacity to other communications providers of voice, data, and video services, such as cable television companies, local and long distance telephone companies, computer networks, commercial merchants (e.g., home shopping networks), or large private users, such as banks, pursuant to leases, network sharing agreements or licensing transactions negotiated at arms' length for varying terms at market values.

Development proposes to provide the necessary system operations and maintenance services in connection with its energy management communications network and will charge third party communications providers the fair market value of such services based on their level of use of the system.

Development also proposes to offer to utility customers directly, or indirectly through public utility companies, a broader range of energy management services, including demandside management ("DSM") measures, and, in connection therewith, proposes to invest in energy management equipment and/or provide customer financing for the purchase of equipment from third party vendors and suppliers.

Specifically, Development proposes to: (1) Engage in energy management services, including—(a) Design of modifications and new equipment, (b) management or direct installation of

² Development states that, by utilizing his network, it proposes to offer to customers power usage and outage monitoring services (including POWERcall), two way customer/utility communications, automated billing, energy and conservation information, including "Good Cents" messages and information, and communications-based programs, such as "distance learning," that may be offered in conjunction with a utility's industrial development activities, among other potential utility and utility-related interactive communications services. Development states that the network may also be used for internal system communication of voice and data.

new equipment, (c) the entry into performance contracts (where Development is paid on the basis of actual energy savings), (d) the arrangement of third-party financing for conservation programs, (e) the training personnel in use of equipment, and (f) the observation of the operation of installed system to insure that it meets design specifications; (2) offer demand-side management services, including—(a) design of energy conservation programs, (b) implementation of energy conservation programs, (a) performance contracts for DSM work, and (d) the monitoring and/or evaluating of DSM programs; (3) invest in energy management equipment; and, (4) provide customer financing for the purchase of energy management equipment from third parties.

Development requests authority to use up to \$50 million of the funds provided by Southern to make investments in energy efficiency and conservation assets and/or loans to customers to enable such customers to finance the purchase of such assets.

Development requests authority to provide the following general types of technical consulting services to non-affiliated entities, including utilities, industrial and commercial concerns and governments: management expertise, such as strategic planning, finance, feasibility studies, organization, energy efficiency, safety, environmental and conservation matters, policy matters and management services; technical services and expertise, such as design, engineering, procurement, construction supervision, information systems and services, environmental and conservation planning, auditing, engineering and construction, engineering and construction planning and procedures, data processing, system planning and operational planning; training expertise, including training in the area of operation, equipment repair, and maintenance; and technical and procedural resources and systems, such as are embedded in computer, information, and communications systems, programs or manuals developed or acquired by Southern System companies. In addition, Development seeks authority to render certain services that Southern Electric International, Inc. ("SEI") now provides in accordance with the Commission orders dated July 17 and December 18, 1981 (HCAR Nos. 22132 and 22315A, respectively) to public utility companies and others having need for the procurement of materials, machinery, equipment, services and supplies used in the generation, transmission, and distribution of electric power and the

maintenance of inventories of spare parts, such as through joint procurement organizations (e.g., Pooled Inventory Management Services), which may include, as members, participants, or shareholders companies that are subsidiaries of Southern. Development also seeks authority to assume SEI's obligations under existing contracts to the extent that they can be assigned.

Development also requests authorization to offer to third parties Intellectual Property³ created or acquired by Development or its associate companies within the Southern System.

Development also proposes to undertake preliminary development activities with respect to potential investments in energy and resource recovery facilities and technologies, including but not limited to coal gasification facilities and other synthetic fuels technologies, landfill gas recovery, refuse derived fuels, and other alternative fuels technologies. Development states that it will not make any capital investment in any such facility exceeding \$1 million individually or \$10 million in the aggregate, except pursuant to separate Commission authorization.

Gulf States Utilities Company (70-8375)

Gulf States Utilities Company ("GSU"), 350 Pine Street, Beaumont, Texas 77701, an electric utility subsidiary company of Energy Corporation, a registered holding company, has filed an application-declaration pursuant to sections 6(a), 7, 9(a), 10, 12(c) and 12(d) of the Act and Rules 42, 44(b), 50 and 50(a)(5) thereunder. GSU proposes to engage in the transactions described herein from time to time through December 31, 1995.

GSU proposes to issue and sell not more than \$700 million aggregate principal amount of: (1) One or more series of its preferred stock, cumulative, \$100 par value, and/or its preferred stock, cumulative, without par value ("Preferred"); (2) one or more new series of its first mortgage bonds ("Bonds"); and/or (3) one or more new sub-series of the medium term note series of its first mortgage bonds ("MTNs").

Each series of Bonds or sub-series of MTNs will be sold at such price, will

bear interest at such rates and will mature on such date (not more than 40 years from the first day of the month of issuance) as will be determined at the time of sale. No series of Bonds or sub-series of MTNs will be issued at rates in excess of those generally obtained at the time of pricing for sales of first mortgage bonds or medium term notes having the same maturity, issued by companies of comparable credit quality and having similar terms, conditions and features. The price, exclusive of accrued interest, to be paid for each series of Bonds to be sold at competitive bidding will be within a range of not more than 5 percentage points, but shall not exceed 5 percentage points above or below 100% of the principal amount of such series of Bonds, and the price of each sub-series of MTNs will be within a range of 95-105% of the principal amount. GSU requests an exemption from the Commission's Statement of Policy Regarding First Mortgage Bonds (HCAR No. 13105, February 16, 1956, as modified by HCAR No. 16369, May 8, 1969) ("Bond SOP") to the extent that, among other things, the redemption provisions, the sinking fund provisions (or lack thereof), the covenant limiting common stock dividends and/or the maintenance and replacement provisions (or lack thereof) with respect to any series of Bonds or sub-series of MTNs deviate from the Bond SOP.

The price, exclusive of accumulated dividends, for each series of Preferred will be determined at the time of sale and will not be less than par or stated value on a per share basis. The price to be paid for any series of Preferred to be sold at competitive bidding will not be less than par or stated value nor more than 102.75% thereof per share, plus accumulated dividends, if any. No series of Preferred would be sold if the dividend rate thereon would exceed those generally obtained at the time of pricing for sales of preferred stock of the same par or stated value, issued by companies of comparable credit quality and having similar terms, conditions and features. GSU requests an exemption from the Commission's Statement of Policy Regarding Preferred Stock (HCAR No. 13106, February 16, 1956, as modified by HCAR No. 16758, June 22, 1970) ("Stock SOP") to the extent that, among other things, the redemption provisions of any series of Preferred deviate from the Stock SOP.

Depending upon market conditions, GSU may sell one or more series of Preferred having a par value of \$100 to underwriters for deposit with a bank or trust company ("Depository"). The underwriters would then receive from the Depository and deliver to the

repurchasers in the subsequent public offering shares of depositary preferred stock ("Depository Preferred"), each representing a stated fraction of a share of the Preferred. Depository Preferred would be evidenced by depositary receipts. Each owner of Depository Preferred would be entitled proportionally to all the rights and preferences of the series of Preferred (including dividends, redemption and voting). A holder of Depository Preferred will be entitled to surrender Depository Preferred to the Depository and receive the number of whole shares of Preferred represented thereby. A holder of Preferred will be entitled to surrender shares of Preferred to the Depository and receive a proportional amount of Depository Preferred.

GSU proposes to use the net proceeds derived from the issuance and sale of the Bonds, MTNs and/or Preferred for general corporate purposes, including, but not limited to, the repayment of outstanding securities when due and/or the possible redemption, acquisition or refunding of certain outstanding securities prior to their stated maturity or due date.

GSU states that it may sell the Bonds, MTNs and Preferred pursuant to the competitive bidding requirements of Rule 50, or, by means of agency arrangements or direct placement with purchasers under an exception from the competitive bidding requirements of Rule 50 pursuant to Rule 50(a)(5), in the event that GSU determines that a negotiated public offering or private placement would be advantageous. GSU requests authorization to undertake negotiations with respect to arrangements for the issuance and sale of the Bonds, MTNs and Preferred. It may do so.

GSU also proposes to enter into arrangements for the issuance and sale of tax-exempt bonds ("Tax-Exempt Bonds"), and in connection therewith, GSU proposes to enter into one or more equipment lease/sublease arrangements ("Equipment Lease"), pursuant to which one or more governmental authorities ("Issuers") may issue one or more series of Tax-Exempt Bonds under one or more indentures ("Indenture") in an aggregate principal amount not to exceed \$250 million. The net proceeds from the sale of the Tax-Exempt Bonds will be used to finance certain facilities including but not limited to sewage and/or solid waste disposal or pollution control facilities ("Facilities") that have not heretofore been the subject of such financing, or to refinance outstanding tax-exempt bonds issued for that purpose.

³ "Intellectual Property" is defined as "any process, program or technique which is protected by the copyright, patent or trademark laws, or as a trade secret, and which has been specifically and knowingly incorporated into, exhibited in, or reduced to a tangible writing, drawing, manual, computer program, product or similar manifestation or thing." see HCAR Nos. 22132 and 22315A (July 17 and December 18, 1981, respectively).

GSU further proposes, under the Equipment Lease, to acquire, construct and install the Facilities, and lease the Facilities to the Issuers and simultaneously sublease such Facilities from the Issuers at subrentals sufficient (together with other monies held by the trustee under the applicable Indenture and available for such purpose) to pay the principal or redemption price of, premium, if any, interest and other amounts owing on the Tax-Exempt Bonds together with related expenses. Under the Equipment Lease, GSU will also be obligated to pay certain fees incurred in connection with the transactions.

The Equipment Lease and the Indenture may provide for either a fixed interest rate or an adjustable interest rate for each series of the Tax-Exempt Bonds. No series of Tax-Exempt Bonds would be sold if the fixed interest rate or initial adjustable interest rate thereon would exceed the lower of 13% or rates generally obtained at the time of pricing for sales of tax-exempt bonds having the same maturity, issued for the benefit of companies of comparable credit quality and having similar terms, conditions and features. The Tax-Exempt Bonds will mature not earlier than five years from the first day of the month of issuance nor later than 40 years from the date of issuance. Each series may be subject to redemption and/or sinking fund provisions.

GSU proposes to arrange for one or more irrevocable letters of credit, in an aggregate amount up to \$300 million and for a term not to exceed ten years, from a bank, in favor of the trustee for one or more series of Tax-Exempt Bonds. GSU would enter into a letter of credit and reimbursement agreement ("Reimbursement Agreement") with the bank under which GSU would agree to reimburse the bank for amounts drawn under the letter of credit within 60 months with the interest rate not to exceed the bank's prime commercial loan rate plus 2% and to pay certain fees, including up-front fees not to exceed \$100,000 and annual fees not to exceed 1 1/4% of the face amount of the letter of credit. Provision may be made for extension of the term of such letter of credit or for the replacement thereof, upon its expiration or termination, by another letter of credit.

In addition, or as an alternative to a letter of credit, GSU may: (1) Provide an insurance policy for one or more series of Tax-Exempt Bonds, and/or (2) obtain authentication of and pledge one or more new series of its First Mortgage Bonds ("Collateral Bonds") to be issued under GSU's mortgage and delivered to the trustee or the bank to evidence and

secure GSU's obligations under the Equipment Lease or the Reimbursement Agreement. Such Collateral Bonds could be issued: (1) In a principal amount equal to the principal amount of Tax-Exempt Bonds and bearing interest at a rate equal to the rate of interest on such Tax-Exempt Bonds; (2) in a principal amount equivalent to the principal amount of Tax-Exempt Bonds plus an amount equal to interest on those Tax-Exempt Bonds for a specified period and bearing no interest; (3) in a principal amount equivalent to the principal amount of Tax-Exempt Bonds or in such amount plus an amount equal to interest on those Tax-Exempt Bonds for a specified period, but carrying a fixed interest rate that would be lower than the fixed interest rate of the Tax-Exempt Bonds; or (4) in a principal amount of Tax-Exempt Bonds at an adjustable rate of interest, varying with such Tax-Exempt Bonds but having a ceiling rate of 13%. Each series of the Collateral Bonds that would bear interest would do so at a fixed interest rate or initial adjustable interest rate not to exceed 13%. The terms of the Collateral Bonds will correspond to the terms of the related Tax-Exempt Bonds. The maximum amount of the Collateral Bonds would be \$300 million, and the Collateral Bonds would be in addition to the aggregate limitation on the Bonds specified above. In connection with the proposed Tax-Exempt Bonds financing, GSU requests a finding of the Commission that competitive bidding of Collateral Bonds pursuant to Rule 50 is inappropriate since the Collateral Bonds would be issued and pledged solely to secure GSU's obligations and no public offering of the Collateral Bonds would be made.

GSU also proposes to use, in addition to or as an alternative for the proceeds from the sale of the Bonds, MTNs, Preferred and/or Tax-Exempt Bonds, other available funds to acquire, through tender offers, open market or negotiated purchases, in whole or in part, prior to their respective maturities, not more than \$600 million aggregate principal amount and par value and/or stated value of: (1) One or more series of GSU's outstanding first mortgage bonds or sub-series of MTNs, (2) one or more series of GSU's outstanding preferred stock, (3) one or more series of outstanding tax-exempt bonds heretofore issued for the benefit of GSU, (4) GSU's outstanding series of debentures, and/or (5) GSU's outstanding series of preference stock. GSU states that it will not use the proceeds from the sale of the Bonds, MTNs, Preferred and/or Tax-Exempt Bonds to enter into refinancing

transactions unless: (1) the estimated present value savings derived from the net difference between interest or dividend payments on a new issue of comparable securities and those securities refunded is, on an after-tax basis, greater than the present value of all repurchasing, redemption, tendering and issuing costs, assuming an appropriate discount rate, determined on the basis of the then estimated after-tax cost of capital of Entergy Corporation and its subsidiaries, consolidated; or (2) GSU shall have notified the Commission of the proposed refinancing transaction (including the terms thereof) and obtained appropriate authorization to consummate the transaction.

Louisiana Power & Light Co. (70-8391)

Louisiana Power & Light Company ("LP&L"), 639 Loyola Avenue, New Orleans, Louisiana 70113, an electric utility subsidiary company of Entergy Corporation ("Entergy"), a registered holding company, has filed an declaration, pursuant to Sections 6(a) and 7 of the Act and Rule 50(a)(5).

LP&L proposes to issue and sell up to \$326 million in secured lease obligation bonds ("Refunding Bonds"), in one or more series through December 31, 1995, in order to redeem approximately \$310 million in previously issued and sold secured lease obligation bonds ("Original Bonds").

By orders dated September 26, 1989 (HCAR No. 24956) and September 27, 1989 (HCAR No. 24958) ("Orders"), LP&L sold to and leased back from three separate trusts ("Lessors"), on a long-term net lease basis pursuant to three separate facility leases ("Leases"), an approximate 9.3% aggregate ownership interest ("Undivided Interests") in Unit No. 3 of the Waterford nuclear power plant ("Waterford 3") in three almost identical but separate transactions. The First National Bank of Commerce ("Owner-Trustee") is the trustee for these trusts. LP&L now has an approximate 9.3% leasehold interest in Waterford 3.

The purchase price of the Undivided Interests was \$353.6 million. About \$43,603,000 was provided through equity contributions of the owner-participant in each of the three Lessor trusts. About \$309,997,000 was provided through issuance of the Original Bonds by the Owner-Trustee in an underwritten public offering. The Original Bonds consist of three separate series of secured lease obligation bonds, with an annual interest rate of 10.30%, to mature on January 2, 2005, issued in an aggregate principal amount of \$140,452,000 ("2005 Bonds"), and three

separate series of secured lease obligation bonds, with an annual interest rate of 10.67%, to mature on January 2, 2017, issued in an aggregate principal amount of \$169,545,000 ("2017 Bonds").

LP&L now proposes to have the Owner-Trustee issue the Refunding Bonds either under three amended and supplemented Indentures of Mortgage and Deeds of Trust dated September 1, 1989 or under comparable instruments ("Indentures"). The Refunding Bonds will be issued to refund the Original Bonds. In the alternative, LP&L proposes to refund all or a portion of the Original Bonds with interim funds obtained from banks or other institutions by the Owner-Trustee ("Interim Funds") and to then issue Refunding Bonds to retire the Interim Funds.

The proceeds from the sale of the Refunding Bonds and possibly the proceeds of the Interim Funds, possibly together with funds provided by LP&L, will be used to redeem the Original Bonds and to meet associated issuance costs. The 2005 Bonds are optionally redeemable on July 2, 1994 for 105.150% of their principal amount. The 2017 Bonds are first optionally redeemable on July 2, 1994 for 108.003% of their principal amount. Should Original Bonds be retired with the Interim Funds, the proceeds of Refunding Bonds will be used to retire the Interim Funds. It is not anticipated that there would be a redemption premium associated with the retirement of the Interim Funds. The Refunding Bonds will be structured and issued under the documents and pursuant to the procedures applicable to the issuance of the Original Bonds, which documents and procedures are described in the Orders, or comparable documents with similar terms and provisions.

The Interim Funds would be provided through one or more domestic or foreign financial institutions ("Interim Lenders"), which would make loans to the Lessors evidenced by notes issued by the Lessors. The term of the Interim Funds would be up to the remainder of the basic lease terms under the Leases. LP&L might assume the Interim Funds upon the occurrence of certain events or if it exercises certain purchase options under the Leases. The Interim Funds would be refunded with the proceeds of the Refunding Bonds. LP&L would use its best efforts to arrange for refunds with desirable interest rates as quickly as possible after the Interim Funds are required.

LP&L is obligated to make payments under the Leases in amounts that will

provide for scheduled payments of principal and interest on the Refunding Bonds when due. Upon the refund of the Original Bonds, amounts payable by LP&L under the Leases will be adjusted pursuant to the terms of supplements to the Leases to be entered into. A similar procedure would be used if the Interim Funds are used.

Neither the Refunding Bonds nor the Interim Funds will be direct obligations of or guaranteed by LP&L. However, under certain circumstances, LP&L might assume all or a portion of the Refunding Bonds of the Interim Funds. Each Refunding Bond will be secured by, *inter alia*, (i) A lien on and security interest in the Undivided Interest of the Lessor that issues the Refunding Bond and (ii) certain other amounts payable by LP&L thereunder. The notes of the Lessor in evidence of the Interim Funds would also be secured.

The Refunding Bonds are to be issued in registered form without coupons in denominations of \$1,000 or integral multiples thereof. Interest on the Refunding Bonds of each series will be payable January 2 and July 2 of each year to commence with the interest payment date after the initial issuance of the Refunding Bonds. Interest on Interim Funds could be paid on a different basis. The Refunding Bonds might be redeemed if a Lease is to be terminated prior to the end of the basic lease term provided for therein. Similar provisions would be applicable to the Interim Funds.

Instead of Refunding Bonds issued through the Owner-Trustee, LP&L might arrange for a funding corporation to issue the Refunding Bonds, in which case the proceeds from Refunding Bonds would be loaned by the funding corporation to the Lessors, which would issue notes ("Lessor Notes") to the funding corporation to evidence the loans and secure the Refunding Bonds, and the Lessors would use the loans to redeem the Original Bonds.

The terms of the Lessor Notes and the indentures for their issuance would reflect the redemption and other terms of the Refunding Bonds. The rental payments of LP&L would be used for payments on principal and interest on the Lessor Notes, which payments would be used for payments on Refunding Bonds when due. The Refunding Bonds would be secured by the Lessor Notes, which would be secured by a lien on and security interest in the Undivided Interests and by certain rights under the Leases.

An alternative to Refunding Bonds issued by the Owner-Trustee would be for LP&L to use a trust structure in which the Lessors would issue Lessor

Notes to one or more passthrough trusts and the trusts would issue certificates in evidence of ownership interests in the trusts. The debt terms of the Refunding Bonds would be comparable to the terms of the Lessor Notes and the indentures for their issuance.

LP&L might have some Refunding Bonds or trust certificates to be sold by competitive bidding, negotiated underwritten public offering, or private placement with institutional investors. LP&L intends to arrange the Interim Funds through commercial banks or similar institutions.

LP&L believes that it would be impossible to sell the Refunding Bonds or the trust certificates, or to arrange the Interim Funds, by competitive bidding in accordance with Rule 50. Thus LP&L requests under Rule 50(a)(5) an exception from the competitive bidding requirements of the rule. LP&L further requests authorization to negotiate for the sale of the Refunding Bonds or the trust certificates or for the Interim Funds. It may do so.

LP&L shall not have the Owner-Trustee sell the Refunding Bonds or the trust certificates, or acquire the Interim Funds, unless: (i) The estimated present value savings derived from the net difference between interest payments on a new issue of comparable securities and those securities refunded is, on an after-tax basis, in excess of the present value of all redemption and issuance costs, based on an appropriate discount rate, determined on the basis of the then estimated after-tax cost of capital of Entergy and its consolidated subsidiaries, or (ii) LP&L shall have obtained Commission authorization.

Under the separate 1989 participation agreements relative to the sale of the Undivided Interests, LP&L issued three separate promissory notes to the owner-participants in an aggregate principal amount equal to the highest of either the maximum net casualty value or the maximum net special casualty value payable under the Leases during the basic lease term.—\$208,236,768 on July 2, 1994, which is expected to be the approximate date of the sale.

Redemption of the Original Bonds could, in some circumstances, cause an increase in these values and therefore, require an increase in the principal amount of the related promissory notes.

In addition, LP&L is required to collateralize its obligations to the owner-participants five years after the sales either through first mortgage bonds in a principal amount equal to that of the promissory notes or a letter of credit (HCAR No. 24956, September 26, 1989). To the extent the proposed transactions would necessitate the issuance of

promissory notes or first mortgage bonds in a principal amount in excess of that previously authorized, LP&L also seeks authorization of such increases.

Metropolitan Edison Company (70-8401)

Metropolitan Edison Company ("Met-Ed"), 2800 Pottsville Pike, Muhlenberg Township, Berks County, Pennsylvania 19640, a public-utility subsidiary company of General Public Utilities Corporation ("GPU"), a registered holding company, has filed an amended application-declaration under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and rules 45, 50(a)(5) and 54 thereunder. A notice of the application-declaration was issued by the Commission on April 22, 1993 (HCAR No. 26034) ("Prior Notice").

As described in the Prior Notice, Met-Ed proposes to organize a special purpose subsidiary ("Met-Ed Capital") as either a limited liability company under the Delaware Limited Liability Company Act ("LLC Act") or a limited partnership under the Pennsylvania or Delaware Revised Uniform Limited Partnership Act. Met-Ed may also organize a second special purpose wholly owned subsidiary under the Delaware General Corporation Law ("Investment Sub") for the sole purpose of either: (i) Acquiring and holding a second class of Met-Ed Capital common interests so as to comply with the requirement under the LLC Act that a limited liability company have at least two members or (ii) acting as the general partner of Met-Ed Capital, assuming a limited partnership structure. Met-Ed Capital will then issue and sell from time to time in one or more series through June 30, 1996 up to \$125 million aggregate stated value of preferred limited liability company interests or limited partnership interests, in the form of Monthly Income Preferred Stock, \$25 per share stated value ("MIPS").

Met-Ed states that there are certain changes to the transactions as described in the Prior Notice. First, each note or Subordinated Debenture, as described in the Prior Notice, will have a term of up to 50 years, rather than 30 years that may be extended for up to an additional 20 years, subject to certain specified conditions.

In addition, Met-Ed states that there are certain changes to the structure of Met-Ed Capital and Investment Sub. Met-Ed may acquire all of the common stock of Investment Sub for a nominal consideration and may capitalize Investment Sub with a demand promissory note in the principal amount of up to 10% of the total capitalization

of Met-Ed Capital from time to time, or up to an initial principal amount of \$13 million. If Met-Ed Capital is organized as a limited partnership, Investment Sub may also acquire up to a 3% general partnership interest in Met-Ed Capital. The amount of such capital contribution (up to \$4.0 million), together with the gross proceeds received by Met-Ed Capital from the issuance and sale of the MIPS (i.e., a maximum of \$125 million), would be applied by Met-Ed Capital to acquire Met-Ed's Subordinated Debentures. The total equity contributions by Met-Ed to Met-Ed Capital would not exceed \$35 million.

Finally, Met-Ed may acquire a separate class of limited partnership interest in Met-Ed Capital for a nominal consideration to ensure that Met-Ed Capital will at all times have a limited partner as required by the Delaware Revised Uniform Limited Partnership Act.

Pennsylvania Electric Company (70-8403)

Pennsylvania Electric Company ("Penelec"), 1001 Broad Street, Johnstown, Pennsylvania 15907, a public-utility subsidiary company of General Public Utilities Corporation ("GPU"), a registered holding company, has filed an amended application-declaration under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and rules 45, 50(a)(5) and 54 thereunder. A notice of the application-declaration was issued by the Commission on April 22, 1993 (HCAR No. 26034) ("Prior Notice").

As described in the Prior Notice, Penelec proposes to organize a special purpose subsidiary ("Penelec Capital") as either a limited liability company under the Delaware Limited Liability Company Act ("LLC Act") or a limited partnership under the Pennsylvania or Delaware Revised Uniform Limited Partnership Act. Penelec may also organize a second special purpose wholly owned subsidiary under the Delaware General Corporation Law ("Investment Sub") for the sole purpose of either: (1) Acquiring and holding a second class of Penelec Capital common interests so as to comply with the requirement under the LLC Act that a limited liability company have at least two members or (ii) acting as the general partner of Penelec Capital, assuming a limited partnership structure. Penelec Capital will then issue and sell from time to time in one or more series through June 30, 1996 up to \$125 million aggregate stated value of preferred limited liability company interests or limited partnership interests, in the form of Monthly Income

Preferred Stock, \$25 per share stated value ("MIPS").

Penelec states that there are certain changes to the transactions described in the Prior Notice. First, each Note or Subordinated Debenture, as described in the Prior Notice, will have a term of up to 50 years, rather than 30 years that may be extended for up to an additional 20 years, subject to certain specified conditions.

In addition, Penelec states that there are certain changes to the structure of Penelec Capital and Investment Sub. Penelec may acquire all of the common stock of Investment Sub for a nominal consideration and may capitalize Investment Sub with a demand promissory note in the principal amount of up to 10% of the total capitalization of Penelec Capital from time to time, or up to an initial principal amount of \$13 million. If Penelec Capital is organized as a limited partnership, Investment Sub may also acquire up to a 3% general partnership interest in Penelec Capital. The amount of such capital contribution (up to \$4.0 million), together with the gross proceeds received by Penelec Capital from the issuance and sale of the MIPS (i.e., a maximum of \$125 million), would be applied by Penelec Capital to acquire Penelec's Subordinated Debentures. The total equity contributions by Penelec to Penelec Capital would not exceed \$35 million.

Finally, Penelec may acquire a separate class of limited partnership interest in Penelec Capital for a nominal consideration to ensure that Penelec Capital will at all times have a limited partner as required by the Delaware Revised Uniform Limited Partnership Act.

Allegheny Power System, Inc., et al. (70-8411)

Allegheny Power System, Inc., ("Allegheny"), 12 East 49th Street, New York, New York, 10017, a registered holding company, has filed an application-declaration under Sections 6(a), 7, 9(a), 10, 12(b) and 13(b) of the Act and Rules 45, 87, 90 and 91 promulgated thereunder.

Allegheny requests Commission authorization through December 31, 1996 to organize and finance a new wholly-owned non-utility subsidiary company—AYP Capital, Inc., ("AYP")—that would invest directly or indirectly in (i) companies involved in new technologies that are related to the core business of Allegheny; and (ii) companies for the acquisition and ownership of exempt wholesale generators ("EWGs") within the definition of Section 32 of the Act. Allegheny also proposes through

December 31, 1996 to invest up to \$500,000 in AYP.

Allegheny proposes to incorporate AYP in Delaware with initial authorized capital of up to 1,000 shares of common stock (no par value) and to subscribe to 100 shares of AYP common stock for \$10.00 per share. Allegheny also proposes to fund AYP from time to time through December 31, 1996 through purchases of additional AYP stock, or capital contributions, in an aggregate amount not to exceed \$500,000. AYP will use those funds to pursue appropriate investment opportunities in new technologies or in EWGs. Allegheny proposes to obtain funds for this purpose from: (i) Sales of Allegheny common stock pursuant to its Dividend Reinvestment and Stock Purchase and Employee Stock Ownership and Savings Plans, (ii) regular bank lines of credit, or (iii) internal sources. Allegheny states that it will not guarantee indebtedness of AYP.

Allegheny states that it anticipates that AYP will have no paid employees and that personnel employed by Allegheny Power Service Corporation ("Allegheny Service"), a wholly-owned nonutility subsidiary company of Allegheny, will provide a wide range of services, on an as-needed basis, to AYP pursuant to a service agreement to be entered into between AYP and Allegheny Service. Under this service agreement, AYP will reimburse Allegheny Service for the cost of services provided in accordance with Rules 90 and 91 of the Act. All time spent by Allegheny Service employees on AYP matters will be billed to and paid by AYP on a monthly basis.

Allegheny states that AYP will maintain separate financial records with profit and loss statements. Allegheny Service, it is stated, pursuant to the service agreement with AYP, will be responsible for the financial records and for audit procedures that are in compliance with generally accepted principles.

With respect to EWGs, Allegheny states that if AYP acquires an interest in an EWG, it will use Allegheny Service employees or other Allegheny system employees "within a de minimis limit" for services. It is stated that AYP will not use in excess of 2% of the total employees of all other Allegheny system domestic public utility companies for services to an affiliated EWG.

With respect to new technologies related to its core business, Allegheny states that there are significant opportunities for investment in companies engaged in the development of new technologies that would promote the public interest through efficient and

clean electric power generation and utilization. It is stated that the new technologies would be related to: (i) Electric power conversion and storage; (ii) conservation, load management, and demand side management; (iii) environmental and waste treatment; (iv) advanced computer hardware and software; (v) power-related electronic systems, control systems and components; (vi) electronic automation systems and components.

Allegheny states that, to invest in EWGs or in companies engaged in new technologies, AYP might directly invest or seek experienced investment partners and structure investment vehicles with those partners. In either event, each investment, it is stated, will be structured to limit the exposure of AYP to excessive liabilities and to allow AYP a role in the direction of the business.

Allegheny states that it now has no proposed specific investment in mind and that AYP shall make no investment without prior Commission approval. Allegheny also states that neither it nor AYP will, without Commission approval, finance the future acquisition by AYP of an EWG or new technologies company.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 94-11607 Filed 5-12-94; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 94-5-10 Dockets 49166 and 49167]

Application of Express One International, Inc. For Certificate Authority Under Section 401(d)(1)

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Express One International, Inc., fit, willing, and able and award it a certificate of public convenience and necessity to engage in interstate, overseas and foreign scheduled air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than May 19, 1994.

ADDRESSES: Objections and answers to objections should be filed in Dockets 49166 and 49167 and addressed to the

Documentary Services Division (C-55, Room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Patricia T. Szrom, Chief, Air Carrier Fitness Division (P-58, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-9721.

Dated: May 9, 1994.

Patrick V. Murphy,
Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 94-11732 Filed 5-12-94; 8:45 am]

BILLING CODE 4910-82-P

Coast Guard

[CGD 94-046]

Chemical Transportation Advisory Committee (CTAC) Subcommittee on Marine Vapor Control Systems

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Subcommittee on Marine Vapor Control Systems of the Chemical Transportation Advisory Committee will meet to continue reviewing tank vessel cleaning facility operations and evaluate the technical and safety aspects of potential control technologies which will allow these facilities to meet air quality emissions standards. The meeting will be open to the public.

DATES: The meeting will be held on June 15, 1994, from 9 a.m. to 4 p.m. Written material should be submitted no later than June 10, 1994.

ADDRESSES: The meeting will be held in Room 4315, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001. Written material should be submitted to LCDR Robert F. Corbin, Commandant (G-MTH-1), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001.

FOR FURTHER INFORMATION CONTACT: LCDR Robert F. Corbin, Commandant (G-MTH-1), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001, telephone (202) 267-1217.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2 sec. 1 *et seq.*

One section of the 1990 Amendments to the Federal Clean Air Act (CAA) requires States to achieve and maintain a 15% reduction in their Volatile

Organic Compound (VOC) emissions level below the 1990 base year level by 1996 in non-attainment areas within the individual States. States are presently developing methods to achieve required compliance levels. One State recently passed state regulations that will require vessels that have carried certain VOC cargoes and are being gas-freed and/or cleaned to utilize a marine vapor control system or an alternate means of control approved by the State at the tank vessel cleaning facility. It is anticipated other States will develop similar regulations as a means of complying with the CAA Amendments for their States. The purpose of this meeting is to continue reviewing tank vessel cleaning facility gas-freing and tank cleaning operations in order to evaluate potential control technologies that will allow these facilities to meet air quality emissions standards while ensuring a high level of safety for facility and vessel personnel is maintained. As a result of this review, the Subcommittee will develop recommendations for revising existing safety guidelines for tank vessel cleaning facilities.

Dated: May 3, 1994.

A.E. Henn,

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

[FR Doc. 94-11708 Filed 5-12-94; 8:45 am]

BILLING CODE 491014-M

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Training and Qualifications

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of Meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss training and qualifications issues.

DATES: The meeting will be held on June 1, 1994, at 12 Noon.

ADDRESSES: The meeting will be held at the Air Line Pilots Association, Room 804/805, 1625 Massachusetts Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mrs. Marlene Vermillion, Flight Standards Service, Air Transportation Division (AFS-200), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-8166.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal

Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee (ARAC) to be held on June 1, 1994, at the Air Line Pilots Association, Room 804/805, 1625 Massachusetts Avenue, NW, Washington, DC. The agenda for this meeting will include progress reports from the Air Carrier Working Group, the Cabin Safety Working Group, and the Aircraft Dispatchers Working Group. Each working group Chair will report on the progress of the working group.

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements in advance to present oral statements at the meeting or may present written statements to the committee at any time. Arrangements may be made by contacting the person listed under the heading FOR FURTHER INFORMATION CONTACT.

Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting.

Issued in Washington, DC, on May 9, 1994.

Thomas Toula,

Executive Director for Training and Qualifications, Aviation Rulemaking Advisory Committee.

[FR Doc. 94-11717 Filed 5-12-94; 8:45 am]

BILLING CODE 4910-13-M

Maritime Administration

[Docket S-906]

Mormac Marine Transport, Inc.; Application for Written Permission Pursuant to Section 805(a) of the Merchant Marine Act, 1936, as Amended

Mormac Marine Transport, Inc. (Mormac), a subsidiary of Mormac Marine Group, Inc. (Mormac Marine), by application of May 9, 1994, requests, pursuant to section 805(a) of the Merchant Marine Act, 1936, as amended (Act) and Article II-13 of Operating-Differential Subsidy Agreements, Contracts MA/MSB-295 (a), (b), and (c) (ODSAs), written permission for (1) James R. Barker and Paul R. Tregurtha (and members of their immediate families), to own a pecuniary interest in Moran Towing Corporation (Moran) and (2) Messrs. Barker and Tregurtha and members of their immediate families to serve as officers and directors of Moran and any of its subsidiaries.

Moran provides domestic coastwise transportation services and performs

harbor ship work with tugboats, more particularly described below. Mormac is of the view that docking and undocking ships within harbors is not subject to section 805(a), noting that that type of service was within section 803 of the Act, which was repealed by the Merchant Marine Act of 1970.

Mormac points out that it currently has approval for common ownership, officers and directors of Mormac Marine and its subsidiaries as well as the Interlake Steamship Company and Lakes Shipping Company, Inc., both of which are involved in the domestic coastwise Great Lakes service. Mormac needs approval for the acquisition of Moran for the brief period of time remaining under the terms of Mormac's ODSAs. Mormac's ODSAs will terminate in December 1995, June 1996, and February 1997, respectively.

Pursuant to the letter of intent, Messrs. Barker and Tregurtha, members of their immediate families, and Lakes Shipping Company, Inc. (which itself is owned in substantial part by the Barker and Tregurtha families) will be purchasing the outstanding stock of Moran.

According to Mormac, Moran and its subsidiaries are currently involved principally in the operation of tug boats from eight ports on the U.S. east and gulf coasts used to dock and undock ships and also tow barges and other vessels. Moran also uses its own tugs and barges to transport cargoes along the east and gulf coasts and dry bulk cargoes both in the coastwise and worldwide trades. The Moran fleet currently consists of 54 tugs and 12 barges. Moran also indirectly owns a 20-percent interest in tankers transporting crude oil from Alaska to the continental U.S.

Mormac states that Moran and Mormac are both U.S. citizens within the definition of section 2 of the Shipping Act, 1916, and section 905(a) of the Act, and will continue to be so after the consummation of the proposed transactions. Following the change in ownership, Mormac claims that Moran will continue to be involved in the same domestic coastwise and worldwide service in which it is currently engaged, with the possibility of future modifications and expansion to these services as circumstances warrant and permit. Mormac feels that it is essential that Moran be permitted freely to move tugboats and barges among the several services in which they are presently employed and into new services if conditions and circumstances so dictate. It is also important that Moran be able to expand services geographically

within the regions currently being served.

Mormac maintains that the ownership of Moran by Messrs. Tregurtha and Barker and their involvement in the management of Moran will not result in any change in competitive conditions for U.S.-flag vessels providing domestic coastwise marine transportation and harbor tug services or for U.S.-flag vessels providing tanker services from Alaska to the continental U.S. The only effect of the proposed transaction will be a change in the ownership of Moran. Furthermore, it is expected that the management of Moran will remain with Moran after the acquisition. Messrs. Tregurtha and Barker will serve as Chairman and Vice Chairman thereof, respectively.

Moran and Mormac are, and will remain, according to Mormac, entirely separate corporate entities that will maintain separate and discrete accounts so there will be no issue of a subsidy leakage or diversion of subsidy.

Following the consummation of the proposed transaction, Mormac and Moran will consent to examination of their books and records to the extent necessary to establish that there is no diversion of subsidy. Mormac will receive no benefit from the operations of Moran and Moran will receive no benefit from the operations of Mormac. Moran believes that no U.S.-flag competitor of Moran will be subject to unfair competition nor will the ownership of Moran by Messrs. Barker and Tregurtha and their family members be prejudicial to the purposes and policies of the Act.

Mormac contends that no disputed issue of material fact is anticipated by a transaction that simply changes ownership of a company providing existing services. Any competitive condition that existed before the transaction will exist after the transaction. Mormac believes that no credible argument of leakage can be raised, eliminating the possibility of any argument that a change in ownership and the continuation of current services will result in unfair competition to any U.S.-flag vessel. Under these circumstances, should there be any request to intervene in this application, no issue is expected by Mormac to be raised that could not be addressed on the basis of available information provided to the record or subject to official notice and certainly no issue that would involve the submission of substantial evidence, either written or oral.

In Mormac's view, approval of this application is also entirely consistent with the purposes and policies of the

Act. This acquisition will be a significant expansion of Messrs. Barker's and Tregurtha's U.S.-flag fleets and a strong statement of continuing support for the U.S. merchant marine by individuals who have a long history in and are well respected by the maritime industry.

Mormac requests the scope of domestic operations permitted under the ODSAs be modified to allow ownership of Moran by Lakes Shipping Company, Inc., Messrs. Barker and Tregurtha and members of their immediate families, as well as to allow Messrs. Barker and Tregurtha to serve as officers and directors of both Mormac and Moran, with Moran continuing to be involved in its current services (modified and expanded as circumstances warrant and permit).

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such application within the meaning of section 805(a) of the Act and desiring to submit comments concerning the application, must file written comments in triplicate with the Secretary, Maritime Administration, together with petition for leave to intervene, Room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Comments must be received no later than 5 p.m. on May 24, 1994. The petition shall state clearly and concisely the grounds of interest, and the alleged facts relied on for relief.

If no petition for leave to intervene is received within the specified time or if it is determined that petitions filed do not demonstrate sufficient interest to warrant a hearing, the Maritime Administration will take such action as may be deemed appropriate.

In the event petitions regarding the relevant section 805(a) issues are received from parties with standing to be heard, a hearing will be held, the purpose of which will be to receive evidence under section 805(a) relative to whether the proposed operations (a) could result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or intercoastal service, or (b) would be prejudicial to the objects and policy of the Act relative to domestic trade operations.

Dated: May 11, 1994.

(Catalog of Federal Domestic Assistance Program No. 20.804 (Operating-Differential Subsidies))

By Order of the Maritime Administrator.
James E. Saari,
Secretary.
[FR Doc. 94-11825 Filed 5-12-94; 8:45 am]
BILLING CODE 9410-81-M

UNITED STATES INFORMATION AGENCY

The Role of Legislative Staff and Information Resources in the Legislative Process (Africa); Public and Private Non-Profit Organizations in Support of International Educational and Cultural Activities

AGENCY: Notice—Request for proposals.

SUMMARY: The Office of Citizen Exchanges (E/P) of the United States Information Agency (USIA) proposes the development of a multi-phased exchange program for legislative staff of four francophone African countries. The participating countries are Benin, Cote d'Ivoire, Mali and Niger. The project should introduce participants to the responsibilities of various professional staff in conducting the business of a legislature, emphasizing professional non-partisan roles. The project may address a wide range of administrative, legal, fiscal, and research services or concentrate on a few of notable priority. It also should illustrate the role of information resources in conducting policy analysis and drafting legislation as well as the role of archival materials in establishing the legislature's official legal record. The project should facilitate access to resource materials to promote the the study of the legislative process and should lay the foundation for collaboration between U.S. and African legislatures and professional support organizations.

A U.S. not-for-profit institution will design and execute the program and select the American presenters. The institution should demonstrate success in coordinating international exchange programs for senior-level foreign participants. The applicant institution should have substantive working relationships with U.S. public and private sector organizations involved with legislative affairs and the professional development of key staff in Congress or in state assemblies. The program will begin in the fall of 1994.

Interested applicants are urged to read the complete Request for Proposals (RFP) announcement before addressing inquiries to the Office. After the RFP deadline, the Office of Citizen Exchanges may not discuss this competition in any way with applicants until the final decisions are made.

ANNOUNCEMENT NUMBER: This Announcement number is E/P-94-30. Please refer to this number and the title given above in all correspondence or telephone calls to USIA.

DATES: Deadline for Proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on July 8, 1994. Faxed documents will not be accepted, nor will documents postmarked July 8, 1994, but received at a later date. It is the responsibility of the grant applicant to ensure that proposals are received by this deadline. Grant activity should begin after October 1, 1994.

ADDRESSES: You must submit the original and 14 copies of the proposal as instructed in the application checklist provided in the Application Package. The original and two copies should contain all applicable TABS. The rest of the copies should contain TABS A through D only. Please submit your proposal and copies by the application deadline to: U.S. Information Agency, REF: Citizen Exchanges: Role of Legislative Staff and Information Resources in the Legislative Process, (Africa), E/P-94-30, Office of Grants Management (E/XE), 301 Fourth Street, SW., room 336, Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested organizations should contact the Office of Citizen Exchanges (E/PS), U.S. Information Agency, 301 Fourth Street, SW., room 224, Washington, DC, 20547, telephone: 202-619-5319, fax: 202-619-4350, to request a detailed application package which includes all necessary forms and guidelines for preparing proposals, including specific budget preparation instructions. Agency representatives are able to answer only technical questions about this competition. For technical information, contact Stephen Taylor, Program Specialist, Africa, Near East and South Asia Division, Office of Citizen Exchanges.

Project Overview

Several francophone African countries are strengthening their democratic institutions, having recently completed the transition to a representative system of government. National legislatures in these countries have the opportunity to gain greater independence, develop more effective legislation and take steps to serve more forcefully as a balance to executive power. The viability and institutional independence of these legislative bodies could be enhanced by the services of trained staff prepared to play a support role for lawmakers and the legislative process. Legislative staff also are well

paced to provide continuity regardless of the legislature's partisan make-up or the political fortunes of elected representatives.

In the United States, Congress and state legislatures employ professional staff to conduct research, draft legislation, analyze budgets, maintain records, monitor compliance with legislation and perform other duties. In many cases, professional staff provide these services on a non-partisan basis. For example, on Capitol Hill, the Office of the Legislative Counsel assists committees in drafting and amending legislation. The clerk of the House and secretary of the Senate, selected by the majority party, assist in processing legislation and performing various reporting functions. The House Office of the Law Revision Counsel updates and publishes an official classification of U.S. laws. In drafting bills, lawmakers rely on non-partisan support organizations such as the Congressional Research Service, which analyzes public policy issues, and the Congressional Budget Office, which provides analyses of fiscal issues.

While not every one of these services is directly applicable to needs in Africa, they reflect the evolving demands placed upon the U.S. Congress and could help guide efforts to promote professional development of legislative staff in Africa. The legislatures in Mali, Niger and Benin are drafting landmark legislation aimed at implementing political and economic reforms. Legislators and observers have identified the need for assistance in bill drafting, improving legislative procedures and developing strategies to make better use of legislative archives. In most cases specialized training is not available, and staff could benefit from a project aimed at enhancing their capabilities to assist lawmakers fulfill their mandates. Legislators and staff also are seeking reference materials to support their legislative initiatives. In Cote d'Ivoire, where the ruling party has held power for 30 years, parliamentary elections scheduled for 1995 could alter the political landscape. Legislative aides in Cote d'Ivoire, and all these states, could benefit from a program that demonstrates the role of professionalism and nonpartisanship in conducting the business of the legislature.

Objectives

The project should be designed to:

- Provide an overview of the structure and practices of representative government in the United States, including the interrelationship between the three branches of government;

- Introduce participants to the professional support offices and staff employed by the U.S. Congress and appropriate state legislatures;
- Demonstrate the roles and skills of professional staff in the day-to-day operations of a legislature and the nature of their interaction with lawmakers;
- Analyze the relationship between partisan politics and the professional responsibilities of legislative staff;
- Develop workshops and appropriate instructional material designed to address identified needs and enhance the capabilities of professional aides to improve the legislative process;
- Develop strategies for improving management of archives, legislative records and other official documentation;
- Develop appropriate training methods to prepare project participants to train others involved in the legislative process;
- Devise strategies to facilitate access to reference materials and other appropriate information about the structure and functioning of the U.S. Congress, state legislatures and other democratic institutions; and
- Lay the groundwork for collaboration between the professional support services for U.S. legislatures and counterpart services of African legislatures.

Programmatic Considerations

Pursuant to the legislation authorizing the USIA Bureau of Educational and Cultural Affairs, all programs sponsored by that Bureau must be balanced and non-partisan in nature and representative of the diversity of American political, social and cultural life.

USIA will give careful consideration to proposals which demonstrate: (1) In-depth, substantive knowledge of management and policy development issues relative to the legislative process;

- (2) First-hand connections with appropriate U.S. public and private sector organizations and institutions involved in legislative affairs;
- (3) The capacity to organize and manage international exchange programs, including appropriate orientation for the participants, handling of pre-departure arrangements and monitoring and problem-solving in such programs.

USIA is especially interested in multi-phase programs in which the phases build on one another and lay the groundwork for new and long-term relationships between American and African professionals. Proposals which are overly ambitious and those which

are very general will not be competitive. Office of Citizen Exchanges grants are not given to support projects whose focus is limited to technical matters, or for scholarly research projects, developing publications for dissemination in the United States, individual student exchanges, film festivals, or exhibits. Neither does the Office of Citizen Exchanges provide scholarships or support for long-term (a semester or more) academic studies. Competitions sponsored by other Bureau offices are also announced in the *Federal Register* and may have different application requirements as well as different objectives.

Programming elements might include workshops or seminars overseas led by American experts, a study tour in the U.S. for selected African participants, U.S.-based internships, and specialized American consultancies overseas. A planning visit overseas by the American organizer can also be considered if crucial to successful development and implementation of the program.

Selection of Participants

The U.S.-based phase of the project should be designed for legislative staff from Benin, Cote d'Ivoire, Mali and Niger, probably totalling about 12 persons. Participants should have professional responsibilities related to the operation of the national legislature. USIS personnel overseas will select the African participants, although recommendations from the grantee institution are welcome. USIS offices will facilitate the issuance of visas and can also help with the distribution of program-related materials to African participants. Two U.S. State Department interpreters and one escort officer will be available for a U.S. study tour. For the program phases in Africa, the grantee institution will select the American presenters in consultation with USIA. American presenters conducting in-country activities should be French-fluent.

Programming Suggestions

The proposed project should include at least one phase for African participants in the U.S. and at least one phase for American specialists in Africa. The following ideas should serve not as a blueprint, but as a stimulus for development of an original program design.

The project should include formats which maximize interaction between the delegates and the speakers/presenters. The program design should provide adequate time for delegates to meet individually with American professionals who have similar interests

and specializations. It is preferred, though not essential, that presenters be familiar with issues pertaining to the political process in the participating African countries.

U.S. Study Tour Phase

The U.S. study tour (approximately 3-4 weeks) could begin with an introduction to the U.S. Congress and its relationship to the other branches of the national government. However, the program should focus on one or more state legislatures whose scope and structure offer comparisons more relevant to African legislative bodies. Participants would learn about the professional duties of various legislative aides, as well as support staff including legal counsels, researchers, analysts, archivists, clerks and administrators.

Participants might also benefit from observing the activities of lawmakers' personal staff who perform functions such as constituent services and media relations as well as committee staff who assist in setting agendas, organizing hearings and drafting legislation. Activities should stress the importance of professionalism in enhancing the long-term viability of the legislature and consider the impact of partisan politics on the professional staff's pursuit of its responsibilities.

Participants also should study a variety of archival materials and their usage in supporting the legislative process and establishing the official record. Activities should help guide efforts to formulate appropriate strategies for handling archival materials in the participants' home countries.

Phase in Africa

It is recommended that the grantee institution organize a series of workshops to be conducted in the participating African countries. The workshops would bring together legislators and legislative staff to develop strategies aimed at strengthening the institutional capabilities of the legislature. This might include creating new staffing patterns, improving communication techniques, or revising job responsibilities. The U.S. presenters would also examine archives and advise participants on developing appropriate archiving systems. The U.S. presenters would conduct activities in French.

The themes, objectives and design of the activities in Africa would most likely be based on discussions among the grantee institution, E/P, USIS posts and key players in the legislative process in the participating countries. This multi-phased exchange program

should promote development of institutional linkages designed to advance the study of the legislative process. E/P encourages applicant institutions to consider strategies to facilitate access to information resources focusing on democratic institution building. This material might include reference books, periodicals, bibliographies, handbooks for elected representatives and lists of organizations that could offer assistance.

Program Responsibilities

The grantee institution's responsibilities include: selecting speakers, themes and topics for discussion; organizing a coherent progression of activities; orienting and debriefing participants; providing any support materials; providing all travel arrangements, lodging and other logistical arrangements for the African participants, escort interpreters and U.S. presenters who travel to Africa; and overseeing the project on a daily basis to achieve maximum program effectiveness. The grantee institution is responsible for coordinating plans and implementation with P/E, participating USIS posts, and any African co-host institutions.

At the start of each phase, the grantee institution will conduct an orientation session for the delegation. At the conclusion, the institution will conduct participant evaluations and submit to E/P a final program report summarizing the entire project and resulting organizational links. To prepare the participants for their U.S. experience, E/P encourages the grantee organization to forward to participants a set of preliminary materials outlining the basic principles of representative government, the role of professional legislative staff and other appropriate background information about the project. E/P will ask African participants to prepare brief outlines describing their own particular interests in these areas. The grantee institution should brief the American presenters on the African delegates' backgrounds, interests and concerns.

Other Program Considerations

Consultation with the participating USIS posts in the development of the project proposal is encouraged. Letters of commitment from participating U.S. institutions would enhance a proposal.

USIA also encourages the development of specialized written materials to enhance this professional development program. In developing written materials, consideration should be given to their wider use in Africa, beyond the immediate training at hand

USIA is interested in organizations' ideas on how to "reuse" specialized materials by providing them to universities and libraries or other institutions for use by a larger audience. If not already available, glossaries of specialized terms should be developed. However, please note that, according to current USIA regulations, materials developed with USIA funds may not be distributed in the United States.

Funding

Competition for USIA funding support is keen. Selection of a grantee institution is based on the substantive nature of the program proposal; the applicant's professional capability to carry the program through to a successful conclusion; and cost effectiveness, including in-kind contributions and the ability to keep overhead costs at a minimum. USIA will consider providing funding up to approximately \$160,000, but organizations with less than four years of successful experience in managing international exchange programs are limited to \$60,000, and their budget submissions should correspond to this limitation. USIA will consider funding the following costs:

1. International and domestic air fares; visas; transit costs (e.g., airport fees); ground transportation costs;
2. *Per diem*: For foreign participants during activities in the United States, organizations have the option of using a flat rate of \$140/day or the published Federal Travel Regulations (FTR) per diem rates of individual American cities.

Note: U.S. institutional staff must use the published FTR per diem rates, not the flat rate.

For activities overseas, standard Federal Travel Regulations per diem rates must be used.

3. *Escort-interpreters*: Interpretation for U.S.-based programs is provided by the State Department's Language Services Division. Typically, delegations ranging from 8-12 participants require two simultaneous interpreters and one escort officer. Grant proposal budgets should contain a flat \$140/day per diem rate for each State Department escort/interpreter, as well as home-program-home air fare of \$400 per interpreter and any U.S. travel expenses during the program itself. Salary expenses are covered centrally and are not part of the applicant's budget proposal. USIA grants do not pay for foreign interpreters to accompany delegations during travel to or from their home country. Interpreters are not

available for U.S.-based internship activities.

4. *Book and cultural allowances*: Participants are entitled to a one-time book allowance of \$50 plus a cultural allowance of \$150 per person during programs taking place in the United States. U.S. staff do not receive these benefits. Escort interpreters are reimbursed for actual cultural expenses up to \$150.00.

5. *Consultants*: Consultants may be used to provide specialized expertise or to make presentations. Honoraria generally should not exceed \$250/day. Subcontracting organizations may also be used, in which case the written contract(s) should be included in the proposal.

6. *Materials development*: Proposals may contain costs to purchase, develop and translate materials for participants. USIA reserves the rights to these materials for future use.

7. Room rentals, which generally should not exceed \$250/day.

8. One working meal per project, for which per capita costs may not exceed \$5-\$8 for a lunch or \$14-\$20 for a dinner. The number of invited guests may not exceed the number of participants by more than a factor of two to one.

9. *Return travel allowance*: \$70 for each participant which is to be used for incidental expenditures incurred during international travel.

10. Other costs necessary for the effective administration of the program, including salaries for grant organization employees, benefits, and other direct and indirect costs per detailed instructions in the application package.

E/P encourages cost-sharing, which may be in the form of allowable direct or indirect costs. E/P would be especially interested in proposals which demonstrate a program vision which goes well beyond that which can be supported by the requested USIA grant and which would try to use a USIA grant to leverage additional funding from other sources to support elements of the broader program plan.

The Recipient must maintain written records to support all allowable costs which are claimed as being its contribution to cost participation, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A-110, Attachment E, "Cost-sharing and Matching," and should be described in the proposal. In the event the Recipient does not meet the minimum amount of cost-sharing as stipulated in the Recipient's budget, the

Agency's contribution will be reduced in proportion to the Recipient's contribution.

Please note: All delegates will be covered under the terms of a USIA-sponsored health insurance policy. The premium is paid by USIA directly to the insurance company.

Application Requirements

Proposals must be structured in accordance with the instructions contained in the Application Package. Confirmation letters from U.S. and foreign co-sponsors noting their intention to participate in the program will enhance a proposal. Because this is a competitive solicitation, representatives of the Office of Citizen Exchanges can only respond to technical questions.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the Application Package.

Eligible proposals will be forwarded to panels of USIA officers for advisory review. Proposals will be reviewed by USIS posts and by USIA's Office of African Affairs. Proposals may also be reviewed by the Office of the General Counsel or other Agency offices. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer. The award of any grant is subject to availability of funds.

The U.S. Government reserves the right to reject any or all applications received. USIA will not pay for design and development costs associated with submitting a proposal. Applications are submitted at the risk of the applicant; should circumstances prevent award of a grant, all preparation and submission costs are at the applicant's expense. USIA will not award funds for activities conducted prior to the actual grant award.

Review Criteria

USIA will consider proposals based on the following criteria:

1. Institutional Reputation and Ability

Applicant institutions should demonstrate their potential for excellence in program design and implementation and/or provide documentation of successful programs. If an applicant is a previous USIA grant recipient, responsible fiscal management and full compliance with all reporting requirements for past

Agency grants as determined by USIA's Office of Contracts will be considered. Relevant substantive evaluations of previous projects may also be considered in this assessment.

2. Project Personnel

The thematic and logistical expertise of project personnel should be relevant to the proposed program. Resumes or C.V.s should be summaries which are relevant to the specific proposal and no longer than two pages each.

3. Program Planning

A detailed agenda and relevant work plan should demonstrate substantive rigor and logistical capacity.

4. Thematic Expertise

Proposal should demonstrate the organization's expertise in the subject area which promises an effective sharing of information.

5. Cross-Cultural Sensitivity and Area Expertise

Evidence should be provided of sensitivity to historical, linguistic, religious, and other cross-cultural factors, as well as relevant knowledge of the target geographic area/country.

6. Ability to Achieve Program Objectives

Objectives should be realistic and feasible. The proposal should clearly demonstrate how the grantee institution will meet program objectives.

7. Multiplier Effect

Proposed program should strengthen long-term mutual understanding and contribute to maximum sharing of information and establishment of long-term institutional and individual ties.

8. Cost-Effectiveness

Overhead and direct administrative costs to USIA should be kept as low as possible. All other items proposed for USIA funding should be necessary and appropriate to achieve the program's objectives.

9. Cost-Sharing

Proposals should maximize cost-sharing through other private sector support as well as direct funding contributions and/or in-kind support from the prospective grantee institution and its partners.

10. Follow-on Activities

Proposals should provide a plan for continued exchange activity (without USIA support) which ensures that USAI-supported programs are not isolated events.

11. Project Evaluations

Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. USIA recommends that the proposal include a draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives. Grantees will be expected to submit intermediate reports after each project component is concluded or quarterly, which is less frequent.

Notice

The terms and conditions published in the RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency which contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the U.S. Government. Awards cannot be made until funds have been fully appropriated by Congress and allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about September 26, 1994. Award grants will be subject to periodic reporting and evaluation requirements.

Dated: May 9, 1994.

David Michael Wilson,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 94-11497 Filed 5-12-94; 8:45 am]

BILLING CODE 8230-01-M

University Democratization in South Africa Program

AGENCY: United States Information Agency.

ACTION: Notice—request for proposals.

SUMMARY: The Office of Academic Programs (E/A) requests proposals from post-secondary institutions to develop a program to assist educational reform in South African post-secondary institutions as the country moves towards a nonracial democracy. The purpose of the project is to enable university student leaders and university student affairs officials to undertake a program in management skills and conflict resolution at a U.S. academic institution. The American institution should also plan to coordinate post training follow-up activities in South Africa. The institutional agreement will be for a period of two years. Interested

applicants are urged to read the complete Federal Register announcement before requesting application packets from the Office of Academic Programs.

DATES: Deadline for proposals: All copies must be received at the United States Information Agency by 5 p.m. Washington, DC (time on June 10, 1994). Proposals received after this deadline will not be eligible for consideration.

Faxed documents will not be accepted nor will documents postmarked on June 10, 1994 but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline.

ADDRESSES: The original and 9 copies of the completed proposal application, including required forms, should be submitted by the deadline to: U.S. Information Agency, REF: University Democratization in South Africa Program/RFP, Office of Grants Management (E/XE), room 336, 301 4th Street SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: For general information and requests for application packets which include all necessary forms and guidelines for preparing proposals, including specific budget preparation information, contact Nancy Searles, Branch Chief at (202) 619-5370, or Ellen Beralson, Deputy Branch Chief, Africa Branch at (202) 619-5376, Fax: (202) 619-6137 or write to the following address: Office of Academic Programs, rm. 232, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547.

SUPPLEMENTARY INFORMATION:

Overview

The University Democratization in South Africa Program focuses on education reform to enable students, faculty and administrators of selected South African universities to shift from the confrontation of an apartheid culture to the cooperation implicit in a democratic society. This project will provide university student leaders and university faculty and administrative staff tasked with student affairs management with training in conflict resolution and in university administration. The South African institutions which will participate are the University of Fort Hare, the University of Zululand, the University of the North and the University of the Western Cape.

Eligibility

In the U.S., participation in the program is open to accredited two-year and four-year colleges and universities, including graduate schools. Consortia of

universities and/or community colleges, individually or as systems, are also eligible. In South Africa, participation is limited to the University of the Western Cape, the University of Fort Hare, the University of the North, and the University of Zululand. Proposals from a consortium may be submitted by a member institution with authority to represent the consortium.

Participants representing the U.S. institution traveling under USIA grant support must be U.S. citizens. Participants representing South African institutions must be citizens, nationals, or permanent residents of South Africa.

The Agency invites proposals from eligible Historically Black Colleges and Universities (HBCU's) and other institutions in the U.S. with significant minority student enrollment. Consortia of universities including such institutions are also encouraged to apply.

Project Design

The project should begin with a conference in South Africa bringing together American experts and South African students, instructors, and staff to provide initial training in student affairs/educational administration and conflict resolution and to develop subsequent programming. Incorporating South African citizens' aspirations and objectives into the overall training plan is crucial to the success of the project.

The second phase of the project would focus on formal training at the U.S. host institution. The administering U.S. institution, in consultation with the United States Information Service offices (USIS) in Pretoria, and the project participants would select a group of South Africans to come to the U.S. institution for courses, workshops, and guided research on student politics in democratic societies, managing change in educational institutions, conflict resolution, and general management skills. Research might focus upon creating a history of the South African student movement, outlining its role in democratizing educational institutions, and devising models for exercising student power in a democratic South Africa. The U.S. academic experience should be from six weeks to one semester in length. Longer stays for the purpose of pursuing an advanced degree will not be sponsored. Participants may enroll in established courses at the administering institution. However, the institution should also be able to organize customized training sessions for the group participants. The final format of the academic program will depend upon consultation among

the U.S. and South African participants at the initial conference in South Africa.

The final segment of the grant would be follow-up workshops organized by the South African participants at their home institutions with facilitation and consultation from the U.S. instructors in the program. The U.S. institution may also propose to assist with publication and dissemination of findings developed during the U.S. training program and the final South African workshops.

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life.

Budget

Competition for USIA funding is keen. The selection of a grantee institution will depend on program substance, cross-cultural sensitivity and ability to carry out the program successfully. Since USIA cooperative assistance constitutes only a portion of total project funding, proposals should list and provide evidence of other anticipated sources of financial and in-kind support.

A proposal's cost-effectiveness, including in-kind contributions and ability to keep administrative costs low, is a major consideration in the review process.

Funding for this grant is limited to \$250,000. Preference will be given to the most competitive budget proposals. Qualified organizations with less than four years of successful experience in managing international exchange programs are limited to grants of \$60,000.

A comprehensive line item budget should be submitted with the proposal by the application deadline. Specific guidelines for budget preparation are available in the application packet.

Application Requirements

Proposals must be submitted within the deadline and conform to the program design. The proposal package should include one original and 14 complete copies and all required documentation. Proposal should be presented as follows:

1. An executive summary (abstract), not to exceed two double-spaced pages.
2. A narrative, not to exceed 20 double-spaced pages, showing the intellectual rationale and goal of the program, how the program will accomplish its goals and how it relates to USIA's mission to increase mutual understanding between people of the United States and of other societies.

This section should include a concise description of the project's work plan, spelling out program schedules, thematic agenda and proposed itineraries. Participant selection should be discussed in detail. This section should conclude with a discussion of any follow-up activities planned; how the organization intends to evaluate the project; and what groups, beyond the direct participants, will benefit from the project.

3. A comprehensive line item budget. See application package.

4. Resumes (not to exceed two pages each) for key personnel.

5. Confirmation letters from foreign co-sponsors noting their intention to participate in the program.

6. USIA compliance forms, furnished with the application package.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the appropriate geographic area office, and the budget and contracts offices. Proposals may also be reviewed by the Agency's Office of General Counsel. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the following criteria:

1. *Quality of Program:* Quality of program plan, including quality and rigor of the training, workshops and other activities as called for in this request, thorough conception of project, and demonstration of how participants' needs will be met.
2. *Institutional Capability:* Institutions should demonstrate their potential for program excellence and/or provide documentation of successful programs. If an organization is a previous USIA grant recipient, responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts will be considered.
3. *Project Personnel:* Personnel's professional and logistical expertise should be relevant to the proposed program. Resumes should be relevant to the specific proposal.

4. *Thematic Expertise:* Proposal should demonstrate the organization's expertise in the subject area.

5. *Program Planning:* Detailed agenda and work plan should demonstrate substance and logistical capacity. Agenda and plan should adhere to the program overview described above.

6. *Ability to Achieve Program Objectives:* Objectives should be realistic and attainable. Proposals should clearly demonstrate how the grantee institution will meet the program's objectives.

7. *Cross-Cultural Sensitivity/Area Expertise:* Proposal should demonstrate sensitivity to historical, linguistic and other cross-cultural factors, and relevant knowledge of South Africa.

8. *Multiplier Effect:* Proposed programs should strengthen long-term mutual understanding and include maximum sharing of information.

9. *Cost-Effectiveness:* The overhead and administrative components should be as low as possible. All other items proposed for USIA funding should be necessary and appropriate to achieve the program's objectives.

10. *Cost-Sharing:* Proposals should show cost-sharing through direct funding contributions and in-kind support from the prospective grantee institution.

11. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success.

12. Evidence of program sustainability after the expiration of USIA funded grant.

Notice

The terms and conditions published in the RFP are binding any may not be modified by any USIA representative. Explanatory information provided by

the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about August 5, 1994. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: May 6, 1994.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 94-11596 Filed 5-12-94; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register

Vol. 59, No. 92

Friday, May 13, 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).

FOREIGN CLAIMS SETTLEMENT COMMISSION

F.C.S.C. Meeting Notice No. 8-94

Announcement in Regard to Commission Meetings and Hearings

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date and Time	Subject Matter
Wed., May 25, 1994 at:	Oral Hearings on objections to Proposed Decisions issued on claims against Iran:
9:00 a.m.	IR-0589—Thomas H. Hancock. IR-2463—William R. Clem. IR-1140—Gerald Stewart.
10:00 a.m. ..	IR-2929—Eric Jecubic. IR-2930—Phillip Jecubic.

Date and Time	Subject Matter
10:30 a.m. ...	IR-1768—William L. Jensen.
11:00 a.m. ...	IR-0980—Richard J. Hallwood.
2:00 p.m. ...	IR-2744—Frank Burroughs.
3:00 p.m. ...	IR-2433—Thomas G. Pobanz.
3:30 p.m. ...	IR-1831—Eva J. Tabe.
4:00 p.m. ...	IR-2756—Delta Geotechnical.
Thurs. May 26, 1994 at 10:30 a.m..	Consideration of Proposed Decisions on claims against Iran.

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe a meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6029, Washington, DC 20579. Telephone (202) 616-6988.

Dated at Washington, DC on May 11, 1994.
Judith H. Lock,
Administrative Officer.
[FR Doc. 94-11863 Filed 5-11-94; 3:10 pm]
BILLING CODE 4410-01-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-94-16]

TIME AND DATE: May 18, 1994 at 2:30 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

1. Agenda for future meeting
2. Minutes
3. Ratification List
4. Inv. No. 731-TA-699 (Preliminary) (Stainless Steel Angles from Japan)—briefing and vote
5. Inv. Nos. 701-TA-355 and 731-TA-660 (Final) (Grain-Oriented Silicon Electrical Steel from Italy and Japan)—briefing and vote
6. Outstanding action jacket: None

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

CONTACT PERSON FOR MORE INFORMATION:
Donna R. Koehnke, Secretary, (202) 205-2000.

Issued: May 9, 1994.

Donna R. Koehnke,
Secretary.

[FR Doc. 94-11828 Filed 05-11-94; 12:17 pm]

BILLING CODE 7020-02-U

Federal Register

Friday
May 13, 1994

Part II

Department of Labor

Wage and Hour Division

29 CFR Part 570

Child Labor Regulations, Orders and
Statements of Interpretation; Proposed
Rules

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 570

RIN 1215-AA89

Child Labor Regulations, Orders and Statements of Interpretation

AGENCY: Wage and Hour Division, Labor.

ACTION: Proposed rule; request for comments.

SUMMARY: The Department of Labor (Department or DOL) is proposing revisions in subpart C (Child Labor Reg. No. 3) to provide an exception from the permissible hours and time standards for minors 14 and 15 years of age when employed as attendants in professional sports. The proposed exception limits such employment to outside school hours and to duties customarily performed by typical sports attendants (e.g., batboys/girls, ballboys/girls, etc.). Technical modifications are proposed in the procedure for obtaining occupational variations for 14- and 15-year-olds enrolled in Work Experience and Career Exploration Programs. Among other revisions to update these regulations, the Department is also proposing to delete the procedures relating to hazardous occupation determinations in Subpart D (Child Labor Reg. 5), which, for the most part, have been replaced by the notice-and-comment requirements of the Administrative Procedure Act.

DATES: Comments are due on or before July 12, 1994.

ADDRESSES: Submit written comments to the Administrator, Wage and Hour Division, U.S. Department of Labor, room S3506, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: J. Dean Speer, Director, Division of Policy and Analysis. Commenters who wish to receive notification of receipt of comments are requested to include a self-addressed, stamped post card, or to submit them by certified mail, return receipt requested. As a convenience to commenters, comments may be transmitted by facsimile ("FAX") machine to (202) 219-5122 (this is not a toll-free number). If transmitted by facsimile and a hard copy is also submitted by mail, please indicate on the hard copy that it is a duplicate copy of the facsimile transmission.

FOR FURTHER INFORMATION CONTACT: J. Dean Speer, Director, Division of Policy and Analysis, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, room S-3506,

200 Constitution Avenue, NW, Washington, DC 20210. Telephone (202) 219-8412. This is not a toll free number.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

The proposed rules contain no reporting or recordkeeping requirements subject to the Paperwork Reduction Act of 1980 (Pub. L. 96-511). The information collection requirements contained in § 570.35a, which are not modified by this proposal, were previously approved by the Office of Management and Budget under OMB control number 1215-0121. The general FLSA information collection requirements (including requirements contained in part 570) were approved by the Office of Management and Budget under the control number 1215-0017.

II. Background

The child labor provisions of the Fair Labor Standards Act (FLSA) establish a minimum age of 14 years for employment in most nonagricultural occupations. The Secretary of Labor is authorized to provide by regulation for the employment of young workers 14 and 15 years of age in suitable occupations other than manufacturing or mining, and during periods and under conditions which will not interfere with their schooling or with their health and well-being. These provisions also permit 16- and 17-year-old minors to be employed in the nonagricultural sector, without hours or time limitations, subject to prohibitions on occupations found and declared by the Secretary of Labor to be particularly hazardous, or detrimental to the health or well-being of minors under age 18. In agriculture, minors 14 and older may be engaged in general employment, subject to prohibitions on occupations declared particularly hazardous by the Secretary of Labor. Additionally, in agriculture 12- and 13-year-olds may be employed with written parental consent or on a farm where the minor's parent is also employed. Under very limited waiver conditions, 10- and 11-year-olds may be employed outside of school hours in agriculture as hand harvesters of short season crops for a maximum annual period of eight weeks.

The regulations for 14- and 15-year-olds are known as Child Labor Regulation No. 3 (Reg. 3) and are contained in subpart C of 29 CFR Part 570. Reg. 3, as amended, limits the hours that 14- and 15-year-olds may work to:

- (1) Outside school hours;
- (2) Not more than 40 hours in any one week when school is not in session;

(3) Not more than 18 hours in any one week when school is in session;

(4) Not more than 8 hours in any day when school is not in session;

(5) Not more than 3 hours in any day when school is in session; and

(6) Between 7 a.m. and 7 p.m.; except during the summer (June 1 through Labor Day) when the evening hour is extended to 9 p.m.

Summer school sessions are considered to be "outside school hours," i.e., nonschool weeks. Also, 14- and 15-year-olds enrolled in a State-approved, school-supervised Work Experience and Career Exploration Program (WECEP) may be employed for up to 23 hours in school weeks, 3 hours on school days, and during school hours.

Child Labor Reg. 3 permits work by 14- and 15-year-olds in certain occupations in retail, food service, and gasoline service establishments, and prohibits their employment in certain other work, including work prohibited by hazardous occupational orders.

The Department is proposing an exception from the above permissible hours and time standards for 14- and 15-year-olds employed as attendants in professional sports. The Department suspended enforcement of the child labor regulations as applied to batboys/girls employed in professional baseball during the 1993 baseball season, and subsequently extended the policy to attendants in other professional sports while reviewing such employment under the child labor regulations.

During 1986 and 1987, the Department conducted a study at the request of the Congress¹ to determine whether a change in the permissible hours of employment for batboys and batgirls would be detrimental to their well-being and whether any changes to existing standards should be proposed. The Department concluded that changes in permissible hours and time standards for batboy/girl work would not be detrimental to their health and well-being. The Department surveyed 157 professional league baseball teams and conducted selected on-site interviews with parents, teachers, team owners, and batboys/girls and found that youths genuinely enjoyed the experience. The Department could find no evidence that school grades were adversely affected by such work. The Department also advised the Congress that regulatory modifications, rather than legislative change, would be the best vehicle to

¹ See section 801, Public Law 99-425 (September 30, 1986).

address the matter of permissible hours for batboys/girls.

The Department's Child Labor Advisory Committee (CLAC), established in 1987 to provide advice and guidance in the development of possible proposals to change existing standards, recommended that existing hours and time of work standards be retained for 14- and 15-year-olds employed as sports attendants, including batboys/girls; and that the work performed in such activity be limited to traditional duties, i.e., putting out and taking in field equipment, running errands for players, and supplying the umpire with balls. While the Committee's advisory view was taken into consideration, the Department also continued to consider other pertinent information, including inquiries received from interested parties concerning the employment of youth in sports-related activities, such as scorekeepers, concession stand helpers, ball monitors and sideline officials. One inquiry concerned conforming the Federal child labor regulations to a State of Wisconsin provision which permits youths under age 14 to be employed by high schools as ball monitors and sideline officials at football games. Another was received from the Grant County (Kansas) Recreation Commission concerning 14- and 15-year-olds employed as scorekeepers and concession stand helpers in summer softball, baseball, and other sports programs. Also, the National Association of Professional Baseball Leagues, Inc. (NAPBL) petitioned² the Department in June 1993 to revise the regulation to permit the employment of 14- and 15-year-olds as batboys for professional baseball clubs. According to the NAPBL, existing hours and time-of-day standards effectively preclude baseball teams from lawfully employing youth under the age of 16. The NAPBL contended further that such employment is not adverse to the health and well-being of youth and that the denial of the batboy/girl experience is inconsistent with the intent of the FLSA's child labor provisions.

Some employers are covered by all of FLSA's provisions, while others are covered by the FLSA but may be exempt from its minimum wage and overtime provisions though not its child labor

²Section 570.38 of the regulations provides that persons desiring revisions of subpart C of part 570 may submit in writing to the Secretary of Labor a petition setting forth the changes desired and the reasons for proposing them. In response, the Secretary may either schedule hearings or make other provision for affording interested parties an opportunity to be heard.

provisions.³ Other employers that are not covered by the FLSA are subject to varying State child labor requirements. The practice of providing sport-attendant experiences to America's youth is a longstanding tradition. As a consequence, many professional and semi-professional sports teams, i.e., baseball, basketball, etc., have violated Federal child labor regulations by employing underage youth, particularly 14- and 15-year-olds, as sports-attendants.

The Department believes that a change in the existing Federal hours and times standards to allow employment of 14- and 15-year-olds as batboys/girls, ballboys/girls, or in other sports-attendant capacities would not be inconsistent with FLSA's oppressive child labor provisions and, therefore, proposes a narrow exception from the requirements of Child Labor Reg. 3 for such work. Specifically, the proposed exception is limited to employment by professional sports organizations and would apply only if the duties performed are traditional in nature and the work is outside regular school hours. Thus, the current restrictions when school is in session, i.e., 3-hour daily limit, 18-hour weekly limit, and 7 p.m. end-of-day time restriction, and the current 9 p.m. end-of-day time restriction when school is not in session would not apply to 14- and 15-year-old sports-attendants.

The Department recognizes that a delicate balance exists between the value of jobs that provide positive, formative experiences, and the possible negative effects that excessive employment of youth can have on their academic performance and their health and well-being. The Department believes that the proposed change for 14- and 15-year-olds in sports attending activities will not have an adverse effect on their health, well-being, or educational development. Further, the Department believes that the employment opportunities for 14- and 15-year-olds as provided herein is consistent with the purpose of the FLSA to permit safe and healthy employment opportunities under conditions which protect the health, well-being, and schooling of such young workers. See 29 U.S.C. 203(l).

³For example, section 13(a)(3) of the FLSA exempts any employee employed by an amusement or recreational establishment from the minimum wage (section 6) and overtime (section 7) provisions of the Act, but not from the child labor provisions (section 12), if the establishment does not operate for more than seven months in any calendar year, or if during the preceding calendar year the establishment's average receipts for any six months were not more than 33½ percent of its average receipts for the other six months.

In addition, the Department proposes to delete the regulations at 29 CFR part 570, subpart D (Child Labor Reg. 5). These regulations provide a procedure for the Secretary to promulgate or amend hazardous occupation orders (HOs), which identify occupations in which employment of minors under 18 years of age is prohibited because the Secretary, pursuant to section 3(l) of the Act, has determined that the occupations are particularly hazardous for such workers or detrimental to their health or well-being. The Department proposes to repeal Child Labor Reg. 5, because its procedural requirements are no longer necessary, and because the continued existence of the regulation poses the potential for confusion regarding the process to be utilized by the Secretary in the review, amendment, and promulgation of HOs.

Child Labor Reg. 5 was promulgated in 1938, immediately after the enactment of the FLSA (3 FR 2640 (1938)). Although neither the FLSA nor other laws required such procedures, the Children's Bureau, which at that time was charged with administration of the FLSA child labor provisions, prescribed the process so that the public would be informed of the Department's intentions regarding the creation or amendment of restrictions on the employment of minors in hazardous occupations. The original Child Labor Reg. 5 identified certain mandatory steps, including public hearings, to be taken in HO promulgation. The Congress, however, imposed a standardized procedure in 1946 for all Federal agencies to follow when issuing or amending regulations. The procedures in this law, the Administrative Procedure Act (APA), 60 Stat. 237, provide greater administrative flexibility than the process in Child Labor Reg. 5, in that, for example, the APA does not mandate a public hearing in every case prior to promulgation of a regulation. There have been no changes to Child Labor Reg. 5 except for a technical amendment in 1961 (26 FR 5005 (1961)) to more align the HO process with APA requirements, i.e., hearings were identified among various optional steps which the Department could utilize.

It is the Department's view that Child Labor Reg. 5 is no longer necessary. The procedures set out in this regulation are not substantively different from the APA requirements which control DOL rulemaking, including promulgation of HOs. While the optional steps identified in the regulation are matters which the Department may choose to undertake in the promulgation of particular HOs, these steps—involving study, drafting,

examination, and review of options and standards—are integral parts of the Department's deliberative, policy-making process and, thus, they need not and should not be set out in detail in regulations. Further, it is the Department's view that the regulation potentially creates confusion in that the Child Labor Reg. 5 procedures may be viewed incorrectly as mandatory steps for promulgation of HOs. The proposed repeal of Child Labor Reg. 5 will eliminate the possibility of confusion.

The Department is also proposing a technical modification in the regulations that is considered necessary and appropriate in connection with the Work Experience and Career Exploration Program (WECEP) to facilitate applications for certification under this program. Section 570.35a of the regulations provides for the employment of 14- and 15-year-olds in a State-approved, school-supervised Work Experience and Career Exploration Program (WECEP).⁴ A condition for approval of such programs is that they provide sufficient safeguards to ensure that the employment will not interfere with the schooling of the minors or with their health and well-being. Enrollees in approved WECEPs may be employed for up to 23 hours in school weeks, 3 hours on school days, and during school hours, in occupations other than:

- (1) Those in manufacturing and mining;
- (2) Those declared to be hazardous for the employment of minors under 18 years of age (set forth in subpart E of the regulations); or
- (3) Those declared to be hazardous for employment of minors below the age of 16 in agriculture (set forth in subpart E-1 of the regulations).

The regulations at § 570.35a(c)(3) allow the Administrator of the Wage and Hour Division to approve a variance from the prohibited occupations in individual cases or classes of cases after notice to interested parties and an opportunity to furnish views. In State Educational Agency applications for WECEP program approval and requests for variances from the Reg. 3 occupations restrictions in those programs pursuant to § 570.35a(c)(3), the Department has consistently approved variances for particular activities which, within the operation of programs that meet all the WECEP criteria, have been determined by the Department not to interfere with the health and well-being of the 14- and 15-

year-olds enrolled in the programs. To provide pertinent guidance to the State Educational Agencies and other interested parties, the Department proposes to amend the WECEP regulations to specify that the following activities will be ordinarily considered to be acceptable for participants in approved WECEP programs:

- (1) Using a deep fryer or cooking at a grill with a maximum temperature of 375 degrees;
- (2) Operating power-driven mowers, weed-eaters, trimmers and whips with nylon string only;
- (3) Retrieving and/or placing food in coolers/freezers;
- (4) Loading and unloading goods weighing up to 30 lbs. provided that such work does not exceed 30 percent of the minor's weekly hours worked; and
- (5) Operating noncommercial dishwashers.

In effect, the revised WECEP regulations would contain a limited exception to the Reg. 3 occupations restrictions for WECEP participants engaged in the specified activities. Further, in order to preserve the Department's discretion to modify the Reg. 3 restrictions in special circumstances where a WECEP program applicant can demonstrate that the program will provide safe and suitable employment, the WECEP regulation will continue to contain a provision for obtaining variances from occupational restrictions similar to variance procedures under other programs administered by the Department's Wage and Hour Division, e.g., see § 5.14 of 29 CFR part 5 (Davis-Bacon and Related Acts) and § 4.123 of 29 CFR part 4 (McNamara-O'Hara Service Contract Act).

In addition, the Department is proposing to delete the exception contained in § 570.35(b) for enrollees in work training programs conducted under the Economic Opportunity Act of 1964. This Act has been repealed and the exception is no longer appropriate.

Executive Order 12866

The Department believes that this proposed rule is not a "significant regulatory action" within the meaning of Executive Order 12866. It proposes to change the permissible hours and time standards to permit greater flexibility in the employment of 14- and 15-year-olds as professional sports attendants. While the changes proposed are expected to enhance opportunities for employment, the impact on overall employment levels of 14- and 15-year-olds is modest. Other proposed changes are technical in nature and are expected to have only a minor impact on the employment of 14- and 15-year-olds. Accordingly, these

changes are not expected to result in a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
 - (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
 - (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
 - (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.
- Therefore, no regulatory impact analysis has been prepared.

Regulatory Flexibility Analysis

The Department has determined that the proposed rule will not have a significant economic impact on a substantial number of small entities. The proposed change to provide an exception from the permissible hours and time standards for minors 14 and 15 years of age when employed as attendants in professional sports has narrow application and will affect only a limited number of employers of which some may be considered small entities. Although the other technical changes may affect small entities, the impact is believed to be insignificant. For these reasons, the Department believes that the proposed rule will not have a significant economic impact on a substantial number of small entities. The Secretary of Labor has certified to this effect to the Chief Counsel for Advocacy of the Small Business Administration. Therefore, no regulatory flexibility analysis is required.

Document Preparation

This document was prepared under the direction and control of Maria Echaveste, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 570

Child labor, Child labor occupations, Employment, Government, Intergovernmental relations, Investigations, Labor, Law enforcement, Minimum age.

Accordingly, 29 CFR part 570 of the Code of Federal Regulations is proposed to be amended as set forth below.

⁴ Twelve States have Departmental approval to operate WECEP programs in the 1992-94 school years.

Signed at Washington, DC., on this 4th day of May 1994.

Robert B. Reich,

Secretary of Labor.

Bernard E. Anderson,

Assistant Secretary for Employment Standards.

Maria Echaveste,

Administrator, Wage and Hour Division.

PART 570—CHILD LABOR REGULATIONS, ORDERS AND STATEMENTS OF INTERPRETATION

1. The authority citation for part 570 continues to read as follows:

Authority: Secs. 3, 11, 12, 52 Stat. 1060, as amended, 1066, as amended, 1067, as amended; 29 U.S.C. 203, 211, 212.

Subpart C—Employment of Minors Between 14 and 16 Years of Age (Child Labor Reg. 3)

2. In § 570.35 of subpart C, paragraph (b) is proposed to be revised to read as follows:

§ 570.35 Periods and conditions of employment.

(b) In the case of minors 14 and 15 years of age who are employed to perform sports-attending services at professional sporting events, i.e., baseball, basketball, football, soccer, tennis, etc., the requirements of paragraphs (a)(2) through (a)(6) of this section shall not apply, provided that the duties of the sports-attendant occupation consist of pre- and post-game or practice setup of balls, items and equipment; supplying and retrieving balls, items and equipment during a sporting event; clearing the field or court of debris, moisture, etc. during play; providing ice, drinks, towels, etc., to players during play; running errands for trainers, managers, coaches, and players before, during, and after a sporting event; and returning and/or storing balls, items and equipment in club house or locker room after a sporting event. For purposes of this exception, impermissible duties include grounds or field maintenance such as grass mowing, spreading or rolling tarpaulins used to cover playing areas, etc.; cleaning and repairing equipment; cleaning locker rooms, showers, lavatories, rest rooms, team vehicles, club houses, dugouts or similar facilities; loading and unloading balls, items, and equipment from team vehicles before and after a sporting event; doing laundry; and working in concession stands or other selling and promotional activities.

3. Section 570.35a(c)(3) of subpart C is proposed to be revised to read as follows:

§ 570.35a Work experience and career exploration programs.

* * * * *

(c) * * *

(3) Occupations other than those permitted under §§ 570.33 and 570.34, except ordinarily for the following if expressly identified in the program application:

(i) Using a deep fryer or cooking at a grill with a maximum temperature of 375 degrees;

(ii) Operating power-driven mowers, weed-eaters, trimmers and whips with nylon string only;

(iii) Retrieving and/or placing food in coolers/freezers;

(iv) Loading and unloading goods weighing up to 30 lbs. provided that such work does not exceed 30 percent of the weekly hours worked; and (v) Operating noncommercial dishwashers. Employment in other activities may be approved by the Administrator of the Wage and Hour Division in acting on the program application if the Administrator finds that the applicant has demonstrated that the terms and conditions of the proposed employment will not be particularly hazardous or detrimental to the health or well-being of the minor enrolled in an approved program.

* * * * *

Subpart D—[Removed and Reserved]

4. Subpart D, consisting of §§ 570.41 through 570.49, is proposed to be removed and reserved.

[FR Doc. 94-9946 Filed 5-12-94; 8:45 am]

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DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 570

RIN 1215-AA09

Child Labor Regulations, Orders and Statements of Interpretation

AGENCY: Wage and Hour Division.

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: The Department of Labor (Department or DOL) is considering proposing revisions in the child labor regulations issued pursuant to the Fair Labor Standards Act (FLSA), 29 CFR part 570, which set forth the criteria for the permissible employment of minors

under 18 years of age. In particular, subparts C and E of these regulations are under review. Subpart C (Child Labor Reg. 3) specifies permissible hours and time standards, as well as occupational limitations, for 14- and 15-year-old employees. Subpart E identifies occupations deemed particularly hazardous for, or detrimental to the health or well-being of, employees under 18 years of age. This advance notice of proposed rulemaking seeks the views of the public on needed changes to these regulations, and also with respect to other aspects of the regulations.

DATES: Comments are due on or before August 11, 1994.

ADDRESSES: Submit written comments to the Administrator, Wage and Hour Division, U.S. Department of Labor, room S3506, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: J. Dean Speer, Director, Division of Policy and Analysis. Commenters who wish to receive notification of receipt of comments are requested to include a self-addressed, stamped post card, or to submit them by certified mail, return receipt requested. As a convenience to commenters, comments may be transmitted by facsimile ("FAX") machine to (202) 219-5122 (this is not a toll-free number). If transmitted by facsimile and a hard copy is also submitted by mail, please indicate on the hard copy that it is a duplicate copy of the facsimile transmission.

FOR FURTHER INFORMATION CONTACT: J. Dean Speer, Director, Division of Policy and Analysis, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, room S-3506, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 219-8412. This is not a toll free number.

SUPPLEMENTARY INFORMATION: The child labor provisions of the Fair Labor Standards Act (FLSA) establish a minimum age of 14 years for employment in most nonagricultural occupations. The Secretary of Labor is authorized to provide by regulation for the employment of young workers 14 and 15 years of age in suitable occupations other than manufacturing or mining, and during periods and under conditions which will not interfere with their schooling or with their health and well-being. These provisions also permit 16- and 17-year-old minors to be employed in the nonagricultural sector, without hours or time limitations, subject to prohibitions in occupations found and declared by the Secretary of Labor to be particularly hazardous, or detrimental to the health or well-being of minors under age 18. In

agriculture, minors 14 and older may be engaged in general employment, subject to prohibitions on occupations declared particularly hazardous by the Secretary of Labor. Additionally, in agriculture 12- and 13-year-olds may be employed with written parental consent or on a farm where the minor's parent is also employed. Under very limited waiver conditions, 10- and 11-year-olds may be employed outside of school hours in agriculture as hand harvesters of short season crops for a maximum annual period of eight weeks.

The regulations for 14- and 15-year olds are known as Child Labor Regulation No. 3 (Reg. 3) and are contained in subpart C of 29 CFR part 570. Reg. 3, as amended, limits the hours that 14- and 15-year-olds may work to:

- (1) Outside school hours;
- (2) Not more than 40 hours in any one week when school is not in session;
- (3) Not more than 18 hours in any one week when school is in session;
- (4) Not more than 8 hours in any day when school is not in session;
- (5) Not more than 3 hours in any day when school is in session; and
- (6) between 7 a.m. and 7 p.m., except during the summer (June 1 through Labor Day) when the evening hour is extended to 9 p.m.

Summer school sessions are considered to be "outside school hours," i.e., nonschool weeks. Also, 14- and 15-year-olds enrolled in a State-approved, school-supervised Work Experience and Career Exploration Program (WECEP) may be employed for up to 23 hours in school weeks, 3 hours on school days, and during school hours.¹

Child Labor Reg. 3 permits work by 14- and 15-year-olds in certain occupations in retail, food service, and gasoline service establishments, and prohibits their employment in certain other work, including work prohibited by hazardous occupational orders.

Pursuant to the FLSA child labor provisions, the Secretary has issued standards governing employment of minors under 18 years of age in nonagriculture occupations. The 17 nonagricultural hazardous occupations orders (HOs) now in effect are contained in 29 CFR part 570, subpart E. Prohibitions established by these HOs apply either on an industry basis, specifying the occupations in the industry that are not covered, or on an occupational basis irrespective of the industry in which performed. The current nonagricultural HOs deal with

manufacturing and storing explosives (HO 1); motor-vehicle driving and outside helper (HO 2); coal mining (HO 3); logging and sawmilling (HO 4); power-driven woodworking machines (HO 5); exposure to radioactive substances (HO 6); power-driven hoisting apparatus (HO 7); power-driven metal-forming, punching, and shearing machines (HO 8); mining, other than coal mining (HO 9); slaughtering, or meat-packing, processing, or rendering (HO 10); power-driven bakery machines (HO 11); power-driven paper-products machines (HO 12); manufacturing brick, tile, and kindred products (HO 13); power-driven circular saws (HO 14); wrecking, demolition, and ship-breaking operations (HO 15); roofing operations (HO 16); and excavation operations (HO 17).

Occupations in agriculture found particularly hazardous and, consequently, prohibited by the Secretary for children below the age of 16 are contained in subpart E-1 of 29 CFR part 570.

Because of changes in the workplace and the introduction of new processes and technologies since the adoption of current regulatory standards, as well as changes in places where young workers find employment opportunities, the existence of differing Federal and State standards, and the divergent views on how best to correlate school and work experiences, the Department is undertaking a comprehensive review of the criteria for child labor employment, and is considering proposing revisions to Regulations, 29 CFR part 570. Accordingly, this advance notice of proposed rulemaking is being published to obtain the views of the public with respect to the matters set out below as well as to any other issues of interest under this regulation.

I. Permissible Hours, Time-of-day, and Occupational Standards Under Child Labor Reg. 3

Since the regulations relating to hours, time and occupations were last amended, the Department has engaged in periodic reviews of the appropriateness of these regulations.

Thus, for example, in 1982, the Department published a proposal in the *Federal Register* to, among other things, modify the permissible periods of work for 14- and 15-year-olds.² This proposal would have increased the maximum daily hours from 3 to 4 hours on a school day, and increased the maximum weekly hours of employment when

school is in session from 18 to 24 hours. The proposal would have further permitted 14- and 15-year-olds to work up to 36 hours in any week when school was in session for only a portion of the week due to holidays or vacation periods. Finally, this proposal would have generally expanded the end-of-day time restriction from 7 to 9 p.m. on school days, and would have established a 10 p.m. end-of-day limit on any day during the summer months or preceding a nonschool day. The 1982 proposal generated considerable public interest and controversy. The Department subsequently suspended the proposal from further consideration, and it was not implemented as a final rule.³

In August 1987, the Department established a Child Labor Advisory Committee (CLAC)⁴ to provide advice and guidance in the development of possible proposals to change existing standards. In its review of hours and time of work issues, the Committee recommended that existing hours and time of work standards be retained without modification.

In the U.S. Congress, bills have been introduced in the House and Senate that include, among other things, hours and time restrictions for 14- and 15-year-old employees. Bills to reform the FLSA's child labor provisions, H.R. 1106, introduced February 24, 1993, and S. 86, introduced January 21, 1993, would allow 14- and 15-year-olds to work only for 3 hours a day and 15 hours a week, or between the hours of 7 a.m. and 7 p.m. when school is in session. Under H.R. 1106, 16- and 17-year-old minors could not, for the first time, work more than 4 hours a day or 20 hours a week, or before 6 a.m. or after 10 p.m. when school is in session. These hours and time restrictions for 14- and 15-year-olds are similar to the existing regulations, except that the bills set a 15 hours-per-week limit (rather than the current, regulatory 18).

Under a model State child labor law drafted by the Child Labor Coalition (a child labor advocacy group of 35 organizations interested in updating child labor laws), the maximum hours of employment for 14- and 15-year-olds would be set at 15 hours a week while in school, and 30 hours a week when school is not in session. For 16- and 17-year-olds, the maximum work hours would be 30 when school is in session and 40 hours when it is not.

¹ 50 FR 17434, April 29, 1985 (DOL's Semiannual Regulatory Agenda).

² 47 FR 31254, July 16, 1982; 47 FR 34166, August 6, 1982 (extending the comment period to January 13, 1983).

³ The CLAC was composed of 21 members representing employers, education, labor, child guidance professionals, civic groups, child advocacy groups, State officials, and safety groups.

⁴ Twelve States had Departmental approval to operate WECEP programs in the 1992-94 school years.

The Department has also continued to receive input from the public suggesting that certain changes be made in the regulations.⁵ The National Restaurant Association (NRA), the International Association of Amusement Parks and Attractions (IAAPA), and the Fresno (California) Private Industry Council, among others, have requested that the Department change the regulations. Correspondence has also been received from individual employers, Members of Congress, and members of State legislatures.

In 1992, for example, the NRA noted that nearly 20 percent of employed teens work in food service occupations and that roughly 25 percent of the industry's hourly workers are in their teens. The NRA also pointed to a high overall teen unemployment rate and suggested a number of reforms to the regulations, including:

(1) Allowing 14- and 15-year-olds to work up to 24 hours a week when school is in session for four days or less due to holiday or vacation breaks (currently limited to 18 hours during weeks when school is in session for one or more days);

(2) Expanding the limit to 4 hours on Sundays through Thursdays, i.e., days followed by school days, and to 8 hours on Fridays and Saturdays (currently limited to 3 hours on school days);

(3) Changing the 7 p.m. limitation during the school year to 9 p.m. on Sundays through Thursdays and to 11 p.m. on Fridays and Saturdays; and

(4) Changing the 9 p.m. limitation during the summer vacations (from June 1 to Labor Day) to 11 p.m.

Reforms suggested by the International Association of Amusement Parks and Attractions (IAAPA) include:

(1) Allowing 14- and 15-year-olds to work up to 24 hours a week when school is in session for 5 days, and up to 36 hours a week when school is in session for any part of a week due to holidays or vacation (with the actual hours limit determined by subtracting from 40 hours, 4 hours for each day that school is in session during the partial school week);

(2) Changing the current 3-hours-per-day limit when school is in session to 4 hours; and

(3) Changing the 9 p.m. end-of-day limitation during the summer period to 11 p.m.

The Department is also aware of the child labor standards established by State governments. In this regard, nearly all States have employment restrictions

applicable to young workers and, although many have adopted standards similar to the Federal standards for 14- and 15-year-olds, the restrictions vary significantly. For example, most States limit the number of hours that may be worked in a day when school is not in session to 8 hours; only three States allow more than 8 hours of work in a day when school is not in session. Most States limit the number of hours that may be worked in a week when school is not in session to 40 hours; fifteen States, however, permit work in excess of 40 hours when school is not in session, with the number of hours allowed ranging from 44 to 56. With respect to the number of hours that may be worked in a week when school is in session, a large number of the States do not have any specific restrictions. Eighteen States restrict work to no more than 18 hours; two States restrict work to 16 and 15 hours, respectively; two States restrict work hours to 18 hours but allow more hours when school is not in session for a full week; and seven other States have provisions that allow work in excess of 20 hours a week when school is in session.

Of the States that restrict daily work hours, 20 provide for a 3-hour limitation on a school day, whether or not the following day is a school day; one State sets a 3-hour limit on days followed by a school day; and one State permits longer hours on Saturdays and Sundays. A daily limit of 4 hours is allowed by seven States, with one of these States permitting additional hours on Fridays and on a school day preceding a day when school is not in session.

Four States have established maximum permissible daily and/or weekly combined school and work hours, i.e., 10 total hours of combined school and work on a daily basis, or 48 total hours of combined school and work on a weekly basis.

In 28 States, work beyond 7 p.m. is prohibited except during the summer, on a holiday, or on a day preceding a day when school is not in session, when work until 9 p.m. is allowed in 26 of these States, and until 10 p.m. in the other two States. Two additional States prohibit work after 7 p.m. at all times. An additional 19 States allow work at least until 8 p.m.; another five States permit work until 10 p.m.

In addition to allowing more working hours during the summer, State standards often distinguish between days preceding a school day from those preceding a non-school day. Several States also make a distinction between full school weeks and weeks when school is in partial session because of holiday and vacation time, permitting

more hours to be worked in partial school weeks.

Under the Department's Work Experience and Career Exploration Program (WECEP), which began in 1969, 14- and 15-year-old enrollees were initially permitted to work up to 28 hours per week when school was in session and up to 4 hours on a school day, any portion of which could be during school hours. Studies of WECEP indicated that limited labor market experience in a controlled school setting had a definite positive impact on the scholastic performance and school attendance of participating 14- and 15-year-old students. These studies also established that the optimum hours—at which students attained the greatest educational benefits—were fewer than the maximum hours originally allowed. As a result, in 1975, the permissible hours of employment under WECEP were reduced to 3 hours per day and 23 hours per week, and these revised standards were adopted in final regulations published in the *Federal Register* on September 3, 1975. See 29 CFR 570.35a(d).

The Department is also aware that some employers of young workers have adopted special programs designed to achieve complementary integration of educational and work experiences. Such employers may, for example, ascertain young workers' grade point averages (GPA) at the time of hiring; arrange work schedules, subject to parental consent, to accommodate the scholastic needs of students; allow young workers to study at the workplace; give bonuses for superior academic achievement or school attendance; monitor young workers' academic performance and school attendance during employment; and ensure that students, prior to hiring, know their employment rights and the regulations applicable to minors.

The Department seeks comments on whether there is a need for changes in the requirements of Child Labor Reg. 3 for students participating in programs under statewide School-to-Work Opportunities systems advocated by the School-to-Work initiative jointly sponsored by the Departments of Education and Labor (see 59 FR 5266 (February 3, 1994) and 59 FR 11154 (March 9, 1994)). Programs developed under this initiative are intended to give youth access to education and training opportunities that will prepare them for high-skill, high-wage careers.

The Department, for the reasons discussed above, is particularly interested in obtaining public comment on the appropriateness and feasibility of the following matters:

⁵ Section 570.38 of the regulations provides that persons desiring revisions of subpart C of part 570 may submit in writing to the Secretary of Labor a petition setting forth the changes desired and the reasons for proposing them. In response, the Secretary may either schedule hearings or make other provisions for affording interested parties an opportunity to be heard.

1. Should greater flexibility be allowed in the permissible hours of work for 14- and 15-year-olds whose employers have a formal "employer-parent-school" program that links meaningful work experiences with support for the attainment of the student-employee's educational goals and ongoing academic performance? Commenters are requested to include specific recommendations as to the standards or criteria that should be considered for inclusion in any future rulemaking to define such special programs, and as to the changes in permissible work hours that would be appropriate for 14- and 15-year-olds whose employers maintain such programs. Commenters are also requested to provide information regarding the implications for employer recordkeeping that might be necessary for the Department to monitor compliance with the standards for any such programs, and recommendations for how these recordkeeping requirements should be addressed.

2. The current regulations contain an end-of-day restriction of 7 p.m. on days when school is in session. A less restrictive time of 9 p.m. is permitted during the summer vacation period defined in the regulations as June 1 through the Labor Day holiday. When school is in session, the regulations make no distinction between a day preceding a school day and one preceding a non-school day, i.e., typically Fridays, Saturdays, and days before a school holiday. Should there be different restrictions on times of work on days preceding a non-school day and, if so, why? Would any such changes interfere with the schooling, health, or well-being of young workers? If an end-of-day restriction different from 7 p.m. is appropriate on days preceding a non-school day, what should the time restriction be on such days, and why? Should the Department consider a later end-of-day time for work during the summer months when school is not in session? If so, what should that time be and why?

3. The regulations currently limit the daily hours that may be worked by 14- and 15-year-olds to 3 hours on days when school is in session; 8 hours when school is not in session. Should a distinction be made in the number of hours that may be worked on a day preceding a non-school day (typically Friday, Saturday, and the day before a school holiday) and, if so, how many hours should be permitted and why?

4. Weekly hours for 14- and 15-year-olds are limited by the regulations to 18 hours when school is in session. While some States permit more hours, only

two limit permissible weekly hours to less than the 18-hour standard, one to 16 and another to 15. On the other hand, the child labor reform bill pending in the U.S. House of Representatives (H.R. 1106) and the Model state law drafted by the Child Labor Coalition would limit the number of hours that may be worked each week to 15. Should the existing Federal standard be changed and, if so, how many hours should be permitted and why? Should a distinction be made for those weeks when school is in session less than five days?

5. Traditionally, schools were not "in session" during the summer months and the regulations reflected this common schedule by providing less-restrictive hours and time limitations during the summer vacation period between June 1 and the Labor Day holiday. School systems, however, have begun converting to non-traditional attendance schedules and remain open year-round. For example, some public and private schools have implemented academic quarter-year, trimester, or other alternative attendance schedules under which the schools schedule classes year-round, but not all students are attending school at any point in time. For these schools, the traditional concept of the "summer vacation break" between June 1 and Labor Day has become irrelevant. Additionally, home education programs are now more common, not only in school jurisdictions where the public schools operate on uniform attendance calendars applicable to all students, but also in school jurisdictions where the public schools operate year-round or on a platoon system. Should the regulations be changed to accommodate different structures for when school is "in session" and what are the particular changes that should be made to reflect the characteristics of alternative school schedules? If the concept is based on the schedule for school attendance of individual student-employees (rather than the entire school system), how do employers and student-employees determine when different hours restrictions are applicable and what records would have to be maintained to ensure compliance?

The Department is also reviewing the occupational provisions contained in Reg. 3 to determine what changes, modifications, or clarifications, if any, are appropriate for 14- and 15-year-old employees. The Department is interested in obtaining public comment on all aspects of these provisions, including the following matters:

1. Section 570.34(b)(5), promulgated prior to the advent of the fast food

industry, prohibits cooking by 14- and 15-year-olds employed by retail and food establishment cooking at soda fountains, lunch counters, snack bars, or cafeteria serving counters. This prohibition has been interpreted by the Department to allow cooking only when the activity is in "plain view" of customers. Thus, the cooking prohibition applies to full service restaurants and certain fast food restaurants where the cooking configuration does not permit customers to plainly view the cooking activity. Should cooking be permitted in retail and food establishments, and, if so, what restrictions, if any, would be appropriate to ensure the safety and health of young workers? Should all cooking be prohibited, and, if so, why?

2. Section 570.33(b) prohibits the employment of 14- and 15-year-olds in any occupation which involves " * * * any power-driven machinery other than office machines." The operation of certain power-driven devices, equipment, and tools in retail, food service, and gasoline service establishments is expressly permitted by § 570.34. In such industries, 14- and 15-year-olds may, for example, operate vacuum cleaners, floor waxers, dishwashers, toasters, dumbwaiters, popcorn poppers, milk shake blenders, and coffee grinders. Fourteen- and 15-year-olds are also permitted to operate office machines in connection with office and clerical work and cash registers in connection with retail sales work. Should any of the machines, etc., expressly permitted in Reg. 3 be reconsidered because their use adversely affects the health and well-being of such workers? If so, why? Are there power-driven machines, etc., in the contemporary workplace not now expressly permitted by Reg. 3 which 14- and 15-year-olds should be allowed to operate? If so, identify the machines and explain why their use should be permitted. Also, questions periodically arise about the meaning of "power-driven" and whether the term includes tools, equipment, etc., that are activated by battery power, i.e., many tools and devices are now power-activated by rechargeable battery units. Should the term "power-driven" include equipment, tools, etc. powered by such sources, and why or why not?

3. In addition, consideration is being given to two clarifying modifications which would incorporate existing Departmental enforcement policy into the regulations. Section 570.34(b)(7) prohibits 14- and 15-year-olds from working in freezers and meat coolers. Such workers are prohibited from working as dairy stock clerks, meat

clerks, deli clerks, produce clerks, or frozen-food stock clerks where their duties would require them to enter and remain in coolers or freezers for prolonged periods. Inventory and cleanup work involving prolonged stays in freezers and coolers also is prohibited. On the other hand, food preparers in fast food restaurants or cashiers in grocery stores whose duties require entry to such refrigeration equipment only momentarily to retrieve items are not considered as working in coolers and freezers for enforcement purposes. Because this traditional interpretation of the "cooler and freezer" prohibition is not specifically contained in the regulations, a regulatory clarification may be appropriate.

Similarly, a regulatory clarification to reflect longstanding policy concerning solicitations for newspaper subscriptions may be appropriate. Section 13(d) of the FLSA exempts from the minimum wage, overtime, and child labor provisions (§§ 6, 7, and 12) "any employee engaged in the delivery of newspapers to the consumer." Accordingly, such work is outside the scope of the child labor regulations. However, the Department has held, on the basis of a legal opinion from the Solicitor, that the "newspaper" exemption does not apply when the minor is performing nonexempt work such as participation in a sales blitz where newspaper subscriptions are solicited outside the assigned paper route for delivery by other delivery persons. Should this enforcement position be incorporated in the provisions of Child Labor Reg. 3?

The Department recognizes the delicate balance between the value of jobs that provide positive, formative experiences, and the negative effects that excessive hours of employment of youth can have on their academic performance, and their health and well-being. Public comments, which should include supporting data whenever available, are specifically invited on such relevant factors as:

- (1) The need for safe and healthy employment opportunities for 14- and 15-year-olds;
- (2) The biological developmental factors, such as muscle coordination and attention span, present in 14- and 15-year-olds which should be considered with regard to their conditions of employment;
- (3) The educational needs of 14- and 15-year-olds and the effect on their academic success of longer and/or later hours of work;
- (4) The correlation between longer and/or later hours of work and the safety and health of 14- and 15-year-olds;
- (5) The correlation between employment opportunities for 14- and 15-year-olds and

their personal and educational development; and

(6) The potential effects of specific changes in the regulations on the employment opportunities of 14- and 15-year-olds.

II. Nonagricultural Hazardous Occupations Orders for the Employment of Youth Under 18 Years of Age

The first seven HOs were developed under the direction of the Children's Bureau between 1939 and 1946. In 1946, authority for the program was transferred from the Children's Bureau to the Department of Labor under Reorganization Plan No. 2. HOs 8 through 17 were issued by the Bureau of Labor Standards between 1950 and 1963. In the intervening years, the Department has made some clarifying modifications to these HOs that largely incorporate Departmental interpretations and enforcement policy, and hazardous occupations in agricultural were promulgated in 1970.

As a result of various recommendations made by the Department's Child Labor Advisory Committee (CLAC), a notice of proposed rulemaking was published to clarify or modify HO 2, HO 10, and HO 12 on October 23, 1990 (55 FR 42812). The final rule, published on November 20, 1991 (56 FR 58626), clarified the existing HOs to:

- (1) Eliminate exemption procedures contained in HO 2 which allowed minors under 18 years of age to work as school bus drivers;
- (2) Specify that restaurants, fast food establishments, and other retail establishments are subject to HO 10 prohibiting minors under the age of 18 from using power-driven meat processing equipment;
- (3) Specifically provide that meat slicers are meat processing equipment within the meaning of the HO 10 prohibitions; and
- (4) Amend HO 12 to expressly prohibit minors under the age of 18 from using power-driven paper baling machinery in the processing of waste paper.

The CLAC made a number of additional recommendations which were not included in the HO 2, 10, and 12 rulemaking. For example, the CLAC recommended that HO 10 be amended to also include bacon slicing machines in the list of prohibited machines, and to prohibit the use of such machines without regard to the purpose of their use, i.e., power-driven meat processing machines used primarily for processing products other than meat. The CLAC also was of the view that food processing in industries other than meat

processing, such as poultry, fish, and seafood processing, should be studied by the Department to determine the need for protecting young workers from hazardous activity. With respect to HO 2, the CLAC made several recommendations, including defining and delimiting the terms "occasional and incidental" driving and "outside helper," specifically prohibiting the operation of trucks on private property, and specifically excluding motorcycles, mopeds, or similar vehicles from the "occasional and incidental" exception. With respect to HO 11, the CLAC recommended a complete ban on the operation of all power-driven bakery machinery, and also recommended further study of power-driven paper products machines addressed in HO 12.

Of particular concern to the CLAC was the lack of sufficient and relevant data to support comprehensive review of existing HOs or findings that certain contemporary occupations, processes, machinery and worksites are particularly hazardous for employment of youths under age 18, or detrimental to their health or well-being. The lack of comprehensive statistics on minors injured in the workplace has been a longstanding concern of the Department. Historically, some limited information was generated, largely from secondary sources and statistical records from the few States that compiled worker compensation data, to support the case for each of the existing HOs. Fundamental to some of the existing HOs (e.g., HO 15, shipbreaking), however, was the notion that work found to be particularly hazardous or detrimental to the health and well-being of adult workers would be injurious to minor workers.

To address this concern, the Department is continuing its efforts to develop reliable youth injury statistics through enhancements of information reported by the Bureau of Labor Statistics (BLS). BLS is redesigning its Occupational Safety and Health Statistical reporting system to collect more comprehensive work-related injury and illness data on all workers, including young workers. This new system, the Survey of Occupational Injuries and Illnesses, will collect information from about 280,000 establishments from a sampling frame of approximately six million establishments. The new survey will include data by occupation, age, gender, race, and length of service with details on, among other things, the nature of the injury/illness, the part of body affected, the primary and secondary sources of the injury/illness, and the event or exposure leading to the injury/illness.

BLS has developed another major safety and health data reporting system with its Census of Fatal Occupational Injuries program. This data base includes information on fatally injured workers (industry, occupation, age, sex, and race) and the fatal events (nature of the injury and how it happened).

The Department believes that such injury data is essential to support ongoing comprehensive and systematic reviews of occupations, processes, machinery, and worksites which are particularly hazardous for workers under 18 years of age, or detrimental to their health or well-being. While such data will enhance the Department's ability to pinpoint patterns of injuries and illness by various characteristics, i.e., problems areas, specific information about workplaces, processes, and machines causing injuries or illness must still be identified, e.g., data can indicate that a "machine" was the object which produced injuries in a particular industry, but specific information on the type of machine and/or its peculiar characteristics may continue to be a key part of HO determinations.

The Department's review of State child labor laws supports the view of the CLAC that the existing HOs need to be revisited and that contemporary circumstances may warrant new or different protections for minors under the age of 18. The standards in those States that regulate employment under age 18 prohibit employment on certain types of machines, in work involving hazardous substances, in hazardous locations, in dangerous occupations, and in specific industries. While specific prohibitions vary widely among these States, a significant number of States have promulgated work prohibitions in areas of particular interest to the Department: At least nine States (Connecticut, Florida, Iowa, Louisiana, Maryland, Minnesota, New Jersey, New York, and Washington) prohibit exposure to carcinogenic, corrosive or toxic substances; a number of States (Arkansas, Connecticut, Delaware, Florida, Maryland, and Pennsylvania) prohibit work on electric apparatus or wiring; four States (Illinois, North Dakota, Washington and Wisconsin) now prohibit exposure to body fluids and infectious agents; and several States (Colorado, Connecticut, Florida, Minnesota, and Washington) place restrictions on work above specified heights.

Further, the Department is aware of Congressional interest in the updating of workplace protections for minors under the age of 18. The bills referred to above, H.R. 1106 and S. 86, would direct the Secretary of Labor to find and declare

HOs prohibiting the employment of minors in poultry processing, fish and seafood processing, and in the handling of pesticides. In addition, H.R. 1106 would, among other things, eliminate any exemption from the motor vehicle operation prohibition in HO 2 except for driving by a 17-year-old that is "secondary and incidental" to the minor's main occupation; and expressly apply HO 10 to restaurants and fast food establishments.

While the Department is interested in obtaining public comment on any modifications, deletions, clarifications, or other changes that may be appropriate in existing HOs, and any areas of work that should be addressed by new HOs, public comment is specifically invited on the appropriateness and feasibility of the following:

1. Food Processing

HO 10 currently prohibits the employment of youth under 18 in certain occupations involving slaughtering, meat-packing or processing, or rendering. There are no comparable restrictions involving poultry processing and fish and seafood processing. Should the Department adopt restrictions in these industries, and, if so, are there particular machines or operations which should be restricted? To what extent are minors under 18 employed in such industries, and what is the nature of the work performed? Should such restrictions encompass all food processing? Do studies, injury and illness data, etc., exist which support prohibiting the employment of minors under the age of 18 in all food processing activity?

2. Hazardous Wastes and Toxic Substances

Existing regulations do not address exposures to hazardous wastes and toxic substances in nonagricultural employment. In agriculture, the handling of or applying toxic agricultural chemicals by youth under the age of 16 is prohibited (see § 570.71(a)(9)). The model State child labor law drafted by the Child Labor Coalition, discussed above, would ban all occupations involving the loading, mixing, applying, handling, or working around or near any fertilizer, herbicides, fungicides, pesticides, insecticides, and/or any other chemical. In addition, this model legislation would prohibit the loading, handling, mixing, or applying of chemicals, including cleaning agents or disinfectants, which could result in allergic reactions, poisonings, or internal or external injuries. The use or handling of heavy metals, including

mercury and lead, would also be prohibited by the proposed model legislation.

A number of States have adopted standards along the same lines. Several States, for example, prohibit exposure to carcinogenic, corrosive, or toxic substances. Working with lead, working in the manufacturing of paint, acids or poisons, and exposure to asbestos and related substances are other areas banned by particular States.

Is there a commonly understood definition of toxic or hazardous substances, and what standards or criteria would be appropriate for use in Federal standards for workers under 18 years old? Should different standards apply to 14- and 15-year-olds? Are there data to support such standards or criteria? Should specific substances or materials be identified in an HO, or would a more generic framework be appropriate? Is an occupational and/or industry framework a reasonable alternative, and, if so, which occupations and/or industries create the greatest concerns that such exposure is detrimental to the health and well-being of youth under age 18? What are the compliance difficulties associated with limiting employment in this area, and how can they be minimized?

3. Electric Apparatus and Wiring

Available injury and illness data indicate a high incidence of fatal injuries in the construction industry resulting from electric shock. A significant number of these deaths were suffered by workers between the ages of 16 and 19. Construction industry accidents involving electric shock are attributed to working directly with electricity, using hand held power driven tools, from electric cords, and from ladders, scaffolds and other equipment coming in contact with overhead wires. While the current child labor regulations do not deal with electricity, at least six States prohibit young workers from working with electric apparatus and wiring.

Should consideration be given to establishing a prohibition of such activity in the construction industry? Why? Should a broad-based generic prohibition be considered as opposed to occupational-specific prohibitions, and, if so, how should the prohibition be formulated? Should an exemption be permitted for employment of 16- and 17-year-old apprentices and student learners as in the case of certain other HOs (HOs 5, 8, 10, 12, 14, 16, and 17)?

4. Heights

Under HO 16, all occupations in roofing operations are prohibited. The

HO's prohibition does not include gutter and downspout work; the construction of the sheathing or base of roofs; or the installation of television antennas, air conditioners, exhaust and ventilating equipment, or similar appliances attached to roofs.

Several States currently restrict work above certain heights by young workers. These standards either involve work performed at heights above 10 feet or at heights 6 feet above ground, and include elevated surfaces such as scaffolds and ladders.

While work in roofing occupations is specifically prohibited by HO 16, work in other occupations requiring work on a roof are not. Should all occupations involving work on roofs be prohibited? If so, why? As above, should consideration be given to the possible development of a generic restriction with cross-industry application or to particular occupations and/or industries, e.g., the construction industry? Also, should an exemption be permitted for employment of 16- and 17-year-old apprentices and student learners?

5. Body Fluids and Infectious Agents

The States of Wisconsin and Washington have prohibited all minors from working in occupations involving exposure to body fluids including blood or infectious agents, and in 1993 the States of North Dakota and Illinois banned such employment for minors under the age of 16. Other States accomplish a similar objective using an industry/occupation approach. In Virginia, for example, minors under the age of 16 cannot work as laboratory helpers, therapists, orderlies, or nurses' aides in any hospital, nursing home, clinic, or other establishment providing care for resident patients. Minors under the age of 18 are prohibited by the State of Washington from employment in the occupation of nurses' aid, except as a student or after training, and by the State of Wisconsin from employment in hospitals and nursing homes. The model State law drafted by the Child Labor Coalition, referred to above, would ban all occupations involving the handling or storage of blood, blood products, body fluids and body tissues, and medical or other dangerous wastes.

What evidence exists to support a finding that such exposures are particularly hazardous, or detrimental to the health or well-being of young workers, or that they are at risk in the absence of work prohibitions? Are other governmental safeguards, i.e., standards established by the Occupational Safety and Health Administration (OSHA), sufficient to protect minors? As above, would an occupation/industry-specific approach, in contrast to a generic formulation, be more feasible, and, if so, why?

6. Student-Learner Exceptions

Another area of the regulations under review concerns the student-learner provisions in § 570.50(c). Certain of the HOs (HO 5, 7, 10, 12, 14, 16, and 17) contain an exemption for the employment of student-learners between the ages of 16 and 18. For the exemption to apply, §§ 570.50(c)(2)(i) and (ii) require a written agreement which provides that the work of the student-learner in a vocational training program involving these otherwise prohibited occupations and activities must be "incidental" to the training and that the work is "intermittent and for short periods of time." The Department is seeking comment on whether there is a need for changes to these two requirements for student-learners participating in programs under statewide School-to-Work Opportunities systems advocated by the School-to-Work initiative jointly sponsored by the Departments of Education and Labor (see 59 FR 5266 (February 3, 1994) and 59 FR 11154 (March 9, 1994)). Programs developed under this initiative are intended to give youth access to education and training opportunities that will prepare them for high-skill, high-wage careers. The Department solicits public comment on whether any changes are needed to these two requirements in order to facilitate this objective. The changes being considered would be limited to student-learners under School-to-Work Opportunities programs and would affect only those HOs which have traditionally included a student-learner exception. School-to-Work Opportunities programs would remain subject to the requirements that

the activity be performed under the direct and close supervision of a qualified and experienced person, that safety instructions be given by the school and correlated by the employer with on-the-job training, and that a schedule of organized and progressive skill development activities be prepared. Also, work done in prohibited occupations would be an essential and integral part of the student-learner's training program. If there are no changes made to the student-learner exception, would this significantly foreclose school-to-work training opportunities? If this were the case, what other alternatives should the Department consider to facilitate the effectiveness of employment in the School-to-Work Opportunities program?

III. General

In soliciting comments on the above or any other aspects of the child labor regulations considered appropriate by commenters, such as the HO 10 exemption for bacon-slicing machines, the Department is specifically interested in data, reports, cost-benefit analyses, studies and other documentation which support the positions taken or otherwise relate to the Department's objective to develop updated, realistic health and safety standards for today's young workers. Any impact on school-to-work transition programs should also be discussed.

This document was prepared under the direction and control of Maria Echaveste, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 570

Child labor, Child labor occupations, Employment, Government, Intergovernmental relations, Investigations, Labor, Law enforcement, Minimum age.

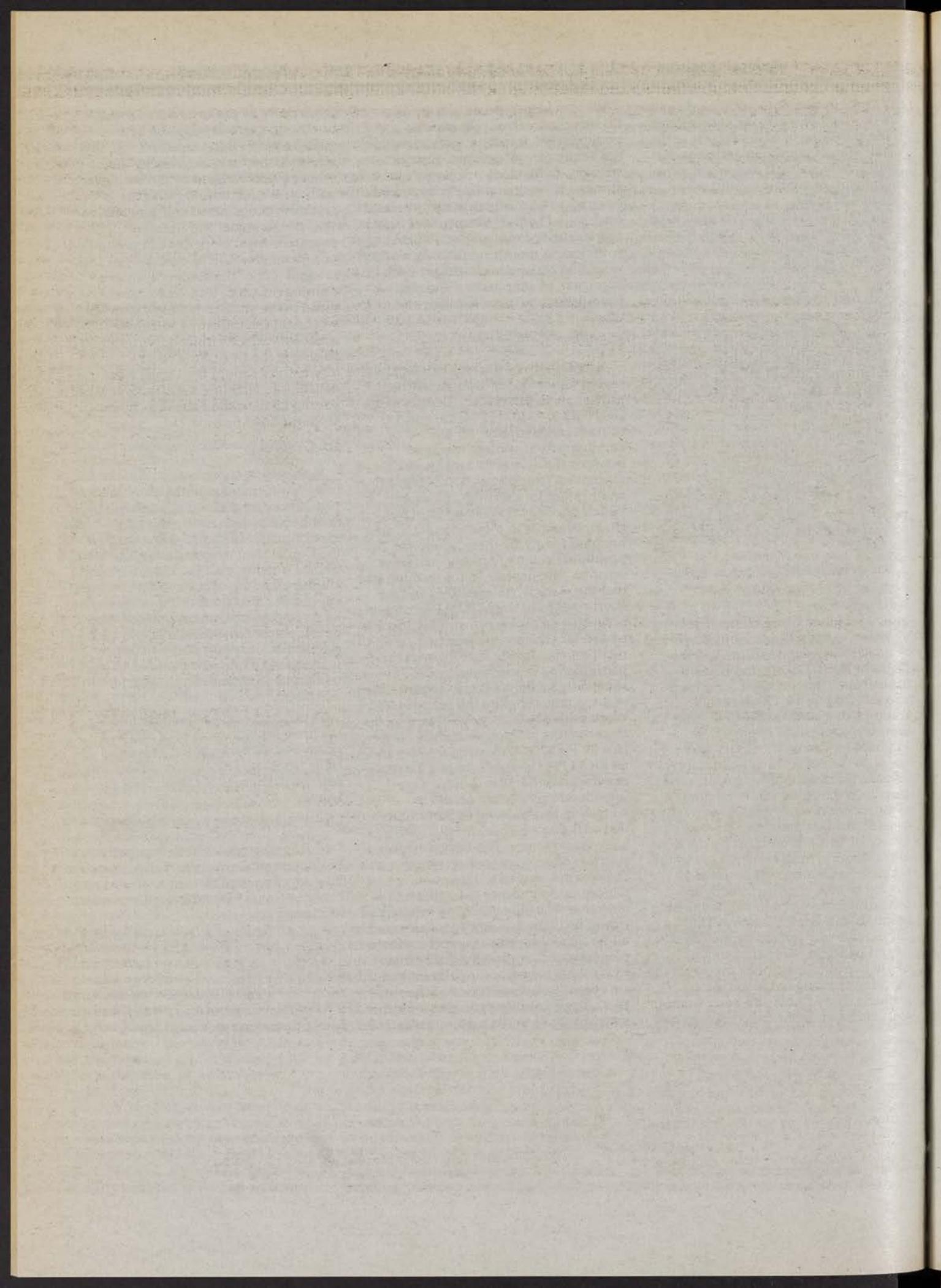
Signed at Washington, DC, on this 4th day of May, 1994.

Maria Echaveste,

Administrator, Wage and Hour Division.

[FR Doc. 94-9947 Filed 5-12-94; 8:45 am]

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Federal Register

Friday
May 13, 1994

Part III

Federal Trade Commission

16 CFR Part 305

Rules Concerning Disclosures of
Information About Energy Consumption
and Water Use for Certain Home
Appliances and Other Products Required
Under the Energy Policy and
Conservation Act; Final Rule

FEDERAL TRADE COMMISSION

16 CFR Part 305

RIN 3084-AA26

Rules Concerning Disclosures of Information About Energy Consumption and Water Use for Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission ("Commission") issues final rules that add general service fluorescent lamps, medium base (integrally ballasted) compact fluorescent lamps, and general service incandescent lamps (both reflector and nonreflector) to the list of products subject to provisions of the above referenced rule, commonly referred to as the Appliance Labeling Rule ("Rule"). Lamps often are referred to as "light bulbs" or "electric lights." This action is taken pursuant to the Energy Policy Act of 1992 ("EPA 92"), which directed the Commission to prescribe, by April 25, 1994, rules requiring such lamp products to be labeled with disclosures that will enable purchasers to select the most energy efficient lamps that meet their requirements. At the same time, the Commission temporarily stays § 305.8(a)(3) of the Rule, which requires manufacturers to file annual reports, until the U.S. Department of Energy adopts test procedures for lamps under EPA 92. The Commission also exempts from the requirements of §§ 305.11(e) and 305.14(d) of the Rule, which require disclosures on labels and in catalogs, those lamp products that will be eliminated from the market as of October 31, 1995, by minimum efficiency standards specified in EPA 92.

EFFECTIVE DATE: May 15, 1995.

FOR FURTHER INFORMATION CONTACT: Kent C. Howerton, James G. Mills, or Terrence J. Boyle, Attorneys, Federal Trade Commission, Bureau of Consumer Protection, Division of Enforcement, Room S-4631, 601 Pennsylvania Ave., NW., Washington, DC 20580, telephone numbers 202-326-3013, 202-326-3035, and 202-326-3016, respectively.

SUPPLEMENTARY INFORMATION:

I. Introduction

EPA 92¹ amends in several respects the Energy Policy and Conservation Act

¹ Public Law 102-486, 106 Stat. 2776, 2817-2832 (Oct. 24, 1992) (codified in 42 U.S.C. 6201, 6291-6309).

of 1975 ("EPCA"), which requires the Commission to prescribe labeling rules for certain major household appliances and other products.² The EPA 92 amendments to EPCA direct the Commission, within 18 months of the statute's enactment, to prescribe rules requiring that certain types of lamp products be labeled with "such information as the Commission deems necessary to enable consumers to select the most energy efficient lamps which meet their requirements."³ Pursuant to this statutory directive, the Commission published a Notice of Proposed Rulemaking ("NPR") on November 15, 1993, soliciting written public comments on proposed amendments to the Appliance Labeling Rule ("Rule"), 16 CFR part 305 (1993), to include these categories of lamp products.⁴ The Commission also conducted a Public Workshop-Conference ("Workshop") on January 19, 1994, to discuss the proposed amendments, and accepted supplemental written comments from the Workshop participants following the completion of the Workshop.

After evaluating the written comments, the transcript of the Workshop, and the supplemental comments, the Commission is amending the rule to impose labeling and other disclosure requirements for the lamp products referenced in EPA 92. The amendments are discussed in detail in part IV, below. The amendments appear in "Text of Amendments," below. The Commission also has determined that the final rules announced today overlap certain provisions of the Commission's pre-existing Light Bulb Rule pertaining to the required disclosure format for wattage, light output, and laboratory life ratings and to the voltage level at which those ratings are to be tested.⁵ Following this proceeding, the Commission will consider whether any additional action

² 42 U.S.C. 6291 *et seq.* EPCA also has been amended by the National Energy Conservation Policy Act of 1978 ("NECPA"), Public Law 95-619, 92 Stat. 3258 (1978); the National Appliance Energy Conservation Act of 1987 ("NAECA 87"), Public Law 100-12, 101 Stat. 103 (1987); and the National Appliance Energy Conservation Amendments of 1988 ("NAECA 88"), Public Law 100-357, 102 Stat. 671 (1988).

³ 42 U.S.C.A. 6294(a)(2)(C)(i) (West Supp. 1993). Pursuant to other EPA 92 amendments to EPCA, the Commission also amended the Rule to require the disclosure of water usage rates for certain plumbing products. 58 FR 54955 (1993).

⁴ 58 FR 60147 (1993).

⁵ Prior to EPA 92, the Commission issued a rule, known as the "Light Bulb Rule," governing the most common types of incandescent lamps. Trade Regulation Rule for the Incandescent Lamp (Light Bulb) Industry, 16 CFR part 409 (1993); see 35 FR 11784 (1970). The labeling rules announced in this notice duplicate certain disclosures required by the Light Bulb Rule.

is necessary concerning the Light Bulb Rule.

II. Background

A. Overview of the Appliance Labeling Rule

EPCA, enacted in 1975, is generally designed to promote improved energy efficiency of consumer products. 42 U.S.C. 6201 (1988). As amended by EPA 92, it establishes energy consumption standards or water use standards for certain categories of major home appliances and other products, 42 U.S.C.A. 6295 (West Supp. 1993), and directs the U.S. Department of Energy ("DOE") to prescribe test procedures to measure the energy consumption or water use of those products. 42 U.S.C.A. 6293 (West Supp. 1993). EPCA also directs the Commission to prescribe, or in some cases to consider prescribing, rules requiring appliances and other products to be labeled with disclosures of estimated annual energy cost, another useful measure of energy usage or efficiency, or of water use rates. 42 U.S.C.A. 6294 (West Supp. 1993).

Following enactment of EPCA in 1975, the Commission adopted the Appliance Labeling Rule.⁶ The Rule requires that certain major home appliances, including furnaces, refrigerators and air conditioners, be labeled with EnergyGuides.⁷ In addition, the Rule requires fluorescent lamp ballasts to be labeled or marked with the symbol "E" enclosed in a circle, to denote that the ballast meets an energy efficiency standard established under EPCA.⁸ The Rule, as

⁶ 44 FR 66466 (1979). The Commission has amended the Rule on several occasions to add labeling requirements for additional product categories. 52 FR 46888 (1987) (adding a new product category of central air conditioners and heat pumps and two additional subcategories of furnaces, pulse combustion furnaces and condensing furnaces); 54 FR 28031 (1989) (adding a new product category of fluorescent lamp ballasts); and 58 FR 54955 (1993) (adding new product categories of showerheads, faucets, water closets and urinals).

⁷ For example, labels for refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers, and water heaters must disclose the estimated annual operating cost (e.g., "\$240.00"). 16 CFR 305.11(a)(5)(i)(E). Labels for room air conditioners, central air conditioners, heat pumps, and fact sheets for furnaces, by contrast, must disclose the energy efficiency rating (e.g., "10.5" for a central air conditioner or "96.5" for a furnace). 16 CFR 305.11(a)(5)(i)(E), 305.11(a)(5)(iii)(C), 305.11(b)(3)(v). In two separate proceedings, the Commission is considering proposals to amend the current disclosure requirements for refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers, water heaters and room air conditioners, 53 FR 22106 (1988) and 58 FR 12818 (1993), and to issue labeling rules for pool heaters, instantaneous water heaters, and heat pump water heaters, 58 FR 7852 (1993).

⁸ 16 CFR 305.11(d). A fluorescent lamp ballast is a device that is used to start and operate fluorescent

recently amended, also requires showerheads, faucets, water closets and urinals to be marked permanently and/or labeled with certain disclosures about their water use.⁹

Except for fluorescent lamp ballasts, the Rule requires catalogs and point-of-sale promotional materials for products covered by the Rule to contain disclosures of required energy consumption and efficiency information or water use information.¹⁰ Further, the Rule requires, for furnaces, disclosure of energy usage information on fact sheets, 16 CFR 305.11(b), and, for central air conditioners and heat pumps, similar disclosures on fact sheets or in industry directories, 16 CFR 305.11(c). For fluorescent lamp ballasts, the Rule requires catalogs and point-of-sale promotional materials to contain the same symbol that is required on labels, 16 CFR 305.13(c), 305.14(c).

EPCA authorizes the Commission to assess monetary civil penalties for violations of the Rule. 42 U.S.C. 6303(a), (d) (1988). The Rule provides that manufacturers or private labelers who knowingly distribute products covered by the Rule that are not properly labeled are subject to a penalty of not more than \$100 for each unit. 16 CFR 305.4(a)(1). Manufacturers, distributors, or retailers who knowingly remove or make illegible a required label similarly are subject to a penalty of not more than \$100 for each unit. 16 CFR 305.4(a)(2). Manufacturers or private labelers who fail to include required disclosures in their catalog advertising are subject to a penalty of not more than \$100 per day. 16 CFR 305.4(b)(5). Manufacturers or private labelers who fail to keep records or provide reports or product samples as specified by the Rule also are subject to a penalty of not more than \$100 per day. 16 CFR 305.4(b)(2). EPCA also grants to the U.S. District Courts authority to issue injunctions against such violations. 42 U.S.C. 6304 (1988).

B. Lamp Labeling Amendments to Appliance Labeling Rule Required by EPA 92 Amendments to EPCA

The EPA 92 amendments to EPCA require that the Commission issue labeling rules no later than April 25, 1994, for "general service fluorescent lamps," "medium base compact fluorescent lamps," and "general service incandescent lamps," as those terms are defined in EPCA. 42 U.S.C.A.

lamps by providing a starting voltage and current and limiting the current during normal operations. 16 CFR 305.3(j).

⁹ 58 FR at 54965-66; to be codified at 16 CFR 305.11(e).

¹⁰ 58 FR at 54964; to be codified at 16 CFR 305.13(a), .14(a)-(b), (d).

6294(a)(2)(C)(i) (West Supp. 1993). These are the lamps used in the majority of household and commercial settings. See Part IV.A.1.-3, below. The lamp labeling rules must require conspicuous disclosure on the packaging of the lamp of "such information as the Commission deems necessary to enable consumers to select the most energy efficient lamps which meet their requirements." *Id.* The rules must apply to lamp products manufactured after the twelve month period beginning on the date of publication of the rule. *Id.* The Commission also is requiring disclosures in catalogs from which these lamp products can be ordered.

C. Requirements of Light Bulb Rule

The Light Bulb Rule covers, with some exceptions, the category of general service incandescent (nonreflector) lamps.¹¹ It does not cover general service fluorescent lamps, medium base compact fluorescent lamps, or general service incandescent reflector lamps. The EPA 92 amendments require the Commission to issue labeling rules for all of these lamps.¹²

The Light Bulb Rule requires that package containers disclose clearly and conspicuously the enclosed bulb's electrical energy consumption expressed in average initial wattage, light output expressed in average initial lumens, and average laboratory life expressed in hours.¹³ It specifies placement and size of the disclosures on packages.¹⁴ It also requires that the disclosures of the bulb's wattage, light output, and laboratory life be made in accordance with the requirements of a specific federal purchase specification, and that the disclosures be based upon "generally accepted and approved test methods and procedures."¹⁵ Finally,

¹¹ 16 CFR 409.1 n. 3.

¹² Thus, today's amendments apply to: (1) General service incandescent (reflector and nonreflector) lamps; (2) medium base (integrally ballasted) compact fluorescent lamps; and (3) general service fluorescent lamps.

¹³ 16 CFR at 409.1(a). If lamps are sold without sleeves or packaging, or are sold in universal or interchangeable sleeves or packaging without the information listed above, then all these disclosures must appear clearly and conspicuously on the lamps themselves. *Id.* at 409.1(a)-(b).

¹⁴ *Id.* at 409.1 n. 4.

¹⁵ *Id.* at 409.1 n. 1. For multiple filament ("three-way") lamps, it requires that wattage and lumen ratings be disclosed for operation at each level, and that the life rating be based on the life of the first filament that fails. Because the federal purchase specification cited in the Light Bulb Rule does not cover multiple filament lamps, that Rule allows industry members to substantiate wattage, light output, and laboratory life ratings using tests that are based upon generally accepted and approved test methods. It requires disclosure of the specific method used to determine the life rating, for example, that the lamp is burned on all three

the Light Bulb Rule prohibits specific claims for these lamp products unless certain conditions are met.¹⁶

The Light Bulb Rule remains effective notwithstanding the labeling rules for lamp products that the Commission now adopts. The Commission does, however, note two provisions of the Light Bulb Rule that are different from the lamp labeling rules. The first concerns the format requirements for disclosing the design wattage, light output and laboratory life ratings of general service incandescent nonreflector lamps. The second provision concerns the Light Bulb Rule's requirement that the testing for, and required disclosures of, wattage, light output and laboratory life ratings of general service nonreflector lamps be at the lamp's design voltage. The rules announced today also prescribe that these required ratings disclosures must be made in a specified manner and must be based on testing at 120 volts, regardless of the design voltage. Manufacturers are permitted to provide these ratings based on the design voltage. Because these different rule provisions are not contradictory, manufacturers will be able to comply with both without incurring significant additional costs.¹⁷ Following this proceeding, the Commission will decide what further action, if any, it should take concerning the Light Bulb Rule.

D. Procedures Used in Rulemaking Proceeding

In the NPR, the Commission invited interested persons to submit by December 30, 1993, written comments on any issue of fact, law or policy that might have bearing upon the proposed lamp labeling rules. The Commission also announced in the NPR that the Commission's staff would conduct a Workshop, with the assistance of a neutral, third-party facilitator, to afford Commission staff and interested parties an opportunity to discuss issues raised

positions equally or that it is based on the life of the major filament (medium light level) of the lamp. *Id.*

¹⁶ *Id.* at 409.1(c)-(d). For example, § 409.1(c) prohibits representations that savings either in lamp cost or cost of light will result from the use of certain lamps because of the lamps' life or light output unless specific factors are taken into account and clearly and conspicuously disclosed.

¹⁷ The requirement to provide disclosures at 120 volts on lamps that have a different design voltage affects a very small segment of the market. Further, those manufacturers who make 125 or 130 volt lamps have a market incentive to provide the ratings at their design voltages whether or not it is required. Furthermore, the various size specifications set by the Light Bulb Rule only prescribe minimum sizes for these rating disclosures, which prevents the disclosures specified by today's rules from becoming too small.

in the rulemaking proceeding, particularly areas of significant controversy or divergent opinions that were raised in the written comments. The Commission announced that the discussion during the Workshop would be transcribed and the transcription would be placed on the public record. The NPR directed persons interested in participating in the Workshop to notify the Commission staff by December 15, 1993.¹⁸

The Workshop was to focus primarily on considering what information might be "necessary to enable purchasers to select the most energy efficient lamps which meet their requirements," where the disclosures should be made, and the manner and layout for making the disclosures. Participants in the Workshop also were to be afforded an opportunity to address additional issues raised in the proceeding. The Workshop, however, was not intended to achieve a consensus among participants or between participants and Commission staff with respect to any issue raised in the rulemaking proceeding. The Workshop instead was intended to elicit information on the basis of which the Commission could determine how to design the lamp labeling rules.

The Workshop took place at the Federal Trade Commission, Pennsylvania Avenue and Sixth Street, NW., Washington, DC, on January 19, 1994. With the following exceptions, the proceeding was conducted as explained in the NPR. First, because of the limited number of parties who requested to participate in the Workshop, all parties who timely submitted requests to participate, and timely filed written comments, were selected. Second, the Commission allowed any interested party who attended the Workshop to make limited oral presentations. Third, in response to a petition from the National Electrical Manufacturers' Association ("NEMA"),¹⁹ the Commission extended the deadline for participants and others who made oral presentations during the Workshop to submit supplemental written comments from 24 hours to one week following the close of the Workshop.²⁰

E. Identification of Parties Who Filed Written Comments

The Commission received comments responding to the NPR from industry members, trade associations, energy and

environmental interest groups, federal and state agencies, utility companies, testing laboratories, private standards-setting organizations, universities and other interested parties. The following parties filed written comments:²¹ (1) Angelo Brothers Company ("Angelo") (G-1); (2) American Council for an Energy-Efficient Economy ("ACEEE") (GG-1); (3) Inchcape Testing Services, ETL Testing Laboratories, Inc. ("ETL") (GG-2); (4) General Electric Company ("GE") (G-2); (5) Henry Gluckstern, Esq. ("Gluckstern") (GG-3); (6) Green Seal ("Green Seal") (GG-4); (7) The Home Depot ("Home Depot") (GG-5); (8) Illuminating Engineering Society of North America ("IES") (GG-6); (9) Lawrence Berkeley Laboratory ("LBL"), University of California (GG-7); (10) Massachusetts Office of the Attorney General ("MA AG") (GG-8); (11) Minnesota Department of Public Service ("MN DPS") (GG-9); (12) Missouri Department of Natural Resources ("MO DNR") (GG-10); (13) Dickstein, Shapiro & Morin, on behalf of National Electrical Manufacturers Association ("NEMA") (G-3); (14) New England Power Service ("NEPS") (GG-11); (15) Northwest Real Group ("NW REAL"), on behalf of Eugene Water and Electric Board, Grays Harbor Public Utility District, Idaho Department of Water Resources (Energy Division), Idaho Power Company, NW Power Planning Council, Oregon Public Utility Commission, PacifiCorp, Public Power Council, Puget Sound Power and Light Company, Salem Electric, Seattle City Light, and Snohomish County Public Utility District # 1 (GG-12); (16)

²¹ All public documents are filed in the Commission's File No. R611004. Staff submissions for the public record are filed in category "C. Miscellaneous Staff Materials Assembled After NPR Filed." Industry comments are filed in category "G. Lamp Products Proceeding—Industry Comments." Other comments are filed in category "GG. Lamp Products Proceeding—Comments from Other Sources." Documents are numbered sequentially, such as Document No. G-1, Document No. G-2. In this notice, comments are cited by an identification of the commentor, the comment number and the relevant page number(s), e.g., "Angelo, G-1, 1-3." Supplemental comments are designated in addition as: "[Supp.]" The Workshop transcript is filed in category "L. Transcripts of Public Hearings." Discussion by more than one party in the transcript is cited by a reference to the transcript and the relevant page number(s), e.g., "Tr., 15-20." Discussion by one party in the transcript is cited by an identification of the party, a reference to the transcript and the relevant page number(s), e.g., "Osram (Tr.), 80-81." Although the following comments were submitted shortly after the initial or supplemental written comment due dates, the Commission has placed them on the public record and considered them as part of the rulemaking record of this proceeding: Panasonic, G-7; Hubbell, GG-19; SCL, GG-20; and MA AG (Supp.), GG-23. One supplemental comment, NEMA, G-17, was received on March 4. This comment has been placed on the public record of this proceeding, but is not included as part of the rulemaking record.

Oregon Department of Energy ("OR DOE") (GG-13); (17) Oregon State University ("ORSU") (GG-14); (18) Osram Sylvania, Inc. ("Osram") (G-4); (19) Philips Lighting Company ("Philips") (G-5); (20) Lighting Research Center ("LRC"), Rensselaer Polytechnic Institute (GG-15); (21) Scientific Certification Systems, Inc. ("SCS") (GG-16); (22) Supreme Corporation ("Supreme") (G-6); (23) U.S. Environmental Protection Agency ("US EPA") (GG-17); (24) Washington State Energy Office ("WA SEO") (GG-18); (25) Hubbell/Lighting Division ("Hubbell") (GG-19); (26) Scientific Certification Systems, Inc. ("SCS") (GG-20) (revised version of GG-16); (27) Matsushita Electric Corporation of America ("Panasonic") (G-7).

Philips (G-14), Osram (G-15), and GE (G-16) also filed written comments in response to the separate notice published by the Commission concerning its request to OMB for approval of the collection of information burden hours imposed by the proposed lamp labeling rules under the Paperwork Reduction Act ("PRA").²²

F. Identification of Parties Who Participated in Workshop and Those Who Filed Supplemental Written Comments

The following parties were selected as participants and attended the Workshop:

- (1) Steven Nadel, Deputy Director, ACEEE. ACEEE is a nonprofit research organization that seeks to promote energy efficiency.
- (2) Barton Pasternak, Vice President of Corporate Development, Angelo. Angelo Brothers Company is the largest non-manufacturing seller and distributor of incandescent light bulbs in the United States.
- (3) W. Scott Seeley, Counsel, Gail Cohen, Product Manager for incandescent and three-way lamps, Russ Churchill, Manager, GE Lighting Institute, GE. GE is a full-line manufacturer of lamps.
- (4) Arthur Weissman, Vice President of Standards and Planning, Green Seal. Green Seal is a nonprofit environmental organization involved in labeling and standards-setting. Green Seal recently issued a standard for compact fluorescent lamps, and has certified several products under that standard.
- (5) Mark Eisen, Manager of Environmental Marketing, Home Depot. Home Depot is a home center retailer.
- (6) Rita Harrold, Director of Educational and Technical Development, and Ed Robinson,

²² 58 FR 60652 (1993).

¹⁸ 58 FR at 60163.

¹⁹ Petition dated December 15, 1993, from Mark L. Perlis, Dickstein, Shapiro & Morin, counsel for NEMA.

²⁰ Order dated Dec. 21, 1993, of Lewis R. Parker, Chief Judge, FTC. See 58 FR at 60164.

Regional Vice President, IES. IES disseminates information on the art and science of illumination, through publications and educational programs.

(7) Barbara Atkinson, LBL. LBL operates an energy analysis program that provides assistance to the U.S. Department of Energy about federal policy options and the Energy Policy Act. LBL also conducts research on lighting technologies.

(8) Bill McAvooy, Assistant Attorney General, MA AG. MA AG works with utilities such as New England Power regarding conservation programs.

(9) Mark Perlis, Counsel, NEMA. NEMA is a trade association that includes manufacturers of lamp products.

(10) Meredith Miller, NEPS. NEPS is a service company for three retail electric power companies in New England, Rhode Island, and Massachusetts, and New Hampshire. NEPS provides incentives to residential customers to encourage compact fluorescent lamp purchases.

(11) Peter Bleasby, Director of Industry Relations and Standards, Osram. Osram manufactures most types of lamp products.

(12) Al Rousseau, Manager of Technical Relations, Philips. Philips manufactures most types of lamp products.

(13) Bob Davis, Research Assistant Professor, LRC. LRC conducts an efficient lighting research and development program.

(14) Bruce Siegal, President, Supreme. Supreme is a small family-owned lamp manufacturer, specializing in the manufacture of long-life lamps specifically designed for vibration service and rough surface applications.

(15) William VonNeida, US EPA. US EPA conducts a "Green Lights" program as its flagship voluntary pollution prevention program to reduce greenhouse gas emissions. In the program, US EPA encourages businesses, government, and other organizations to use energy-efficient lighting.

In addition to the participants listed above, Larry Galowin, Laboratory Accreditation Program, National Voluntary Laboratory Accreditation Program, National Institute of Standards and Technology ("NIST"), U.S. Department of Commerce, also attended and made oral presentations during the Workshop.

The following parties who made oral presentations during the Workshop also filed supplemental written comments after the Workshop: ACEEE (GG-21); Angelo (G-8); GE (G-9); LBL (GG-22); NEMA (G-10); Osram (G-11); Philips

(G-12); Supreme (G-13); MA AG (GG-24); and NIST (GG-23).

III. Disclosures and Other Requirements Proposed in NPR

In informal communications with the Commission's staff during the period after EPA 92 was enacted and before the Commission published the NPR, representatives of several industry members and environmental interest groups suggested various labeling requirements for lamps. Two of the more specific suggestions were described in the NPR, along with the Commission's proposals.²³

A. NEMA's Proposals

NEMA suggested that the Commission adopt particularized disclosure requirements for different types of lamp products.²⁴ For general service fluorescent lamps and incandescent reflector lamps, for which EPCA establishes energy conservation standards, NEMA suggested disclosure only of the encircled capital letter "E," similar to the current requirement for fluorescent lamp ballasts.²⁵ This symbol would designate that the product meets the established energy conservation standards. In support of this proposal, NEMA stated that the performance of all the interchangeable general service fluorescent lamps that will remain on the market after the energy conservation standards established by EPA 92 become effective²⁶ will vary only slightly.

NEMA suggested that the designation be indicated in the manufacturer's catalogs and other printed material, and that the encircled "E" be etched on the product itself, no smaller than the lamp designation information for wattage. NEMA suggested that, if the Commission cannot require etching on the product, it should require that the packing carton containing one or more lamps be marked with the encircled "E," in color contrasting ink and no smaller than the manufacturer's name or logo.

For general service incandescent lamps (other than reflector lamps) and medium base compact fluorescent lamps, NEMA suggested that "light output" (in lumens), watts, life, design volts, and bulb quantity contents (*i.e.*, number of bulbs in the package) be disclosed according to specified format requirements on at least one panel of the outer sleeve of the package. One or more

of these items also could be disclosed on the remaining panels. For general service incandescent lamps (other than reflector lamps), the term "lumens," in the specified format, would follow beside or below the numerical value for light output. For medium base compact fluorescent lamps, the term "lumens (base-up)" would be used instead of "lumens."²⁷

NEMA also suggested that the labeling rules require an "energy efficiency index" (consisting of "lumens per watt," rounded to the next highest number, and "yearly energy cost" of operating the lamp) on packages of general service incandescent lamps (other than reflector lamps) and medium base compact fluorescent lamps.²⁸ The energy efficiency index would include the disclosure: "Lumens per watt." The yearly energy cost would include the disclosure: "At 4 hours per day at \$.10 per kilowatt-hour."

NEMA further suggested that, if the manufacturer elects to place the energy efficiency label on a panel other than the primary display panel of the package, it should be required to provide an additional "energy flag" on the primary display panel. The energy flag would include only the "energy index" value (*i.e.*, lumens per watt).²⁹ The designation "Energy Index" would be printed with the energy index value inside the flag, and a reference to "See package back" would be printed immediately below the flag.

NEMA also suggested that the Commission require that manufacturers of all lamp products covered by the labeling rules include on the outer (packing) cases in which the lamps are shipped a label or pre-printed message stating: "Product herein tested and labeled in compliance with the Energy Policy Act of 1992" or, alternatively, with an approved symbol. NEMA suggested that the advisory statement be integrated with or be placed adjacent to the usual case contents label and included format recommendations.

B. ACEEE's Proposals

ACEEE also submitted specific labeling suggestions for discussion

²⁷ See note 136, below.

²⁸ The "energy efficiency index" would be a square, at least one inch by one inch, divided in the middle by a horizontal line. The lumens per watt would appear in the top portion of the square, and the yearly energy cost in the bottom. The letters and numbers would be printed in black (or whatever dark color is used in creating the Universal Product Code symbol). See Illustration 1, 58 FR at 60153.

²⁹ The "energy flag" would be a right triangle one inch in height and resting on a perpendicular side one and one-half inches in length. See Illustration 2, 58 FR at 60154.

²³ 58 FR at 60152-60.

²⁴ NEMA, C-41, C-42.

²⁵ See Part II.A, above.

²⁶ The effective dates are April 30, 1995, for some lamp products, and October 31, 1995 for other lamp products. 42 U.S.C.A. 6295(j)(1) (West Supp. 1993).

purposes.³⁰ ACEEE stated that because purchase patterns vary for residential and commercial purchasers, different labeling approaches would probably be warranted. It pointed out that commercial purchasers generally have a greater technical understanding about lamp products, whereas residential purchasers generally know very little about lighting and need information that is non-technical and easily understood. It also noted that residential purchases generally are made through grocery, hardware, and other retail outlets, where products in boxes or other packaging are selected by the purchaser off the shelf in small quantities. ACEEE stated that, in contrast, commercial purchasers generally order medium to large quantities of lamps from lighting distributors, using information in catalogs and sales brochures, as well as information provided orally by sales personnel. These commercial purchases often are shipped in case quantities, and printed packages for individual lamps are rare.

ACEEE suggested that two types of information appear on labels for residential purchasers: annual operating cost and relative light output. It proposed that relative light output be measured by comparing the lumen output of a product to a reference lamp, with a reference lamp defined for each common type and wattage of lamp.³¹ It also suggested that annual operating cost include both the purchase cost (manufacturer's suggested list price prorated for an assumed annual hours of operation) and annual electricity cost (for average operating hours and electricity cost).³² ACEEE suggested that use of an annual operating cost metric would allow purchasers to compare products with different lives and costs.

ACEEE further stated that a lumens-per-watt disclosure probably should not be used for residential purchasers. ACEEE maintained that such a disclosure could encourage residential purchasers to buy higher wattage lamps that have higher lumens-per-watt

ratings, when a lower wattage lamp with a lower lumens-per-watt rating might provide sufficient light for their needs and cost less to operate at the lower wattage. For commercial purchasers, on the other hand, ACEEE suggested that a lumens-per-watt rating probably would be acceptable because catalog display space is likely to be very limited and commercial purchasers are more sophisticated.

ACEEE supported disclosure of relevant information on lamp packages and other point-of-sale materials that provide information on particular products, such as fact sheets and special displays for residential sales. For commercial sales, it suggested requiring the information in catalogs and other sales materials that provide information on specific products. Finally, ACEEE recommended that the Commission specify label content and size, but that the Commission allow manufacturers to develop their own customized designs, consistent with Commission specifications.

C. Commission's Proposals

1. Disclosure Requirements

Based on the options discussed in the NPR about the kinds of information purchasers need to select lamp products and the proposals suggested by interested parties (as summarized above), the Commission proposed requiring disclosure of two types of information for lamp products covered by the labeling rules. One category included basic performance information (such as light output, which is needed to select lamp products that meet purchasers' requirements), and the other category included various supplemental disclosures designed to further facilitate selection of the most energy efficient lamp. Each category is discussed below.

a. Basic disclosures. The Commission proposed requiring that lamp package labels and catalogs conspicuously disclose the following information: (1) Lumens (whether identified by that term, or another such as "brightness" or "light output"); (2) watts; (3) design volts (if other than 120 volts); (4) average life (in hours); and (5) number of items in the package.³³ For multiple filament ("three-way") general service incandescent lamps, the Commission proposed requiring that lumens, watts, and design volts be disclosed for operation at each level, and that the life rating be based on the life of the first filament that fails. Finally, the Commission proposed that the following statement appear on package

labels and in catalogs from which the lamps could be ordered: "More efficient lamps may have a higher purchase price, but may cost you less overall."

b. Supplemental disclosures. The Commission proposed requiring, for all lamps to be covered by the labeling rules, that package labels and catalogs from which the lamps may be ordered also make a supplemental disclosure. The Commission proposed two alternatives for primary consideration: (1) A lumens-per-watt disclosure; or, (2) a disclosure of the estimated energy cost of the lamp based on a specified unit energy cost and use period.

The NPR explained that a lumens-per-watt disclosure (*i.e.*, the "Energy Index" that had been suggested by NEMA) has the advantage of simplicity. But, as ACEEE noted, such a disclosure could lead to lumen over-purchasing because higher wattage bulbs often produce disproportionately more lumens and thus often have a better energy index although they use more energy. The Commission stated that this drawback possibly could be avoided if the Commission required a disclosure such as: "Select the light output you require before comparing the energy index of different bulbs."

Alternatively, the Commission stated that it might require a disclosure of the estimated monetary cost of the energy used by the lamp, based on use for a specified usage period, such as a normal average life in hours of a lamp or a length of time based on average usage patterns. The advantage of an operating cost disclosure is that it would reduce to monetary terms the energy cost of a lamp product. At the same time, the Commission stated that it would consider carefully whether such disclosures effectively communicate the extent to which a higher initial bulb cost can be compensated for by lower operating costs over the bulb's life.³⁴

The Commission indicated that, although average or estimated usage patterns (*e.g.*, one year) could be used in a monetary cost of operation disclosure, there are no established usage patterns and estimated use will vary depending upon the location of the lamp. In addition, the Commission noted that it would have to determine what unit cost for electricity to use. The Commission explained that, to prevent possible confusion, it might be appropriate to require disclosure of how the estimated energy cost was determined.³⁵ The Commission recognized, however, that

³⁴ See notes 106, 108, below.

³⁵ *Id.*

³⁰ ACEEE, C-40.

³¹ For example, ACEEE suggested a 60 watt standard incandescent A-lamp as the reference lamp for a 15 watt compact fluorescent lamp. The relative light output of the compact fluorescent lamp might be 88%, based on average light output.

³² ACEEE, C-40, 3, illustrated this as follows: Assuming 1,000 hours per year of operation and \$.08 per kilowatt-hour unit electricity cost, a 15 watt compact fluorescent lamp (with a \$20 list price and 10,000 hour rated life) will have an annual operating cost of \$3.20 $\{[\$20 / (10,000 \text{ hour life} / 1,000 \text{ hours per year})] + [15 \text{ watts} \times 1,000 \text{ hours per year} / 1,000 \text{ Wh/kWh} \times \$.08 \text{ per kilowatt hour}]\}$. In comparison, a standard 60 watt general service incandescent A-lamp (with a \$1.00 list price and 1,000 hour rated life) will have an annual operating cost of \$5.80.

³³ 58 FR at 60154-56.

additional information could unduly complicate the label and not be useful.

Because some purchasers may be interested in computing lamp costs comprehensively, including consideration of the initial purchase price and replacement cost, the Commission also proposed requiring that information be provided to purchasers to enable them to determine the "estimated total operating cost" of the lamp for a standard time period. But, recognizing that purchasers desiring such information would need to make calculations for each bulb they were considering, the Commission stated that it would consider carefully the extent to which consumers actually would use the proposed disclosures in making a purchase decision. The Commission noted that, as a practical matter, consumers may disregard, or consider too complex, any disclosure requiring computations of this sort, and that any such required disclosures, therefore, may not be useful to consumers in their efforts to choose an energy efficient bulb.

2. Where Disclosures Should Be Made

In the NPR, the Commission explained that residential purchasers normally buy lamp products through retail outlets, such as hardware, home center, and grocery stores. Residential purchasers, therefore, normally have the opportunity to examine lamp product packaging prior to purchase. The disclosures proposed for packaged product labels would provide residential purchasers with the information they need to select the most energy efficient lamps that meet their requirements.

According to industry representatives, however, some products, such as general service fluorescent lamps, frequently are shipped without individual lamp sleeves or packaging other than the bulk shipping case, whether the shipment is to a commercial purchaser (who purchases through a catalog) or to a local retail store for resale of unpackaged individual lamps to residential purchasers. For these products, the Commission suggested two options. Option One would require the basic and supplemental disclosures (except for the number of items in each package) on an adhesive, hang tag, or similar type of label, attached to each unpackaged product. Option Two would require the manufacturer to include, with each bulk shipping case, statements disclosing all the required information for the enclosed products (except for the number of items in each package). Option Two also would require the

retailer to post those statements conspicuously at the point of sale in immediate proximity to the sales floor display of the lamp product.

Some sellers also sell lamp products to residential purchasers and commercial purchasers through catalogs. These purchasers will not see the disclosures on the product's packaging until the product is delivered, and may rely primarily (or solely) on information in the catalogs from which the lamps are ordered. For these purchasers, the catalog serves the same informational function as a package does for a retail purchaser. The Commission, therefore, proposed that the basic as well as the supplemental disclosures be made both on package labels and in catalogs each time each different lamp product is listed for sale.

3. Format of Disclosures

The Commission explained in the NPR that it could specify that required disclosures be made through use of a flexible standard that requires "clear and conspicuous" disclosures. Under this "performance" standard, complying firms would be free to design disclosures as they wish in response to market considerations, as long as the disclosures were clear and conspicuous. The Commission stated that, alternatively, it could require that the disclosures comply with a design format specified by the Commission.

The Commission indicated that, in choosing a format standard, it would be guided by the need to direct the purchaser's attention to the information that is most important, and the need for the information to be organized so it could be easily understood and acted upon. For example, the Commission stated that it would consider requiring that those items deemed most important to purchasers be featured on the front panel of a package label, perhaps within a graphic box, while permitting other disclosures to be placed elsewhere.

4. Substantiation and Sampling Requirements

In the NPR, the Commission proposed requiring that manufacturers follow testing and test specimen sampling procedures to be specified in the final labeling rules to substantiate all disclosures they must make on labels, catalogs and point-of-sale written materials. The Commission stated that when DOE issues testing and sampling procedures for general service fluorescent lamps and general service incandescent reflector lamps, or for any additional lamp products, the Commission would consider whether to adopt the DOE procedures as the

required substantiation under the labeling rules.³⁶ The Commission solicited comments about current industry testing and sampling procedures, such as those issued by IES and the American National Standards Institute ("ANSI"), that would be adequate in the interim to substantiate the disclosures it proposed.

To enable the Commission to determine whether required disclosures are accurate, the NPR also proposed requiring that manufacturers, upon request by the Commission, submit, at the manufacturer's expense, a reasonable number of products to any laboratory designated by the Commission. Any charge levied by the laboratory for testing, however, would be paid for by the Commission.³⁷

5. Recordkeeping and Reporting Requirements

The Commission proposed requiring that manufacturers of all covered lamp products maintain records to substantiate each item that the final rules required to be disclosed, and proposed requiring manufacturers to submit those records to the Commission within 30 days of a request. The Commission also proposed requiring that lamp manufacturers submit annual reports on or before March 1 each year. As proposed, the yearly reporting requirement would not become effective until after DOE issues test procedures for specific lamp products covered by the labeling rules. The Commission stated that it would publish a notice after DOE had issued test procedures, announcing when the initial reports would be due.

The Commission proposed requiring that each report contain the same type of information that currently is required for other categories of products covered by the Appliance Labeling Rule. To minimize the burdens imposed by this reporting requirement, the Commission proposed accepting trade association directories and similar submissions in

³⁶EPA 92 amended EPCA to establish minimum energy efficiency standards for general service fluorescent lamps and incandescent (reflector) lamps. 42 U.S.C.A. 6295(i) (West Supp. 1993). The amendments require DOE to issue specific testing procedures for these lamp products. 42 U.S.C. 6293(b)(6) (West Supp. 1993). EPCA does not establish energy conservation standards or require DOE to issue test procedures for medium base compact fluorescent lamps or general service incandescent lamps (other than incandescent (reflector) lamps). However, DOE has authority to issue test procedures for categories of products that are not specified in EPCA. 42 U.S.C. 6292(b), 6393(b)(1)(B) (1988), and to set minimum efficiency standards for those products. 42 U.S.C.A. 6295(i) (West Supp. 1993).

³⁷Based on EPCA, 42 U.S.C. 6296(b)(3) (1988), the Appliance Labeling Rule, 16 CFR 305.16, applies this requirement to other products.

lieu of individual annual reports, as it does for other product categories.

6. Other Matters

The Commission proposed amending § 305.1 of the Appliance Labeling Rule, 16 CFR 305.1, which summarizes the Rule's coverage, to include a description of the disclosures proposed for labels and catalogs. The Commission also proposed amending § 305.2 of the Rule, 16 CFR 305.2, which contains definitions of words used in EPCA, to include definitions for additional words to be used in the Rule, based on definitions in EPCA, as amended by EPA 92, 42 U.S.C.A. 6291(30) (West Supp. 1993).

IV. Analysis of Disclosures and Other Requirements Adopted by the Commission

The Commission received information from the public relating to this rulemaking proceeding from three sources: written comments filed in response to the NPR, testimony during the Workshop, and supplemental written comments following the Workshop. The discussion below includes information from all three sources, as well as documents placed on the public record by the Commission's staff during the rulemaking proceeding.

In some cases, participants in the proceeding modified their position on one or more of the issues as the rulemaking progressed. In instances in which the commentator's position on a particular issue changed, the Commission has taken the commentator's most recent comments as its final position on that issue. Similarly, whenever the Commission refers to a commentator's position on a particular issue, if it has changed since its original formulation, the Commission notes that change.

A. Lamp Products Covered by Labeling Rules

EPCA specifically defines the lamp products that are covered by the Commission's lamp labeling rules. Under EPCA, as amended by EPA 92, the Commission's labeling rules apply only to "general service fluorescent lamps," "medium base compact fluorescent lamps," and "general service incandescent lamps." 42 U.S.C.A. 6294(a)(2)(c)(i) (West Supp. 1993). These lamp products are described in more detail below.

1. General Service Fluorescent Lamps

The term "fluorescent lamp" means a lamp containing a low pressure mercury electric-discharge source in which a fluorescing coating transforms some of

the ultra-violet energy generated by the mercury discharge into light. 42 U.S.C.A. 6291(30)(A) (West Supp. 1993). EPCA includes only the following fluorescent lamps:

(i) Any straight-shaped lamp (commonly referred to as 4-foot medium bi-pin lamps) with medium bi-pin bases of nominal overall length of 48 inches and rated wattage of 28 or more.

(ii) Any U-shaped lamp (commonly referred to as 2-foot U-shaped lamps) with medium bi-pin bases of nominal overall length between 22 and 25 inches and rated wattage of 28 or more.

(iii) Any rapid start lamp (commonly referred to as 8-foot high output lamps) with recessed double contact bases of nominal overall length of 96 inches and 0.800 nominal amperes, as defined in ANSI C78.1-1978 and related supplements.

(iv) Any instant start lamp (commonly referred to as 8-foot slimline lamps) with single pin bases of nominal overall length of 96 inches and rated wattage of 52 or more, as defined in ANSI C78.3-1978 (R1984) and related supplement ANSI C78.3a-1985.

42 U.S.C.A. 6291(30)(A)(i)-(iv) (West Supp. 1993).

The term "general service fluorescent lamp" means fluorescent lamps that can be used to satisfy the majority of fluorescent applications. 42 U.S.C.A. 6291(30)(B) (West Supp. 1993). The definition specifically excludes fluorescent lamps designed and marketed for specific lighting applications.³⁸

2. General Service Incandescent Lamps

The term "incandescent lamp" means a lamp in which light is produced by a filament heated to incandescence by an electric current. 42 U.S.C.A. 6291(30)(C) (West Supp. 1993). The definition includes only the following incandescent lamps:

(i) Any lamp (commonly referred to as lower wattage nonreflector general service lamps, including any tungsten-halogen lamp) that has a rated wattage between 30 and 199 watts, has an E26 medium screw base, has a rated voltage or voltage range that lies at least partially within 115 and 130 volts, and is not a reflector lamp.

(ii) Any lamp (commonly referred to as a reflector lamp) which is not colored or designed for rough or vibration service applications, that contains an inner reflective coating on the outer bulb to direct the light,

³⁸The exclusions are: (i) Fluorescent lamps designed to promote plant growth; (ii) fluorescent lamps specifically designed for cold temperature installations; (iii) colored fluorescent lamps; (iv) impact-resistant fluorescent lamps; (v) reflectorized or aperture fluorescent lamps; (vi) fluorescent lamps designed for use in reprographic equipment; (vii) fluorescent lamps primarily designed to produce radiation in the ultra-violet region of the spectrum; and (viii) fluorescent lamps with a color rendering index of 82 or greater. 42 U.S.C.A. 6291(30)(B)(i)-(viii) (West Supp. 1993).

an R, PAR, or similar bulb shapes (excluding ER or BR) with E26 medium screw bases, a rated voltage or voltage range that lies at least partially within 115 and 130 volts, a diameter which exceeds 2.75 inches, and is either—

(I) A low(er) wattage reflector lamp which has a rated wattage between 40 and 205 watts; or

(II) A high(er) wattage reflector lamp which has a rated wattage above 205 watts.

(iii) Any general service incandescent lamp (commonly referred to as a high- or higher-wattage lamp) that has a rated wattage above 199 watts (above 205 watts for a high wattage reflector lamp).

42 U.S.C.A. 6291(30)(C)(i)-(iii) (West Supp. 1993).

The term "general service incandescent lamp" means any incandescent lamp (other than a miniature or photographic lamp) that has an E26 medium screw base, a rated voltage range at least partially within 115 and 130 volts, and which can be used to satisfy the majority of lighting applications. 42 U.S.C.A. 6291(30)(D) (West Supp. 1993). The definition specifically excludes incandescent lamps designed and marketed for specific lighting applications.³⁹ Included within the category of "general service incandescent lamps" are incandescent reflector lamps. The term "incandescent reflector lamp" means a lamp described in item (ii), above. 42 U.S.C.A. 6291(30)(F) (West Supp. 1993).

3. Medium Base Compact Fluorescent Lamps

The term "medium base compact fluorescent lamp" means an integrally ballasted fluorescent lamp with a medium screw base and a rated input voltage of 115 to 130 volts and which is designed as a direct replacement for a general service incandescent lamp. 42 U.S.C.A. 6291(30)(S) (West Supp. 1993). Thus, the definition does not include other types of compact fluorescent lamps that operate with a separate ballast, even if the lamp or the separate ballast has a medium screw base.

³⁹EPCA excludes any "general service incandescent lamp" specifically designed for: (i) Traffic signal, or street lighting service; (ii) airway, airport, aircraft, or other aviation service; (iii) marine or marine signal service; (iv) photo, projection, sound reproduction, or film viewer service; (v) stage, studio, or television service; (vi) mill, saw mill, or other industrial process service; (vii) mine service; (viii) headlight, locomotive, street railway, or other transportation service; (ix) heating service; (x) code beacon, marine signal, lighthouse, reprographic, or other communication service; (xi) medical or dental service; (xii) microscope, map, microfilm, or other specialized equipment service; (xiii) swimming pool or other underwater service; (xiv) decorative or showcase service; (xv) producing colored light; (xvi) shatter resistance which has an external protective coating; or (xvii) appliance service. 42 U.S.C.A. 6291(30)(D)(i)-(xvii) (West Supp. 1993).

B. Disclosures for Lamps Generally

Several comments stated that the main purpose of energy labeling for lamps is to encourage purchasers to move towards the purchase of more energy efficient lighting like compact fluorescent lamps.⁴⁰ The potential for energy savings through the use of more efficient lighting is high, particularly in commercial settings where lighting is the single largest source of electricity consumption. About 41 percent of electricity, and 28 percent of total energy, consumed in the commercial sector is for lighting.⁴¹ Fluorescent lamps consume about 55 percent of lighting electricity in the commercial sector,⁴² with incandescent reflector lamps consuming most of the remainder. In the residential sector, energy use for lighting is small, though not trivial, representing about seven percent of residential energy use.⁴³ Incandescent lamps provide most lighting in residences.

General service fluorescent lamps provide lighting through a system known as a luminaire. Under EPCA, the term "luminaire" means a complete lighting unit consisting of a fluorescent lamp or lamps, together with parts designed to distribute the light, to position and protect the lamps, and to connect the lamps to the power supply through a ballast. 42 U.S.C.A. 6291(29)(F) (West Supp. 1993). Compact fluorescent lamps also provide lighting through a system. For compact fluorescent lamps, the system includes the fluorescent lamp and a ballast. Some compact fluorescent lamps are sold for use with separate ballasts. The lamp labeling rules, however, cover only those defined as medium base compact fluorescent lamps, *i.e.*, those that have an integral ballast and medium screw base. Incandescent lamps also have medium screw bases. They provide lighting by heating an internal filament to incandescence by an electric current, and can be used, for example, in table or floor lamp fixtures or in ceiling or wall fixtures. Medium base (integrally ballasted) compact fluorescent lamps are meant for use as replacements for

incandescent lamps in these applications.

Increasing the efficiency of a lighting system that currently uses incandescent lamps can be accomplished by selecting a more efficient incandescent lamp, such as a more efficient halogen incandescent lamp, or a more efficient medium base compact fluorescent lamp. To the extent the efficiency of general service fluorescent lighting systems can be increased, it can be accomplished by increasing the efficiency of the lamp, the ballast or the luminaire, or a combination of those separate parts. In designing the disclosure requirements for these different lamp types, therefore, the Commission has considered the effect of the minimum energy efficiency standards specified by EPCA on the lamps that will remain on the market after the standards become effective, and how best to provide purchasers with the information necessary for them to select the most efficient lamps that meet their requirements.

Several comments stated generally that any labeling requirements for lamps should meet one or more of the following standards: Simple, uniform, comprehensible, cost-effective and based on readily available information.⁴⁴ In response to a question in the NPR, some comments favored different types of disclosures based on the category of purchaser—residential or commercial. One comment, however, specifically stated that the disclosures should be the same for both categories.⁴⁵ Most industry members supported a "bifurcated" approach to labeling (discussed in detail below), with a requirement for detailed disclosures of performance characteristics on packaging for general service incandescent lamps and compact fluorescent lamps and a requirement for disclosure of only an encircled "E" on packaging for general service incandescent reflector lamps and general service fluorescent lamps.⁴⁶ Several other comments, however, favored requiring the same detailed disclosures of performance characteristics on the packaging of all the lamp types covered by the labeling rules.⁴⁷

Two of the three categories of lamps covered by the labeling rules have medium size, screw-in bases that fit into standard screw-in lamp receptacles.⁴⁸ These are: General service incandescent (reflector and nonreflector) lamps, and medium base compact fluorescent lamps. The method of connection to the power source is the same for these types of lamps, and the Commission is prescribing similar labeling requirements for them. The Commission discusses the comments on the proposals for general service incandescent (nonreflector) lamps and medium base compact fluorescent lamps and the labeling rule requirements for them together in Part IV.C, below. The Commission discusses the comments on, and the requirements for, general service incandescent reflector lamps in Part IV.D, below. The comments and final requirements respecting the fourth type of lamp—general service fluorescent lamps—are described in Part IV.E, below.

C. Disclosures for Medium Base General Service Incandescent (Nonreflector) Lamps and Compact Fluorescent Lamps

Virtually all the comments recommended that the Commission require some version of the basic disclosures that the Commission proposed in the NPR for both general service incandescent (nonreflector) lamps and medium base compact fluorescent lamps.⁴⁹ The disclosures the Commission is requiring, each of which is discussed separately below, are: design voltage (if other than 120 volts), energy used (in terms of watts), light output (in average initial lumens), average laboratory life (in hours), number of items in the package (if more than one), and a supplemental disclosure, consisting of an advisory statement.⁵⁰ Because the comments usually discussed recommendations regarding the disclosures for these two types of medium screwbase lamps together, and because these lamps are generally interchangeable, the Commission discusses the comments and the final disclosure requirements

⁴⁸ The third category, general service fluorescent lamps, are not screwed into lamp receptacles, but have prongs at either end of the lamp tube or receptacles for prongs that are at either end of the lamp fixture.

⁴⁹ 58 FR at 60154-55.

⁵⁰ See 16 CFR 305.11(e), 305.14(d) in Text of Amendments, below. For descriptions of the items recommended for required disclosures, see, in particular, Angelo, G-1, 2; GE, G-2, 7, (Ans.), 1; NEMA, G-3, 39, (Supp.), G-10, 10-12; Osram, G-4, 2, (Supp.), G-11, 1-2; Philips, G-5, 1-2, (Supp.), G-12, 1; Panasonic, G-7, 2; ACEEE, GG-1, 1; OR DOE, GG-13, 7-8; LRC, GG-15, 2; WA SEO, GG-18, 1-2.

⁴⁰ See, e.g., NEMA, G-3, 35; Gluckstern, GG-3, 1.

⁴¹ U.S. Congress, Office of Technology Assessment, *Building Energy Efficiency* (hereinafter referred to as "OTA Report"), OTA-E-518 (Washington, DC: U.S. Government Printing Office, May 1992), C-6, 50. Commercial buildings used 12.9 quads of energy at a cost of \$68 billion in 1989. About two-thirds of this energy was in the form of electricity. In addition to lighting, space heating and space cooling were the other principal end uses. *Id.* at 21.

⁴² *Id.* at 54.

⁴³ *Id.* at 50-51.

⁴⁴ GE, G-2, 4-5, (Tr.), 106; NEMA, G-3, 10-11; Osram, G-4, 2; IES (Tr.), 62; MN DPS, GG-9, 1; OR DOE, GG-13, 1.

⁴⁵ See 58 FR at 60158. Comments favoring different types of disclosures: ACEEE, GG-1, 1; IES, GG-6, 1-2; OR DOE, GG-13, 2; WA SEO, GG-18, 3. Specifically recommending identical disclosures for both types: MN DPS, GG-9, 1.

⁴⁶ See, e.g., NEMA, G-3; Osram, G-4; Philips, G-5; GE, G-2.

⁴⁷ See, e.g., Angelo, G-1; ACEEE, GG-1; LBL, GG-7; MN DPS, GG-9; WA SEO, GG-18.

for these types of medium screw base lamps together in this section.

A few comments recommended that required labeling for compact fluorescent lamps include additional information, such as the lamp's incandescent wattage equivalency, color and temperature ratings, noise and interference factors, and whether the lumen output of the lamp is substantially different in a base-up or base-down installation.⁵¹ The Commission discusses these issues in Part IV.C.4, below.

1. Basic Disclosures

a. *Voltage.* Voltage refers to the electromotive force of electricity.⁵² In the residential market, the voltage provided by electric utilities in this country for lighting purposes is primarily 120 volts,⁵³ but may range from approximately 115 to 125 volts.⁵⁴ Voltage is not a characteristic of a lamp product, but the operation of a lamp is affected by the voltage at which it operates. For a given lamp, the higher the voltage, the higher the light output in lumens, the higher the wattage, and the shorter the life.⁵⁵ In the NPR, the Commission proposed requiring that manufacturers disclose voltage on packaging only if the product's "design voltage," *i.e.*, the voltage at which the lamp was designed to operate, is other than 120 volts.

⁵¹ See, *e.g.*, NW REAL, GG-12, 1; OR DOE, GG-13, 2-7, 7-8; ORSU, GG-14, 2-3; LRC, GG-15, 1-2; MA AG (Supp.), GG-24, 2; Philips (Supp.), G-12, 1; ACEEE (Supp.), GG-21, 3. See also note 136, below.

⁵² The term "volt" (a unit of potential difference and of electromotive force) is defined as the difference of electric potential between two points of a conducting wire carrying a constant current of one ampere, when the power dissipated between those points is equal to one watt. U.S. Department of Commerce, National Institute of Standards and Technology, "The International System of Units (SI)," NIST Special Publication 330 (1991 edition), August 1991 (hereinafter cited as "NIST Publication 330"), at 19.

⁵³ NEPS (Tr.), 37 (for residential consumers, voltage provided by utilities for lighting is predominately 120 volts); ACEEE (Tr.), 38 (120 volts is normal for vast majority of homes); IES (Tr.), 62 (same). Utility companies in some parts of the country, however, such as the Northwest, provide other voltages such as 125 volts, and manufacturers ship lamps with those design voltages to those areas. Osram (Tr.), 51-52 (ships 125-volt lamps to Northwest, which has slightly higher line voltage); GE (Tr.), 60 (Northwest/TVA is 125 volts); Osram (Tr.), 64 (ships 125-volt lamps to Seattle and TVA). In recognition of the predominant demand for lamps that operate at 120 volts, manufacturers design most incandescent lamps for operation at that voltage. GE (Tr.), 37-38 (90% or more). See also Osram (Tr.), 64-65 (no more than 10% of its incandescent lamps have 125 design voltage).

⁵⁴ Even within a given locality, the voltage may vary by plus or minus five percent. NEPS (Tr.), 37.

⁵⁵ See, *e.g.*, GE (Tr.), 35.

During the proceeding, commentors explained that lamps produced for use in this country fall into three basic categories, based on their design voltage. The vast majority of lamps have a design voltage of (*i.e.*, are manufactured to operate at) 120 volts.⁵⁶ A minority of lamps are produced with a different design voltage because they are intended for use in limited areas of the country, such as the Northwest, in which the line voltage is 125.⁵⁷ The last category includes lamps with a design voltage of 130. These lamps typically are produced with a heavier filament and have longer lives when used at 120 volts (though providing less light) than competing lamps with design voltages of 120 volts. They are generally sold as "long-life" products⁵⁸ and are marketed throughout the country, regardless of the line voltage in the particular area.⁵⁹

The Commission's Light Bulb Rule currently requires manufacturers to disclose watts, light output in lumens and average laboratory life in hours for incandescent lamps, based on operation at the lamp's stated design voltage.⁶⁰ EPCA, as amended by EPA 92, on the other hand, states that: "Labeling information for incandescent lamps shall be based on performance at 120 volts input, regardless of the rated lamp voltage." 42 U.S.C.A. 6294(a)(2)(C)(i) (West Supp. 1993).⁶¹ The statutory language and the comments received raise two issues that the labeling rules must address concerning voltage. First, should the rules require that the design voltage always be disclosed, or that the design voltage be disclosed only if it is other than 120 volts? Second, what labeling information (*i.e.*, which disclosures) must be based on tests conducted at 120 volts (regardless of the design voltage)?

Virtually all the comments that discussed voltage agreed that it is an important element that affects operation of lamp products. Several comments agreed with the Commission's proposal to require that voltage be disclosed if the design voltage of the product (the voltage at which the product was designed by the manufacturer to operate) is other than 120.⁶² None suggested that disclosure of voltage in

⁵⁶ See note 53, above.

⁵⁷ *Id.*

⁵⁸ See GE (Tr.), 35-36; Supreme (Tr.), 39.

⁵⁹ See, *e.g.*, ACEEE (Tr.), 202.

⁶⁰ 16 CFR 409.1 n. 1.

⁶¹ Neither the EPA 92 amendments to EPCA nor the legislative history of the EPA 92 amendments define more specifically the labeling disclosures for incandescent lamps that must be based on operation at 120 volts.

⁶² See, *e.g.*, NEMA (Supp.), G-10, 10-11; ACEEE (Tr.), 38; Osram (Supp.), G-11, 1; Philips (Supp.), G-12, 1.

labeling is necessary for lamps with a design voltage of 120.⁶³

The issue of the voltage at which the required disclosures of watts, light output, life and energy efficiency should be based was the subject of considerable discussion during the Workshop.⁶⁴ Several industry representatives supported requiring disclosure of wattage, light output in lumens, and average laboratory life based on operation of the lamp at its design voltage, if the design voltage is other than 120.⁶⁵ They suggested that only the energy index (*i.e.*, lumens per watt) should be disclosed at 120 volts regardless of the lamp's design voltage. They argued that only the efficiency measure is covered by the requirement in EPCA that labeling disclosures for incandescent lamps be measured at 120 volts.⁶⁶ Other commentors contended,

⁶³ See, *e.g.*, ACEEE, GG-1, 1.

⁶⁴ See Tr., 35-65. The discussion of this issue throughout the comments and Workshop transcript usually was directed specifically at general service incandescent lamps. In some instances, it was unclear whether the comments were meant to apply also to other lamp types. But, there are no references to this issue specifically pertaining to compact fluorescent lamps.

⁶⁵ NEMA (Tr.), 39-40, 54, (Supp.), G-10, 19-21 (the Commission views these statements as NEMA's final position on the issue); Osram (Tr.), 41, (Supp.), G-11, 2. See also Angelo, G-1, 2 (but note that Angelo later recommends disclosures at 120 volts in the Workshop at Tr. 57); GE, G-2, 7, (Ans.), 1; Osram (Tr.), 41, 58-59, (Supp.), G-11, 2; ACEEE, GG-1, 1 (ACEEE, too, later recommends in the Workshop that all disclosures be at 120 volts, (Tr.), 59); OR DOE, GG-13, 7; WA SEO, GG-18, 1.

⁶⁶ In its supplemental comment, NEMA stated:

A question was raised at the Workshop as to whether the last sentence of section (sic) (324(a)(2)(C)(i) of EPCA) should be interpreted to apply only to energy efficiency labeling or to all items required to be disclosed under the Commission's regulations. There is no published legislative history interpreting this provision. However, NEMA representatives were involved in extensive discussions with energy efficiency organizations and congressional staff over the language of the Energy Policy Act. Throughout those discussions, everyone's attention was focused on how best to educate consumers to select the most energy efficient lamp. NEMA representatives sought inclusion of the requirement that all lamps' efficiency ratings be based on a comparable operation at 120 volts. NEMA's objective was to prevent some manufacturers or importers from disguising low efficiency lamps by claiming efficiency ratings at voltages greater than 120 volts. NEMA was concerned that if a consumer faced 120 and 130 volt lamps in the same store, it be clear that the 130 volt lamp would be substantially less efficient when operated at 120 volts (Tr. 40-41). NEMA did not intend to force manufacturers to cease production or alter existing ratings of higher voltage lamps for use in niche markets. Thus, in construing section (sic) (324(a)(2)(C)(i) of EPCA, NEMA urges that the provision be fairly read in the context of the legislative discussions and that congressional intent is best served by requiring that only lumens per watt measurements be based on 120 volts operation.

NEMA (Supp.), G-10, 20-21. See also GE (Supp.), G-9, Ex. 4; Osram (Tr.), 51-52 (most purchasers do not see mix of products based on different voltages

however, that for general service incandescent lamps the labeling rules should require that wattage, light output, life and energy index disclosures be made at 120 volts because most purchasers operate lamps at 120 volts and performance claims should be based on a uniform standard.⁶⁷

The Commission has determined that the final labeling rules should require that all the specified disclosures be based on operation at 120 volts, but that it should not require disclosure of voltage unless the design voltage is other than 120, since all required lamp disclosures will be based on a uniform voltage.⁶⁸ For the vast majority of purchasers in the country, lamps will be operated at 120 volts, regardless of the design voltage designated by the lamp manufacturer. For these purchasers, who represent 90% or more of the market for these lamps in the U.S., therefore, disclosures of the lamp's performance in watts, lumens, life and energy efficiency at a different voltage, such as 125 or 130 volts, would misrepresent the performance they receive in actual use.⁶⁹ The Commission realizes that, for those purchasers whose line voltage is other than 120 volts, disclosure of these performance characteristics at 120 volts will not represent the lamp performance they will experience. These purchasers, however, represent a small minority in the marketplace. For lamps with a design voltage of 130, but expected to be operated at 120 volts, the disclosures will be accurate.⁷⁰

on store shelves, but purpose of the statute's requirement was to require efficiency be based on constant voltage for situations when mix of products were on shelves at same time). But see NEMA, G-3, 45 ("Section 324(a)(2)(C)(i) of EPCA requires that labeling information for incandescent lamps be based on performance when operated at 120 volts input, regardless of the rated lamp voltage. The Commission's regulations should expressly require manufacturers of incandescent lamps to disclose all performance characteristics when operated at 120 volts, regardless of the rated voltage.")

⁶⁷ See MN DPS, GG-9, 2; NEPS (Tr.), 44; LRC (Tr.), 44, 54-55; Angelo (Tr.), 57; ACEEE (Tr.), 59; IES (Tr.), 62.

⁶⁸ See 16 CFR 305.11(e)(1)(C) in Text of Amendments, below. If a lamp's design voltage is other than 120 volts, the lamp's required disclosures of wattage, light output, and life must each be followed by the phrase "at 120 volts." Manufacturers of such lamps may also disclose the lamps' wattage, light output and life at the design voltage. In such cases, the disclosures of wattage, light output, and life must each be followed by a phrase indicating the voltage at which the additional disclosures were measured, e.g., "at 125 volts."

⁶⁹ See note 53, above.

⁷⁰ See Angelo (Tr.), 63:

(P)eople may choose life or lumen output but if it's tested at 120 then there's no reason to go

The final rules, therefore, require that the disclosures of watts, lumens, and hours of life be based on operation of the lamp at 120 volts. Because medium base compact fluorescent lamps compete directly with incandescent lamps, purchasers often will compare these different lamp types when making purchasing decisions. Therefore, the Commission also is requiring that the performance disclosures for medium base compact fluorescent lamps be based on operation at 120 volts.

The labeling rules, however, allow manufacturers who distribute lamps with different design voltages to provide additional information based on the design voltage of the lamps when operated under those other voltages. Because the Commission is allowing manufacturers to provide additional information to purchasers whose line voltage varies from 120 volts, there is no reason to believe that manufacturers will cease production of lamps designed to operate at different voltages, as NEMA speculated.⁷¹ See §§ 305.11(e)(1)(A)(ii) and 305.11(e)(1)(C) in "Text of Amendments," below.

b. *Wattage.* Watt ratings on lamps refer to the unit of electrical power that the lamp will consume.⁷² In the NPR, the Commission proposed requiring that watts be disclosed. There was no disagreement during the proceeding regarding the need for or appropriateness of requiring disclosure of wattage on labels for general service incandescent (nonreflector) lamps and compact fluorescent lamps.⁷³ This information is often used by residential purchasers as the basis for selecting a lamp because they often associate light output with the wattage ratings of the general service incandescent lamps they currently use. But, wattage information also is important to know for safety reasons. Lamp fixtures often are marked

through the deception of saying it's a 130-volt lamp. It's simply enough to say that this lamp is going to produce less lumens[,] meaning it's going to have a different filament and it has really nothing to do with design wattage, it has to do with life and lumens. So in the circumstance of the people who were buying it for that reason, why go through a deception? Why not just tell them [it's] at 120 and let it be billed as a 120-volt lamp with less lumens and more life?

⁷¹ NEMA (Supp.), G-10, 21.

⁷² The term "watt" (a unit of power) is defined as the power which in one second gives rise to energy of one joule. NIST Special Publication 330, at 18. In EPCA, as amended by EPA 92, the term "lamp wattage" means "the total electrical power consumed by a lamp in watts, after the initial seasoning period referenced in the appropriate IES standard test procedure and including, for fluorescent, arc watts plus cathode watts." 42 U.S.C.A. 6291(30)(O) (West Supp. 1993).

⁷³ The Light Bulb Rule already requires a wattage disclosure for incandescent lamps. 16 CFR 409.1(a)(1).

with the maximum wattage lamp the fixture is designed to use. For incandescent lamp fixtures in particular, use of a lamp with a higher wattage than that marked on the fixture can result in a safety hazard created by the higher heat output from the higher wattage lamp. Purchasers, therefore, need wattage information in addition to lumen output when selecting the appropriate lamp to meet their requirements.

Accordingly, the Commission is requiring disclosure of watts on packages. In addition, to help purchasers understand the meaning of watts, the Commission is requiring that the phrase "energy used" precede the wattage number and term "watts." The juxtaposition of the "watts" and "energy used" disclosures, in conjunction with the "lumens" and "light output" disclosures, discussed in Part IV.C.1.c.i, below, can help educate purchasers on the relationship between the amount of light a lamp produces and the amount of energy used to produce the light. These disclosures, along with the Advisory Disclosure described in Part IV.C.2.c, below, will enable purchasers to select the most energy efficient products that meet their lighting needs. At the same time, the combined disclosures will provide retail purchasers with the "watt" information they may be most accustomed to using as the basis for their purchasing decisions, and which they may need to avoid purchasing a lamp product that is inappropriate for the lamp fixture in which it will be used. See §§ 305.11(e)(1)(A)(iii) and 305.11(e)(1)(B) in "Text of Amendments," below.

c. *Light output in lumens.* The terms "lumens," "lumen output," or "lumen rating" refer to a lamp product's light output.⁷⁴ This information is designed to permit the purchaser to determine whether a given lamp will provide sufficient light to meet the purchaser's requirements and to compare the relative light output of competing lamp products. Some retail purchasers may generally refer to this concept as "brightness," but this term-actually means something different from light output, according to accepted industry definitions.⁷⁵ In the NPR, the

⁷⁴ Under EPCA, the term "lumen output" means "total luminous flux (power) of a lamp in lumens, as measured in accordance with applicable IES standards as determined by the Secretary [of DOE]." 42 U.S.C.A. 6291(30)(Q) (West Supp. 1993). For incandescent lamps, the Light Bulb Rule already requires that light output be disclosed in lumens.

⁷⁵ Brightness is measured in candelas and means the intensity of the light, whereas light output,

Continued

Commission proposed requiring that packaging disclose lumens (whether identified by that term, or another such as "light output"). There was agreement among the participants in the proceeding that light output in lumens should be disclosed.

i. Emphasis on light output in disclosures. Although light output is the primary descriptor of whether a specific lamp will provide the necessary lighting to meet a particular need, it appears that residential purchasers, at least, often purchase lamps based on the product's rated wattage.⁷⁶ For these purchasers, different wattages are associated with various lighting needs. There are lamp products with substantially different wattage ratings, however, that can provide almost the same light output in lumens. Stated another way, by choosing lamps on the basis of light output, consumers could meet their lighting needs and use less energy by selecting a lamp of a lower wattage.⁷⁷

Four comments agreed that a key element in getting consumers to purchase more energy efficient lamps is to encourage them to shop for light output in lumens, rather than for energy usage in watts, as they currently are more accustomed to do.⁷⁸ Several comments favored furthering this objective by making the disclosure of light output (in lumens) as prominent as or more prominent than the wattage disclosure on current packaging.⁷⁹ Some comments also suggested that, because residential consumers are often unfamiliar with the term "lumen," the disclosure of lumens should be accompanied by a descriptive phrase that would be more familiar, such as "light output" or "brightness."⁸⁰ There was, however, information presented at

which is measured in lumens, means amount of flow of light.

⁷⁶ See Part IV.C.1.b, above.

⁷⁷ For example, a general service incandescent halogen lamp can provide a greater light output in lumens than a standard general service incandescent lamp of the same wattage rating. In addition, a compact fluorescent lamp can provide the same or greater light output in lumens than a general service incandescent halogen lamp at a significantly lower wattage rating.

⁷⁸ Angelo, G-1, 2, (Tr.), 182-183; Osram, G-4, 2; Philips, G-5, 2-3; GE, G-2, 7, (Tr.), 181-182. See Part IV.C.1.b, above.

⁷⁹ Angelo (Tr.), 182-183 ("make lumens more prominent"); GE, G-2 (Ans.), 1 ("prominent"); Philips, G-5, 1-2 ("at least 50% of that of the wattage"); MO DNR, CG-10, 3 ("more prominently"); WA SEO, CG-18, 1-2 ("of equal size and prominence"). But see GE (Tr.) 181-182 (the change in prominence should be gradual).

⁸⁰ GE, G-2, (Ans.), 9 ("brightness (lumens)"); Philips, G-5, 2-3 ("light output"); ACEEE, GG-1, 3 ("light output: XX Lumens"); MO DNR, CG-10, 3 ("brightness (lumens)"). But see OR DOE, GG-13, 3 ("lumen disclosure should be in lumens, not 'brightness' or 'light output'").

the Workshop indicating that lumens is not an unfamiliar concept to many consumers, even though wattage may be a more significant factor in making purchase decisions.⁸¹

The Commission agrees that the labeling rules should assist purchasers in shopping for lamps on the basis of light output in lumens rather than watts. Because competing lamp products may provide the same lumen output at varying wattage ratings, purchasers can reduce their energy costs for lighting by purchasing lamp products that provide the lumens they need at the lowest wattage ratings. Current packaging generally highlights wattage, and purchasers may be accustomed to selecting lamp products based on wattage instead of lumens (e.g., they simply replace a burned out 100 watt lamp with a new 100 watt lamp).

It is in the interest of energy efficiency, therefore, to design labeling information to highlight the importance of light output in lumens. Accordingly, the Commission is requiring that the lumens disclosure be identified primarily as one of "light output," and that this light output disclosure be the first of the three basic performance disclosures appearing on the primary display panel. In addition, to remind consumers that wattage is not a measure of light output, the wattage disclosure will be identified primarily as "energy used."⁸² See § 305.11(e)(1)(B) of the rule in "Text of Amendments," below. Coupled with the educational information currently being provided by manufacturers, utility companies and others in the marketplace, this increased emphasis in labeling on light output and clarification of the meaning of wattage should help educate consumers to save energy costs by purchasing the lowest wattage lamp that provides the light output they need.

ii. Average initial lumens vs. average mean or average lumens. In general, the light output in lumens of a given lamp product is greatest at the beginning of its life (i.e., its "initial lumens"). Light output in lumens degrades over the lifetime of the lamp. According to generally accepted industry standards,

⁸¹ According to research conducted by Conway/Milliken & Associates for GE in July 1992, 55% of all consumers understand the meaning of lumens, even though they may purchase based on wattage. GE (Tr.), 109-10. See GE (Supp.), G-9, 1, Ex. A. But see Angelo (Tr.), 134-35 (disagrees and thinks that most consumers do not know watts are a measurement of energy as opposed to a measurement of light, because, up until now, they have purchased on the basis of watts).

⁸² The Commission is not specifying type size for these disclosures because of the huge variety of packaging styles and sizes, and the need to vary type size according to the package.

the light output for a lamp can be measured and expressed in terms of average initial lumens (at or near the beginning of the lamp's life), as average or mean lumens over the duration of the lamp's real or projected lifetime, or as a range of lumens. In determining the most appropriate lumen disclosure for each type of lamp product, the Commission has considered the comments concerning the effect of degradation on the different lamp types and the measure of light output in lumens that will give purchasers the most accurate and uniform information on which they can compare competing products and make purchase decisions.

There was considerable discussion in the written comments and at the Workshop about how and at what point or points in a lamp's operation light output should be measured.⁸³ Some comments suggested that the required disclosure should be of mean or average lifetime lumens,⁸⁴ while others believed that lumens should be expressed as initial lumens.⁸⁵

During the Workshop, representatives of GE and Osram explained in some detail how lumens are measured under current industry methods. One of the issues discussed was the extent to which lumens degrade (or diminish) over the life of a lamp.⁸⁶ There was general agreement among most of the Workshop participants that the extent of degradation of competing general service incandescent lamps and of medium base compact fluorescent lamps over the average lifetime of a compact fluorescent lamp (10,000 hours) is substantially the same.⁸⁷

⁸³ See, e.g., Tr., 66-86.

⁸⁴ Philips (Tr.), 74 (a rating based on a long-term average of tested lumens that would be rounded); NEPS (Tr.), 67, 72; SCS, GG-16, 1-3 (details reasons for disclosing "mean lumen output range," including differing lumen depreciation and lumen output values and differences in lumen output from differences in fixtures, installations, sensitivity to temperature, and/or ballasts).

⁸⁵ See, e.g., Osram (Tr.), 68; NEMA (Supp.), G-10, 15-16; Philips (Supp.), G-12, 2; LBL (Supp.), GG-22, 3.

⁸⁶ See Tr., 66-86.

⁸⁷ Because compact fluorescent lamps have longer lives than incandescent lamps, this comparison requires that several general service incandescent lamps be considered for the comparison. Specifically:

Over the life span of a compact fluorescent product, generally speaking, after the first hundred hours—and the initial lumens are measured at one hundred hours burning—the product declines in output slowly over a life of perhaps 10,000 hours. If you look at what happens for the equivalent number of incandescent lamps, then obviously every time you replace an incandescent lamp say after 750 hours, your light output goes up to the initial again, and then drops off to some lower figure. If you take the difference in the averages between what you get from that whole bunch of incandescent lamps and what you get from the

Accordingly, most Workshop participants concluded that it would be appropriate for the Commission to require disclosure of average initial lumens.⁸⁸ Because it is easier to measure the light output of lamp products as initial lumens, and a requirement to disclose light output in initial lumens is consistent with the requirements of the Light Bulb Rule, the Commission has determined to require disclosure of average initial lumens on the packages of these products.⁸⁹ See § 305.11(e)(1)(A)(iv) in "Text of Amendments," below.

d. *Average lamp life.* Lamp life refers to the lamp's average life or lifetime, measured under laboratory conditions (*i.e.*, average laboratory life).⁹⁰ In the NPR, the Commission proposed requiring disclosure of average life (in hours). During the proceeding, two issues emerged relating to the proposed requirement to disclose lamp life: (1) How to determine the life of the product; and (2) whether to express life in years (based on an average usage period, such as three hours per day) or hours.

i. *How to measure lamp life.*

Laboratory lamp life is determined by measuring the length of time (in hours) the lamp will operate before burning out. The IES standard calls for the lamp to be operated according to an on/off cycling schedule. The life of a lamp is the number of burning hours to failure.

single curve with the compact fluorescent, it is not a very big percentage. It is perhaps around five percent. That is far less than you will get by differences in light output from incandescent lamps due to fluctuating voltage.

Osram (Tr.), 80-81.

⁸⁸ See GE (Tr.), 67 ("Whether I would want product A or product B from a light output or an efficiency standpoint, you'll still make the same decision."); Osram (Tr.), 81 ("Our procedures, both nationally and internationally for rating products at initial value is something that we can live with as an industry, and something that we can measure with some consistency, and can be enforced."); NEMA (Supp.), G-10, 15-15; LBL (Supp.), GG-22, 3 ("There was considerable discussion at the Workshop on whether initial lumens, or mean or maintained lumens, should be reported on lamp labels. LBL concurs with the position that the difference between the lumen depreciation of general service incandescent lamps and compact fluorescent lamps is small enough that initial lumens (per the standard test procedure) are acceptable."); Phillips (Supp.), G-12, 3. *But see* MA AG (Supp.), GG-24, 2, fn. 1 ("Manufacturers should disclose if a compact fluorescent lamp or an energy efficient incandescent lamp's lumen degradation is faster or further or both than the degradation of a conventional incandescent lamp.").

⁸⁹ This requirement is consistent with the Light Bulb Rule, 16 CFR at 409.1(a)(2).

⁹⁰ In EPCA, as amended by EPA 92, the terms "life" and "lifetime" mean "length of operating time of a statistically large group of lamps between first use and failure of 50 percent of the group in accordance with test procedures described in the IES Lighting Handbook-Reference Volume." 42 U.S.C.A. 6291(30)(P) (West Supp. 1993).

Some industry members, however, to save time, will use one or two variations of this standard. In one case, they will use a "steady burn," in which there is no on/off cycle. In the other case, they will burn the lamp at much higher voltages than normal and extrapolate the lamp's laboratory life from the test results.⁹¹

In the discussion of lamp life determination during the Workshop, the participants agreed that consistency is of considerable significance for this disclosure. Specifically, it is most important that the estimated life of competing lamp products be measured in a manner that yields comparable results. Participants did not, however, agree that any particular test procedure should be required by the labeling rules.

As discussed in Part IV.G, below, the Commission has determined at this time not to require for any of the basic disclosures that any specific test procedure be used. The Commission, however, is requiring that manufacturers have a reasonable basis, consisting of competent and reliable scientific tests, to substantiate these disclosures. To meet this reasonable basis standard for substantiating light output and laboratory life disclosures, manufacturers may rely on tests conducted pursuant to the specific IES test procedure referenced in the Rule. These test procedures, which comments recognized as appropriate test standards used by the industry, require on/off cycling. The Commission concludes that requiring manufacturers to have competent and reliable scientific tests to substantiate laboratory life claims is sufficient to ensure that manufacturers determine average laboratory life in a way that will produce consistent results. See the discussion of substantiation in Part IV.G, below.

ii. *Years vs. hours.* The other issue concerning lamp life pertained to how the lifetime should be expressed. ACEEE originally recommended that life be expressed in years, but later suggested requiring disclosure of both years and hours.⁹² NEMA recommended that the required disclosure of life be in hours, because a disclosure in years would involve fractions of less than one year for some lamp products and assumptions about average hours of use in a year.⁹³ No commenters were aware of any studies demonstrating average usage periods for either commercial or residential users for particular types of

lamps or uses. The Light Bulb Rule currently requires that life of incandescent lamps be disclosed in hours, 16 CFR 409.1(a)(3), and many manufacturers express lamp life in hours for other lamps. Accordingly, the Commission has determined to require a simple disclosure of average laboratory life in hours, rather than years (or both hours and years). The labeling rules, therefore, require that the average laboratory life of lamp products be disclosed in hours. See § 305.11(e)(1)(A)(v) in "Text of Amendments," below.

e. *Quantity of lamps in package.*

There was no disagreement with the proposal to require the disclosure on packages of the number of bulbs contained in the package if there were more than one. This requirement, therefore, appears in the final labeling rules. See § 305.11(e)(1)(A)(i) in "Text of Amendments," below.

2. Supplemental Disclosure Options

To supplement the disclosures of wattage, light output and laboratory life, the Commission proposed in the NPR requiring disclosure of an efficiency measure of each lamp's performance. The Commission proposed two alternatives for primary consideration: (1) An energy efficiency measure such as lumens per watt; and (2) a disclosure of the estimated energy cost of the lamp based on a specified unit energy cost and usage period. The NPR also described similar suggestions made by ACEEE and NEMA. As is further set forth below, the Commission has concluded that neither a lumens-per-watt disclosure nor an operating cost disclosure is likely to increase consumers' abilities to choose the most efficient lamp for their needs. Instead, the Commission has concluded that the basic information required to be disclosed should be supplemented by the Advisory Disclosure described in Part IV.C.2.c, below.

a. *Energy index.* The Commission explained in the NPR that a lumens-per-watt disclosure (*i.e.*, the "Energy Index" that had been suggested by NEMA), which would rate the efficiency of a lamp product in converting electric energy into light output, has the advantage of simplicity. It pointed out, however, that such a disclosure could suffer from the drawback identified by ACEEE (*i.e.*, because higher wattage bulbs often have disproportionately greater light output, they often will use more energy as well as have a better energy index). Thus, a lumens-per-watt disclosure alone could lead to lumen and watt over-purchasing. The Commission inquired whether this

⁹¹ See Supreme (Tr.), 89-90.

⁹² ACEEE, GG-1, 2, (Supp.), GG-21, 1 ("For example, a label might read: Lamp Life: 1000 hours (0.9 years at 3 hours per day).").

⁹³ NEMA (Supp.), G-10, 21 note *.

drawback could be avoided by requiring that the Energy Index be accompanied by a disclosure such as: "Select the light output you require before comparing the energy index of different bulbs."

Most of the comments supported requiring a disclosure of the energy efficiency of lamp products in the form of lumens per watt and that it be called an "energy index."⁹⁴ One participant compared this to a miles per gallon disclosure for gasoline, which consumers presumably understand.⁹⁵ Although consumers could otherwise ascertain the information from the separately required disclosures of lumens and watts, the energy index reduces this information to a single figure.⁹⁶ Several comments favoring this disclosure also recommended that it be no less than 50% of the size of the light output disclosure and that it be accompanied by a definition or explanation of its meaning on the same or another panel.⁹⁷ Two comments recommended that the Commission require disclosure of a "range" of energy indices for available general service incandescent lamps and compact fluorescent lamps like those the Commission requires for other products under the Appliance Labeling Rule, with the performance of the labeled lamp indicated on the range.⁹⁸

Two comments opposed an energy index as unnecessary or confusing.⁹⁹ Other comments were concerned with the potential overbuying problem identified by ACEEE (that the disclosure could unintentionally force consumers to "overbuy" watts and lumens because higher wattage incandescent lamps tend to have higher energy indices.)¹⁰⁰ Three comments, however, agreed with the Commission's suggestion that the potential problem might be avoided by requiring the prominent disclosure of wattage next to the energy index disclosure and/or a definition or explanation that informs purchasers to look for the lumens they want and then

select the highest energy index.¹⁰¹ One comment indicated that the potential overbuying problem was not likely to be a significant one.¹⁰²

The Commission has determined not to require disclosure of a lumens-per-watt index. Although support was expressed in the rulemaking proceeding for this proposal, disclosing such an index could result in consumers purchasing more watts than they need. This overbuying may occur because a lumens-per-watt index will rise with wattage of incandescent lamps. Thus, a consumer who buys the lamp with the highest lumens-per-watt index may select a lamp that has a higher than required light output and wattage. For example, overbuying may occur if a consumer selects a 100-watt incandescent lamp with a 17 lumens-per-watt index as a replacement for a 60-watt incandescent lamp with a 14 lumens-per-watt index or a 75-watt incandescent lamp with a 16 lumens-per-watt index.

An energy index based on lumens per watt also could confuse consumers who understand correctly that higher wattage lamps use more energy. Because a lumens-per-watt index tends to increase with the wattage of incandescent lamps, these consumers might be led to believe that lamps with higher energy index numbers generally cost more to operate. In that event, the much higher energy index numbers that would appear on the labels of compact fluorescent lamps actually could mislead some consumers into believing that these lamps were less energy efficient.

In light of these potential disadvantages, the Commission has determined not to adopt a lumen-per-watt index as a supplemental disclosure. The Commission has concluded that the objectives of EPA 92 will be better achieved by supplementing the basic disclosures with the Advisory Disclosure described in Part IV.C.2.c, below, which informs consumers how to use the basic disclosures to select the most efficient lamp for their needs.

b. Energy operating cost. Another proposal for conveying lamp efficiency information was to require an energy operating cost disclosure. As described in the NPR, ACEEE suggested requiring disclosure of estimated annual operating cost.¹⁰³ NEMA suggested requiring disclosure of both an estimated annual operating cost and a lumens-per-watt

energy index.¹⁰⁴ Based on these suggestions and other considerations discussed in the NPR, the Commission proposed requiring disclosure of estimated monetary cost of energy information, as an alternative, or in addition to, a lumens-per-watt disclosure of the lamp's energy efficiency.¹⁰⁵

In the NPR, the Commission stated that it might require a disclosure of the estimated monetary cost of the energy used by a lamp based on its use for a specified period, such as the lamp's life in hours or a length of time based on average usage patterns. The Commission explained that such a disclosure could be based on the representative average unit cost of electricity, as specified in the Appliance Labeling Rule, 16 CFR 305.9, or on an assumed unit cost. The advantage of an operating cost disclosure is that it would reduce to monetary terms the energy costs of competing lamp products. At the same time, the Commission stated that it would consider carefully whether such disclosures, particularly when the costs are prorated over a period of time that is less than the life of a very energy efficient bulb, communicate effectively the extent to which a higher initial lamp cost can be compensated for by lower operating costs over the lamp's life.¹⁰⁶

The Commission pointed out in the NPR that, if it adopted a monetary cost of operation disclosure, it would have to base the disclosure on an average or estimated usage pattern (e.g., one year). The Commission noted, however, that there are no established usage patterns, and estimated use will vary depending upon the location and use of the lamp. In addition, the Commission would have to determine what unit cost of electricity to use. The representative average unit cost of electricity, as specified in the Appliance Labeling Rule (16 CFR 305.9), changes annually, and thus could result in consumer confusion if lamps manufactured in different years were available for sale at the same time. To avoid possible confusion, the Commission explained that it might require manufacturers to

¹⁰⁴ *Id.* at 60153.

¹⁰⁵ *Id.* at 61055.

¹⁰⁶ For example, if a monetary cost of operation disclosure were adopted, one usage period for which disclosures could be calculated is 750 hours, which is approximately the life of general service incandescent lamps with the shortest lifetimes. A second option would be to set a longer period (e.g., 1000 hours). But, where this period exceeds the average life of the lamp, the cost of replacement of the lamp might come into play. A third option would be to use a shorter period, such as one hour, 10 hours, or 100 hours. A shorter period, however, might be too small to illustrate sufficiently energy cost differences among competing lamps.

⁹⁴ See, e.g., NEMA, G-3, 34-35, (Supp.), G-10, 12; Osram (Tr.), 124, (Supp.), G-11, 2; Philips, G-5, 2, (Supp.), G-12, 1; Panasonic, G-7, 2; LBL, GG-7, 1; MN DPS, GG-9, 2; OR DOE, GG-13, 2; LRC, GG-15, 2; US EPA, CG-17, 2-3; WA SEO, CG-18, 2; NEPS, GG-11, 3; GE (Tr.), 110, 140, 155, 198, (Supp.), G-9, 1 (GE would prefer that the Commission require only a disclosure of lumens and watts and no energy index, but would prefer an energy index disclosure over an energy cost disclosure).

⁹⁵ Osram (Tr.), 124.

⁹⁶ See *Id.* at 125.

⁹⁷ NEMA (Supp.), G-10, 12; Osram (Supp.), G-11, 2; Philips (Supp.), G-12, 1.

⁹⁸ LBL (Supp.), GG-22, 3; NIST (Supp.), GG-23, 2-3.

⁹⁹ IES, GG-6, 2; SCS, GG-16, 4.

¹⁰⁰ Angelo, G-1, 2; GE, G-2, (Ans.), 1-2; ACEEE, GG-1, 3, (Supp.), GG-21, 1; MO DNR, GG-10, 2.

¹⁰¹ LRC, GG-15, 2; WA SEO, GG-18, 2.

¹⁰² OR DOE, GG-13, 2 (may be a problem for some lamps, but not true in general).

¹⁰³ 58 FR at 60154.

include an explanation of how the estimated energy cost was determined in immediate proximity to the monetary cost estimate disclosure.¹⁰⁷ The Commission recognized, however, that the additional information could unduly complicate the label, and therefore not be helpful to purchasers.

Because some purchasers may be interested in computing lamp costs comprehensively, including the initial purchase price, the Commission proposed requiring information to enable them to make the necessary calculations to determine the "estimated total operating cost" of the lamp for a standard time period.¹⁰⁸ But, recognizing that purchasers would need to make calculations for each lamp they considered, the Commission stated that it would consider carefully the extent to which purchasers actually would use the proposed disclosures in making a purchase decision. As a practical matter, the Commission noted that purchasers, particularly retail consumers, may disregard, or consider too complex, any disclosure requiring computations of this sort, and therefore that such required disclosures may not be useful to purchasers in their efforts to choose an energy efficient lamp. The NPR solicited comments on both the annual operating and total operating cost disclosures proposed by the Commission.¹⁰⁹

The 17 comments that addressed cost disclosures were evenly divided. Seven comments recommended that the Commission require some kind of cost

¹⁰⁷ This would allow purchasers to compare the energy costs of competing products with different lifetimes based on a time line that is within the lifetime of all the competing products and is large enough to illustrate clearly the differences among energy costs and, therefore, of energy efficiencies. In the alternative, the Commission explained that it could require that monetary cost of operation estimates be based upon a constant unit cost of electricity, such as 10 cents per hour, which although not fully accurate for all purchasers, would facilitate lamp-to-lamp comparisons.

¹⁰⁸ Specifically, the Commission proposed requiring the following statement:

IMPORTANT: Energy efficient lamps may have a higher purchase price, but could cost you less overall due to energy savings. The estimated total operating cost of this lamp for 750 hours of use is: (Figure A) × the purchase price for one light + (Figure B). Compare this cost to the estimated total operating costs you calculate for other lamps that provide the same or similar lumens. The manufacturer would determine and reprint Figure A and Figure B in this disclosure. The NPR explained how the manufacturer would calculate these figures and included examples. The Commission proposed a more detailed disclosure for multiple filament general service incandescent lamps.

¹⁰⁹ See Questions 3 ("Disclosure of Monetary Cost of Operation") and 4 ("Disclosure of Estimated Total Operating Cost"), 58 FR at 60158-59.

disclosure.¹¹⁰ Seven comments opposed such a requirement.¹¹¹ Two commentors initially supported cost disclosures, but later recommended against them.¹¹² One comment stated that if cost disclosures were required, the NEMA proposal described in the NPR for estimated annual operating cost along with an energy index would be the best.¹¹³

Of the comments favoring a cost disclosure, only one recommended including the purchase price of the lamp in the cost disclosure.¹¹⁴ Most comments that supported cost disclosures, as well as some comments in opposition and some additional comments, opposed requiring disclosure of the "estimated total operating cost."¹¹⁵ The objection most often offered was that manufacturers have no control over the retail price of the products they manufacture, which would make it impossible to disclose on packages a meaningful operating cost figure that includes purchase price.

The comments supporting disclosure of estimated annual operating cost favored the approach because they believe that consumers understand dollars and that operating cost would provide useful information.¹¹⁶ Most of these comments recommended using a fixed unit cost for electricity, rather than the national average cost figures published annually by DOE, and a fixed usage period.¹¹⁷

¹¹⁰ ACEEE, GG-1, 1-2, (Tr.), 113-114, 149, (Supp.), GG-21, 1; Gluckstern, GG-3, 1; MN DPS, GG-9, 2; MO DNR, GG-10, 2; NEPS, GG-11, 2-3; LRC, GG-15, 2-3; US EPA, GG-17, 3.

¹¹¹ GE, G-2, 7, (Tr.), 170; NEMA, G-3, 35-38, (Tr.), 131, 133, 139, (Supp.), 13, 23-26; OR DOE, GG-13, 3-5; Osram (Tr.), 131, (Supp.), 3; Philips (Supp.), G-12, 1; Green Seal (Tr.), 159; SCS, GG-16, 4-5.

¹¹² Angelo, G-1, 3 (support), (Tr.), 136, 157, 158 (oppose); LBL, GG-7, 1-2 (support), (Supp.), G-22, 4 (oppose).

¹¹³ WA SEO, GG-18, 2.

¹¹⁴ NEPS, GG-11, 2-3. But see NEPS (Tr.), 199 ("I have put it in my comments as something to be considered, and I am very willing to back off on [life-cycle cost disclosure].")

¹¹⁵ See Angelo, G-1, 3; Osram, G-4, 2; Philips, G-5, 2; Panasonic, G-7, 2; ACEEE, GG-1, 1-2, 4 (retail prices vary too much to require disclosure of estimated total operating cost); MN DPS, GG-9, 2 (price based cost too complicated unless Commission prescribes a table with several fixed prices for both bulb types); MO DNR, GG-10, 2; LRC, GG-15, 2-3 (cost based on purchase price is practically useless); US EPA, GG-17, 3 (life-cycle cost would be the best, but it's too complicated; thus, estimated annual operating cost over a standard time period is the best compromise).

¹¹⁶ See, e.g., ACEEE (Tr.), 149 ("We think you really need a dollar cost disclosure. People understand dollars.")

¹¹⁷ See, e.g., ACEEE (Supp.), GG-21, 1 (But see ACEEE, GG-1, 1-2, in which ACEEE advocated earlier the use of a rounded version of the DOE national energy cost); MN DPS, GG-9, 2; MO DNR, GG-10, 2; LRC, GG-15, 2-3; US EPA, GG-17, 3.

Of those comments opposing required disclosure of operating cost, most contended that cost disclosures would be difficult to develop and would make disclosures too complicated, regardless of whether annual or total costs were used.¹¹⁸ Several comments remarked that cost disclosures in U.S. dollars would result in crowded labels and consumer confusion because of the United States' increased trade with Canada and Mexico under the North American Free Trade Agreement ("NAFTA").¹¹⁹

Some comments that opposed mandatory cost disclosures recognized that manufacturers might want to disclose some cost information voluntarily in point-of-sale materials.¹²⁰ Several comments recommended that the Commission regulate how cost disclosures on packaging or in point-of-sale materials should be made, if the manufacturer wishes to make them. Of these, some recommended that the Commission require manufacturers to disclose the product usage period and energy cost assumptions upon which their cost claims were based.¹²¹ Other

Even Philips, which opposed cost disclosure requirements, agreed that, if they were required, they should be based on a fixed energy cost. Philips, G-5, 2.

¹¹⁸ See, e.g., SCS, GG-16, 4-5 ("Given that the most accurate presentation of operating costs is utility district based (due to utility rates (affecting operating cost) and rebates (affecting purchase cost)) rather than national, printing operating costs directly on the product package is problematic.")

¹¹⁹ IES, GG-6, 2 ("Will labeling requirements necessitate bi- and tri-language packaging to explain the (U.S. cost) information?"); Osram (Tr.), 121, (Supp.), G-11, 3; GE, G-2, (Ans.), 4, (Tr.), 140 ("The result of dollar cost operation on package would force manufacturers to make country-specific packaging. Country-specific packaging means that we are less efficient and we are not as able to meet consumer demands in the three (national) markets."), 141 (noting that there could be special problems with products bound for Canada, which would need bi-lingual labels and, if cost were required, cost disclosures in both US and Canadian dollars).

¹²⁰ Osram (Supp.), G-11, 2; LBL (Supp.), GG-22, 4 (contending that the information necessary to make informed purchasing decisions between two lamps of different efficiencies and price takes two forms: Total operating costs, and total life-cycle costs. "Since electricity rates vary considerably by region, hours of lamp usage vary by consumer, and retail price depends on factors outside the manufacturers' influence, it is difficult to present this information on a product label. However, guidelines should be established by the Commission for presentation of these quantities in point-of-purchase information to avoid confusing or inaccurate claims in product advertising."); SCS, GG-16, 4-5.

¹²¹ NEMA (Supp.), G-10, 25 note ** ("NEMA believes that the Commission should not mandate specific assumptions that must be used in voluntary cost disclosures. Rather, the Commission should require that manufacturers who choose to make disclosures must disclose their assumptions about the cost of electricity and annual hours of lamp use."); Philips (Supp.), G-12, 1 ("Any such

Continued

comments suggested that the Commission should prescribe standardized assumptions for any voluntarily-made operating cost disclosures.¹²²

The Commission has determined not to require disclosure of operating cost information for general service incandescent (nonreflector) lamps and medium base compact fluorescent lamps. The Commission agrees that fluctuations in retail purchase prices for lamp products and utility company rebates make it a practical impossibility for manufacturers to disclose a meaningful total operating cost that includes purchase price.¹²³ The Commission also agrees that varying energy rates and consumer usage patterns would make it necessary to require computation of annual operating cost on the basis of questionable assumptions.¹²⁴ This would make it difficult, if not impossible, to provide current, accurate and meaningful annual operating cost information for prospective lamp purchasers.¹²⁵ Because purchasing decisions are likely to be made very quickly for lamps, which are relatively low-priced items, complicated disclosures involving operating costs are unlikely to be heeded by purchasers at

(voluntary operating cost) disclosures should be based on substantiated test data and any assumptions (should be) disclosed on the package."

¹²² See Angelo (Tr.), 136, 157 (suggesting that the Commission set a standard to avoid one manufacturer using 10 cents per kWh and another using 15 cent per kWh); GE (Tr.), 170 ("We do agree that if cost of operation is going to be optionally claimed on a package, then it is a good idea to have a standard set of assumptions."); 170-72 (cautioning that, unless the required assumptions are keyed into flexible marketplace standards, there is a risk of their becoming outdated, which would undermine credibility and inhibit the main goal: Consumers switching from general service incandescent lamps to compact fluorescent lamps); Green Seal (Tr.), 159 ("* * * I think it makes sense, therefore, to lay out what the assumptions are and once that is done, there is a standard."); Osram (Supp.), G-11, 2 (supports development of a common set of criteria for operating cost disclosures on lamp packages where the manufacturer chooses to display them, and suggests basing disclosures in meantime on 1100 hours use per year and 10 cents per kilowatt-hour).

¹²³ To encourage the use of compact fluorescent lamps, some utility companies offer significant rebates to their customers for purchasing them. These offers usually accompany the consumers' utility bills, and include explanations of why compact fluorescent lamps can save energy and money.

¹²⁴ Various studies have shown that 1100 operating hours per year is the average figure for a lamp in a residential setting. Osram (Tr.), 122. To use this average where the lamp a consumer actually purchases only has a 750 hour life, however, could be confusing. GE (Tr.), 155. See notes 106, 108, above.

¹²⁵ Also, because the dollar cost figure on the package will not relate to what the consumer is paying for the lamp, it is likely to be confusing to consumers. Tr., 132-33, 138-39.

the point of sale and may possibly be confusing.¹²⁶ Therefore, a required energy operating cost disclosure would not be useful in helping buyers make purchasing decisions.¹²⁷

The labeling rules do not prohibit manufacturers from disclosing operating cost information, if they choose to do so. The Commission has determined not to prescribe standardized assumptions for these disclosures. The final labeling rules, however, require that, if manufacturers voluntarily choose to make operating cost disclosures on packaging labels, in catalogs or in point-of-sale printed materials, they disclose the unit energy cost, usage patterns, purchase price, and other assumptions upon which the operating cost claims are based. See §§ 305.11(e)(3), 305.13(a)(2) and 305.14(d)(2) in "Text of Amendments," below.

c. Advisory disclosure. As discussed above, the Commission has determined to require that packaging and catalogs contain an Advisory Disclosure that advises consumers how to select the most efficient lamp for their needs. The Advisory Disclosure is:

To save energy costs, find the bulbs with the light output you need, then choose the one with the lowest watts.

This statement advises consumers how to use the lumen and wattage disclosures that will be on the packages to make energy efficient choices. It has the benefits of the explanatory statement that would have accompanied the Energy Index, without the potential overbuying drawback of the index number itself. Like the proposed Energy Index, it may alert consumers to consider lamps, such as halogen incandescent lamps or compact fluorescent lamps, which have lower wattages but produce comparable amounts of light output as higher-wattage incandescent lamps.

3. Additional Disclosures for Multiple Filament Incandescent Lamps

For multiple filament ("three-way") general service incandescent lamps (*i.e.*,

¹²⁶ See, *e.g.*, NEMA, G-3, 36-37. According to GE, of industry sales of all incandescent lamps to residential purchasers in 1992, 36% were sold through mass merchants, 31% through food and grocery outlets, 22% through hardware and home center stores, 7% through drug stores and 4% through all other outlets. GE (Tr.), 105(4). Seventy eight percent of all these lamps are purchased by residential consumers walking themselves through the purchase decision, without expert assistance. GE (Tr.), 105(5). In addition, the average residential consumer spends 53 minutes total for all purchases per stop in grocery or food stores, GE (Tr.), 108, so the consumer obviously spends little time deciding which lamp to purchase in these stores.

¹²⁷ In contrast, information disseminated to consumers in other ways, such as utility company bill inserts, may be more useful.

incandescent lamps with two filaments of different wattage that can be burned either separately or together, producing three different light output levels), the Commission proposed requiring that design voltage, wattage, light output and an efficiency measure be disclosed for operation at each level. It proposed that the life rating be based on the life of the first filament that fails. The Commission solicited comments on whether and how proposed operating cost disclosures should apply to multiple filament lamps.¹²⁸

Five comments addressed how to disclose wattage, light output, laboratory life and the energy index for these lamp products.¹²⁹ There was general agreement among these comments that the Commission should require disclosure of watts and lumens for all three settings, and that the required disclosure of the laboratory life of the lamp should be determined on the basis of the major filament.¹³⁰ One comment recommended requiring use of the average wattage "as used" in calculating an estimated operating cost.¹³¹

Based on the discussion in Part IV.C.1.a-e, above, the Commission has determined to require, for multiple filament lamps, the same disclosures required for a single filament lamp, *i.e.*, energy used (in terms of wattage), light output (in lumens), laboratory life (in hours) and the Advisory Disclosure. Consistent with the Light Bulb Rule, the Commission has determined to require disclosure of wattage and light output for each light output level of a multiple filament lamp. The Commission has determined to require disclosure of average laboratory life on the basis of the filament that fails first, rather than on the major filament, as suggested by the comments.¹³² If the secondary filament routinely fails before the major filament, basing the life estimate on the major filament would not be helpful to purchasers. For the reasons explained in Part IV.C.2.b, above, the Commission has determined not to require energy operating cost information for multiple filament lamps. See § 305.11(e)(1)(G) in "Text of Amendments," below.

¹²⁸ See 58 FR at 60155, and Questions 3 and 4, at 60158-59.

¹²⁹ NEMA, G-3, 45, (Tr.), 206-207, (Supp.), G-10, 14; GE (Tr.), 211; Osram (Supp.), G-11, 3; Phillips (Supp.), G-12, 1; OR DOE, GG-13, 7.

¹³⁰ *Id.*

¹³¹ ACEEE, GG-1, 3.

¹³² This is consistent with the Light Bulb Rule, 16 CFR 409.1 n. 1.

4. Additional Disclosures Recommended for Compact Fluorescent Lamps

Several comments recommended requiring disclosures for compact fluorescent lamps that would be unique to this type of lamp. These suggestions are discussed below.

a. Equivalence claims. In its proposal described in the NPR, ACEEE suggested that the relative light output of a compact fluorescent lamp be measured by comparing it to an incandescent reference lamp, with an incandescent reference lamp being defined for each common type and wattage of compact fluorescent lamp.¹³³ Presumably, this would provide those purchasers who use watts when buying incandescent lamps with light output information they could use in deciding which compact fluorescent lamp would provide the most comparable replacement for that incandescent reference lamp. Responding to this suggestion, some comments recommended against requiring that the lumens of compact fluorescent lamps be expressed as a percentage of the light output of an incandescent reference lamp.¹³⁴ Others favored such an approach.¹³⁵

The Commission believes that the disclosure of wattage, light output in lumens, and the other factors required by the final labeling rules, will be sufficient to allow purchasers to compare competing products when making purchasing decisions, without the necessity of tying a compact fluorescent lamp to a specific incandescent reference lamp. Therefore, the Commission has decided not to require disclosure of an equivalent reference lamp for each compact fluorescent lamp. Manufacturers may voluntarily choose to make equivalence claims, however.

b. Base-up/base-down measurement. Most comments that specifically addressed the light output performance of compact fluorescent lamps suggested that lumen measurements for these products vary depending on whether the lamp is tested in a base-up or base-

down position.¹³⁶ For example, there was testimony at the Workshop to the effect that there could be as much as a 20 to 30 percent variation in light output between a base-down and a base-up configuration, depending on the lamp and its installation.¹³⁷ The comments also state that no test procedure has yet been developed to measure lumens accurately for compact fluorescent lamps in a base-down position.¹³⁸

There was general agreement among these comments that the fact that lumens will vary between base-up and base-down applications should be addressed in the disclosure requirements. Most comments also agreed that, if there were more than a five percent difference between base-up and base-down lumens, manufacturers should be required to disclose each separately, disclosing base-down lumens to the best of their ability.¹³⁹ The Commission agrees that, to the extent the base-up/base-down positioning of compact fluorescent lamps affects the light output of the lamps significantly, those differences in light output should be disclosed. The Commission finds that a difference of more than five percent in lumen output is significant, and has determined that the labeling rules shall require disclosure of light output in lumens for both base-up and base-down positions when the manufacturer has reason to believe that the difference between the two disclosures would be more than five percent. Therefore, if the manufacturer has reason to believe the light output at a base-down position would be more

than 5% different, the label also must disclose the light output at the base-down position or, if no test data for the base-down position exist, that the light output for a base-down position might be more than 5% less. See § 305.11(e)(1)(E) in "Text of Amendments," below.

c. CRI and CCT. Some comments suggested that the Commission require the disclosure of the color rendering index ("CRI") and the correlated color temperature ("CCT") for compact fluorescent lamps.¹⁴⁰ These two measurements are used by the industry to describe the color of the light that compact fluorescent lamps produce. The record on whether these factors should be disclosed is insufficient for the Commission to prescribe labeling requirements. Although these are useful disclosures for commercial consumers and for some knowledgeable residential consumers, they are not necessary for them or other purchasers to select the most energy efficient lamps to fill their lighting needs. Additionally, it would be difficult to explain the meaning and use of these items in concise and simple terms on the limited space available on lamp packaging. To the extent such information is important, it is likely that manufacturers, utility companies and other interested parties voluntarily will provide that information on packaging or by other means. If they do not and consumers are dissatisfied with the performance of compact fluorescent lamps, they will not make repeat purchases of compact fluorescent lamps. Consequently, the Commission is not requiring the disclosure of CRI or CCT for compact fluorescent lamps.

d. Operating temperature. OR DOE recommended that the Commission require disclosure of the effect of operating temperature on compact fluorescent lamps. OR DOE stated that many fluorescent products do not start or operate well at very low temperatures, such as in outdoor

¹³³ See, e.g., ACEEE, GG-1, 3, (Tr.), 234, (Supp.), GG-21, 3; OR DOE, GG-13, 10; LRC, GG-15, 2, (Tr.), 235; US EPA, GG-17, 2; Osram (Tr.), 233, 242; GE (Tr.), 236; NEMA (Tr.), 272; Philips (Supp.), G-12, 1; LBL (Supp.), GG-22, 2. Compact fluorescent lamps normally are tested for light output ratings with the base facing upward. On the other hand, compact fluorescent lamps used as replacements for incandescent lamps normally are used with the base facing downward. This difference in position may result in a different light output. In addition, the temperature of the environment surrounding the compact fluorescent lamp also affects light output. When compact fluorescent lamps are used in enclosed luminaires with internal temperatures that are elevated above room temperature, the result may be reduced light output. The same is true when compact fluorescent lamps are operated outdoors at low temperatures. Rensselaer Polytechnic Institute, Lighting Research Center, National Lighting Product Information Program, Specifier Reports: Screwbase Compact Fluorescent Lamp Products ("Rensselaer Report"), Vol. 1, Issue 6, April 1993, C-3, at 6.

¹³⁷ See, e.g., US EPA, GG-17, 2; Osram (Tr.), 233; LRC (Tr.), 235.

¹³⁸ See ACEEE (Supp.), GG-21, 3; LBL (Supp.), GG-22, 2; OR DOE, GG-13, 10.

¹³⁹ LRC (Tr.), 235; ACEEE (Tr.), 239, (Supp.), GG-21, 3 (would prefer that a test procedure for base-down lumens be developed but supports disclosure based on multiplier in interim); NEMA (Tr.), 272; Philips (Supp.), G-12, 1.

¹⁴⁰ WA SEO, GG-18, 3; MA AG, GG-8, 3, (Supp.), GG-24, 1-2; OR DOE, GG-13, 5-7, 7-8; ORSU, GG-14, 2-3. EPCA defines these two terms as follows:

The term "color rendering index" or "CRI" means the measure of the degree of color shift objects undergo when illuminated by a light source as compared with the color of those same objects when illuminated by a reference source of comparable color temperature. 42 U.S.C.A. 6291(30)(j) (West Supp. 1993).

The term "correlated color temperature" means the absolute temperature of a blackbody whose chromaticity most nearly resembles that of the light source. 42 U.S.C.A. 6291(30)(k) (West Supp. 1993).

The NPR proposed including these definitions of CRI and CCT in the Rule because they are terms that will often be used in connection with the marketing of fluorescent lamp products and because DOE may include them in its standards or test procedure rules.

¹³³ 58 FR at 60154.

¹³⁴ LBL (Supp.), GG-21, 2 ("CFL package information should not claim equivalent light output based on incandescent wattage").

¹³⁵ MN DPS, GG-9, 2 ("It would be confusing to express light output of a lamp as a percent of a reference lamp. Comparison with reference lamps is an excellent approach, but the comparison should be simply stated in watts, lumens per watt and lumens. It would be especially helpful in encouraging the sale of compact fluorescent lamps to have a comparable light output compact fluorescent lamp as the reference lamp for incandescent lamps and vice-versa."); LRC, GG-15, 2; MA AG (Supp.), GG-24, 2.

lighting in cold temperatures, and do not provide full light output at very low or very high temperatures.¹⁴¹ The record does not contain sufficient specific information for the Commission to conclude how significant and extensive the effects of temperature are on compact fluorescent lamps in actual practice and to determine what specific disclosures are needed. Moreover, it appears that manufacturers already disclose the temperature factor in some instances on compact fluorescent lamp packages. To keep the required disclosures simple and concise, therefore, while fulfilling the statutory mandate concerning the important information the labeling rules should provide, the Commission has determined not to require disclosures concerning the operation of compact fluorescent lamps under these operating conditions.

e. Noise and interference factors. Several comments suggested requiring disclosure of warning-type information, such as the possibility that compact fluorescent lamps will interfere with some remote control and other electronic devices.¹⁴² One comment recommended requiring the disclosure of power quality and noise factors.¹⁴³ Although noise interference warnings appear on packaging for at least some compact fluorescent lamps, there was insufficient information presented on the rulemaking record about how significant these factors are. In light of this, as well as the practical necessity to limit required disclosures to the most important information consumers need, the Commission has determined not to require disclosure of these factors. To the extent manufacturers wish to disclose information about any of these factors in a truthful and non-deceptive way, they will be free to do so.

5. Location and Format of Packaging Disclosures

a. Location. As described in the NPR, NEMA proposed that the disclosures discussed above for general service incandescent (nonreflector) lamps and medium base compact fluorescent lamps appear on at least one panel of the outer sleeve of lamp packages.

¹⁴¹ OR DOE, GG-13, 5-6. OR DOE's comment directed this concern to all fluorescent lamp products. Because general service fluorescent lamps are purchased overwhelmingly for commercial use, and most commercial purchasers are more knowledgeable about the factors affecting performance of those lamp products, the Commission is addressing this issue primarily as it concerns compact fluorescent lamps purchased by residential consumers.

¹⁴² MA AG, GG-8, 1-3, (Supp.), GG-24, 1-2; NEPS, GG-11, 3; LBL, GG-7, 2.

¹⁴³ ORSU, GG-14, 3.

NEMA suggested that the Commission specify both type size and relative size specifications for the disclosures, and that the Commission require that the supplemental disclosures NEMA proposed (the energy index and estimated annual operating cost) be disclosed in a square at least one inch by one inch.¹⁴⁴

ACEEE's suggestions, as described in the NPR, did not contain specific format recommendations. ACEEE suggested, however, that the Commission specify label content and size, while allowing manufacturers flexibility to design their own customized labels within the specified parameters.¹⁴⁵

The Commission did not propose specific formats in the NPR for the size or location of the disclosures under consideration. The Commission stated, however, that it would consider requiring that the principal disclosures be featured on the front panel of a package label, perhaps within a graphic box, while permitting other disclosures to be placed elsewhere.¹⁴⁶

Accordingly, the Commission has determined to require that the basic disclosures¹⁴⁷ and the Advisory Disclosure be made on the principal display panel of packages for these two types of lamps. The comments that addressed where these disclosures should be made agreed that key disclosures should be on the front panel, or on "at least one panel."¹⁴⁸ The Commission has determined that it is unnecessary to prescribe exact specifications for all aspects of the

¹⁴⁴ 58 FR at 60153-54.

¹⁴⁵ *Id.* at 60154.

¹⁴⁶ *Id.* at 60156.

¹⁴⁷ The basic disclosures are: design voltage (if other than 120), energy used (expressed in watts), light output (expressed in lumens), life (expressed in hours), and number of bulbs in package (if more than one).

¹⁴⁸ See, e.g., OR DOE, GG-13, Enclosure (showing proposed disclosures for front and back package panels); Osram (Supp.), G-11, 1 (disclosures should be made on the main panel); Philips (Supp.), G-12, 1 (disclosures should be on at least one panel of the lamp package); NEMA, G-3, 39, (Supp.), G-10, 10 (the main disclosures should be on at least one panel of the package). Although its comment was directed at the disclosure of an energy efficiency range, NIST's remarks on disclosure location are pertinent:

The side of the package is not in a prominent display situation since the customer must remove the package in order to examine the sidebar information. That is probably too late in the decision process for many purchasers. It would seem to be more advantageous to show such information on the front of the package. Then the buyer could more readily determine that there is another option before removing from the shelf. As GE noted, the crowded display areas can become confusing, if not overwhelming, for a wise choice to be made from the many offerings displayed. Therefore, it seems to be even more important to get the information displayed up front.

NIST (Supp.), GG-23, 2.

required disclosures. But, to ensure prominent display of the light output figure as well as the word, "lumens," the Commission is specifying format requirements for these and the other performance disclosures.¹⁴⁹ See §§ 305.11(e)(1)(A) and 305.11(e)(1)(B) in "Text of Amendments," below.

b. Type size, prominence, and graphic enclosures. Many comments stressed the importance of making the light output disclosure with prominence that is equal or similar to the energy used (wattage) disclosure. These comments agreed that, to encourage consumers to shop for lamps based on efficiency, the disclosure requirements should direct consumers' attention to light output in lumens. To accomplish this, the comments generally recommended that the lumens number be disclosed in a size that is at least 50% as large as the wattage number and that it be disclosed with prominence equal to the disclosure of watts.¹⁵⁰

The Commission agrees that the requirements should direct consumers to the lumen disclosure, and facilitate consumers' understanding of the meaning of the various terms. In the Commission's experience, this will be facilitated by using simple, understandable language and putting the most important information first. Accordingly, the amended rule specifies that the required disclosures appear in the following order:

(1) The term "light output" followed by the lumens figure, and, in close proximity to either of these, the term "lumens;"

(2) The term "energy used" followed by the wattage figure, and, in close

¹⁴⁹ See NEMA, G-3, 6 (package design plays an important part in the sale of lamps, package has limited space, specific words and formats matter greatly).

¹⁵⁰ See, e.g., Angelo (Tr.), 156; GE, G-2, 7, (Ans.), 9, (Tr.), 179 (does not believe that lumens should be larger than watts on the package); NEMA, G-3, 39 (wherever wattage is displayed, light output must be disclosed in close proximity, in type that is at least 50 percent the size of the wattage figure); 42 (Commission should consider requiring all disclosures of wattage be accompanied by a reference to light output of equal size and prominence), (Supp.), G-10, 12 (disclosure of light output in lumens should be at least the same size and no less prominent than the disclosure of wattage); Phillips, G-5, 2 (the words Light Output should appear in close proximity to the wattage, in print at least 50% that of the wattage); MO DNR, GG-10, 3 (brightness (lumens), yearly energy costs, and lamp life should be more prominent than other required information such as watts, volts, and size); WA SEO, GG-18, 1-2 (to begin steering consumers to lumens, lumens disclosure should be larger in comparison to watts than is presently required; it should perhaps be of equal size and prominence); Osram (Supp.), G-11, 1 (light output disclosure should be no smaller than the wattage disclosure); ACEEE (Supp.), GG-21, 1 (agrees with the proposal forwarded by Angelo that the lamp package have both lumens and watts printed in equal size).

proximity to either of these, the word "watts," and

(3) The term "life" followed by the life in hours figure and, in close proximity to either of these, the word "hours."

In addition, the disclosures must conform to the following type size requirements:

(1) The three numerical figures must be of equal size;

(2) The terms "light output," "energy used" and "life" must be of equal size; and,

(3) The terms "lumens," "watts," and "hours," must be of equal size but only approximately 50% of the size of the terms "light output," "energy used," and "life," while still clear and conspicuous.

See § 305.11(e)(1)(B) and appendix K in "Text of Amendments," below.

The rules require that lamp packages contain an Advisory Disclosure to educate purchasers how to select the most efficient lamp that meets their needs. The required Advisory Disclosure is:

To save energy costs, find the bulbs with the light output you need, then choose the one with the lowest watts.

This statement must appear on the primary display panel of the lamp package, along with the required disclosures of lumens, watts and life. The Commission is not specifying the type size or style of this reference, but it must be clearly and conspicuously displayed. See § 305.11(e)(1)(F) in "Text of Amendments," below.

6. Disclosures in Catalogs

In the NPR, the Commission proposed that required information be disclosed both on packages and in catalogs from which the lamp products may be purchased.¹⁵¹ EPCA authorizes the Commission to require that information required on labels be contained in catalogs. 42 U.S.C. 4296(a) (1988). For consumers who purchase lamps through catalogs for either residential or commercial use, the catalog serves the same informational function as a package does for those who purchase the product off a store shelf.

Most of those who commented on this issue generally supported the Commission's proposal. NEMA originally recommended against the Commission's proposal, arguing that the disclosures that NEMA had proposed were uniquely suited to the size and space constraints of packages, and did not necessarily translate well to disclosures in catalogs.¹⁵² In its final

comment, however, NEMA recommended requiring disclosure of all required information in catalogs, except lumens per watt and number of bulbs in the package.¹⁵³ OR DOE and WA SEO recommended that all required disclosures be required in ordering catalogs.¹⁵⁴ Home Depot recommended that the Commission clearly define "catalog" to differentiate between manufacturers' catalogs and retailers' advertising catalogs or circulars from which lamps can be ordered.¹⁵⁵

The Commission has concluded that the required disclosures are important to both commercial and residential purchasers of these two types of lamps, whether they are purchasing the lamps in a store or through a catalog. The Commission has determined, therefore, to require that all disclosures that § 305.11(e) requires on packaging be made clearly and conspicuously in catalogs from which the lamps can be ordered, with the exception of the number of lamps in a package. The Commission is not requiring this last disclosure in catalogs because catalogs often offer lamps packaged in different ways. In some cases, lamps are offered in cartons containing smaller packages of several bulbs apiece. In others, lamps are offered in bulk quantities and the lamps are not shipped in retail-store-type packages. In both cases, the catalogs clearly disclose price and quantity with respect to the lamps described on their pages. In contrast, in some instances at point of sale, without actually opening a package, it is not clear how many lamps are inside.

For catalogs not distributed to consumers for making purchases for personal use or consumption by individuals, the disclosures need not comply with the format provisions of § 305.11(e)(1)(B), but must only be disclosed clearly and conspicuously. The Commission also agrees with OR DOE's recommendation that, in cases in which the same disclosure applies to entire categories of products in the catalog, it is only necessary for the required disclosure to be made once on each page on which such products appear. Accordingly, the labeling rules allow this accommodation. See § 305.14(d)(1) in "Text of Amendments," below. The Rule also requires that, if manufacturers make

operating cost claims in catalogs, they disclose, clearly and conspicuously, the assumptions (unit cost of electricity, usage period, purchase price, etc.) that were used. See § 305.14(d)(2) in "Text of Amendments," below.

7. Disclosures in Point-of-Sale Printed Materials

In the NPR, ACEEE suggested that the required disclosures for residential purchasers be disclosed on point-of-sale materials as well as on packages.¹⁵⁶ The Commission proposed that, as one option for disclosures for lamps sold in bulk without individual packages, manufacturers be required to include the prescribed information in written materials in shipping cartons and retailers be required to disclose it at point of sale.¹⁵⁷ This proposal was based on EPCA, which authorizes the Commission to require disclosure, in written materials displayed or distributed at point of sale, of any information required on labels. 42 U.S.C. 6294(c)(4) (1988). In the "Questions for Comment" section of the NPR, the Commission solicited comment on the appropriateness of point-of-sale requirements.¹⁵⁸

The comments were divided on whether the Commission should require disclosures in point-of-sale materials for general service incandescent lamps and compact fluorescent lamps. ACEEE consistently recommended that the Commission require disclosure of annual operating and life-cycle cost information in point-of-sale materials.¹⁵⁹ Although initially neutral on this point, NEMA ultimately opposed mandatory disclosures at point of sale in favor of a requirement that manufacturers be required to disclose only the assumptions upon which any voluntary point-of-sale disclosures are based.¹⁶⁰ GE stated that, if the Commission wished to provide additional information explaining the meaning and use of the lumens-per-watt energy index disclosure, the method most suited for such disclosures is in point-of-sale materials.¹⁶¹ LBL suggested that the

¹⁵⁶ 58 FR at 60154.

¹⁵⁷ Id. at 60155.

¹⁵⁸ Id. at 60159.

¹⁵⁹ ACEEE, GG-1, 3-4, (Tr.), 169, 188, 201, (Supp.), GG-21, 1. ACEEE recommended charts disclosing several lumens-per-watt efficiencies cross-referenced to various operating costs based on different unit costs for electricity. LBL appeared to support this approach, but recommended disclosing different wattages in place of lumens per watt. LRC (Tr.), 188-189.

¹⁶⁰ Initial neutrality: NEMA, G-3, 40-42, 47. Later opposition: NEMA (Tr.), 190-192, (Supp.), G-10, 14, 26.

¹⁶¹ GE (Ans.), G-2, 1.

¹⁵³ NEMA (Supp.), G-10, 14.

¹⁵⁴ OR DOE, GG-13, 9 (labeling disclosures for all products should also be required in catalogs from which these products are sold, whether at retail or wholesale; where a labeling requirement applies to entire categories of products in the catalog, the disclosure could be made once, prominently, at the very least on each page); WA SEO, GG-18, 4.

¹⁵⁵ Home Depot, GG-5, 2.

¹⁵¹ 58 FR at 60154-56.

¹⁵² NEMA, G-3, 46-47.

Commission either prescribe the assumptions upon which operating cost disclosures are based (such as cost of electricity and hours of use) or, at least, require that manufacturers disclose whatever assumptions they use in point-of-sale materials.¹⁶² Osram supported the disclosure of operating costs only at point of sale and recommended that the Commission prescribe specific cost and use assumptions for those disclosures.¹⁶³ Home Depot and SCS recommended that the Commission issue no requirements relating to point-of-sale disclosures, but that it allow such disclosures voluntarily.¹⁶⁴

The Commission has determined not to mandate particular disclosures at the point of sale (other than the disclosures on packaging). The Commission's requirements for disclosures on packages and in catalogs will provide purchasers of general service incandescent lamps and compact fluorescent lamps with information sufficient to enable them to select the most energy efficient lamps to fill their lighting needs.

Several comments suggested that the Commission also require disclosure of energy cost information, or at least specify the bases (*i.e.*, the unit energy cost and usage patterns) on which any voluntarily made energy cost claims are calculated. The Commission declines to do so, for the same reasons the Commission determined not to require disclosure of energy cost information on packaging or to prescribe the assumptions on which voluntary energy cost information is provided. The Commission has concluded, however, that it is important that consumers be made aware of the assumptions on which any energy cost claims on packaging or in point-of-sale written materials are based. Therefore, the final labeling rules require that the assumptions (unit cost of electricity, purchase price, hours of use, patterns of use, *etc.*) on which any voluntary claims about energy operating cost are made be clearly and conspicuously disclosed in connection with such claims on packaging or in point-of-sale written materials.¹⁶⁵ See § 305.11(a)(2) in "Text of Amendments," below.

D. Disclosures for General Service Incandescent Reflector Lamps

In the NPR, the Commission stated that incandescent reflector lamps would be within the category of general service incandescent lamps under the

Commission's proposed labeling rules.¹⁶⁶ As such, the rule amendments would have required manufacturers of these products to disclose design voltage (if other than 120), wattage, light output (expressed in lumens), life (expressed in hours), a supplemental disclosure (either lumens per watt or operating cost), and number of bulbs in the package (if more than one).¹⁶⁷ ACEEE's proposal, as outlined by the Commission in the NPR, would also apply equally to reflector and nonreflector general service incandescent lamps. In contrast, as discussed in the NPR, NEMA recommended that general service incandescent reflector lamps be subject to disclosure requirements that would be substantially different from those required for other general service incandescent lamps. Specifically, NEMA recommended requiring, for incandescent reflector lamps, the same disclosure it proposed for general service fluorescent lamps (*i.e.*, disclosure only of the encircled capital letter "E," as the Rule presently requires for fluorescent lamp ballasts, 16 CFR 305.11(d)). This would designate that the product meets the energy conservation standards established in EPCA.¹⁶⁸ NEMA suggested that the designation be indicated in the manufacturer's catalogs and other printed material, and that the encircled "E" be etched on the products themselves.¹⁶⁹

1. Disclosures on Packaging and in Catalogs

Fourteen of the participants commented on what type of disclosures the Commission should require for general service incandescent reflector lamps. Five comments supported limiting the required disclosures for these lamps to an encircled "E," as NEMA suggested.¹⁷⁰ Six supported a requirement to disclose the basic elements and efficiency index proposed by the Commission.¹⁷¹ Three favored a requirement to disclose the encircled

"E," but with additional limited disclosures.¹⁷²

Those supporting an encircled "E" disclosure for general service incandescent reflector lamps argued that the minimum efficiency standards added to EPCA by EPA 92 for these lamps¹⁷³ would eliminate all but the efficient models,¹⁷⁴ leaving purchasers with little choice among the remaining models in terms of energy efficiency.¹⁷⁵ They also contended that, because the products are purchased for the specialized purpose of directing a focused beam of light onto an area or object, purchasers are primarily interested in the pattern (or spread) and the intensity of the beam.¹⁷⁶ NEMA and Philips, moreover, maintained that manufacturers are already disclosing the elements that are relevant to purchasers of these lamps—wattage, voltage, life, beam intensity and beam spread.¹⁷⁷ NEMA added that the Commission can rely on marketing pressures to compel manufacturers to continue making disclosures of pertinent lighting characteristics without a mandate.¹⁷⁸ These comments concluded that the Commission does not have to require most of the elements proposed for other general service incandescent lamps and compact fluorescent lamps for purchasers to be able to select a general service incandescent reflector lamp.

Three comments supporting disclosure of all the basic elements for general service incandescent reflector lamps did not agree that the EPCA standards would eliminate variation among the efficiencies of these products.¹⁷⁹ LBL contended that the

¹⁷² Osram, G-4, 2, (Supp.), G-11, 4; ACEEE, GG-1, 3, (Supp.), GG-21, 2; LRC, GG-15, 3, (Tr.), 312.

¹⁷³ 42 U.S.C.A. 6295(i)(1)(A) (West Supp. 1993).

¹⁷⁴ NEMA (Supp.), G-10, 28; Philips (Supp.), G-12, 2.

¹⁷⁵ Osram (Supp.), G-11, 3.

¹⁷⁶ GE, G-2, 3, 6, (Ans.), 2, 9, (Tr.), 301, 304; NEMA, G-3, 19-21, 30; Osram (Tr.), 295 ("When you purchase a reflector incandescent lamp, you are interested in how it concentrates the light on the particular object or task that you bought the lamp to illuminate. And that typically is characterized * * * in terms of beam spread and beam performance."); IES, GG-6, 2.

¹⁷⁷ NEMA, G-3, 29-30, (Supp.), G-10, 29; Philips, G-5, 2 (Philips limited its remarks to beam characteristics).

¹⁷⁸ NEMA, G-3, 31.

¹⁷⁹ Angelo (Supp.), G-8, 2 ("To presume, as NEMA does, that halogen PAR lamps, which already meet the standards, will simply capture the entire market, belittles the attempts of others to meet the efficiency standards with less expensive technology."); ACEEE (Supp.), GG-21, 2 ("* * * the 'circle E' alone does not reflect the substantial variations in efficacy among incandescent reflector products that exceed [EPA 92] efficiency standards.") LBL (Supp.), GG-22, 3 ("While the minimum efficacy required by [EPA 92] for incandescent reflector lamps in effect mandates halogen reflector lamps or better, there are more

¹⁶⁶ 58 FR at 60151.

¹⁶⁷ *Id.* at 60154-55.

¹⁶⁸ 42 U.S.C.A. 6295(i)(1)(A) (West Supp. 1993).

¹⁶⁹ 58 FR at 60152-53.

¹⁷⁰ NEMA, G-3, 29, (Supp.), G-10, 28; IES, GG-6, 2; GE, G-2, 6, (Ans.), 1, 2; Philips, G-5, 2; Supreme (Supp.), G-13, 1.

¹⁷¹ LBL, GG-7, 1; MN DPS, GG-9, 1-2; MO DNR, GG-10, 1; OR DOE, GG-13, 2-7, 7-8; WA SEO, GG-18, 2; Angelo, G-1, 2. The basic elements are: Voltage (if other than 120), wattage, light output (expressed in lumens), laboratory life (in hours), and number of bulbs in the package (if more than one).

¹⁶² LBL (Supp.), GG-22, 1, 4.

¹⁶³ Osram (Supp.), G-11, 2.

¹⁶⁴ Home Depot, GG-5, 2 (Tr.), 196.

¹⁶⁵ See Part IV.C.2.b, above.

variation is actually likely to increase in the future.¹⁸⁰ The supporting comments generally stated that purchasers should be provided with information that will enable them to distinguish between the lamps that meet the standards and those that exceed them.¹⁸¹ One comment also suggested requiring the disclosure of beam spread for these products.¹⁸²

Some commentors changed their positions on this issue. Although initially opposing the NEMA recommendation (*i.e.*, for the encircled "E"), ACEEE later stated that publishing an encircled "E" on incandescent reflector lamp packaging would be acceptable as long as wattage, life, and lumens per watt were included in catalogs.¹⁸³ LRC originally supported the encircled "E" requirement alone, but, at the Workshop, added that its support was dependent on a requirement to include wattage and life disclosures (presumably on packages), with which NEMA agreed.¹⁸⁴ Osram supported the NEMA recommendation in its initial comment and, in its post-Workshop comment, continued to support an encircled "E" disclosure, along with an additional recommendation that beam performance information (in accordance with ANSI standards) and average life also be disclosed on packages.¹⁸⁵

The Commission has determined to require disclosure of an encircled "E" on packages and in catalogs¹⁸⁶ for those general service incandescent reflector lamps that meet or exceed the minimum efficiency standards set by EPCA. But, to inform purchasers of the meaning and significance of this information, the Commission is requiring that a brief explanatory statement also appear on the packages for the lamps and in catalogs from which they can be ordered. Specifically, manufacturers must disclose clearly and conspicuously the encircled "E" on the principal

display panel of packaging for these lamps. On the principal display panel or on another panel, manufacturers also must disclose clearly and conspicuously the statement, "(The encircled "E" logo, followed by:) means this bulb meets Federal minimum efficiency standards." The encircled "E" and the explanatory statement must be linked by asterisks. In catalogs from which general service incandescent reflector lamps can be ordered by purchasers, manufacturers also must disclose clearly and conspicuously the encircled "E" in close proximity to each entry for a covered general service incandescent reflector lamp. On each page in such a catalog upon which the encircled "E" appears, manufacturers also must disclose, clearly and conspicuously at least once, the statement: "(The encircled "E" logo, followed by:) means this bulb meets Federal minimum efficiency standards." See § 305.11(e)(2) in "Text of Amendments," below.

The Commission also has concluded, however, that the encircled "E" disclosure and explanatory statement alone will not provide purchasers of general service incandescent reflector lamps with enough information to select the most energy efficient products to fill their lighting needs. Several comments show that there will continue to be a range of choice among different general service incandescent reflector lamps with varying efficiencies after the DOE standards become effective.¹⁸⁷ Moreover, the record shows that some manufacturers generally already disclose some of several other factors for these lamps—design voltage, wattage, laboratory life, beam spread, and beam intensity.¹⁸⁸ One industry member, Angelo, suggested that it would work no hardship on sellers for the Commission to mandate the same disclosures as those proposed for general service incandescent lamps.¹⁸⁹

The Commission has determined, therefore, to require that manufacturers of general service incandescent reflector lamps disclose, on packages and in catalogs, the following elements: design voltage (if other than 120), wattage, light output (expressed in average initial lumens),¹⁹⁰ average laboratory life (expressed in hours), the Advisory

Disclosure and, on packages only, number of bulbs in package (if more than one).¹⁹¹ For the reasons explained in Part IV.C.1.a, above, the disclosure of wattage, lumens, and life must be based on operation at 120 volts regardless of the lamp's design voltage. The format requirement for these disclosures will be the same as they are for general service incandescent lamps and compact fluorescent lamps. See §§ 305.11(e)(1)(A)-(D) and 305.14(d)(1) in "Text of Amendments," below.

2. Disclosures in Point-of-Sale Materials

Two comments addressed the issue of disclosures in point-of-sale materials for general service incandescent reflector lamps. ACEEE recommended that average annual operating cost and average lifetime indicators be included on both packaging and point-of-sale displays for sales to residential purchasers.¹⁹² LBL thought that efficacy (*i.e.*, efficiency) information should be included in point-of-sale materials for residential purchasers.¹⁹³

The Commission has already discussed its position generally respecting required disclosures in point-of-sale materials in Part IV.C.7, above. The Commission's position is the same respecting point-of-sale materials for general service incandescent reflector lamps. Accordingly, the Commission is not requiring specific disclosures for these products at point of sale. But, as for the other lamp products, if point-of-sale operating cost disclosures are voluntarily made, the assumptions used (cost of electricity, hours of use, *etc.*) must be disclosed.¹⁹⁴ See § 305.13(a)(2) in "Text of Amendments," below.

3. Vibration Service and Rough Service Reflector Lamps

Angelo raised a concern at the Workshop about a type of incandescent reflectorized lamp that is produced for use under conditions involving rough service or service in which they will be subjected to vibration, such as industrial or construction site use. These lamps are manufactured with more durable filaments to withstand such service, which also results in their having a significantly longer life. Angelo pointed out that these lamps appear to be excluded from the definition of "incandescent reflector lamp" in the

efficacious options on the market, such as halogen infrared and compact fluorescent reflector lamps. Future technology may bring even more lamps with higher efficiencies."

¹⁸⁰ LBL (Supp.), GG-22, 3.

¹⁸¹ Angelo, G-1, 2; ACEEE (Supp.), GG-21, 2; LBL, GG-7, 1; MN DPS, GG-9, 1-2; MO DNR, GG-10, 1; WA SEO, GG-18, 2.

¹⁸² WA SEO, GG-18, 3.

¹⁸³ ACEEE, GG-1, 3; (Supp.), GG-21, 4.

¹⁸⁴ LRC, GG-15, 3; (Tr.), 312.

¹⁸⁵ Osram, G-4, 2; (Supp.), G-11, 4.

¹⁸⁶ The record indicates that manufacturers of general service incandescent (reflector) lamps sell many of their products through catalogs, especially to commercial and industrial customers, and many commentors believed that disclosures should appear in catalogs. See, e.g., NEMA, G-3, 29, 31, (Supp.), G-10, 29; Osram, G-4, 2; ACEEE, CG-1, 3-4, (Supp.), GG-21, 2; LBL (Supp.), GG-22, 3; OR DOE, GG-13, 9; WA SEO, GG-18, 4; Hubbell, GG-9, 1.

¹⁸⁷ Angelo (Supp.), G-8, 2; ACEEE (Supp.), GG-21, 2; LBL (Supp.), GG-22, 3.

¹⁸⁸ NEMA, G-3, 29-30, (Supp.), G-10, 29; Philips, G-5, 2; LRC (Tr.), 307.

¹⁸⁹ Angelo, G-1, 2.

¹⁹⁰ Because of the unique nature of the light output of general service incandescent (reflector) lamps, the amendments require that light output (in lumens) for these products be measured for only the beam spread of the lamp, as determined by industry standards.

¹⁹¹ The reasons for the specific versions of these elements have already been discussed in Part IV.C.1.a-2.c, above. The Commission will not, therefore, repeat the discussion here.

¹⁹² ACEEE, GG-1, 3-4.

¹⁹³ LBL (Supp.), GG-22, 3.

¹⁹⁴ See Part IV.C.2.b, above.

EPA 92 amendments to EPCA.¹⁹⁵ As such, they would not be required to meet the minimum efficiency standards or bear the disclosures required for other incandescent reflector lamps by the Rule.

Angelo contended that these products, many of which are imported, are significantly less efficient than incandescent reflector lamps that will have to meet the new minimum standards, but that they may be marketed to compete directly with these more efficient lamps at a reduced retail price.¹⁹⁶ According to Angelo, the price differential will lead residential consumers into purchasing them without realizing that they are receiving a much less efficient product for their money, and "cheap lamps will drive out good lamps at the consumer level."¹⁹⁷ Angelo's recommended solution is to require that manufacturers of rough and vibration service incandescent reflectorized lamps be required to disclose, on their packages, the fact that the lamps are for rough service and do not meet the federal minimum efficiency standards for other similar lamps designed for ordinary household use.¹⁹⁸ Angelo's concerns and proposed solution were shared by three other participants, including a company that produces rough and vibration service incandescent reflector lamps.¹⁹⁹

EPCA defines "incandescent lamp," in part, as "a lamp in which light is produced by a filament heated to incandescence by an electric current, including only the following:

* * * * *

(i) Any lamp (commonly referred to as lower wattage nonreflector general service lamps, including any tungsten-halogen lamp) that has a rated wattage between 30 and 199 watts, has an E26 medium screw base, has a rated voltage or voltage range that lies at least partially within 115 and 130 volts, and is not a reflector lamp.

(ii) Any lamp (commonly referred to as a reflector lamp) which is not colored or designed for rough or vibration service applications (emphasis supplied), that

¹⁹⁵ Angelo (Tr.), 310. See 42 U.S.C.A. 6291(30)(C) (West Supp. 1993).

¹⁹⁶ Angelo (Tr.), 310-11, 314-15, 315-16, (Supp.), G-8, 4.

¹⁹⁷ *Id.*

¹⁹⁸ Angelo (Tr.), 315-16, (Supp.), G-8, 4.

¹⁹⁹ Supreme (Tr.), 313, (Supp.), G-13, 1; Osram (Supp.), G-11, 4 ("This labeling should include that the product is designed for Rough Service (or Vibration Service) applications only, has a low light output and costs more to operate than similar products available in the marketplace."); ACEEE (Supp.), GG-21, 2 ("These products have an efficacy of 12 lumens per watt or less. Requiring disclosure of lumens per watt is the only way to inform consumers of the overwhelming energy penalty associated with purchasing these lamps and in essence to thwart these manufacturers' attempts to get around the [EPA 92] requirements.").

contains an inner reflective coating on the outer bulb to direct the light, an R, PAR, or similar bulb shapes (excluding ER or BR) with E26 medium screw bases, a rated voltage or voltage range that lies at least partially within 115 and 130 volts, a diameter which exceeds 2.75 inches, and is either—

(I) A low(er) wattage reflector lamp which has a rated wattage between 40 and 205 watts; or

(II) A high(er) wattage reflector lamp which has a rated wattage above 205 volts."²⁰⁰

* * * * *

EPCA defines "incandescent reflector lamp" as "a lamp described in subparagraph (C)(ii)."²⁰¹

Based on the language of the statute, the Commission concludes that it does not have the authority to treat incandescent reflectorized lamps designed for rough or vibration service applications as "incandescent reflector lamps" under the labeling rules. As part of the process of developing test protocols for incandescent reflector lamps, DOE will define what is meant by "rough or vibration service applications" because such lamps will be excluded from the test protocols. Angelo speculated, however, that the definition DOE adopts for such lamps may allow manufacturers to make lamps that meet the DOE exclusionary definition, but then market them, not as rough or vibration service lamps, but simply as spot or flood lamps to compete with the incandescent reflector lamps that are subject to the minimum efficiency standards. The gist of Angelo's concern appears to be twofold. First, manufacturers of incandescent reflector lamps who must meet the DOE standards (and whose products, as a result, will likely cost more to manufacture) will be at a competitive disadvantage because rough or vibration service reflectorized lamps will have a significantly lower retail price. Second, consumers will not be aware that these less expensive lamps are significantly less efficient and will cost more to operate over time. EPCA authorizes DOE to add products to the list of products for which EPCA mandates minimum efficiency standards.²⁰² Therefore, if the exclusion of these lamps from coverage under the labeling rules as "incandescent reflector lamps" results in unfair competition, consumer confusion, or other problems, DOE can reconsider its definition of general service incandescent reflectorized lamps "for rough or vibration service." In the alternative, DOE can consider whether to add general service incandescent reflectorized lamps "for rough or

²⁰⁰ 42 U.S.C.A. 6291(30)(C) (West Supp. 1993).

²⁰¹ 42 U.S.C.A. 6291(30)(F) (West Supp. 1993).

²⁰² 42 U.S.C. 6292(a)(19) (1988).

vibration service" as a specific type of consumer product covered under EPCA to remedy the situation.

E. Disclosures for General Service Fluorescent Lamps

In the NPR, the Commission proposed requiring the disclosure of the same six factors for general service fluorescent lamps as it proposed for the other types of lamps.²⁰³ Similarly, ACEEE's suggestions for disclosures did not distinguish between general service fluorescent lamps and other types of lamps. Instead, ACEEE suggested that the Commission prescribe different requirements based on the type of purchaser—residential or commercial—at which the disclosure was to be targeted.²⁰⁴

In contrast, NEMA suggested that, for the two types of lamps for which Congress established minimum efficiency standards in the EPA 92 amendments to EPCA—general service incandescent reflector lamps and general service fluorescent lamps—the Commission require the disclosure of only an encircled "E" on packages, in catalogs and etched on the product itself.²⁰⁵ The encircled "E" would designate that the product meets the established energy conservation standards. In support of this recommendation, NEMA stated that interchangeable general service fluorescent lamps that will remain on the market after the energy conservation standards set by EPA 92 become effective (April 30, 1994, for some lamp products, and October 31, 1995, for other lamp products) will have a range of output of only plus or minus four percent.²⁰⁶

1. Disclosures for General Service Fluorescent Lamps Generally

Fifteen comments addressed the issue of what disclosures the Commission should require for general service fluorescent lamps. Seven recommended prescribing disclosure of the same elements for these lamps as were proposed by the Commission in the NPR.²⁰⁷ Eight comments supported NEMA's recommendation that the

²⁰³ 58 FR at 60154-55. These were: (1) Lumens; (2) watts; (3) design voltage (if other than 120); (4) average life (expressed in hours); (5) number of items in the package; and, (6) a supplemental disclosure (lumens per watt or operating cost).

²⁰⁴ 58 FR at 60154.

²⁰⁵ *Id.* at 60152-54. The minimum efficiency standards for these products are prescribed in section 325(i) of EPCA. 42 U.S.C. 6295(i) (West Supp. 1993).

²⁰⁶ *Id.* at 60152.

²⁰⁷ LBL, GG-7, 1; MN DPS, GG-9, 1-2; MO DNR, GG-10, 1; OR DOE, GG-13, 2-7, 7-8; US EPA, GG-17, 2; WA SEO, GG-18, 2-3.

Commission require disclosure only of the encircled "E."²⁰⁸ ACEEE originally opposed limiting the disclosure of information for any lamps to the encircled "E," favoring instead the "basic disclosures" (without lumens-per-watt) for all types.²⁰⁹ At the Workshop and in its post-Workshop comment, however, ACEEE appeared to have changed its views, and to accept the idea of limiting disclosures to the encircled "E" on packaging for general service fluorescent lamps as long as the other elements (or some of them) are disclosed in catalogs offering the lamps for sale.²¹⁰

Most of the comments that recommended the same disclosures for all lamp types, including general service fluorescent lamps, did so on the basis that purchasers could thereby have enough information to choose among lamps that will most economically meet their lighting needs.²¹¹ Some specifically opposed limiting the disclosure for these lamps to an encircled "E," most contending that this disclosure alone would not provide purchasers with sufficient information to compare competing lamps.²¹² Some recommended additional disclosures, such as the effect of different ballasts on lamp operation or color/temperature disclosures.²¹³ Several favored the inclusion of operating cost information.²¹⁴

The comments that recommended limiting disclosure requirements for general service fluorescent lamps to an encircled "E" on packages and in catalogs gave several reasons for their position. A principal reason was that the EPA 92 minimum efficiency standards will eliminate all but a few general service fluorescent lamps that are very similar in their energy efficiency characteristics. Those remaining on the market would not necessarily be interchangeable because such lamps are part of a lamp/ballast/fixture system. Accordingly, comparative disclosures for products

that are not interchangeable are not necessary.

NEMA said that disclosure of lumens per watt for general service fluorescent lamps would not provide a meaningful basis for comparison because lumens-per-watt measurements will not vary significantly among comparable products after the EPA 92 standards take effect. NEMA contended that, after the energy efficiency standards take effect, remaining models of general service fluorescent lamps will differ in light output (for a given nominal wattage) by a very small percentage, if placed in the same lighting system. Only the color of light emitted due to different phosphors would vary, resulting in slight variations in measurements of light output.²¹⁵

In its initial comment, LRC agreed with NEMA's position,²¹⁶ adding later in the Workshop that these lamps are a small part of the residential consumer market, and that any additional savings realized after the efficiency standards went into effect would be minor and would not justify labeling requirements.²¹⁷ GE stated that, because consumers do not consider replacing A-line bulbs with general service fluorescent lamps or A-line table lamps with overhead general service fluorescent lamp fixtures, labels disclosing the elements proposed in the NPR by the Commission would be useless on general service fluorescent lamps that meet the efficiency standards.²¹⁸ Osram concurred with NEMA's position:

As explained at the Public Workshop, fluorescent lamps are one component of a system whose wattage, light output, and efficiency variations are wide, dependent on the ballast and fixture used, and on the ambient temperature. EPCA removes a number of fluorescent lamps from the marketplace, leaving within interchangeable

²¹⁵ NEMA, G-3, 14-16 ("Once the system is set, replacement lamps are picked to match the old lamps and cannot be purchased to increase lamp or system efficiency."); 25-26, (Tr.), 321, (Supp.), G-10, 29-30.

²¹⁶ LRC, GG-15, 3.

²¹⁷ LRC (Tr.), 318.

²¹⁸ GE, G-2, 2, 3 ("Labels mandated by the Commission should only be required on products that are interchangeable and should only contain information that facilitates comparisons among those products."), 6 (contending that lumens, lumens per watt and other energy cost information of the type suggested by the Commission will not encourage energy efficient choices and that such disclosures could mislead consumers by suggesting that (1) fluorescent lamp performance is not dependent on ballasts and fixtures and (2) that all fluorescent lamp types are interchangeable). See GE's detailed explanation of the system-oriented nature of these lamps and how they will be affected by the EPA 92 minimum efficiency standards at Tr., 321-24 (the chart to which GE refers is found as Exhibit "G" to NEMA's supplemental comment (NEMA (Supp.), G-10, Exhibit "G.")).

types a smaller range of efficiency available to the consumer. Of the types that remain, choice is typically by color, either to match the remainder of an installation, or to accord with a consumers preference. Any choice will result in exactly the same energy consumption, since that is controlled by the system.²¹⁹

ACEEE and LBL disagreed with the contention that choice among general service fluorescent lamps of different efficiencies will be eliminated by the EPA 92 minimum efficiency standards. LBL said that there was some interchangeability that could result in a 13% increase in efficacy.²²⁰ It was not clear, however, how often the lamp substitutions described in the comment take place in actual practice.

The Commission finds that general service fluorescent lamps are unique among the products considered in this proceeding because they are a separate part of an integrated lighting system consisting of a lamp, an appropriate ballast, and a fixture, or luminaire, in which the lamp and ballast are installed. On balance, the Commission finds that the preponderance of evidence on the record has established that, because these lamps are part of a system, they are not interchangeable with other types of lamps, and are not readily interchangeable with other general service fluorescent lamps that do not match with the ballast and/or the luminaire in the system of which they are a part. Consequently, after the standards become effective, from an energy efficiency point of view, there will not be a meaningful choice among competing products that will fill the purchaser's lighting needs. The Commission concludes, therefore, that a requirement to disclose the basic elements (and/or a supplemental disclosure) on general service fluorescent lamp package labels will not assist purchasers of these products as contemplated by EPA 92.

The Commission instead has determined to require an encircled "E" on packages and in catalogs for general

²¹⁹ Osram (Supp.), G-11, 4.

²²⁰ ACEEE (Supp.), GG-21, 2 ("There are also significant differences between general service fluorescent lamp products meeting the EPA efficiency standards. For example, 32 watt T8 general service fluorescent lamps have an efficacy of about 91 lumens per watt, approximately 10% better than the 82 lumens per watt of 34 watt T12 cool white lamps."); LBL (Supp.), GG-21, 3 ("While these lamps are already regulated under the Energy Policy Act of 1992, there is a range of efficacy available even within each ballast type. While it is true that efficacy varies within a small range for T-12 lamps, T-10 lamps, which substitute for T-12s, have about 13 percent higher lamp efficacy than 34 W T-12s. It is possible that future technology developments will provide other options that widen the range of efficacy.")

²⁰⁸ Angelo, G-1, 1; GE, G-2, 5, (Ans.), 1, 2, (Tr.), 324; NEMA, G-3, 24, (Tr.), 316-317, (Supp.), G-10, 29; Philips, G-5, 3, (Supp.), G-12, 2; Osram (Supp.), G-11, 4; ETL, GG-2, 1-2; IES, GG-6, 2; LRC, GG-15, 3, (Tr.), 318.

²⁰⁹ ACEEE, GG-1, 1, 3.

²¹⁰ ACEEE (Tr.), 328-29, (Supp.), GG-21, 2.

²¹¹ See, e.g., MN DPS, GG-9, 1-2.

²¹² See MO DNR, GG-10, 1; US EPA, GG-17, 2; WA SEO, GG-18, 3.

²¹³ See LBL, GG-7, 1 (the effect of different ballasts); OR DOE, GG-13, 5-7 (operating temperature and color temperature); WA SEO, GG-18, 3 (color rendering index and correlated color temperature).

²¹⁴ See, e.g., ACEEE, GG-1, 1; LBL, GG-7, 1; MO DNR, GG-10, 1.

service fluorescent lamps that meet or exceed the minimum efficiency standards set by EPCA. This disclosure will be useful to purchasers because it will assure them that the lamps so marked meet or exceed the federal minimum efficiency standards. To ensure that purchasers understand that the encircled "E" means that the products meet the minimum efficiency standards established by EPCA, the Commission also has determined to require that a brief explanatory statement appear on the packages for the lamps and in catalogs from which they can be ordered.²²¹ Specifically, the amendments now adopted require that on each package for general service fluorescent lamps, manufacturers must disclose conspicuously the encircled "E" on the principal display panel. The encircled "E" will be considered "conspicuous," in terms of size, if it appears at least as large as either the manufacturer's name or logo or another logo disclosed on the package, such as the "UL" or "ETL" logos, whichever is larger. On the principal display panel or on another panel, manufacturers also must disclose conspicuously the statement, "(The encircled "E" logo, followed by:) means this bulb meets Federal minimum efficiency standards." See § 305.11(e)(2) in "Text of Amendments," below.

2. Disclosures for Products Without Individual Packaging

In the NPR, the Commission proposed two approaches for disclosures for those products (which are usually general service fluorescent lamps) manufacturers might choose to sell without individual packaging or without packaging other than bulk shipping cases.²²² Option One would have required manufacturers to label the products with disclosures on a hang tag or adhesive label attached to each unpackaged product; Option Two would have required manufacturers to include the required information on statements included in each shipping case, and would have required retailers to post the information at point of sale. In addition to these proposals, the Commission asked generally, in "Questions for Comment," whether it

²²¹ Catalogs are discussed below in Part IV.E.3., below.

²²² 58 FR 60156. "Some lamp products, however, are not sold in individual packages. According to industry representatives, for example, general service fluorescent lamps frequently are shipped only in bulk containers, without individual lamp sleeves or packaging, whether the shipment is to a commercial purchaser (who purchases through a catalog) or to a local retail store for resale of unpackaged individual lamps to residential purchasers." *Id.*

should require that labels be attached to individual unpackaged products.²²³

Four comments addressed this issue as it related to general service fluorescent lamps. NEMA and GE suggested that the Commission require that an encircled "E" be etched on the general service fluorescent lamps themselves.²²⁴ Osram specifically opposed the labeling of individual products with stickers or hang tags.²²⁵ OR DOE recommended against labels on individual lamps in favor of disclosures on the bulk packaging.²²⁶

EPCA mandates that the Commission's rules shall provide that the labeling shall indicate the information required by the Commission "on the packaging of the lamp."²²⁷ The Commission, therefore, does not have authority under EPCA to require marking directly on lamp products. But, purchasers of general service fluorescent lamps that are not packaged should be informed that the products meet the minimum efficiency standards. The Commission has determined that proposed Option Two would not in many situations result in the required disclosure actually reaching purchasers because the statements enclosed in shipping cases could be lost and a separate requirement in the rules that retailers post them would be difficult to enforce.

The Commission recognizes that manufacturers regularly etch products with voltage, wattage, and other information, which is the disclosure method that NEMA and GE recommended for the encircled "E."²²⁸ The Commission concludes that if the encircled "E" is permanently marked on the lamps, the objectives of EPA 92, as they apply to general service fluorescent lamps, can be achieved at a reduced compliance burden on those manufacturers who choose to sell lamps that bear no labels, whether packaging

²²³ *Id.* at 60159.

²²⁴ NEMA, G-3, 24; GE, G-2 (Ans.), 8 ("The Commission should not require that individual lamps contain disclosures on any adhesive label hang tag or other kind of label. Such labels will add cost which does not result in any meaningful disclosure being made. GEL has suggested that general service fluorescent lamps be marked with the symbol "E" enclosed in a circle to indicate to purchasers that such lamps meet the energy efficiency requirements of the EPA-92. It is feasible to require limited amounts of information to be marked [etched] on products. The "E" enclosed with a circle is an example of such disclosure that fits easily on a product.")

²²⁵ Osram (Supp.), G-11, 5.

²²⁶ OR DOE, GG-13, 8.

²²⁷ 42 U.S.C.A. 6294(a)(2)(C)(ii) (West Supp. 1993).

²²⁸ The Commission also notes that the labeling rules do not prohibit manufacturers from marking their products in this manner.

labels, hang tags or adhesive labels. Manufacturers need not etch on such products the explanatory statement otherwise required to accompany the encircled "E." On the product itself, the statement may be difficult to read and may not be used or needed by most consumers of these products (who primarily are more knowledgeable commercial purchasers). See § 305.11(e)(2)(B) in "Text of Amendments," below.

3. Catalogs

Eight comments recommended that whatever disclosures the Commission requires for general service fluorescent lamps appear in catalogs from which these products can be ordered for purchase.²²⁹ There was no opposition to this recommendation. Therefore, these amendments require that, in addition to disclosing the encircled "E" on packaging, manufacturers must disclose clearly and conspicuously the encircled "E" in close proximity to each entry for a covered general service fluorescent lamp in catalogs from which the lamps can be ordered by purchasers.²³⁰ On each catalog page upon which the encircled "E" appears, manufacturers also must disclose, prominently and conspicuously at least once, the statement: "(The encircled "E" logo, followed by:) means this bulb meets Federal minimum efficiency standards." See § 305.14(d)(1) in "Text of Amendments," below.

4. Point-of-Sale Printed Materials

Four comments addressed the issue of disclosures in point-of-sale materials for general service fluorescent lamps. GE suggested that the Commission may want retailers to make specific disclosures available in point-of-sale written materials, to the extent that such disclosures may be necessary to help consumers choose the most energy efficient products that meet their requirements.²³¹ ACEEE recommended that average annual operating cost and average lifetime indicators be included on both packaging and point-of-sale displays for sales to residential purchasers.²³² LBL stated that efficacy (efficiency) information should be included in point-of-sale materials for residential purchasers.²³³ SCS

²²⁹ GE, G-2, 5; NEMA, G-3, 24, 26-27, (Supp.), G-10, 30; Osram, G-4, 2, (Supp.), G-11, 4; Philips, G-5, 3; ACEEE, GG-1, 3-4, (Tr.), 328-329, (Supp.), GG-21, 2; OR DOE, GG-13, 9; SCS, GG-16, 4; WA SEO, GG-18, 4.

²³⁰ This requirement also applies to general service incandescent reflector lamps.

²³¹ GE (Ans.), G-2, 8.

²³² ACEEE, GG-1, 3-4.

²³³ LBL (Supp.), GG-22, 3.

contended that the best way to disclose both the energy index and operating cost information would be through voluntary point-of-sale materials prepared on a regional basis.²³⁴

The Commission has already discussed its position and its determination not to require disclosures in point-of-sale materials, in Part IV.C.7, above. The Commission's position is the same for point-of-sale materials for general service fluorescent lamps. Accordingly, the Commission is not requiring specific disclosures for these products at point of sale. As with the other lamp products covered by the labeling rules, however, manufacturers and other sellers must disclose the assumptions they use (cost of electricity, hours of use, etc.) if they voluntarily make point-of-sale operating cost disclosures.²³⁵ See § 305.13(a)(2) in "Text of Amendments," below.

F. Other Issues

1. Request for Exemption for Products To Be Eliminated by EPCA's Energy Conservation Standards

EPCA's minimum efficiency standards for 4-foot medium bi-pin and 2-foot U-shaped general service fluorescent lamps and all incandescent reflector lamps will not become effective until October 31, 1995,²³⁶ approximately six months after the labeling rules become effective. Because of the burdens new labeling requirements would impose, NEMA, GE and Osram requested an exemption under EPCA, 42 U.S.C.A. 6294(a)(2)(C)(ii) (West Supp. 1993), from the labeling requirements for lamp products that will be eliminated from the market on October 31, 1995.²³⁷ This section states that if the Secretary of DOE determines that compliance with the minimum efficiency standards specified in EPCA for any lamp will result in the discontinuance of its manufacture, the Commission may exempt such lamp from the labeling rules. The exemption would be limited to those lamps that may no longer be manufactured after the minimum efficiency standards become effective. DOE has made this determination.²³⁸ Hence, the Commission has the discretion to exempt these lamp products from the new labeling rules. Given that these products will be

manufactured for only six months after the new labeling rules go into effect, it does not appear appropriate to require manufacturers to go to the expense of redesigning their labels. Accordingly, those general service fluorescent lamps and incandescent reflector lamps covered by the minimum efficiency standards that become effective on October 31, 1995, under 42 U.S.C.A. 6295(i)(1)(A) (West Supp. 1993), that do not meet those minimum efficiency standards are exempted from the labeling rules.²³⁹

2. "Gray Market" Problem

NEMA and Philips raised concerns about lamps legally produced for export (that do not comply with the EPCA minimum efficiency standards) being illegally imported back into the country (presumably still marked with the manufacturer's identification) for sale in a "gray" market by parties other than the manufacturers.²⁴⁰ NEMA and Philips recommended that, to provide manufacturers with protection against enforcement actions for this domestic re-sale of these products, the Commission require that products that do not comply with the standards that are manufactured for export be marked indelibly with a symbol connoting that the product was produced exclusively for export.²⁴¹

There is insufficient evidence on the record for the Commission to determine how serious this problem might be, and to prescribe a labeling or marking requirement. Manufacturers who are concerned about the issue, however, can protect themselves by marking their products in such a way that it is clear that they were manufactured for export.

3. Disclosures on Outer Shipping Containers

NEMA, Osram, and Philips recommended that the Commission require disclosure, on the outer shipping cartons of lamp products, of a symbol or statement indicating compliance with the minimum efficiency standards and labeling regulations mandated by EPCA.²⁴²

²³⁹ As of November 1, 1995, any manufacturer who continues to manufacture these lamps could be subject to action by DOE for selling lamps in violation of the minimum efficiency standards.

²⁴⁰ Philips, G-5, 4; NEMA (Tr.), 326.

²⁴¹ Philips suggested an "X" etched on the product. Philips, G-5, 4.

²⁴² NEMA, G-3, 27, 32. (Tr.), 327-28; NEMA's suggestions in the NPR also recommended this requirement (58 FR at 60154); Philips, G-5, 3; Osram (Tr.), 328. Angelo agreed with this recommendation. Angelo (Tr.), 328. NEMA suggested a symbol, or a statement such as: "These lamps are tested and labeled in compliance with federal energy efficiency requirements." NEMA, G-3, 27, 32.

During the discussion of this proposal at the Workshop, NEMA clarified that its recommendation was for a disclosure on the corrugated carton in which the manufacturer ships the products, and not the larger and sturdier shipping container that would be loaded on a ship and that could contain cartons of lamps on one occasion and cartons of other products on another.²⁴³ While NEMA's and Philip's original proposals appeared to be limited to general service fluorescent lamps and general service incandescent reflector lamps, Osram said that the requirement should apply to "all [lamp] products covered by the Energy Policy Act."²⁴⁴ Philips and NEMA pointed out that this requirement would facilitate inspection of foreign products by the U.S. Customs Service.²⁴⁵ The record contains no evidence of opposition to this suggestion.

The Commission agrees that a statement such as the one suggested by NEMA and the other commentors would be helpful to the enforcement efforts of both the U.S. Customs Service and the Commission. Today's amendments, therefore, require that the following disclosure appear conspicuously at least once on the outer surface of all cartons in which lamp products covered by the Rule are shipped domestically or imported: "These lamps comply with Federal energy efficiency labeling requirements." See § 305.11(e)(4) in "Text of Amendments," below.

G. Substantiation of Disclosures

In the NPR, the Commission proposed requiring that manufacturers follow procedures to be specified in the final labeling rules to substantiate all required disclosures. It also proposed requiring that manufacturers comply with specific sampling procedures in selecting the product samples for the required substantiation testing. The substantiation and sampling procedure requirements are connected. The substantiation requirement is directed at ensuring that the disclosures are accurate and based on uniform standards. The sampling procedure requirement is directed at ensuring that the samples tested are representative of the product being produced.

For other products, the Rule requires that substantiation of energy efficiency ratings (and water usage rates) be based on the test procedures specified by

²⁴³ See Tr., 327-28.

²⁴⁴ Osram (Tr.), 328.

²⁴⁵ Philips, G-5, 3; NEMA, G-3, 27, 32, (Tr.), 327.

²³⁴ SCS, GG-15, 4-5.

²³⁵ See Part IV.C.2.b, above.

²³⁶ 42 U.S.C.A. 6295(i)(1)(A)-(B) (West Supp. 1993).

²³⁷ NEMA, G-3, 10, 14-15, 44, (Supp.), G-10, 5 in. *; Osram, G-4, 2. See GE, G-2, 10.

²³⁸ Letter dated April 18, 1994, to Janet Steiger, Chairman, FTC, from Hazel R. O'Leary, Secretary, DOE.

EPCA or DOE.²⁴⁶ For those products, § 305.6 of the Rule specifies that the sampling procedures adopted in the DOE test procedures must be used in selecting the product specimens to be tested.²⁴⁷

EPCA, as amended by EPA 92, requires DOE to issue test procedures to determine certain performance characteristics relating to the energy efficiency standards specified in EPCA for general service fluorescent lamps and incandescent reflector lamps, taking into consideration the applicable IES or ANSI standards. 42 U.S.C.A. 6293(b)(6) (West Supp. 1993). EPCA authorizes, but does not require, DOE to issue test procedures for nonreflector general service incandescent lamps and medium screw base integrally ballasted compact fluorescent lamps. 42 U.S.C. 6293(b)(1)(B) (West Supp. 1993).

The Commission sought comments in the NPR regarding what test procedures would be acceptable to substantiate the required labeling disclosures, and what sampling procedures should be followed in selecting the lamps to be tested. The Commission stated that, when DOE issues testing and sampling procedures for any of the lamp products covered by the lamp labeling rules, the Commission would consider whether to adopt the DOE testing and sampling procedures as the necessary substantiation for the required labeling disclosures. DOE has not yet issued testing or sampling procedures for any of the lamp products covered by the labeling rules the Commission adopts today.

The labeling rules the Commission has adopted require manufacturers of all lamps covered by the labeling rules to have substantiation for all the required labeling disclosures. The Commission has determined, however, not to prescribe particular test methods or sampling procedures that must be used. Instead, the labeling rules specify that the required substantiation for medium base screw-in lamps is a reasonable basis consisting of competent and reliable scientific tests that substantiate the required disclosures.²⁴⁸ For general service fluorescent lamps, the required

substantiation is a reasonable basis consisting of competent and reliable scientific evidence that substantiates the claim made by the encircled "E," that the lamps meet the minimum energy efficiency standards established under EPCA.

To provide guidance to manufacturers about test procedures the Commission considers adequate to meet the reasonable basis standard, however, the labeling rules include specific examples of test procedures the Commission deems to be adequate (*i.e.*, "safe harbors"). Specifically, for light output and average laboratory life claims, the labeling rules state that the Commission will accept as a reasonable basis competent and reliable scientific tests conducted under particular IES test protocols.²⁴⁹ The specific IES test protocols referenced in the labeling rules are recognized throughout the lamp industry as authoritative.²⁵⁰ Further, for incandescent lamps, the current Light Bulb Rule's requirements are consistent with the IES test procedures.²⁵¹ If, in the future, DOE issues test procedures different from these IES protocols, or in addition to them, the Commission will consider testing performed according to the DOE procedures as meeting the reasonable basis standard. Further, if it appears necessary or appropriate, the Commission may initiate a proceeding to consider amending the labeling rules to require use of the DOE test procedures to ensure nationwide consistency.

The labeling rules, therefore, state that the Commission will accept as adequate substantiation light output and laboratory life claims based on competent and reliable scientific tests performed according to the following IES test procedures:

For measuring light output (in lumens): 0
General Service Fluorescent—IES LM 9

²⁴⁹ It is not necessary to specify particular test procedures, or safe harbors, for the measurement of design voltage or wattage, because they are elementary measurements.

²⁵⁰ Philips (Tr.), 91-92; GE (Tr.), 101-02. NEMA has recommended that DOE adopt these IES test procedures when it issues its test methods. NEMA, G-3, 49.

²⁵¹ 16 CFR 409.1 n. 1. The Light Bulb Rule states that, for lamps covered by that Rule, the "average initial wattage, average initial lumen and average laboratory life disclosures required by this section shall be in accordance with the requirements of interim Federal Specification, Lamp, Incandescent (Electric, Large, Tungsten-Filament) W-L-00101 G and shall be based upon generally accepted and approved test methods and procedures." In 1977, that specification ceased being interim and is now known as Federal Specification, Lamp, Incandescent (Electric, Large, Tungsten-Filament) W-L-101H/GEN. This specification refers to pertinent ANSI test protocols, which are consistent with the IES protocols.

Compact Fluorescent—IES LM 66
General Service Incandescent (Other than Reflector Lamps)—IES LM 45
General Service Incandescent (Reflector Lamps)—IES LM 20
For measuring laboratory life (in hours):
General Service Fluorescent—IES LM 40
Compact Fluorescent—IES LM 65
General Service Incandescent (Other than Reflector Lamps)—IES LM 49
General Service Incandescent (Reflector Lamps)—IES LM 49

Although the lamp industry generally uses these IES test procedures, when measuring the laboratory life of their lamps, industry members sometimes vary the IES methods to save time. For example, manufacturers might use accelerated tests, in which lamps being tested are operated at a much higher voltage than their design voltage.²⁵² Once the test lamps fail, their laboratory life at their design voltage is calculated mathematically. Industry members also might routinely measure laboratory life by operating test lamps continuously, rather than as specified in the IES methods.²⁵³ Under the lamp labeling rules, such variations on the IES protocols will fall within the safe harbor if manufacturers can demonstrate that they produce results as accurate as those produced following the IES test methods. See § 305.5(b) in "Text of Amendments," below.

The above IES test procedures, however, do not include specifications governing the selection of the lamp specimens for testing. The Commission, therefore, has amended § 305.6 of the Rule to specify that manufacturers must use competent and reliable scientific sampling procedures for testing lamp products. The Rule also provides, as a safe harbor, the sampling procedures contained in Military Standard 105 Sampling Procedures and Tables for Inspection by Attributes. Mil-Std-105E is the sampling standard referenced in the federal specification cited by the Commission's existing Light Bulb Rule.²⁵⁴ If DOE adopts a sampling standard of its own as part of its test procedures for lamps covered by the labeling rules, the Commission will deem use of that sampling standard as meeting the competent and reliable scientific standard. See § 305.6(b) in "Text of Amendments," below.

²⁵² Supreme (Tr.), 87-88; Philips, (Tr.), 90-91.

²⁵³ Philips (Tr.), 91.

²⁵⁴ 16 CFR 409.1 n. 1.

²⁴⁶ 16 CFR 305.5. The DOE test procedures for products already covered by the Rule are found at 10 CFR part 430, subpart B.

²⁴⁷ 16 CFR 305.6. The DOE sampling procedures for products already covered by the Rule are found in 10 CFR 430, subpart B.

²⁴⁸ For medium base screw-in lamps, the required disclosures are of the lamp's design voltage if other than 120 volts, average initial wattage, average initial light output, average laboratory life and the Advisory Disclosure. For general service incandescent reflector lamps, the disclosures must include the encircled "E" and the explanatory statement.

H. Other Requirements for All Lamp Products

1. Recordkeeping and Submission of Data

In the NPR, the Commission proposed requiring that manufacturers maintain records that substantiate each of the items the final rules require be disclosed. It also proposed requiring them to submit those records to the Commission within 30 days of a request. These requirements are imposed directly by EPCA, which requires manufacturers to keep on file, for a period specified in the Rule, the data from which the information included on the label and required by the labeling rules was derived. 42 U.S.C. 6296(b)(2) (1988).

One comment stated simply that the proposed requirements were acceptable.²⁵⁵ Another recommended that the Commission not mandate recordkeeping requirements, but instead rely on the recordkeeping requirements imposed by DOE as part of its test procedures.²⁵⁶ Two comments recommended that the manufacturer be given 60 days instead of 30 to produce the records.²⁵⁷

The current Rule requires that manufacturers maintain, for a period of two years after production of the specific lamp product has been terminated, records sufficient to show a reasonable basis consisting of competent and reliable scientific evidence that the required disclosures they make on labels and in catalogs are accurate. The recordkeeping requirement is necessary to enable the Commission to determine whether the required disclosures are substantiated and accurate. See 16 CFR 305.15(a).

DOE has not yet specified test procedures or recordkeeping requirements for any lamp products. The Commission, therefore, cannot determine at this time whether the recordkeeping requirements that DOE may specify in the future would be adequate to determine if the manufacturer's rule-required disclosures are substantiated and accurate. The Commission has, however, designed the recordkeeping requirement to minimize the burden it imposes by requiring that manufacturers maintain only those records that are sufficient to demonstrate the accuracy of the required labeling disclosures. After DOE issues test procedures and recordkeeping requirements for lamp products covered by the labeling rules,

the Commission will consider whether the DOE recordkeeping requirements are sufficient to satisfy the recordkeeping requirement imposed by the labeling rules.

The final labeling rules also require that manufacturers submit the required records to the Commission within 30 days of a request. This requirement is statutory, imposed directly by EPCA. 42 U.S.C. 6296(b)(2) (1988). The Commission, however, will consider a request for a reasonable extension of this time period, based on a satisfactory showing of the burden imposed by the 30 days requirement on a particular manufacturer. See § 305.15(b) in "Text of Amendments," below.

2. Reporting

In the NPR, the Commission proposed requiring that lamp manufacturers submit annual reports, containing specific information, on or before March 1 each year. The Commission stated that this requirement would not become effective until after DOE has issued test procedures for specific lamp products. The proposed reporting requirements were based on EPCA, 42 U.S.C.A. 6296(b) (West Supp. 1993), which requires manufacturers of lamp products for which DOE has issued test procedures under section 323 of EPCA, as amended by EPA 92, 42 U.S.C.A. 6293 (West Supp. 1993), to supply the Commission annually with relevant information respecting energy consumption.

The Commission proposed requiring that each report contain the following information: (1) Name and address of manufacturer; (2) all trade names under which the lamps are marketed; (3) model or other identification numbers; (4) starting serial number, date code, or other means of identifying the date of manufacture (date of manufacture information must be included with only the first submission for each basic model or type); and (5) test results measured according to the DOE test procedures for the lamps' wattage, light output ratings and Energy Index and, in addition, for all covered fluorescent lamps, the test results for the lamps' color rendering index. This type of information is currently required for other categories of products covered by the Appliance Labeling Rule. To minimize the burdens imposed by this proposed reporting requirement, the Commission proposed accepting trade association directories and similar submissions in lieu of individual annual reports, as it does for other product categories.

One comment basically agreed with the proposed reporting requirements,

but urged the Commission to minimize the burden of annual reporting.²⁵⁸ Four commenters contended that the NPR underestimated both the number of affected models and the time required to prepare required reports for each model.²⁵⁹ Three of these commenters stated that annual submissions are unnecessary and overly burdensome and recommended that the Commission develop a reporting procedure jointly with DOE.²⁶⁰ One comment stated that manufacturers are prepared to report test reports for basic models of lamps if basic models are described in terms of performance rather than labels or brand names. This comment urged that reporting requirements be imposed only once with respect to any model with particular performance characteristics. It urged the Commission not to require date-coding, because manufacturers do not routinely label each lamp type with serial numbers or date codes and such a requirement would be very costly and disruptive to manufacturers of certain types of lamps.²⁶¹

The reporting requirement in EPCA is concerned primarily with ensuring that the Commission has sufficient information to determine whether ranges of comparability for major appliances should be changed annually. Because the lamp labeling rules do not require disclosure of ranges of comparability, the Commission has determined that it does not need complete annual reports from lamp manufacturers. To minimize burdens imposed on manufacturers, therefore, the Commission is requiring that reports contain only the following information: (1) Name and address of manufacturer; (2) all trade names under which the lamps are marketed; (3) model or other identification numbers; (4) starting serial number, date code, or other means of identifying the date of manufacture (date of manufacture information must be included with only the first submission for each basic model or type); and (5) test results for the wattage and light output ratings of each lamp model or type and, in addition, for each model or type of covered fluorescent lamp, test results for the color rendering index, measured according to the DOE

²⁵⁸ Panasonic, G-7, 2.

²⁵⁹ GE, G-16, 1-2; Osram, G-15, 1-2; Philips, G-14, 1; NEMA, G-3, 28-29, 33, 43. The specific burden estimates contained in these comments are discussed in Part VI, below.

²⁶⁰ Osram, G-4, 3, G-15, 1-2; Philips, G-5, 1, G-12, 4; NEMA, G-3, 28-29, 33, 43, 50.

²⁶¹ NEMA, G-3, 50 (manufacturers may produce many versions of lamps with common performance characteristics, differing only in brand name, distribution channels or packaging).

²⁵⁵ Panasonic, G-7, 2.

²⁵⁶ NEMA, G-3, 28-29, 33, 43.

²⁵⁷ NEMA, G-3, 51; Philips, G-5, 3.

test procedure.²⁶² The reports will be due on March 1 of each year, coinciding with the due date for reports on fluorescent lamp ballasts, beginning March 1, 1996. Although reports must be submitted each year, to further minimize the burdens imposed by the reporting requirements, the Commission will accept subsequent annual reports that identify the reporting entity but provide only data about new, changed, or discontinued products, without repeating information on products that have not changed since the earlier report. In addition, the Commission will accept manufacturers' reports in any format that contains the necessary information. These could be catalogs with cover letters, industry directories, copies of reports to DOE or other federal or state regulatory authorities, or original reports, as long as the required information is included.

Because DOE has not yet issued test procedures for any lamp products, however, the Commission is staying the reporting requirements pending DOE's issuance of test procedures. No reports will be due until after DOE issues test procedures for any of the lamps covered by the labeling rules. Once DOE has issued test procedures, the Commission will publish a notice announcing when the initial reports will be due. See §§ 305.8(a)(3) and 305.8(b) in "Text of Amendments," below.

3. Submission of Product Samples to Designated Laboratory

In the NPR, the Commission proposed requiring that manufacturers, upon request by the Commission, submit at the manufacturer's expense, a reasonable number of products to any laboratory designated by the Commission. The Commission proposed including this requirement in the labeling rules so that manufacturers would be aware of their duties and responsibilities under EPCA, which requires manufacturers to do this. Under EPCA, however, any charge levied by the laboratory for testing will be paid for by the Commission. 42 U.S.C. 6296(b)(3) (1988).

One comment agreed with the proposal, which allows the Commission to determine whether required disclosures are accurate, but urged that care be taken to minimize the expense of spot-check testing.²⁶³ Two commenters stated that the tests should be performed in a NVLAP accredited

laboratory.²⁶⁴ One of these commenters added that the testing should be performed based on the procedures outlined in NIST Handbook 150-01.²⁶⁵

The current Rule repeats the standard specified in EPCA, *i.e.*, manufacturers, upon request by the Commission, must submit at the manufacturer's expense, a reasonable number of products to any laboratory designated by the Commission.²⁶⁶ Any charge levied by the laboratory for testing will be paid for by the Commission. The Commission has determined that this requirement is sufficient for lamp products and, therefore, is not amending the Rule in this regard. See 16 CFR 305.16.

V. Regulatory Flexibility Act

The Commission stated in the NPR that the provisions of the Regulatory Flexibility Act requiring a regulatory analysis were not applicable to the proposed amendments because they would not have "a significant economic impact on a substantial number of small entities." The Commission stated that it believed any economic cost imposed on small entities are primarily statutorily imposed and the proposed regulations would impose few, if any, independent additional costs.

None of the commenters specifically addressed the effect of the proposed labeling rules on small entities. Based on the discussion in Parts IV.H.1-2, above and VI, below, the Commission concludes that the information collection burdens imposed by the recordkeeping and reporting requirements of the final labeling rules on all entities within the affected industry will be *de minimis*, and therefore, will not have "a significant economic impact on a substantial number of small entities," for purposes of the Regulatory Flexibility Act.

VI. Paperwork Reduction Act

In the NPR, the Commission stated that the proposed amendments contained provisions that constitute "collection of information" as defined by the regulations of the Office of Management and Budget ("OMB"), 5 CFR 1320.7(c)(1)(1992), under the

Paperwork Reduction Act ("PRA"). 44 U.S.C. 3501 *et seq.* The NPR proposed requiring that manufacturers of lamp products covered by the labeling rules for which DOE has issued test procedures under section 323 of EPCA, 42 U.S.C.A. 6293 (West Supp. 1993), submit annual reports to the Commission. In addition, the NPR proposed that manufacturers of all lamp products covered by the labeling rules, whether or not DOE has issued test procedures for specific lamp products, maintain records that substantiate required disclosures. The Commission estimated in the NPR that approximately 50 manufacturers would be affected by the proposed lamp labeling requirements and that it would take each company fewer than five hours to comply with the proposed recordkeeping and reporting requirements, for a maximum of 250 hours.

The Commission sought comments on the extent of the paperwork burden in the NPR and in a separate request for comments under the PRA.²⁶⁷ In the separate notice, the Commission stated that the estimated burden was small because manufacturers already maintain some of the required records in the normal course of business.²⁶⁸ Records that are likely to be retained by industry members during the normal course of business are excluded from the "burden" for PRA purposes.²⁶⁹

One manufacturer agreed with the estimate of five hours per manufacturer.²⁷⁰ Three manufacturers and a trade association, however, commented that the Commission had underestimated the number of hours it would take to process, format, check, and prepare the proposed reports for each model of lamp product.²⁷¹ Those three manufacturers stated that it would take from 41 to over 97 hours for them to prepare and file the proposed annual reports.²⁷² Two of these manufacturers and the trade association recommended that the FTC consider developing a reporting procedure jointly with DOE and that reports be required only once as opposed to once a year.²⁷³

The comments, however, did not appear to take into account that the Commission's estimate excluded some

²⁶⁷ 58 FR 60652.

²⁶⁸ *Id.*

²⁶⁹ See 5 CFR 1320.7(b)(1).

²⁷⁰ Panasonic, G-7, 2.

²⁷¹ GE, G-16, 1-2; Osram, G-15, 1-2; Philips, G-14, 1; NEMA, G-3, 28-29, 33, 43.

²⁷² Philips, G-14, 1 (minimum of 41 hours); Osram, G-15, 1-2 (not less than 60 hours); GE, G-16, 1-2 (exceed 97 hours).

²⁷³ Osram, G-4, 3, G-15, 1-2; Philips, G-5, 1. (Supp.); G-12, 4; NEMA, G-3, 28-29, 33, 43, 50.

²⁶² Lamps differing only in matters not relevant to the specified ratings (*i.e.*, color, brand name) may be grouped as a basic model.

²⁶³ Panasonic, G-7, 2.

²⁶⁴ Philips, G-5, 3, G-12, 3 (all testing should be performed in NVLAP accredited laboratory); NEMA, G-3, 49 (regulation should require compliance testing only at NVLAP certified laboratories).

²⁶⁵ Philips, G-12, 3. See NIST Handbook 150-01, C-17.

²⁶⁶ Although the labeling rules do not require the Commission to use NVLAP accredited laboratories, as suggested by some comments, the Commission will select labs for testing services that have appropriate credentials to conduct the required testing and will consider using labs accredited by NVLAP, when appropriate.

hours because of the presumption that manufacturers would be maintaining some of the records in the normal course of business. Nevertheless, in response to these comments, the Commission has revised the recordkeeping and reporting requirements in the final labeling rules to minimize their burdens on manufacturers. Specifically, the final labeling rules require only that manufacturers maintain, for a period of two years after production of the specific lamp product has been terminated, records sufficient to demonstrate they have a reasonable basis consisting of competent and reliable scientific evidence that the required disclosures they make on labeling and in catalogs are accurate. The recordkeeping requirement is imposed directly by EPCA, which authorizes the Commission to specify the period for which the records must be kept. 42 U.S.C. 6296(b)(2) (1988). As previously stated, the two-year requirement is identical to the recordkeeping requirement for the other products covered by the Appliance Labeling Rule. In addition, the final rules require that manufacturers submit reports containing only basic information, and submit the information for each different lamp product only once.²⁷⁴ Further, the Commission will accept manufacturers' reports in any format that contains the necessary information. These could be catalogs with cover letters, industry directories, copies of reports to DOE or other federal or state regulatory authorities, or original reports, as long as the required information is included.

Because of the changes the Commission has made to the recordkeeping and reporting requirements, and taking into account

the fact that many of these records are maintained in the normal course of business, the Commission has determined not to revise its burden estimate. While the initial effort involved in developing a report may, for some companies, take more than the original estimate of five hours per manufacturer, the Commission believes that the time involved in complying with the reporting and recordkeeping requirements, as those requirements have been modified, will nonetheless result in an average of five hours per manufacturer. In light of the revised information collection requirements in the final rules, OMB approved the Commission's request for clearance of the requirements under OMB Control Number 3084-0092.²⁷⁵

VII. Regulatory Review

In accordance with the Commission's ongoing regulatory review program, the Commission sought comments about the impact of the proposed requirements for manufacturers and other sellers of lamp products, and their costs and benefits. Based on the comments and discussion in Parts V and VI, above, the Commission concludes that the amended rule will not have a significant economic impact on parties covered by the labeling rules. The Commission has drafted the final labeling rules to minimize burdens imposed on all covered industry members.

VIII. Metric Measurement

In accordance with the Omnibus Trade and Competitiveness Act (OTCA), 15 U.S.C. 205, the Commission must consider metric measurements in addition to inch-pound measurements in measurement sensitive regulations.²⁷⁶ Although the Commission sought comments from the public on this issue in the NPR, none was received. The Commission has concluded that the units of measurement the Commission is requiring in the labeling rules for lamp products comply with the requirements of the Metric Conversion Act. First, lumens, watts, and volts are metric derived units. Second, the metric terms (lumens, watts, and volts) that the Commission is requiring be disclosed should already be familiar to the consumers because they currently are used on packaging of lamp products.

IX. Discussion of Lamp Labeling Amendments Being Adopted

Each amendment the Commission is adopting today is described below.

²⁷⁵ Notice of Office of Management and Budget Action dated April 1, 1994.

²⁷⁶ See also Executive Order 12770 ("Metric Usage in Federal Government Programs").

A. Section 305.2—Definitions

This section contains definitions of twenty-two terms used in both EPCA and the Rule. The Commission is amending it to add (as twelve new subsections) eleven definitions of terms that EPCA uses for the three categories of lamp products that EPA 92 added to EPCA and a new definition for a term ("consumer product") that the amended Rule uses when requiring disclosure of energy consumption data in lamp labeling. The Commission is also revising two existing definitions ("consumer appliance product" and "covered product") to clarify how the Rule's disclosure requirements apply to lamps. Lastly, the Commission is amending this section to group together all the definitions that are pertinent to lamps and placing them immediately following the two existing definitions relating to fluorescent lamp ballasts. The three definitions relating to plumbing products disclosures that had previously been designated (r) and (u)-(v) are now designated (dd) through (ff).

B. Section 305.3—Description of Covered Products To Which This Part Applies

This section lists the fourteen categories of appliances now covered by EPCA and the Rule. The Commission is amending it to add (as three new subsections) the descriptions taken from section 321(30) of EPCA, as amended by EPA 92, 42 U.S.C.A. 6291(30) (West Supp. 1993), for the three categories of lamps (*i.e.*, fluorescent lamps, medium base compact fluorescent lamps, and incandescent lamps) that EPA 92 added to EPCA.

C. Section 305.4—Prohibited Acts

This section makes it unlawful to distribute in commerce any covered product not marked and/or labeled and advertised as prescribed by the Rule. Failing to maintain and make available certain records and product samples as prescribed by the Rule is also prohibited. The Commission is amending subsection (e), which identifies the various effective dates of the Rule for the different categories of covered products, to establish the effective date of the Rule for covered lamp products. EPA 92 directed the Commission to prescribe, by April 25, 1994, labeling rules for lamp products and provided that such rules shall apply to those covered lamp products manufactured after the 12-month period beginning on the date of publication of the rules in final form. The effective date for these lamp labeling rule

²⁷⁴ The final rules require manufacturers to submit an initial report containing the following information: (1) Name and address of manufacturer; (2) all trade names under which the lamps are marketed; (3) model or other identification numbers; (4) starting serial number, date code, or other means of identifying the date of manufacture (date of manufacture information must be included with only the first submission for each basic model or type); and (5) test results for the wattage and light output ratings of each lamp model or type and, in addition, for each model or type of covered fluorescent lamp, test results for the color rendering index, measured according to the DOE test procedure. In subsequent years, manufacturers will be required only to submit reports containing data about new, changed or discontinued lamp products. Further, the Commission will accept manufacturers' reports in any format that contains the necessary information. The reporting requirement will not become effective until after DOE issues test procedures for specific lamp products. The Commission will publish a notice at a later date, after DOE has issued test procedures, announcing when the initial reports and subsequent annual reports will be due.

amendments is therefore twelve months following publication of this Notice.

D. Section 305.5—Determinations of Estimated Annual Energy Cost and Energy Efficiency Rating and of Water Use Rate

This section specifies what test procedures are to be used for measuring the water use and energy consumption and efficiency of the various categories of products covered by the Rule. The Commission is adding to this section a new subsection for covered lamps specifying that manufacturers and private labelers of covered lamps must, for any representation of the design voltage, wattage, light output or life of any covered medium base compact fluorescent lamp or general service incandescent lamp, including any incandescent reflector lamp, or for any representation made by the encircled "E" that any covered general service fluorescent or incandescent reflector lamp is in compliance with a minimum energy efficiency standard, possess and rely upon a reasonable basis consisting of competent and reliable scientific tests that substantiate the representation. The new subsection also states that for establishing the light output and life ratings of covered compact fluorescent lamps and general service incandescent lamps, including incandescent reflector lamps, the Commission will accept as a reasonable basis the results of competent and reliable scientific tests conducted pursuant to certain IES testing protocols that substantiate those ratings.

E. Section 305.6—Sampling

This section specifies that any representation with respect to or based upon a measure or measures of energy consumption shall be based on certain DOE approved sampling procedures. Inasmuch as DOE has not yet adopted sampling procedures for the covered lamp products, the Commission is adding to this section a new subsection for covered lamps specifying that any representation of design voltage, wattage, light output or life, or any representation made by the encircled "E" that a lamp is in compliance with a minimum energy efficiency standard, shall be based upon testing using competent and reliable scientific sampling procedures. The new subsection also states that the Commission will accept sampling conducted in accordance with "Military Standard 105—Sampling Procedures and Tables for Inspection by Attributes" as competent and reliable scientific sampling procedures.

F. Section 305.8—Submission of Data

This section requires manufacturers of covered products to submit to the Commission, in the form of annual reports, certain information about their products. Section 326(b)(1) of EPCA, 42 U.S.C. 6296(b)(1), requires manufacturers to notify the Commission of all their existing product model numbers within 60 days after a rule covering them takes effect and all their future product model numbers prior to commencement of production. Section 326(b)(4) of EPCA, 42 U.S.C. 6296(b)(4), requires manufacturers to supply annually to the Commission, at times to be specified by the Commission, relevant data respecting their products' energy consumption. The Commission is amending § 305.8 of the Rule to require manufacturers of covered lamp products for which DOE has issued test procedures under EPCA to submit to the Commission by March 1, 1996, and annually thereafter, reports disclosing each company's name and address and the trade names, the model numbers, and the energy consumption data (*i.e.*, for all covered lamps for which DOE has issued test procedures, the test results for the lamps' light output in lumens and energy usage in watts and, in addition, for all covered fluorescent lamps, the test results for the lamps' color rendering index) for each of its covered lamp products. This reporting requirement is, however, being stayed pending DOE's adoption of test procedures for these products. Manufacturers of covered lamp products are not being required to submit any more information than manufacturers of other products covered by the Rule.

G. Section 305.11—Labeling For Covered Products

This section contains five subsections specifying labeling requirements for the Rule's covered products.²⁷⁷ The Commission is amending this provision by adding a new subsection to address the labeling requirements that EPA 92 has directed the Commission to issue for lamps. This new subsection is designated (e) and placed immediately after the existing subsection (d) that pertains to fluorescent lamp ballasts. The subsection that pertains to plumbing products, which was subsection (e), is being redesignated (f).

²⁷⁷ The first subsection applies to all the covered products heretofore included in the Rule except fluorescent lamp ballasts, showerheads, faucets, water closets and urinals; the second concerns only furnaces and central air conditioners; the third only central air conditioners; the fourth only fluorescent lamp ballasts; and the fifth only showerheads, faucets, water closets and urinals.

The new subsection (e) specifies the information that must be disclosed on the labels of the three categories of lamps that EPA 92 has added to EPCA and consists of three subsections. Subsection (e)(1)(A) states that all covered compact fluorescent lamps and general service incandescent lamps, including incandescent reflector lamps (*i.e.*, all covered lamps other than general service fluorescent lamps) must disclose clearly and conspicuously on their labels' principal display panel the following information:

- (1) The number of lamps included in the package, if more than one;
- (2) The design voltage of each lamp included in the package, if other than 120 volts;
- (3) The light output of each lamp included in the package, expressed in average initial lumens;
- (4) The electrical power consumed (energy used) by each lamp included in the package, expressed in average initial wattage; and
- (5) The life of each lamp included in the package, expressed in hours.

Subsection (e)(1)(B) specifies that the light output, energy usage, and life ratings of any covered compact fluorescent and general service incandescent lamp must appear in that order and with equal clarity and conspicuousness on the product's principal display panel. The light output, energy usage and life ratings must be disclosed in terms of "lumens," "watts," and "hours" respectively, with the lumens, watts and hours rating numbers each appearing in the same type style and size and with the words "lumens," "watts," and "hours" each appearing in the same type style and size. The words "light output," "energy used," and "life" must precede and have the same conspicuousness as both the rating numbers and the words "lumens," "watts," and "hours," except that the letters of the words "lumens," "watts," and "hours" shall be approximately 50% of the sizes of those used for the words "light output," "energy used," and "life."

Subsection (e)(1)(C) specifies that a lamp's light output, energy usage, and life are to be measured at 120 volts, regardless of the lamps' design voltage. If a lamp's design voltage is other than 120 volts, the lamp's required disclosures of light output, energy usage, and life must in each instance be followed by the phrase "at 120 volts." The rule amendment allows, but does not require, labels for lamps with design voltages other than 120 volts also to disclose the lamps' light output, energy usage, and life at the design voltage

(e.g., "Light Output 1710 Lumens at 125 volts").

Subsection (e)(1)(D) specifies that for all covered general service incandescent reflector lamps the required disclosures of light output are to be given for the lamps' beam spread and followed clearly and conspicuously by the phrase "at beam spread."

Subsection (e)(1)(E) specifies that, for all covered compact fluorescent lamps, the required disclosures of light output shall be measured at a base-up position, but provides that, if the manufacturer or private labeler has reason to believe any lamp's light output at a base-down position would be more than 5% different, the label must also disclose the lamp's light output at the base-down position or, if no test data for the base-down position exist, the fact that at a base-down position the lamp's light output might be more than 5% less.

Subsection (e)(1)(F) requires that for all covered compact fluorescent lamps and general service incandescent lamps, including incandescent reflector lamps, there shall be clearly and conspicuously disclosed on the principal display panel the following Advisory Disclosure statement:

To save energy costs, find the bulbs with the light output you need, then choose the one with the lowest watts.

Subsection (e)(1)(G) specifies that, for any covered general service incandescent lamp that operates with multiple filaments, the principal display panel shall disclose clearly and conspicuously, in the manner required by paragraph (e)(1)(A)-(C) and (F) of this section of the Rule, the lamp's energy usage in watts and light output in lumens at each of the lamp's levels of light output and the lamp's life in hours at the filament that fails first.

Subsection (e)(2) states that all covered general service fluorescent lamps and incandescent reflector lamps shall be labeled clearly and conspicuously with a capital letter "E" printed within a circle and followed by an asterisk. The label shall also clearly and conspicuously disclose, either in close proximity to that asterisk or elsewhere on the label, the following statement:

* (The encircled "E") means this bulb meets Federal minimum efficiency standards.

If the statement is not disclosed on the principal display panel, that asterisk shall be followed by a clear and conspicuous disclosure of the following:

* See (side, top, back) panel for details.

Subsection (e)(2)(A), for purposes of this section of the Rule, states that on labels of general service fluorescent

lamps the encircled capital letter "E" shall be clearly and conspicuously disclosed in color-contrasting ink and will be deemed "conspicuous," in terms of size, if it appears in typeface at least as large as either the manufacturer's name or logo or another logo disclosed on the label, such as the "UL" or "ETL" logos, whichever is larger.

Subsection (e)(2)(B) states that manufacturers and private labelers who would otherwise not put labels on covered general service fluorescent lamps may, instead of labeling such lamps with the encircled "E" and the statement described in paragraph (e)(2)(A), meet the disclosure requirement of that paragraph by permanently marking such lamps clearly and conspicuously with the encircled "E."

Subsection (e)(3) states that, if energy operating cost claims are made in the labeling of any covered lamp, that representation must in connection therewith clearly and conspicuously disclose the assumptions (e.g., purchase price, unit cost of electricity, hours of use, patterns of use) upon which they are based.

Subsection (e)(4) states that all cartons in which any covered products that are general service fluorescent lamps, medium base compact fluorescent lamps, or general service incandescent lamps, including incandescent reflector lamps, are shipped within the United States or imported into the United States shall disclose clearly and conspicuously the following statement:

These lamps comply with Federal energy efficiency labeling requirements.

H. Section 305.13—Promotional Material Displayed or Distributed at Point of Sale

This section has two subsections, the first of which requires all promotional materials for all covered products (other than fluorescent lamp ballasts, showerheads, faucets, water closets and urinals) that are displayed at the point of sale to disclose clearly and conspicuously the following statement: "Before purchasing this appliance, read important energy cost and efficiency information available from your retailer," and the second of which requires all promotional materials for all covered showerheads, faucets, water closets and urinals to disclose clearly and conspicuously the product's water flow rate.

The Commission is amending this section to add a third subsection specifying that, if in such promotional materials any energy operating cost claims are made for any covered lamp product, the representation must in

connection therewith clearly and conspicuously disclose the assumptions (e.g., purchase price, unit cost of electricity, hours of use, patterns of use) upon which they are based. This new subsection is designated (b) and the former subsection (b), which concerns plumbing products, is redesignated (c).

I. Section 305.14—Catalogs

This section has four subsections, the first two of which concern required disclosures in catalogs from which any covered product (other than fluorescent lamp ballasts, showerheads, faucets, water closets and urinals) may be purchased, the third of which concerns such required disclosures for fluorescent lamp ballasts, and the fourth of which concerns such required disclosures for showerheads, faucets, water closets and urinals.

The Commission is amending this section to add a fifth subsection requiring all such catalog advertising for covered lamps to bear the same disclosures that § 305.11(e) of the Rule requires in the lamps' labeling, except for the number of items contained in the package, and specifying that, if in such catalog advertising any energy operating cost claims are made for any covered lamp product, the representation must in connection therewith clearly and conspicuously disclose the assumptions (e.g., purchase price, unit cost of electricity, hours of use, patterns of use) upon which they are based. This subsection provides that, for catalogs not distributed to consumers for making purchases for personal use or consumption by individuals, the light output, energy usage and life disclosures need not comply with the format provisions of § 305.11(e)(1)(B), but must only be disclosed clearly and conspicuously. This new subsection is designated (d) and the former subsection (d) pertaining to plumbing products is redesignated (e).

J. Section 305.15—Test Data Records

This section requires manufacturers and private labelers, upon notification by the Commission or its designated representative to provide, within 30 days notice, the underlying test data from which the estimated annual energy cost or energy efficiency rating for each basic model was derived. The Commission is amending this section to require that manufacturers and private labelers of lamps provide the Commission upon request with the underlying test data from which the light output, energy usage and life ratings and, for fluorescent lamps, the color rendering index, for each basic model or lamp type, was derived.

List of Subjects in 16 CFR Part 305

Advertising, Consumer protection, Energy conservation, Household appliances, Labeling, Lamp products, Penalties, Reporting and recordkeeping requirements.

Text of Amendments

For the reasons set out in the preamble, 16 CFR part 305 is amended as follows:

PART 305—RULE CONCERNING DISCLOSURES OF INFORMATION ABOUT ENERGY CONSUMPTION AND WATER USE FOR CERTAIN HOME APPLIANCES AND OTHER PRODUCTS REQUIRED UNDER THE ENERGY POLICY AND CONSERVATION ACT

1. The authority citation for part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

2. Section 305.2 is amended by revising paragraphs (n) through (v) and by adding paragraphs (w) through (hh) to read as follows:

§ 305.2 Definitions.

* * * * *

(n) *Consumer product* means any article (other than an automobile, as "automobile" is defined in section 2001(1) of Title 15 (section 501(1) of the Motor Vehicle Information and Cost Savings Act) of a type—

(1) Which in operation consumes, or is designed to consume, energy or, with respect to showerheads, faucets, water closets, and urinals, water; and

(2) Which, to any significant extent, is distributed in commerce for personal use or consumption by individuals; without regard to whether such article or such type is in fact distributed in commerce for personal use or consumption by an individual, except that such term includes fluorescent lamp ballasts, general service fluorescent lamps, medium base compact fluorescent lamps, general service incandescent lamps (including incandescent reflector lamps), showerheads, faucets, water closets, and urinals distributed in commerce for personal or commercial use or consumption.

(o) *Consumer appliance product* means any of the following consumer products, excluding those products designed solely for use in recreational vehicles and other mobile equipment:

(1) Refrigerators, refrigerator-freezers, and freezers which can be operated by alternating current electricity, excluding—

(i) Any type designed to be used without doors; and

(ii) Any type which does not include a compressor and condenser unit as an integral part of the cabinet assembly.

(2) Dishwashers.
(3) Water heaters.
(4) Room air conditioners.
(5) Clothes washers.
(6) Clothes dryers.
(7) Central air conditioners and central air conditioning heat pumps.

(8) Furnaces.
(9) Direct heating equipment.
(10) Pool heaters.
(11) Kitchen ranges and ovens.
(12) Television sets.
(13) Fluorescent lamp ballasts.
(14) General service fluorescent lamps.
(15) Medium base compact fluorescent lamps.
(16) General service incandescent lamps, including incandescent reflector lamps.
(17) Showerheads.
(18) Faucets.
(19) Water closets.
(20) Urinals.

(21) Any other type of consumer product which the Department of Energy classifies as a covered product under section 322(b) of the Act (42 U.S.C. 6292).

(p) *Covered product* means any consumer product or consumer appliance product described in § 305.3 of the Rule.

(q) *Luminaire* means a complete lighting unit consisting of a fluorescent lamp or lamps, together with parts designed to distribute the light, to position and protect such lamps, and to connect such lamps to the power supply through the ballast.

(r) *Ballast efficacy factor* means the relative light output divided by the power input of a fluorescent lamp ballast, as measured under test conditions specified in American National Standards Institute standard C82.2-1984, or as may be prescribed by the Secretary of Energy.

(s) *Bulb shape* means the shape of the lamp, especially the glass portion.

(t) *Base* for lamps means the portion of the lamp which screws into the socket.

(u) *Color rendering index* or *CRI* for lamps means the measure of the degree of color shift objects undergo when illuminated by a light source as compared with the color of those same objects when illuminated by a reference source of comparable color temperature.

(v) *Correlated color temperature* for lamps means the absolute temperature of a blackbody whose chromaticity most nearly resembles that of the light source.

(w) *Lamp type* means all lamps designated as having the same electrical

and lighting characteristics and made by one manufacturer.

(x) *Wattage* for lamps means the total electrical power consumed by a lamp in watts, after an initial seasoning period and including, for fluorescent lamps, arc watts plus cathode watts.

(y) *Light output* for lamps means the total luminous flux (power) of a lamp in lumens.

(z) *Life* and *lifetime* for lamps mean length of operating time of a statistically large group of lamps between first use and failure of 50 percent of the group.

(aa) *Lamp efficacy* means the light output of a lamp divided by its wattage, expressed in lumens per watt (LPW).

(bb) *Average lamp efficacy* means the lamp efficacy readings taken over a statistically significant period of manufacture with the readings averaged over that period.

(cc) *IES* means the Illuminating Engineering Society of North America and, as used herein, is the prefix for test procedures adopted by IES.

(dd) *ASME* means the American Society of Mechanical Engineers and, as used herein, is the prefix for national standards and codes adopted by ASME.

(ee) *ANSI* means the American National Standards Institute and, as used herein, is the prefix for national standards and codes adopted by ANSI.

(ff) *Water use* means the quantity of water flowing through a showerhead, faucet, water closet, or urinal at point of use, determined in accordance with test procedures under section 323 of the Act, 42 U.S.C. 6293.

(gg) *Flushometer valve* means a valve attached to a pressured water supply pipe and so designed that, when actuated, it opens the line for direct flow into the fixture at a rate and quantity to operate properly the fixture, and then gradually closes to provide trap reseal in the fixture in order to avoid water hammer. The pipe to which this device is connected is in itself of sufficient size that, when opened, will allow the device to deliver water at a sufficient rate of flow for flushing purposes.

(hh) *Flow restricting or controlling spout end device* means an aerator used in a faucet.

3. Section 305.3 is amended by revising paragraphs (k) through (n) and by adding paragraphs (o) through (q) to read as follows:

§ 305.3 Description of covered products to which this part applies.

* * * * *

(k) *Fluorescent lamp*: (1) Means a low pressure mercury electric-discharge source in which a fluorescing coating transforms some of the ultra-violet

energy generated by the mercury discharge into light, including only the following:

(i) Any straight-shaped lamp (commonly referred to as 4-foot medium bi-pin lamps) with medium bi-pin bases of nominal overall length of 48 inches and rated wattage of 28 or more;

(ii) Any U-shaped lamp (commonly referred to as 2-foot U-shaped lamps) with medium bi-pin bases of nominal overall length between 22 and 25 inches and rated wattage of 28 or more;

(iii) Any rapid start lamp (commonly referred to as 8-foot high output lamps) with recessed double contact bases of nominal overall length of 96 inches and 0.800 nominal amperes, as defined in ANSI C78.1-1978 and related supplements; and

(iv) Any instant start lamp (commonly referred to as 8-foot slimline lamps) with single pin bases of nominal overall length of 96 inches and rated wattage of 52 or more, as defined in ANSI C78.3-1978 (R1984) and related supplement ANSI C78.3a-1985; but

(2) *Fluorescent lamp* does not mean any lamp excluded by the Department of Energy, by rule, as a result of a determination that standards for such lamp would not result in significant energy savings because such lamp is designed for special applications or has special characteristics not available in reasonably substitutable lamp types; and

(3) *General service fluorescent lamp* means a fluorescent lamp which can be used to satisfy the majority of fluorescent applications, but does not mean any lamp designed and marketed for the following nongeneral lighting applications:

(i) Fluorescent lamps designed to promote plant growth;

(ii) Fluorescent lamps specifically designed for cold temperature installations;

(iii) Colored fluorescent lamps;

(iv) Impact-resistant fluorescent lamps;

(v) Reflectorized or aperture lamps;

(vi) Fluorescent lamps designed for use in reprographic equipment;

(vii) Lamps primarily designed to produce radiation in the ultra-violet region of the spectrum; and

(viii) Lamps with a color rendering index of 82 or greater.

(l) *Medium base compact fluorescent lamp* means an integrally ballasted fluorescent lamp with a medium screw base and a rated input voltage of 115 to 130 volts and which is designed as a direct replacement for a general service incandescent lamp.

(m) *Incandescent lamp*: (1) means a lamp in which light is produced by a

filament heated to incandescence by an electric current, including only the following:

(i) Any lamp (commonly referred to as lower wattage nonreflector general service lamps, including any tungsten-halogen lamp) that has a rated wattage between 30 and 199 watts, has an E26 medium screw base, has a rated voltage or voltage range that lies at least partially within 115 and 130 volts, and is not a reflector lamp;

(ii) Any lamp (commonly referred to as a reflector lamp) which is not colored or designed for rough or vibration service applications, that contains an inner reflective coating on the outer bulb to direct the light, an R, PAR, or similar bulb shapes (excluding ER or BR) with E26 medium screw bases, a rated voltage or voltage range that lies at least partially within 115 and 130 volts, a diameter which exceeds 2.75 inches, and is either—

(A) A low(er) wattage reflector lamp which has a rated wattage between 40 and 205 watts; or

(B) A high(er) wattage reflector lamp which has a rated wattage above 205 watts;

(iii) Any general service incandescent lamp (commonly referred to as a high- or higher-wattage lamp) that has a rated wattage above 199 watts (above 205 watts for a high wattage reflector lamp); but

(2) *Incandescent lamp* does not mean any lamp excluded by the Secretary, by rule, as a result of a determination that standards for such lamp would not result in significant energy savings because such lamp is designed for special applications or has special characteristics not available in reasonably substitutable lamp types; and

(3) *General service incandescent lamp* means any incandescent lamp (other than a miniature or photographic lamp), including an incandescent reflector lamp, that has an E26 medium screw base, a rated voltage range at least partially within 115 and 130 volts, and which can be used to satisfy the majority of lighting applications, but does not include any lamp specifically designed for:

(i) Traffic signal, or street lighting service;

(ii) Airway, airport, aircraft, or other aviation service;

(iii) Marine or marine signal service;

(iv) Photo, projection, sound reproduction, or film viewer service;

(v) Stage, studio, or television service;

(vi) Mill, saw mill, or other industrial process service;

(vii) Mine service;

(viii) Headlight, locomotive, street railway, or other transportation service;

(ix) Heating service;

(x) Code beacon, marine signal, lighthouse, reprographic, or other communication service;

(xi) Medical or dental service;

(xii) Microscope, map, microfilm, or other specialized equipment service;

(xiii) Swimming pool or other underwater service;

(xiv) Decorative or showcase service;

(xv) Producing colored light;

(xvi) Shatter resistance which has an external protective coating; or

(xvii) Appliance service; and

(4) *Incandescent reflector lamp* means a lamp described in paragraph (m)(1)(ii) of this section; and

(5) *Tungsten-halogen lamp* means a gas-filled tungsten filament incandescent lamp containing a certain proportion of halogens in an inert gas.

(n) *Showerhead* means any showerhead (including a handheld showerhead), except a safety shower showerhead.

(o) *Faucet* means a lavatory faucet, kitchen faucet, metering faucet, or replacement aerator for a lavatory or kitchen faucet.

(p) *Water closet* means a plumbing fixture having a water-containing receptor which receives liquid and solid body waste and, upon actuation, conveys the waste through an exposed integral trap seal into a gravity drainage system, except such term does not include fixtures designed for installation in prisons.

(q) *Urinal* means a plumbing fixture which receives only liquid body waste and, on demand, conveys the waste through a trap seal into a gravity drainage system, except such term does not include fixtures designed for installation in prisons.

4. Section 305.4 is amended by revising paragraphs (e)(2) and (e)(3) to read as follows:

§ 305.4 Prohibited acts.

* * * * *

(e) * * *

(2) Any covered product, other than central air conditioners, pulse combustion and condensing furnaces, fluorescent lamp ballasts, fluorescent lamps, medium base compact fluorescent lamps, incandescent lamps (including incandescent reflector lamps), showerheads, faucets, water closets, and urinals, if the manufacture of the product was completed prior to May 19, 1980. Any central air conditioner or any pulse combustion or condensing furnace if its manufacture was completed prior to June 7, 1988. Any fluorescent lamp ballast if its

manufacture was completed prior to January 1, 1990. Any fluorescent lamp, medium base compact fluorescent lamp, or incandescent lamp (including any incandescent reflector lamp), if its manufacture was completed prior to May 15, 1995. Any showerhead, faucet, water closet or urinal if its manufacture was completed prior to October 24, 1994.

(3) Any catalog or point-of-sale printed material pertaining to any covered products, other than central air conditioners, pulse combustion and condensing furnaces, fluorescent lamp ballasts, fluorescent lamps, medium base compact fluorescent lamps, incandescent lamps (including incandescent reflector lamps), showerheads, faucets, water closets, and urinals, that were distributed prior to May 19, 1980, and any catalog or point-of-sale printed material pertaining to any central air conditioners and pulse combustion and condensing furnaces that were distributed prior to June 7, 1988, and any catalog or point-of-sale printed material pertaining to any fluorescent lamp ballasts that were distributed prior to June 23, 1989, and any catalog or point-of-sale printed material pertaining to fluorescent lamps, medium base compact fluorescent lamps, or incandescent lamps (including incandescent reflector lamps), that were distributed prior to May 15, 1995, and any catalog or point-of-sale printed material pertaining to any showerheads, faucets, water closets and urinals that were distributed prior to October 24, 1994, except that if representations respecting the energy consumption or energy efficiency or water use of any covered product or other consumer appliance product or cost of energy consumed or water used by such product are included, they are subject to the requirements of paragraph (d) of this section.

* * * * *

5. Section 305.5 is revised to read as follows:

§ 305.5 Determinations of estimated annual energy cost and energy efficiency rating and of water use rate.

(a) Procedures for determining the estimated annual energy costs, the energy efficiency ratings, and the power and efficacy factors of covered products are those found in 10 CFR part 430, subpart B, in the following sections:

- (1) Refrigerators and refrigerator-freezers—430.22(a).
- (2) Freezers—§ 430.22(b).
- (3) Dishwashers—§ 430.22(c).
- (4) Water heaters—§ 430.22(e).
- (5) Room air conditioners—§ 430.22(f).

- (6) Clothes washers—§ 430.22(j).
- (7) Central air conditioners and heat pumps—§ 430.22(m).
- (8) Furnaces—§ 430.22(n).
- (9) Fluorescent lamp ballasts—§ 430.22(q).

(b) Manufacturers and private labelers of any covered product that is a general service fluorescent lamp, medium base compact fluorescent lamp, or general service incandescent lamp (including an incandescent reflector lamp), must, for any representation of the design voltage, wattage, light output or life of such lamp or for any representation made by the encircled "E" that such a lamp is in compliance with an applicable standard established by section 325 of the Act, possess and rely upon a reasonable basis consisting of competent and reliable scientific tests substantiating the representation. For representations of the light output and life ratings of any covered product that is a medium base compact fluorescent lamp or general service incandescent lamp (including an incandescent reflector lamp), the Commission will accept as a reasonable basis competent and reliable scientific tests conducted according to the following applicable IES test protocols that substantiate the representations:

For measuring light output (in lumens):

General Service Fluorescent	IES LM 9
Compact Fluorescent	IES LM 66
General Service Incandescent (Other than Reflector Lamps).	IES LM 45
General Service Incandescent (Reflector Lamps).	IES LM 20

For measuring laboratory life (in hours):

General Service Fluorescent	IES LM 40
Compact Fluorescent	IES LM 65
General Service Incandescent (Other than Reflector Lamps).	IES LM 49
General Service Incandescent (Reflector Lamps).	IES LM 49

(c) Procedures for determining the water use rates of covered products are those found in the following standards:

- (1) Showerheads and faucets—ASME A112.18.1M-1989, Plumbing Fixture Fittings. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of ASME A112.18.1M may be obtained from the American Society of Mechanical Engineers, 345 East 47th Street, New York, NY 10017, or may be inspected at the Federal Trade Commission, room 130, 600 Pennsylvania Avenue, NW., Washington, DC, or at the Office of the

Federal Register, suite 700, 800 North Capitol Street, NW., Washington, DC.

(2) Water closets and urinals—ASME A112.19.2M-1990, Vitreous China Plumbing Fixtures. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of ASME A112.19.2M may be obtained from the American Society of Mechanical Engineers, 345 East 47th Street, New York, NY 10017, or may be inspected at the Federal Trade Commission, room 130, 600 Pennsylvania Avenue, NW., Washington, DC, or at the Office of the Federal Register, suite 700, 800 North Capitol Street, NW., Washington, DC.

6. Section 305.6 is revised to read as follows:

§ 305.6 Sampling.

(a) For any covered product (except fluorescent lamps, medium base compact fluorescent lamps, and incandescent lamps, including incandescent reflector lamps), any representation with respect to or based upon a measure or measures of energy consumption incorporated into § 305.5 shall be based upon the sampling procedures set forth in § 430.23 of 10 CFR part 430, subpart B.

(b) For any covered product that is a medium base compact fluorescent lamp or a general service incandescent lamp (including an incandescent reflector lamp), any representation of design voltage, wattage, light output or life and, for any covered product that is a general service fluorescent lamp or incandescent reflector lamp, any representation made by the encircled "E" that such lamp is in compliance with an applicable standard established by section 325 of the Act shall be based upon tests using a competent and reliable scientific sampling procedure. The Commission will accept "Military Standard 105—Sampling Procedures and Tables for Inspection by Attributes" as such a sampling procedure.

7. Section 305.8 is amended by revising paragraphs (a) and (b) to read as follows:

§ 305.8 Submission of data.

(a) (1) Each manufacturer of a covered product, except manufacturers of fluorescent lamp ballasts, fluorescent lamps, medium base compact fluorescent lamps, incandescent lamps (including incandescent reflector lamps), showerheads, faucets, water closets or urinals, shall submit annually to the Commission a report listing the kilowatt-hour use per year (for refrigerators, refrigerator-freezers and freezers), the energy factor (for clothes

washers, dishwashers and water heaters) or the energy efficiency rating (for room air conditioners, central air conditioners, heat pumps and furnaces) for each basic model in current production, determined according to § 305.5 and statistically verified according to § 305.6. The report must also list, for each basic model in current production: The model number; the total energy consumption, determined in accordance with § 305.5, used to calculate the kilowatt-hour per year, energy factor, or energy efficiency rating; the number of tests performed; and its capacity, determined in accordance with § 305.7. For those models that use more than one energy source or more than one cycle, each separate amount of energy consumption, or energy cost, measured in accordance with § 305.5, shall be listed in the report. Appendix J of this part illustrates a suggested reporting format. Starting serial numbers or other numbers identifying the date of manufacture of covered products shall be submitted whenever a new basic model is introduced in the market.

(2) Each manufacturer of a covered fluorescent lamp ballast shall submit annually to the Commission a report for each basic model of fluorescent lamp ballast in current production. The report shall contain the following information:

(i) Name and address of manufacturer;
(ii) All trade names under which the fluorescent lamp ballast is marketed;
(iii) Model number;
(iv) Starting serial number, date code or other means of identifying the date of manufacture (date of manufacture information must be included with only the first submission for each basic model);

(v) Nominal input voltage and frequency;
(vi) Ballast efficacy factor; and
(vii) Type (F40T12, F96T12 or F96T12HO) and number of lamp or lamps with which the fluorescent lamp ballast is designed to be used.

(3) Each manufacturer of a covered product that is a fluorescent lamp, medium base compact fluorescent lamp, or incandescent lamp (including an incandescent reflector lamp), shall submit annually to the Commission a report for each lamp type in current production. The report shall contain the following information:

(i) Name and address of manufacturer;
(ii) All trade names under which the lamp is marketed;
(iii) Model number;
(iv) Starting serial number, date code or other means of identifying the date of manufacture (date of manufacture information must be included with only

the first submission for each lamp type); and

(v) For all covered lamps, the test results for the lamp's wattage and light output ratings and, in addition, for all covered fluorescent lamps, the test results for the lamp's color rendering index.

(4) Each manufacturer of a covered showerhead, faucet, water closet or urinal shall submit annually to the Commission a report for each basic model of such products in current production. The report shall contain the following information:

(i) Name and address of manufacturer;
(ii) All trade names under which the product is marketed;
(iii) Model number;
(iv) Starting serial number, date code or other means of identifying the date of manufacture (date of manufacture information must be included with only the first submission for each basic model);

(v) The product's water use, expressed in gallons and liters per flush (gpf/Lpf) or gallons and liters per minute (gpm/Lpm) or per cycle (gpc/Lpc) as determined in accordance with § 305.5.

(b) All data required by § 305.8(a) except serial numbers, shall be submitted to the Commission annually, on or before the following dates:

Products	Deadline for data submission
Refrigerators	Aug. 1.
Refrigerator-freezers	Aug. 1.
Freezers	Aug. 1.
Central air conditioners	July 1.
Heat pumps	July 1.
Dishwashers	June 1.
Water heaters	May 1.
Room air conditioners	May 1.
Furnaces	May 1.
Clothes washers	Mar. 1.
Fluorescent lamp ballasts	Mar. 1.
Fluorescent lamps	Mar. 1.
Medium Base Compact Fluorescent Lamps.	Mar. 1. [Stayed]
Incandescent Lamps, incl. Reflector Lamps.	Mar. 1. [Stayed]
Showerheads	Mar. 1.
Faucets	Mar. 1.
Water closets	Mar. 1.
Urinals	Mar. 1.

All revisions to such data (both additions to and deletions from the preceding data) shall be submitted to the Commission as part of the next annual report period. Serial number reports for new covered products are due sixty days after the annual effective mandatory labeling date for each product.

* * * * *

8. Section 305.11 is amended by revising the heading of paragraph (a), by revising paragraph (e), and by adding paragraph (f) to read as follows:

§ 305.11 Labeling for covered products.

(a) Labels for covered products other than fluorescent lamp ballasts, fluorescent lamps, medium base compact fluorescent lamps, incandescent lamps (including incandescent reflector lamps), showerheads, faucets, water closets and urinals— * * *

(e) Lamps. (1) (i) Any covered product that is a compact fluorescent lamp or general service incandescent lamp (including an incandescent reflector lamp), shall be labeled clearly and conspicuously on the product's principal display panel with the following information:

(A) The number of lamps included in the package, if more than one;

(B) The design voltage of each lamp included in the package, if other than 120 volts;

(C) The light output of each lamp included in the package, expressed in average initial lumens;

(D) The electrical power consumed (energy used) by each lamp included in the package, expressed in average initial wattage;

(E) The life of each lamp included in the package, expressed in hours.

(ii) The light output, energy usage and life ratings of any covered product that is a medium base compact fluorescent lamp or general service incandescent lamp (including an incandescent reflector lamp), shall appear in that order and with equal clarity and conspicuousness on the product's principal display panel. The light output, energy usage and life ratings shall be disclosed in terms of "lumens," "watts" and "hours" respectively, with the lumens, watts and hours rating numbers each appearing in the same type style and size and with the words "lumens," "watts" and "hours" each appearing in the same type style and size. The words "light output," "energy used" and "life" shall precede and have the same conspicuousness as both the rating numbers and the words "lumens," "watts" and "hours," except that the letters of the words "lumens," "watts" and "hours" shall be approximately 50% of the sizes of those used for the words "light output," "energy used" and "life" respectively.

(iii) The light output, energy usage and life ratings of any covered product that is a medium base compact fluorescent lamp or general service incandescent lamp (including an

incandescent reflector lamp), shall be measured at 120 volts, regardless of the lamp's design voltage. If a lamp's design voltage is other than 120 volts, the disclosures of the wattage, light output and life ratings shall in each instance be followed by the phrase "at 120 volts." Labels for lamps with design voltages other than 120 volts also may disclose the lamps' wattage, light output and life at the designed voltage (e.g., "Light Output 1710 Lumens at 125 volts").

(iv) For any covered product that is an incandescent reflector lamp, the required disclosure of light output shall be given for the lamp's beam spread and be followed clearly and conspicuously by the phrase "at beam spread."

(v) For any covered product that is a compact fluorescent lamp, the required light output disclosure shall be measured at a base-up position; but, if the manufacturer or private labeler has reason to believe that the light output at a base-down position would be more than 5% different, the label also shall disclose the light output at the base-down position or, if no test data for the base-down position exist, the fact that at a base-down position the light output might be more than 5% less.

(vi) For any covered product that is a compact fluorescent lamp or a general service incandescent lamp (including an incandescent reflector lamp), there shall be clearly and conspicuously disclosed on the principal display panel the following statement:

To save energy costs, find the bulbs with the light output you need, then choose the one with the lowest watts.

(vii) For any covered product that is a general service incandescent lamp and operates with multiple filaments, the principal display panel shall disclose clearly and conspicuously, in the manner required by paragraph (e)(1) (i)-(iii) and (vi) of this section of the Rule, the lamp's wattage and light output at each of the lamp's levels of light output and the lamp's life measured on the basis of the filament that fails first.

(2) Any covered product that is a general service fluorescent lamp or an incandescent reflector lamp shall be labeled clearly and conspicuously with a capital letter "E" printed within a circle and followed by an asterisk. The label shall also clearly and conspicuously disclose, either in close proximity to that asterisk or elsewhere on the label, the following statement:

*[The encircled "E" means this bulb meets Federal minimum efficiency standards.

If the statement is not disclosed on the principal display panel, the asterisk shall be followed by the following statement:

*See [Back, Top, Side] panel for details.

(i) For purposes of this section of the Rule, the encircled capital letter "E" shall be clearly and conspicuously disclosed in color-contrasting ink on the label of any covered product that is a general service fluorescent lamp and will be deemed "conspicuous," in terms of size, if it appears in typeface at least as large as either the manufacturer's name or logo or another logo disclosed on the label, such as the "UL" or "ETL" logos, whichever is larger.

(ii) Instead of labeling any covered product that is a general service fluorescent lamp with the encircled "E" and with the statement described in paragraph (e)(2) of this section of the Rule, a manufacturer or private labeler who would not otherwise put a label on such a lamp may meet the disclosure requirements of that paragraph by permanently marking the lamp clearly and conspicuously with the encircled "E."

(3) Any manufacturer or private labeler who makes any representation on a label of any covered product that is a general service fluorescent lamp, medium base compact fluorescent lamp, or general service incandescent lamp (including an incandescent reflector lamp), regarding the cost of operation of such lamp shall clearly and conspicuously disclose in close proximity to such representation the assumptions upon which it is based, including, e.g., purchase price, unit cost of electricity, hours of use, patterns of use.

(4) Any cartons in which any covered products that are general service fluorescent lamps, medium base compact fluorescent lamps, or general service incandescent lamps (including incandescent reflector lamps), are shipped within the United States or imported into the United States shall disclose clearly and conspicuously the following statement:

These lamps comply with Federal energy efficiency labeling requirements.

(f) *Plumbing fixtures—(1) Showerheads and faucets.* Showerheads and faucets shall be marked and labeled as follows:

(i) Each showerhead and flow restricting or controlling spout end device shall bear a permanent legible marking indicating the flow rate, expressed in gallons per minute (gpm) or gallons per cycle (gpc), and the flow rate value shall be the actual flow rate or the maximum flow rate specified by the standards established in subsection (j) of section 325 of the Act, 42 U.S.C. 6295(j). Except where impractical due to the size of the fitting, each flow rate

disclosure shall also be given in liters per minute (Lpm) or liters per cycle (Lpc). For purposes of this section, the marking indicating the flow rate will be deemed "legible," in terms of placement, if it is located in close proximity to the manufacturer's identification marking.

(ii) Each showerhead and faucet shall bear a permanent legible marking to identify the manufacturer. This marking shall be the trade name, trademark, or other mark known to identify the manufacturer. Such marking shall be located where it can be seen after installation.

(iii) Each showerhead and faucet shall be marked "A112.18.1M" to demonstrate compliance with the applicable ASME standard. The marking shall be by means of either a permanent mark on the product, a label on the product, or a tag attached to the product.

(iv) The package for each showerhead and faucet shall disclose the manufacturer's name and the model number.

(v) The package or any label attached to the package for each showerhead or faucet shall contain at least the following: "A112.18.1M" and the flow rate expressed in gallons per minute (gpm) or gallons per cycle (gpc), and the flow rate value shall be the actual flow rate or the maximum flow rate specified by the standards established in subsection (j) of section 325 of the Act, 42 U.S.C. 6295(j). Each flow rate disclosure shall also be given in liters per minute (Lpm) or liters per cycle (Lpc).

(2) *Water closets and urinals.* Water closets and urinals shall be marked and labeled as follows:

(i) Each such fixture (and flushometer valve associated with such fixture) shall bear a permanent legible marking indicating the flow rate, expressed in gallons per flush (gpf), and the water use value shall be the actual water use or the maximum water use specified by the standards established in subsection (k) of section 325 of the Act, 42 U.S.C. 6295(k). Except where impractical due to the size of the fixture, each flow rate disclosure shall also be given in liters per flush (Lpf). For purposes of this section, the marking indicating the flow rate will be deemed "legible," in terms of placement, if it is located in close proximity to the manufacturer's identification marking.

(ii) Each water closet (and each component of the water closet if the fixture is comprised of two or more components) and urinal shall be marked with the manufacturer's name or trademark or, in the case of private

labeling, the name or registered trademark of the customer for whom the unit was manufactured. This mark shall be legible, readily identified, and applied so as to be permanent. The mark shall be located so as to be visible after the fixture is installed, except for fixtures built into or for a counter or cabinet.

(iii) Each water closet (and each component of the water closet if the fixture is comprised of two or more components) and urinal shall be marked at a location determined by the manufacturer with the designation "ASME A112.19.2M" to signify compliance with the applicable standard. This mark need not be permanent, but shall be visible after installation.

(iv) The package, and any labeling attached to the package, for each water closet and urinal shall disclose the flow rate, expressed in gallons per flush (gpf), and the water use value shall be the actual water use or the maximum water use specified by the standards established in subsection (k) of section 325 of the Act, 42 U.S.C. 6295(k). Each flow rate disclosure shall also be given in liters per flush (Lpf).

(v) With respect to any gravity tank-type white 2-piece toilet offered for sale or sold before January 1, 1997, which has a water use greater than 1.6 gallons per flush (gpf), any printed matter distributed or displayed in connection with such product (including packaging and point-of-sale material, catalog material, and print advertising) shall include, in a conspicuous manner, the words "For Commercial Use Only."

(3) *Annual operating cost claims for covered plumbing products.* Until such time as the Commission has prescribed a format and manner of display for labels conveying estimated annual operating costs of covered showerheads, faucets, water closets, and urinals or ranges of estimated annual operating costs for the types or classes of such plumbing products, the Act prohibits manufacturers from making such representations on the labels of such covered products. 42 U.S.C. 6294(c)(8). If, before the Commission has prescribed such a format and manner of display for labels of such products, a manufacturer elects to provide for any such product a label conveying such a claim, it shall submit the proposed claim to the Commission so that a format and manner of display for a label may be prescribed.

9. Section 305.13 is amended by revising paragraph (a) to read as follows:

§ 305.13 Promotional materials displayed or distributed at point of sale.

(a) (1) Any manufacturer, distributor, retailer, or private labeler who prepares printed material for display or distribution at point of sale concerning a covered product (except fluorescent lamp ballasts, fluorescent lamps, medium base compact fluorescent lamps, incandescent lamps including incandescent reflector lamps, showerheads, faucets, water closets, and urinals) shall clearly and conspicuously include in such printed material the following required disclosure:

Before purchasing this appliance, read important energy cost and efficiency information available from your retailer.

(2) Any manufacturer, distributor, retailer, or private labeler who prepares printed material for display or distribution at point of sale concerning a covered product that is a general service fluorescent lamp, medium base compact fluorescent lamp, or general service incandescent lamp (including an incandescent reflector lamp), and who makes any representation in such promotional material regarding the cost of operation of such lamp shall clearly and conspicuously disclose in close proximity to such representation the assumptions upon which it is based, including, e.g., purchase price, unit cost of electricity, hours of use, patterns of use.

(3) Any manufacturer, distributor, retailer, or private labeler who prepares printed material for display or distribution at point of sale concerning a covered showerhead, faucet, water closet, or urinal shall clearly and conspicuously include in such printed material the product's water use, expressed in gallons and liters per minute (gpm/Lpm) or per cycle (gpc/Lpc) or gallons and liters per flush (gpf/Lpf) as specified in § 305.11(e).

* * * * *

10. Section 305.14 is amended by revising paragraph (a) introductory text, by revising paragraph (d), and by adding paragraph (e), to read as follows:

§ 305.14 Catalogs.

(a) Any manufacturer, distributor, retailer, or private labeler who advertises in a catalog a covered product (except fluorescent lamp ballasts, fluorescent lamps, medium base compact fluorescent lamps, incandescent lamps including incandescent reflector lamps, showerheads, faucets, water closets or urinals) shall include in such catalog, on each page that lists the covered

product, the following information required to be disclosed on the label:

* * * * *

(d) (1) Any manufacturer, distributor, retailer, or private labeler who advertises in a catalog a covered product that is a general service fluorescent lamp, medium base compact fluorescent lamp, or general service incandescent lamp (including an incandescent reflector lamp), shall disclose clearly and conspicuously in such catalog:

(i) On each page listing any covered product that is a compact fluorescent lamp or a general service incandescent lamp (including an incandescent reflector lamp), all the information concerning that lamp, except for the number of units in the package, required by § 305.11(e)(1) of this Rule to be disclosed on the lamp's label; *provided, however, that, for a catalog not distributed to consumers for making purchases for personal use or consumption by individuals, the disclosures need not comply with the format provisions of § 305.11 (e)(1)(ii) of this Rule, but must be clear and conspicuous; and (ii) On each page listing a covered product that is a general service fluorescent lamp or an incandescent reflector lamp, all the information required by § 305.11(e)(2) of this Rule to be disclosed on the lamp's label according to the following format:*

(A) The encircled "E" shall appear with each lamp entry; and

(B) The accompanying statement shall appear at least once on the page.

(2) Any manufacturer, distributor, retailer, or private labeler who advertises a covered product that is a general service fluorescent lamp, medium base compact fluorescent lamp, or general service incandescent lamp (including an incandescent reflector lamp), in a catalog who makes any representation in such catalog regarding the cost of operation of such lamp shall clearly and conspicuously disclose in close proximity to such representation the assumptions upon which it is based, including, e.g., purchase price, unit cost of electricity, hours of use, patterns of use.

(e) Any manufacturer, distributor, retailer, or private labeler who advertises a covered showerhead, faucet, water closet or urinal in a catalog, from which it may be purchased, shall include in such catalog, on each page that lists the covered product, the product's water use, expressed in gallons and liters per minute (gpm/Lpm) or per cycle (gpc/Lpc) or gallons and liters per flush (gpf/Lpf) as specified in § 305.11(e).

11. Section 305.15 is amended by revising paragraph (b) to read as follows:

§ 305.15 Test data records.

* * * * *

(b) Upon notification by the Commission or its designated representative, a manufacturer or

private labeler shall provide, within 30 days of the date of such request, the underlying test data from which the water use or energy consumption rate, the estimated annual cost of using each basic model, or the light output, energy usage and life ratings and, for fluorescent lamps, the color rendering

index for each basic model or lamp type was derived.

* * * * *

12. Further, appendix K to part 305 of 16 CFR is amended by the addition of six illustrations at the end, as follows:

* * * * *

BILLING CODE 6750-01-P

Lamp Packaging Disclosures

Specifications

- All required disclosures must be clear and conspicuous.
- The words "light output" must appear first in order, followed by the lumens number. The word "lumens" must be close to either "light output" or the lumens number.
- The words "energy used" must appear second in order, followed by the wattage number. The word "watts" must be close to either "energy used" or the wattage number.
- The word "life" must appear third in order, followed by the life in hours number. The word "hours" must be close to either "life" or the life in hours number.
- The numbers for light output, energy used, and life must be of equal size and in the same typestyle.
- The words "light output," "energy used," and "life" must be of equal size and in the same typestyle.
- The words "lumens," "watts," and "hours" must be of equal size and in the same typestyle, but only approximately 50 percent of the size of the words "light output," "energy used," and "life."

Illustration

Note: This illustrates the elements and relative sizes of the required disclosures.

Principal Display Panel

Light Output	1710 Lumens	To save energy costs, find the bulbs with the light output you need, then choose the one with the lowest watts.
Energy Used	100 Watts	
Life	750 Hours	

Incandescent (non-reflector) Lamp Illustration

Lamp Packaging Disclosures

Specifications

- All required disclosures must be clear and conspicuous.
- The words "light output" must appear first in order, followed by the lumens number. The word "lumens" must be close to either "light output" or the lumens number.
- The words "energy used" must appear second in order, followed by the wattage number. The word "watts" must be close to either "energy used" or the wattage number.
- The word "life" must appear third in order, followed by the life in hours number. The word "hours" must be close to either "life" or the life in hours number.
- The numbers for light output, energy used, and life must be of equal size and in the same typestyle.
- The words "light output," "energy used," and "life" must be of equal size and in the same typestyle.
- The words "lumens," "watts," and "hours" must be of equal size and in the same typestyle, but only approximately 50 percent of the size of the words "light output," "energy used," and "life."

Illustration

Note: This illustrates the elements and relative sizes of the required disclosures.

Principal Display Panel

Light Output 1710 Lumens	Energy Used 100 Watts	Life 750 Hours
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To save energy costs, find the bulbs with the light output you need, then choose the one with the lowest watts.

Incandescent (non-reflector) Lamp Illustration

Lamp Packaging Disclosures

Specifications

- All required disclosures must be clear and conspicuous.
- The words "light output" must appear first in order, followed by the lumens number. The word "lumens" must be close to either "light output" or the lumens number.
- The words "energy used" must appear second in order, followed by the wattage number. The word "watts" must be close to either "energy used" or the wattage number.
- The word "life" must appear third in order, followed by the life in hours number. The word "hours" must be close to either "life" or the life in hours number.
- The numbers for light output, energy used, and life must be of equal size and in the same typestyle.
- The words "light output," "energy used," and "life" must be of equal size and in the same typestyle.
- The words "lumens," "watts," "hours," and "at beam spread" must be of equal size and in the same typestyle, but only approximately 50 percent of the size of the words "light output," "energy used," and "life."

Illustration

Note: This illustrates the elements and relative sizes of the required disclosures.

Principal Display Panel

Light Output at beam spread	985 Lumens	To save energy costs, find the bulbs with the light output you need, then choose the one with the lowest watts.	
Energy Used	75 Watts		
Life	2,000 Hours		
		*  means this bulb meets Federal minimum efficiency standards.	

The explanatory statement next to the encircled "E" on the principal display panel above could be disclosed (clearly and conspicuously) on another panel, provided asterisks and the words "See [Back, Top, Side] panel for details" are used.

Incandescent Reflector Lamp Illustration

Lamp Packaging Disclosures

Specifications

- All required disclosures must be clear and conspicuous.
- The words "light output" must appear first in order, followed by the lumens number. The word "lumens" must be close to either "light output" or the lumens number.
- The words "energy used" must appear second in order, followed by the wattage number. The word "watts" must be close to either "energy used" or the wattage number.
- The word "life" must appear third in order, followed by the life in hours number. The word "hours" must be close to either "life" or the life in hours number.
- The numbers for light output, energy used, and life must be of equal size and in the same typestyle.
- The words "light output," "energy used," and "life" must be of equal size and in the same typestyle.
- The words "lumens," "watts," "hours," and "at beam spread" must be of equal size and in the same typestyle, but only approximately 50 percent of the size of the words "light output," "energy used," and "life."

Illustration

Note: This illustrates the elements and relative sizes of the required disclosures.

Principal Display Panel

<p>Light Output at beam spread</p> <p>985 Lumens</p>	<p>Energy Used</p> <p>75 Watts</p>	<p>Life</p> <p>2,000 Hours</p>	<p>E*</p>
<p>To save energy costs, find the bulbs with the light output you need, then choose the one with the lowest watts.</p>			<p>* E means this bulb meets Federal minimum efficiency standards.</p>

The explanatory statement next to the encircled "E" on the principal display panel above could be disclosed (clearly and conspicuously) on another panel, provided asterisks and the words "See [Back, Top, Side] panel for details" are used.

Incandescent Reflector Lamp Illustration

Lamp Packaging Disclosures

Specifications

- All required disclosures must be clear and conspicuous.
- The words "light output" must appear first in order, followed by the lumens number. The word "lumens" must be close to either "light output" or the lumens number.
- The words "energy used" must appear second in order, followed by the wattage number. The word "watts" must be close to either "energy used" or the wattage number.
- The word "life" must appear third in order, followed by the life in hours number. The word "hours" must be close to either "life" or the life in hours number.
- The numbers for light output, energy used, and life must be of equal size and in the same typestyle.
- The words "light output," "energy used," and "life" must be of equal size and in the same typestyle.
- The words "lumens," "watts," and "hours" must be of equal size and in the same typestyle, but only approximately 50 percent of the size of the words "light output," "energy used," and "life."

Illustration

Note: This illustrates the elements and relative sizes of the required disclosures.

Principal Display Panel

Light Output	1200 Lumens	To save energy costs, find the bulbs with the light output you need, then choose the one with the lowest watts.
Energy Used	20 Watts	
Life	10,000 Hours	

Compact Fluorescent Lamp Illustration

Lamp Packaging Disclosures

Specifications

- All required disclosures must be clear and conspicuous.
- The words "light output" must appear first in order, followed by the lumens number. The word "lumens" must be close to either "light output" or the lumens number.
- The words "energy used" must appear second in order, followed by the wattage number. The word "watts" must be close to either "energy used" or the wattage number.
- The word "life" must appear third in order, followed by the life in hours number. The word "hours" must be close to either "life" or the life in hours number.
- The numbers for light output, energy used, and life must be of equal size and in the same typestyle.
- The words "light output," "energy used," and "life" must be of equal size and in the same typestyle.
- The words "lumens," "watts," and "hours" must be of equal size and in the same typestyle, but only approximately 50 percent of the size of the words "light output," "energy used," and "life."

Illustration

Note: This illustrates the elements and relative sizes of the required disclosures.

Principal Display Panel

Light Output 1200 Lumens	Energy Used 20 Watts	Life 10,000 Hours
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To save energy costs, find the bulbs with the light output you need, then choose the one with the lowest watts.

Compact Fluorescent Lamp Illustration

By direction of the Commission.

Donald S. Clark,
Secretary.

**Separate Statement of Commissioner
Mary L. Azcuenaga Concurring in Part
and Dissenting in Part**

*Amendments to the Appliance Labeling
Rule to Include Lamps, Matter No.
R611004*

The Energy Policy and Conservation Act of 1975 ("EPCA"), as amended by the Energy Policy Act ("EPA 92"), imposes a number of regulatory requirements on "covered products" and provides a list clearly defining which products are covered products.

The only lamp products on this list are "general service fluorescent lamps and incandescent reflector lamps." 42 U.S.C. 6292(a)(14). There is no indication in the legislative history that Congress intended that any other lamp products be considered covered products.

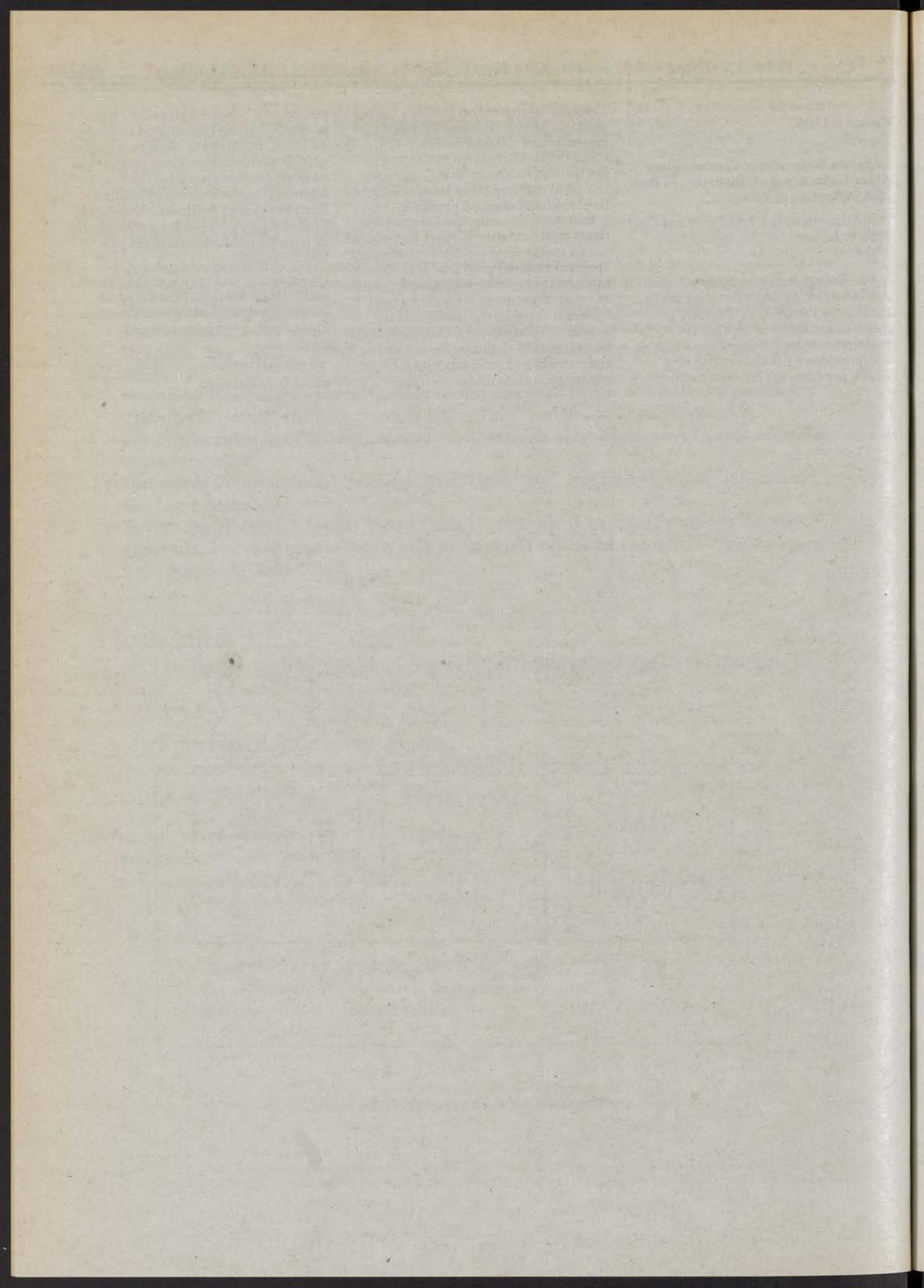
In issuing this rule, the Commission treats medium base compact fluorescent lamps and general service incandescent lamps as covered products. If Congress intended to have these products treated as covered products, it could have included them on the list of covered products. Alternatively, Congress could have given the Commission the authority to add products to the list of covered products under certain

conditions, like the authority it has conferred on the Department of Energy. 42 U.S.C. 6292(a)(19). Because Congress neither defined these lamp products as covered products nor gave the Commission the authority to define them as covered products, these lamp products, in my view, cannot be treated as covered products under the rule amendments.

I dissent from the rule to the extent that it treats medium base compact fluorescent lamps and general service incandescent lamps as covered products.

[FR Doc. 94-11234 Filed 5-12-94; 8:45 am]

BILLING CODE 6750-01-P



Friday
May 13, 1994

Federal Register

Part IV

**Department of
Commerce**

**National Telecommunications and
Information Administration**

**Grants for Planning and Construction of
Public Telecommunications Facilities;
Acceptance of Applications for Filing;
Notice**

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Grants for Planning and Construction of Public Telecommunications Facilities; Acceptance of Applications for Filing

I. New Applications and Major Amendments to Deferred Applications

Notice is hereby given that the following described applications for Federal financial assistance are accepted for filing under provisions of title III, part IV, of the Communications Act of 1934, as amended (47 U.S.C. 390-393, 397) and in accordance with 15 CFR part 2301. All of the applications listed in this section were received by March 17, 1994. The effective date of acceptance of these proposals, unless otherwise indicated herein, is "Dated Received". Applications are listed by their State.

The acceptance of applications for filing is a procedure designed for making preliminary determinations of eligibility and for providing the opportunity for public comment on applications. Acceptance of an application does not preclude subsequent return or disapproval of an application if it is found to be not in accordance with the provisions of either the Act or 15 CFR part 2301, or if the applicant fails to file any additional information requested by the Public Telecommunications Facilities Program (PTFP). Acceptance for filing does not ensure that an application will be funded; it merely qualifies that application to compete for funding with other applications which have also been accepted for filing.

Any interested party may file comments with the Agency supporting or opposing an application and setting forth the grounds for support or opposition. Such comments must contain a certification that a copy of the comments have been delivered to the applicant. Comments must be sent to the address listed in 15 CFR 2301.5(a).

The Agency will incorporate all comments from the public and any replies from the applicant in the applicant's official file.

Charles M. Rush,

Acting Associate Administrator, Office of Telecommunications and Information Applications.

AK (Alaska)

File No. 94011 CFB Alaska Public Radio Network, 810 East 9th Avenue, Anchorage, AK 99501-3826. Signed By: Ms. Diane S. Kaplan, President and

CEO. Funds Requested: \$228,044. Total Project Cost: \$304,058. To improve the production facilities of the Alaska Public Radio Network by replacing studio production equipment, including an audio console and tape recorders. The project will also provide a control center for the applicant's satellite uplink facility and purchase field production equipment to use with an existing portable satellite uplink. The Alaska Public Radio Network provides programming to 29 member public radio stations throughout Alaska and also produces the daily radio program "National Native News" which is distributed via satellite to over 170 stations in 33 states.

File No. 94089 CTB Capital Community Bdcstg. Inc., 224 Fourth Street, Juneau, AK 99801-1198. Signed By: Mr. Bill Legere, President and General Manager. Funds Requested: \$709,484. Total Project Cost: \$945,979. To improve the operational capability of public station KTOO, Ch 3, Juneau, AK, by replacing obsolete and unreliable master and production control switching equipment, record and playback facilities, video and audio distribution equipment, test equipment, satellite receive equipment, terminal accessories, and studio lighting as part of moving to a new operating facility.

File No. 94115 CTB Bethel Broadcasting, Inc., 640 Radio Street, Pouch 468, Bethel, AK 99559. Signed By: Mr. Andrew J. Guy, President. Funds Requested: \$92,596. Total Project Cost: \$123,462. To improve the production capability of public station KYUK-TV, Ch 4, Bethel, AK, by replacing obsolete and unreliable equipment, including an audio mixer, video tape recorders, a studio lighting system, and a studio intercom system.

File No. 94129 PTBN Bethel Broadcasting, Inc., 640 Radio Street, Pouch 468, Bethel, AK 99559. Signed By: Mr. John A. McDonald, Secretary, GM. Funds Requested: \$36,723. Total Project Cost: \$37,323. To develop a distance learning network plan for the Distance Delivery Consortium of Southwest Alaska, composed of member organizations in K-12 school districts, higher education, health care services, public broadcasting, and advisory members in long distance telephone service and satellite distribution, cable television, medical and technical training, and public utilities. The proposed plan would explore options and prepare a feasibility study for a network distribution system that could include a satellite uplink, satellite downlinks, and various last mile configurations for the video, voice and data delivery of educational materials.

File No. 94138 CRB University of Alaska-Fairbanks, Fairbanks North Star Borough, Fairbanks AK 99775-5620. Signed By: Mr. Ted DeLaca, Dir, Office of Arctic Research. Funds Requested: \$183,098. Total Project Cost: \$273,098. To extend the coverage of public radio station KUAC-FM, Fairbanks, AK, by changing its frequency from 104.7 MHz to 89.9 MHz, by relocating its transmitter, by increasing its power, and by upgrading translators in Delta, Central Circle, and Nenana. This will provide the first public radio signal to about 20,650 people in the Fairbanks area. The project will also replace an obsolete and unreliable audio console at the main studios of KUAC-FM.

File No. 94205 CRB Dillingham City School District, Box 670 Seward Street, Dillingham, AK 99576. Signed By: Mr. Donald Renfro, Superintendent. Funds Requested: \$98,258. Total Project Cost: \$131,011. To improve public radio station KCLD, 670 MHz, Dillingham, AK, by installing an emergency power generator and by replacing worn-out and obsolete studio equipment, including audio consoles, cart machines, audio recorders, CD players, and microphones.

File No. 94222 CRB Pickle Hill Public Bdcstg. Inc., Post Office Box 2111, Kenai, AK 99611. Signed By: Mr. Tom Murphy, Station Manager. Funds Requested: \$89,846. Total Project Cost: \$119,794. To provide the first locally originated public radio programming to 25,000 people in Kenai, Soldotna, Sterling, and Nikiski, AK, by equipping public station KCZP, 91.9 MHz, with a studio facility. The station now repeats the programming of public radio station KSKA, Anchorage.

File No. 94278 CRB Rainbird Community Bdcstg Corp., 123 Stedman Street, Ketchikan, AK 99901. Signed By: Ms. Marty West-White, General Manager. Funds Requested: \$60,026. Total Project Cost: \$80,035. To improve the signal of public radio station KRBD, 105.9 MHz, Ketchikan, AK, first by replacing its antenna and changing its frequency to 89.7 MHz, eliminating interference from another FM station, and second by replacing unreliable and obsolete origination equipment, including an audio console, CD players, digital cart machines, recorders, routing switcher and microphones.

AL (Alabama)

File No. 94208 CRB Alabama Educational Television, 2112 11th Avenue S., Birmingham, AL 35205-2884. Signed By: Ms. Judy Stone, Executive Director. Funds Requested: \$15,000. Total Project Cost: \$30,000. To improve public radio station WLRH-

FM, 89.3 MHz, in Huntsville, AL, by replacing origination equipment, including master control console, stereo source selectors, monitor speakers, stereo compressor/limiter, band graphic equalizer, reel to reel tape decks, digital cart machine, microphones, CD player, DAT record/playback and patch bay and cords, so the station may continue quality service to the 600,000 residents in and around Huntsville.

File No. 94218 CTB Alabama ETV Commission, 2112 11th Avenue South, Suite 40, Birmingham, AL 35205-2884. Signed By: Ms. Judy Stone, Executive Director. Funds Requested: \$449,142. Total Project Cost: \$898,284. To improve the Alabama TV Network at WHQ, Ch 41 in Demopolis and WFIQ, Ch 36 in Florence, by replacing the antenna and transmission lines at both locations, replacing the frame synchronizer, color monitor, generator, VCR and still store and by adding Descriptive Video Service items and stereo audio for all 9 network stations. The replacement antenna at Demopolis will provide a first signal to 12,642 unserved residents.

AR (Arkansas)

File No. 94264 CTB Arkansas ETV Commission, 350 South Donaghey, Conway, AR 72032. Signed By: Ms. Susan Howarth, Executive Director. Funds Requested: \$437,747. Total Project Cost: \$875,495. To improve the production facilities of the Arkansas Educational Television Network in Conway by replacing 3 obsolete camera systems. The project would also purchase 3 cameras, lights, audio and control equipment for Studio B, newly constructed at the applicant's headquarters. The control equipment and two additional field production cameras would be placed in a mobile production van and could also be used in conjunction with the applicant's new mobile satellite uplink.

File No. 94281 CRB University of Arkansas, 120 Ozark Hall, Fayetteville, AR 72701. Signed By: Mr. John Stokes, Director, Research Programs. Funds Requested: \$6,917. Total Project Cost: \$9,222. To extend the public radio service of KUAJ, operating on 91.3 MHz, Fayetteville, AR by constructing a translator in Mena, AR operating on 88.5 MHz, which will provide first service to 17,000 people.

AS (American Samoa)

File No. 94179 CTB American Samoa Government, KVZK, Office of Public Info., Pago Pago, AS 96799. Signed By: Ms. Vaoita Savali, Director. Funds Requested: \$152,413. Total Project Cost: \$152,413. To improve the production

facilities of public television station KVZK-TV, Ch. 2, Pago Pago, AS by replacing audio and video amplifiers, intercom and test equipment. The project would also add a video codec so the station could participate in distance learning programming distributed by the PEACESAT satellite project. KVZK-TV serves 45,000 residents of American Samoa.

AZ (Arizona)

File No. 94009 CTN Yavapai Co. Community College Dist., 1100 E. Sheldon St., Prescott, AZ 86301. Signed By: Mr. W.L. Prather, Interim VP, Admin. & Finance. Funds Requested: \$731,716. Total Project Cost: \$1,463,433. To expand Yavapai College's Instructional Television Fixed Service (ITFS) to three unserved sites—Chino Valley, Prescott Valley, and Sedona—and to one site (the College's Verde Valley Campus) already served.

File No. 94060 CTN Northern Arizona University, PO Box 5751, Flagstaff, AZ 86011-5751. Signed By: Dr. Jeanette Baker, Associate Vice President. Funds Requested: \$2,112,509. Total Project Cost: \$2,816,679. To expand Northern Arizona University's existing duplex microwave system (NAUNet) to five community colleges and one Navajo Reservation high school. The schools to be interconnected are Yavapai College (Prescott), Central Arizona College (Signal Peak campus, near Coolidge), Mohave Community College (Lake Havasu City campus), Eastern Arizona College (Thatcher), Estrella Community College (Phoenix), and The Window Rock School District # 8 in Ft. Defiance.

File No. 94068 CTB Arizona State University, Tempe, AZ 85287-1903. Signed By: Ms. Janice D. Bennett, Assistant Director, Spon. Proj. Funds Requested: \$478,400. Total Project Cost: \$956,800. To improve public television station KAET-TV, Ch. 8, in Phoenix, by replacing its worn-out 1978 transmitter and related dissemination equipment. Project would also acquire an audio/video test set and a spectrum analyzer. Station serves approximately 2.8 million people.

CA (California)

File No. 94006 CRB CA State University-Northridge, 18111 Nordhoff Street, Northridge, CA 91330. Signed By: Ms. Louanne Kennedy, Vice President & Provost. Funds Requested: \$32,826. Total Project Cost: \$65,653. To improve the production and operational facilities of public radio station KCSN, 88.5 MHz, Northridge, CA, by replacing master control room and production studio equipment damaged or destroyed by earthquake on January 17, 1994,

including cartridge machines, tape recorders, cassette recorders, CD players, and microphones. The station serves about 1.5 million people and has been broadcasting with borrowed equipment since the earthquake.

File No. 94021 CRB Nevada City Community Bdsct Group, P.O. Box 1327, Nevada City, CA 95959. Signed By: Mr. Steve Ramsey, Program Director. Funds Requested: \$44,865. Total Project Cost: \$89,730. To improve the signal of public radio station KVMR, 89.5 MHz, Nevada City, CA, by replacing its unreliable and obsolete transmitter, antenna, and tower; and to improve its program service by acquiring a satellite downlink to provide the first nationally distributed public radio programming to about 250,000 persons in the Nevada City area.

File No. 94024 CTB Community TV of S. California, 4401 Sunset Boulevard, Los Angeles, CA 90027. Signed By: Mr. Donald G. Youpa, Executive Vice President. Funds Requested: \$639,758. Total Project Cost: \$1,279,517. To replace obsolete and unreliable studio lighting and electrical installations at public television station KCET, Ch 28, Los Angeles, CA, which produces both local and national public television programs.

File No. 94036 CRB KCBX, Inc, 4100 Vachell Lane, San Luis Obispo, CA 93401. Signed By: Mr. Frank R. Lanzone, Jr., President. Funds Requested: \$99,108. Total Project Cost: \$132,144. To improve the operation of public radio station KCBX, 90.1 MHz, San Luis Obispo, CA, by replacing obsolete and worn-out production equipment, including audio consoles, tape recorders, CD players, a telephone interface, routing switcher, and microphones. The project will also replace the remote control system for the station's transmitter, KCBX serves a population of about 550,000.

File No. 94057 CRB Northern CA Public Bdstg, Inc., 280 North Oak Street, Ukiah, CA 95482. Signed By: Mr. Barry Vogel, President. Funds Requested: \$171,966. Total Project Cost: \$229,288. To activate a public radio station on 88.1 MHz in Ukiah, CA, to provide the first public radio signal to 28,000 people in Lake and Mendocino Counties.

File No. 94062 CTB Rural CA Broadcasting Corporation, 5850 LaBath Avenue, Rohnert Park, CA 94928. Signed By: Ms. Nancy Dobbs, President and CEO. Funds Requested: \$24,399. Total Project Cost: \$48,798. To improve the operation of public station KRCB-TV, Ch 22, Rohnert Park, CA, by replacing worn-out components of its transmitter and acquiring test

equipment. The station provides the only public television service to about 100,000 homes.

File No. 94067 CTB Redwood Empire Public TV, Inc., Box 13, Eureka, CA 95502-0013. Signed By: Ms. Sile M. Bauriedel, President. Funds Requested: \$75,750. Total Project Cost: \$151,500. To improve the operation of public station KEET, Ch. 13, Eureka, CA, by replacing obsolete, unreliable studio equipment including cameras, video recorders, a character generator, still-store, monitoring and test equipment and by adding a SAP generator to allow descriptive video or secondary language broadcasts to special audiences. The station serves about 120,000 persons.

File No. 94075 CRB Pataphysical Bdcstg Fndn, Inc., P.O. Box 423, Santa Cruz, CA 95062. Signed By: Mr. Peter Troxell, Manager. Funds Requested: \$225,908. Total Project Cost: \$301,908. To extend the signal of public radio station KUSP, 88.9 MHz, Santa Cruz, CA, by activating translators to bring the first public radio signal to 888 persons in Big Sur and Palo Canyon, to 15,815 people in Monterey County, and to 32,721 people in San Benito County. The project will also replace the station's unreliable and obsolete transmitter and antenna and items of studio equipment, including a mixing console, tape recorders, and a cartridge machine.

File No. 94097 CTB Bay Area Multicultural T/C Assn, 3533 19th Street, San Francisco, CA 94100. Signed By: Mr. Humberto Cintron Chairman, Board of Director. Funds Requested: \$295,041. Total Project Cost: \$393,388. To equip studio and field production facilities for providing ethnic and minority oriented programming on a public television station to operate on Channel 32, San Francisco, CA.

File No. 94122 CTB Community TV of S. California, 4401 Sunset Boulevard, Los Angeles, CA 90027. Signed By: Mr. Donald G. Youpa, Executive Vice President. Funds Requested: \$1,000,000. Total Project Cost: \$2,183,648. To equip a new studio facility being built by public television station KCET, Ch 28, Los Angeles, CA, by replacing obsolete analog equipment with digital routing, signal converters, master sync systems, distribution amplifiers, frame synchronizers/audio delays, still store, machine control, equipment racks, and main monitoring.

File No. 94124 CRB Death Valley Natural History Assn, P.O. Box 188, Death Valley, CA 92328. Signed By: Ms. Feliz N. Fields, Executive Director. Funds Requested: \$13,730. Total Project Cost: \$18,307. To provide the first public radio signal to Death Valley, CA,

by activating a 100 watt FM translator on 88.7 MHz to rebroadcast the programming of public radio station KNPR, Las Vegas, NV.

File No. 94125 CTN Community TV of Santa Cruz Co., Inc., 2828 Casa de Vida, Aptos, CA 95003. Signed By: Mr. Geoffrey Dunn, President. Funds Requested: \$455,034. Total Project Cost: \$910,069. To establish a production studio, plus a field production capability, to originate programming for dedicated community access channels serving Santa Cruz County, which is located on the coast of central California.

File No. 94133 PRTN North Marin T/C Corporation, 899 Northgate Drive, Suite 302, San Rafael, CA 94903. Signed By: Mr. Maximilian Hopkins, Assistant Chairman. Funds Requested: \$75,000. Total Project Cost: \$100,000. To conduct a feasibility study to explore the possibility of developing a fully interactive fiber optic information network in Novato, California and surrounding areas. This proposed study would plan for an interconnected telecommunications system throughout the city and its incorporated environs that would include interactive services for television, computers, the reading of utilities, and possibly telephone options as permitted.

File No. 94141 PTN Monterey County Office of Education, 901 Blanco Circle, Salinas, CA 93901. Signed By: Mr. William Barr, Superintendent. Funds Requested: \$84,988. Total Project Cost: \$132,368. To design a multi-channel, multi-technology video distribution system for educational telecommunications use within a three-county region on California's central coast, and through collaborations among the region's educational institutions, government agencies and private businesses, form the Monterey Bay Educational Telecommunications Roundtable. This Roundtable would include representatives of K-12 school districts, community colleges, universities and local governments working cooperatively to establish the Monterey Bay Educational Telecommunications Network to provide interactive services among educational institutions, government offices and area businesses.

File No. 94145 CRB Hmong-SE Asian Public Bdcstg Corp, 4590 North Woodson Avenue, Fresno, CA 93705. Signed By: Mr. Yeu Cha, President. Funds Requested: \$215,960. Total Project Cost: \$287,947. To construct a new public radio station on 91.9 MHz in Madera California to serve a large Asian-Pacific population with special

programming designed to meet its needs.

File No. 94158 CTB KTEH Foundation, 100 Skyport Drive, MC 54, San Jose, CA 95110-1301. Signed By: Mr. Thomas F. Fanella, President. Funds Requested: \$45,727. Total Project Cost: \$91,454. To construct a Station-controlled microwave interconnection system to provide KTEH, Channel 54, programming to a CATV head-end serving an unserved market in King City, CA. To construct a second station controlled microwave interconnection system to deliver the KTEH signal to a CATV head-end in Santa Cruz, CA, replacing an unreliable off-air system. To replace an existing coaxial cable feeding microwave systems, with a fiber-optic cable, making it less susceptible to lightning outages.

File No. 94159 CTN San Francisco Public Library, 200 Larkin Street, San Francisco, CA 94102. Signed By: Mr. Kenneth E. Dowlin, City Librarian. Funds Requested: \$583,779. Total Project Cost: \$778,372. To establish video production facilities to originate programming for a dedicated government access cable television channel serving San Francisco. The mission of the channel would be to provide the community with gavel-to-gavel coverage of Board of Supervisors meetings and other important City meetings, to inform the residents about local legislative processes and issues, and to enable maximum participation in governing decisions.

File No. 94170 CTN University of California, Davis, 410 Mark Hall, Davis, CA 95616-8671. Signed By: Mr. Keith Young, Contract & Grant Analyst. Funds Requested: \$165,839. Total Project Cost: \$290,944. To expand the distance education offerings of the University of California, Davis by constructing two new classroom production facilities to provide live instructional programming to engineers nationwide via the National Technological University satellite system. The classrooms will also be used to distribute instructional material in environmental engineering to the Mare Island Naval Ship Yard via digital video 1/2 T1 telephone lines.

File No. 94174 PTN San Diego St. University Found, 5178 College Avenue, San Diego, CA 92182-1900. Signed By: Mr. Frank J. DiSanto, Director, Grants & Contracts. Funds Requested: \$38,874. Total Project Cost: \$38,874. To plan for a coordinated telecommunications system for the city of San Diego identified as InfoSanDiego, through the International Center for Communications of the San Diego State University Foundation, that would involve many organizations and

institutions in education, health care, library services, local government, utilities, military, cable television, broadcasting, tourism and private industry to provide an interactive educational and informational service that would be made available to San Diego's diverse ethnic population through cable television and other forms of distribution.

File No. 94184 CTB San Diego State University Fndn, 5164 College Avenue, San Diego, CA 92115. Signed By: Mr. Frank J. DiSanto, Director, Grants & Contracts. Funds Requested: \$519,922. Total Project Cost: \$799,880. To improve the production capability of public station KPBS-TV, Ch 15, San Diego, CA, by replacing obsolete and unreliable studio production equipment, including a master routing switcher, production switcher, and audio console, with digital equivalents and install an on-line videotape editing suit and test equipment.

File No. 94186 CRB Humboldt State University, Arcata, CA 95221-8299. Signed By: Dr. Alistair W. McCrone, President. Funds Requested: \$102,795. Total Project Cost: \$137,060. To extend the signal of public radio station KHSU, 90.5 MHz, Arcata, CA, to approximately 22,460 people by activating a repeater at Crescent City and translators at Shelter Cove, Orleans, and Burnt Ranch; and to establish a radio reading service for the visually handicapped by equipping a studio for the purpose at the station in Arcata.

File No. 94198 CRB CA State University-Sacramento, 3416 American River Dr. Suite B, Sacramento, CA 95864. Signed By: Mr. Phil Corrieveau, General Manager. Funds Requested: \$61,061. Total Project Cost: \$122,125. To construct a Ku-band satellite interconnection system to distribute programming from KXPR and KXJZ, both operated by the applicant in Sacramento, CA, to several repeater stations. These include KXSR, operating in Groveland CA; KXKB, for which the applicant has a construction permit to serve Kings & Tahoe City, CA (and related translator K201AJ to serve South Lake Tahoe, CA and Stateline, NV); and KQNC, Quincy, CA for which the applicant has a transfer of licensing pending at the FCC. The project will also include equipment for the local origination of programming at each of the three repeater stations.

File No. 94224 CTN Educational T/C Consortium of, 1101 East University, Fresno, CA 93741. Signed By: Mr. Robert A. Wyman, Executive Director. Funds Requested: \$999,934. Total Project Cost: \$2,546,724. To develop a video and data network using ISDN and

Frame Relay technologies to offer distance learning services to Fresno, Tulare, King, and Madera counties in central California. The Educational Telecommunications Consortium of central California comprises the State Center Community College District, the Fresno County Office of Education (and all 40 county K-12 districts), West Hills Community College District, Sequoias Community College District, and California State University/Fresno.

File No. 94227 PTN Loyola Marymount University, Loyola Blvd. at W 80th St., Los Angeles, CA 90045-2699. Signed By: Dr. Joseph G. Jabbar, Academic Vice President. Funds Requested: \$85,437. Total Project Cost: \$111,397. To plan for an inter-campus telecommunications network designated as EduLINK, that would interconnect three institutions of higher education and many schools and agencies in each of their areas of the United States, through fully interactive system providing video, voice and data capabilities for shared distance learning and training services. The three institutions proposing to develop the plan would be working cooperatively toward the sharing of courses, seminars, videoconferences, and computer interactive materials that emphasize the cultural diversity of the institution—Loyola Marymount University, a multi-cultural university in Los Angeles; Benedict College, a traditionally African-American college in Columbia, SC; and Sinte Gleska University, a Lakota tribal university on the Rosebud Sioux Reservation in South Dakota.

File No. 94237 CRB Radio Bilingue, 1111 Fulton Mall, #700, Fresno, CA 93721. Signed By: Mr. Hugo Morales, Executive Director. Funds Requested: \$536,324. Total Project Cost: \$715,099. To improve the production facilities operated by the applicant's three California public radio stations KSJV Fresno, KMPO Modesto and KHDC Salinas. Five new studios and control rooms will be added to produce programming for distribution via satellite to public radio station. Radio Bilingue operates the Satellite radio service, which provides Spanish language programming to public radio stations. The project will also provide digital equipment for 7 Hispanic stations to provide programming to Radio Bilingue for national distribution and will replace microwave studio-to-transmitter links at KSJV and KMPO.

File No. 94266 CRB Poor Peoples Radio, Inc, Box 425000 (1329 Divisadero St.), San Francisco, CA 94115. Signed By: Mr. Joe Rudolph, General Manager. Funds Requested: \$35,016. Total Project Cost: \$46,808. To replace obsolete

origination equipment and transmitter at KPOO-FM, 89.5, serving minority populations in San Francisco, California.

File No. 94273 CRB Rose Resnick Lighthouse, 20 10th Street—Suite 220, San Francisco, CA 94103. Signed By: Ms. Anita Baldwin, Executive Director. Funds Requested: \$24,860. Total Project Cost: \$49,720. To improve the radio reading service provided by the Rose Resnick Lighthouse for the Blind and Visually Impaired, San Francisco, CA, by replacing unreliable equipment, including a console, tape recorders, cartridge machines, distribution amplifiers, and microphones. The service is broadcast over an SCA channel of KPFA-FM, 94.1, San Francisco. The project also includes acquisition of additional special radio receivers for the service.

File No. 94275 CTB Coast Community College District, 15751 Gothard Street, Huntington Beach, CA 92647. Signed By: Mr. William A. Furniss, President. Funds Requested: \$443,325. Total Project cost: \$591,100. To improve the operation of public television station KOCE, Ch 50, Huntington Beach, CA, by replacing obsolete and unreliable origination equipment, including cameras, switchers, monitors, and video tape recorders. The station serves a population of 8.2-million people.

File No. 94276 CTB KQED, Inc., 2601 Mariposa Street, San Francisco, CA 94110-1400. Signed By: Ms. Mary G. F. Bitterman, President & CEO. Funds Requested: \$415,323. Total Project Cost: \$830,646. To improve the production capability of public broadcasting station KQED-TV, Ch 9, San Francisco, CA, by replacing worn-out and obsolete video tape recorders for both studio and field use. The project will also include test and monitoring equipment to supplement the station's changeover to digital taping. KQED-TV serves a population of about 7-million.

File No. 94277 CRB San Mateo Cnty Cmty College Dist, 1700 West Hillsdale Boulevard, San Mateo, CA 94402. Signed By: Mr. Craig T. Blake, Acting Chancellor. Funds Requested \$211,876. Total Project Cost: \$282,501. To improve the signal of public broadcasting station KCSM-FM, 91.1 Mhz, San Mateo, CA, by replacing its obsolete and unreliable transmitter, antenna, and test equipment and by raising the height of its tower. The station serves a population of about 4.6-million people.

File No. 94286 CTN Los Angeles Harbor College, 1111 Figueroa Place, Wilmington, CA 90744. Signed By: Mr. James Heinselman, President. Funds Requested: \$394,536. Total Project Cost:

\$638,306. To plan, purchase equipment for, and activate a distance learning service that will deliver live interactive instruction, training and specialized workshops and seminars to remote sites surrounding the Los Angeles Port area of San Pedro through the use of T-1 lines. The proposed service would provide distance learning and training courses to students educators, medical personnel, and those considered to be underserved in the general population.

File No. 94298 CTB Valley Public TV, Inc., 1544 Van Ness Avenue, Fresno, CA 93721. Signed By: Mr. Colin Dougherty, Executive Director. Funds Requested: \$356,777. Total Project Cost: \$713,555. To replace obsolete and unreliable transmission, master control, studio production, field recording, and test equipment at KVPT-TV, Channel 18, in Fresno, California.

File No. 94300 CTB KVIE, Inc., 2595 Capitol Oaks Drive, Sacramento, CA 95833. Signed By: Mr. John D. Hershberger, President and General Manager. Funds Requested: \$255,880. Total Project Cost: \$551,760. To replace three broadcasting studio cameras and an audio console at public broadcasting station KVIE-TV, Channel 6, Sacramento, California.

File No. 94303 CRB University of the Pacific, 3601 Pacific Avenue, Stockton, CA 95211. Signed By: Mr. Joseph Subbiondo, Executive Vice President. Funds Requested: \$45,101. Total Project Cost: \$60,135. To establish a reading service for sight impaired persons, local history programs for area schools, and Asian-Pacific programs for Asia-Pacific population, on two SCA channels of KUOP-FM 91.3 MHz. The project will fund production equipment, a digital STL and 70 SCA receivers.

File No. 94312 CTBN Kern Educational T/C Consortium, 5801 Sundale Avenue, Bakersfield, CA 93309-2900. Signed By: Ms. Kelly F. Blanton, Kern Cnty Superin of Schools. Funds Requested: \$899,984. Total Project Cost: \$1,799,984. To establish a first public telecommunications service in Kern County, located in Southcentral California, by constructing one phase of a county-wide digital microwave system with multi-channel capabilities to program two ITFS facilities and two Low-Power Television (LPTV) facilities, while also providing interactive video, voice and data services to government agencies, hospitals, correctional facilities, libraries and educational institutions at all levels. The proposed telecommunications system would also have four production classrooms in various locations among the educational institutions of the consortium, to originate instructional courses for

distribution to an underserved and disadvantaged population in isolated areas.

File No. 94322 CTB Northern CA ETV Association, Inc., 603 North Market Street, Redding, CA 96003. Signed By: Mr. Lyle Mettler, General Manager. Funds Requested: \$1,110,000. Total Project Cost: \$1,480,000. To replace obsolete and unreliable transmitter, antenna, tower, video recorders, play back machines and test equipment at KIXE-TV, Channel 9, Redding California.

CO (Colorado)

File No. 94035 PRB Leadville Cmnty Brdctg Assoc., Inc., P.O. Box 1256, Leadville, CO 80461. Signed By: Ms. Kathy Bedell, President. Funds Requested: \$44,350. Total Project Cost: \$59,350. To plan for the establishment of a new public FM radio station on 88.9 MHz in Leadville. Proposed station would provide a first signal to approximately 6,000 people.

File No. 94072 CRB Denver Ed. Broadcasting, PO Box 11111, Denver, CO 80211. Signed By: Ms. Florence Hernandez-Ramos, Chief Executive Officer. Funds Requested: \$217,518. Total Project Cost: \$290,025. To improve the facilities of public radio station KUVU-FM, 89.3 MHz, in Denver by acquiring a backup studio-to-transmitter link (STL), and a new transmitter. The current 1985 transmitter will be used as a backup. KUVU-FM will replace a variety of master control room equipment including a new console. Project will also replace console and other origination equipment such as reel-to-reel recorders, CD players/recorders, DAT machines and a variety of associated equipment in the station's production/news rooms. KUVU-FM also seeks a selection of test equipment. The replacement and upgrading of KUVU-FM's equipment will allow it to better serve its multi-cultural audience. The Denver area is also served by KCFR-FM and KGNU-FM (Boulder).

File No. 94128 CRB Boulder Community Brdctg. Assoc., 1900 Folsom, Suite 100, Boulder CO 80302. Signed By: Ms. Marty Durlin, Station Manager. Funds Requested: \$28,640. Total Project Cost: \$57,280. To improve the facilities of public radio station KGNU-FM, 88.5 MHz, in Boulder by replacing old equipment that has been in use for 16 years. Requested equipment includes 3 audio consoles, a stereo monitor, an SCA monitor and a remote control system for the transmitter. Station serves about 300,000 people.

File No. 94130 CRB Boulder Community Brdctg. Assoc., 1900 Folsom, Suite 100, Boulder CO 80302. Signed By: Ms. Marty Durlin, Station Manager. Funds Requested: \$4,102. Total Project Cost: \$8,205. To expand the coverage area of public radio station KGNU-FM, 88.5 MHz, in Boulder, by constructing a new FM translator on 93.7 MHz to serve Ward/Nederland. Translator will provide first service to an estimated 10,000 people in the mountains west of Boulder.

File No. 94183 CTB Prowers County, 301 S. Main Street, Lamar, CO 81052. Signed By: Mr. Robert R. Tempel, Chairman. Funds Requested: \$30,431. Total Project Cost: \$40,575. To replace two public television translators: K59AH, Ch. 59, Lamar; and K69AS, Ch. 69, in Las Animas. Translators serve about 18,000 people by repeating the signal of KTSC-TV, Ch. 8, in Pueblo. The two EMCEE translators are 22 years old.

File No. 94209 CTB Council for Public Television, 1089 Bannock Street, Denver, CO 80204. Signed By: Mr. James Morgese, President and General Manager. Funds Requested: \$137,060. Total Project Cost: \$272,120. To improve the facilities of public television station KRMA-TV, Ch. 6, in Denver, by replacing their 12-year old plumbicon equipped cameras with 3 complete current technology CCD camera systems. Station serves approximately 3,000,000 people.

File No. 94226 CRB Carbondale Cmty Access Radio, 417 Main Street, Carbondale, CO 81623. Signed By: Ms. Missy Bowen, Station Mgr., Funds Requested: \$33,018. Total Project Cost: \$44,025. To improve the facilities of public radio station KDNK-FM, 90.5 MHz, in Carbondale, by replacing worn-out and unrepairable 11-year-old air control room equipment, monitoring equipment, and dissemination equipment. New equipment includes: A stereo modulation monitor, power conditioning equipment, an on-air console, amplifiers, monitors, speakers and a variety of other origination equipment. KDNK-FM's signal covers approximately 23,000 people.

File No. 94246 CTB Front Range Educ. Media Corp., 2246 Federal Blvd., Denver, CO 80211. Signed By: Mr. Ted Krichels, General Manager. Funds Requested: \$103,417. Total Project Cost: \$206,835. To improve the facilities of public television station KBDI-TV, Ch. 12, in Denver (Broomfield), by replacing worn-out dissemination and origination equipment that has become unreliable and deteriorated. Equipment being requested includes a 7 GHz transmitter/receiver with antennas, a visual

transmitter tube, video tape recorders, encoder remote controls, mounting equipment, digital audio cart machines, an ENG camera with battery pack, a video production console, a master control console and other related equipment. KBDI-TV will be relocating to the Five Points Media Center and this equipment will assist in the conversion to the digital format. KBDI-TV serves approximately 2.1 million people.

File No. 94267 CTN National Technological Univ., 700 Centre Avenue, Fort Collins, CO 80526. Signed By: Mr. Lionel V. Baldwin, President. Funds Requested: \$564,190. Total Project Cost: \$867,900. To establish a Manufacturing Extension Partnership (MEP) satellite network which will provide information to small and medium manufacturing establishments on improving manufacturing competitiveness. The project will utilize NTU's existing digital satellite network and uplinks at 45 engineering schools and will fund 110 downlinks at sites participating in the MEP program, which is sponsored by the National Institute of Standards and Technology (NIST).

File No. 94295 CTB San Juan Basin Area Voc-Tech School, P.O. Box 970, 33057 Highway 160, Cortez, CO 81321. Signed By: Mr. Howard N. Acott, Executive Director. Funds Requested: \$184,935. Total Project Cost: \$246,580. To activate a low-power noncommercial TV station on Channel 28 that will bring diverse distance learning services to Montezuma and Dolores Counties in southwest Colorado. The course work transmitted will be designed for K-12 schools, San Juan Basin Area Vocational-Technical School, Pueblo Community College, and area law enforcement and firefighting institutions. The proposal includes a satellite Ku-band receive-only earth station, to permit the applicant to retransmit nationally-distributed instructional programming.

CT (Connecticut)

File No. 94105 CTN Board of Trustees of Community, 61 Woodland Street, Hartford, CT 06105. Signed By: Mr. Andrew C. McKirdy, Executive Director. Funds Requested: \$319,700. Total Project Cost: \$639,400. To establish a compressed video, two-way interactive distance learning network for the Connecticut Community-Technical College System. The network would interconnect the System's fifteen campuses, its central office, and off-campus sites at businesses and State agencies.

DC (District of Columbia)

File No. 94017 CRB Univ. of the District of Columbia, Washington, DC 20008. Signed By: Ms. Martha J. Bridgeforth, V.P. Institutional Advancement. Funds Requested: \$77,092. Total Project Cost: \$154,185. To improve public radio station WDCU-FM operating on 90.1 MHz in Washington, DC by upgrading the station with the addition to a C-Band fixed satellite downlink to improve its programming and by increasing the power from 6,800 watts to 50,000 watts with the purchase of a new transmitter and antenna which will increase coverage by 900,000 potential listeners.

File No. 94051 CTB Howard University, 2222 4th Street NW., Washington, DC 20059. Signed By: Mr. James A. Fletcher, VP-Business Affairs/Treasurer. Funds Requested: \$478,552. Total Project Cost: \$957,104. To improve public television station WHMM-TV, operating on Ch. 32 in Washington, DC, by augmenting the present local production and dissemination capability with the purchase of additional portable cameras, digital audio tape recorders, video tape players, digital Betacam players, digital video effects system, computerized video editing system, audio special effects processor and installation supplies, plus additional test equipment and transmitter components to extend the station service structure. This project will provide WHMM-TV the capability to add services to local minority audiences, including 1,400,000 blacks, as well as to the national audiences.

File No. 94134 CTN Amer. Indian Higher Ed. Consort., 509 Capitol Court NE., Ste. 100, Washington, DC 20002. Signed By: Ms. Margaret Perez, President-AIHEC. Funds Requested: \$474,802. Total Project Cost: \$633,070. To establish the first phase of a satellite-delivered distance learning system that would interconnect the 29 member-schools of the American Indian Higher Education Consortium (AIHEC). The proposal would purchase a C/Ku-Band receive-only earth station for the 29 AIHEC colleges and for the AIHEC headquarters in Washington, DC; it would also provide video classroom equipment for the 29 schools. Three of the AIHEC schools are four-year institutions; the remainder are two-year community colleges. They are found in Michigan (1), Wisconsin (2), North Dakota (5), South Dakota (4), Nebraska (1), Kansas (1), Montana (7), Washington State (1), California (1), New Mexico (3), and Arizona (1). The proposal is the first result of a major telecommunications

planning effort conducted over the past two years by AIHEC schools.

File No. 94324 PTN Assn of State & Terr Pub Health Lab, 1211 Conn. Ave. NW., Suite 608, Washington, DC 20036. Signed By: . Funds Requested: \$45,500. Total Project Cost: \$45,500. To plan for a pilot project that would use digitized video in videoconferencing applications to distribute distance-based learning to rural areas of the U.S. The plan would include identification and evaluation of possible sites, and the production of pilot continuing education and training programs that would focus on medical laboratory methods and procedures in public health.

FL (Florida)

File No. 94027 CTB University of Florida, 1200 Weimer Hall, Gainesville, FL 32611. Signed By: Mr. Dillard C. Marshall, Asst. Director, Sponsored Res. Funds Requested: \$188,492. Total Project Cost: \$376,984. To improve public television station, WUFT-TV, Ch 5, in Gainesville, FL, by replacing 4 studio cameras, so the station may continue producing local programs to 345,940 residents of North Central Florida.

File No. 94114 CRB Florida State University, 1600 Red Barber Plaza, Tallahassee, FL 32310. Signed By: Mr. Robert M. Johnson, Vice President for Research. Funds Requested: \$49,200. Total Project Cost: \$65,600. To activate a repeater noncommercial radio station, WFSU-FM, operating on 89.1 MHz, located 18 miles northwest of Panama City with a power of 100 Kw on an existing tower, providing first signal to 21,349 residents within a radius of 33 miles which covers 195,000 people.

File No. 94139 CTB Florida State University, 16000 Red Barber Plaza, Tallahassee, FL 32310. Signed By: Mr. Robert M. Johnson, Vice President for Research. Funds Requested: \$207,965. Total Project Cost: \$415,930. To improve public television station, WFSU-TV, Ch 11 in Tallahassee, FL, by replacing 3 studio camera systems and 1500 ft. of RF transmission line, so the station may continue to produce quality local programs to serve 600,000 residents in 27 counties in North Florida.

File No. 94151 CRB Florida State University, 1600 Red Barber Plaza, Tallahassee, FL 32310. Signed By: Mr. Robert M. Johnson, Vice President for Research. Funds Requested: \$53,289. Total Project Cost: \$71,052. To activate a Radio Reading Service, using the applicant's facilities located at WFSU-FM, 88.9 MHz, in Tallahassee, FL to bring specialized programming to the

blind, visually impaired and those with other physical disabilities. The audio will be delivered to approximately 12,560 people by 7 public radio subcarriers and by public TV SAP channels (the 7 include 4 in Tallahassee, 1 in Panama City and 2 in Valdosta, GA).

File No. 94164 CTN Okaloosa-Walton Community College, 100 College Boulevard, Niceville, FL 32578. Signed By: Mr. James R. Richburg, President. Funds Requested: \$235,322. Total Project Cost: \$313,763. To construct an ITFS system, with a satellite receive-only earth station, that will permit the sharing of instructional programming among the public schools, Okaloosa-Walton Community College, and the private homes of Okaloosa and Walton Counties in northwest Florida. Distribution to the homes will be accomplished through an agreement for a dedicated channel on the cable television system that serves the area.

File No. 94204 CTN University of North Florida, 4567 St. Johns Bluff Rd. So., Jacksonville, FL 32224. Signed By: Dr. Joyce T. Jones, Director, Sponsored Research. Funds Requested: \$82,971. Total Project Cost: \$110,628. To establish an ITFS system at the University of North Florida to help meet the educational and informational needs of the university and its surrounding communities, by enabling the university to extend its academic programs, workforce education and training, and professional development courses through a two-way interactive distance learning system. The proposed interconnection system would provide services to institutions and organizations at all levels of education, and to libraries, military bases, government offices, retirement communities, and businesses.

File No. 94217 CRB School Board of Dade County, 172 NE 15th Street, Miami, FL 33132. Signed By: Mr. Octavio J. Visiedo, Superintendent of Schools. Funds Requested: \$45,182. Total Project Cost: \$90,364. To improve public radio station WLRN-FM, 91.3 MHz, in Miami, FL by replacing master control items, including an input console, speakers, cassette recorders, digital cartridges, DAT recorders, CD players, reel to reel recorders, microphones with booms, stereo headphones and a stereo gated compressor/limiter, so the station may continue and increase its local service to the 3,883,700 people in South Florida from the Florida Keys to Palm Beach.

File No. 94223 CRB University of Florida, 219 Crinter Hall, Gainesville, FL 32611. Signed By: Mr. Dillard C. Marshall, Assistant Director, Spon. Res.

Funds Requested: \$73,369. Total Project Cost: \$146,738. To activate a repeater noncommercial radio station, WWUA-FM, operating on 90.1 MHz, with a power of 4,500 watts, in Inverness, FL, providing first signal to 201,165 residents in the three counties of Citrus, Hernando and Sumter. This project involves the applicant's successful negotiation with Alkalodge for assignment of their Construction Permit for WWUA-FM.

File No. 94251 CTB Florida West Coast Pub. Brdcastg., 1300 North Boulevard, Tampa, FL 33607. Signed By: Mr. Stephen Rogers, President & CEO. Funds Requested: \$285,171. Total Project Cost: \$570,343. To improve public television station, WEDU-TV, operating on Ch 3 in Tampa, FL, by replacing essential origination and dissemination equipment including tape machines, tape handler, frame synchronizer, routing switcher components and microwave amplifier, so the station can continue service to the 3,396,000 residents in the Florida West Coast area.

GA (Georgia)

File No. 94121 PRB Albany State College, 504 College Drive, Albany, GA 31705. Signed By: Mr. Billy C. Black, President. Funds Requested: \$74,590. Total Project Cost: \$92,215. To establish a plan to assess public radio audience interests and develop first rate programming. Albany State College is preparing to establish a public radio station to be a part of the Peach State Radio Network, and wants to offer programs which both cultivate the interest of the region and emphasize its uniqueness.

File No. 94126 CTN Macon College, 100 College Station, Macon, GA 31297-4899. Signed By: Dr. S. Aaron Hyatt, President. Funds Requested: \$190,730. Total Project Cost: \$467,452. To purchase video origination equipment to allow Macon College to implement video distance learning so as to reach off-campus receive sites, including local area high schools and business/industry sites. Although for the most part the College's system will be interconnected by T1 telephone transmission, the system will provide instruction for home-bound non-traditional students and lower-income minority students via educational access channels on local cable television. The College's proposed network will also provide it access to the statewide Georgia State Academic and Medical Systems (GSAMS) network.

File No. 94136 CRB Radio Free Georgia Broadcasting, 1083 Austin Ave., NE, Atlanta, GA 30307. Signed By: Mr.

Tom Davis, Executive Director. Funds Requested: \$88,368. Total Project Cost: \$117,824. To improve public radio station WRFG-FM, 89.3 MHz, in Atlanta, GA by acquiring a new transmitter, antenna and transmission line, which will increase the station's power from 23,400 watts to 100,000 watts directionally. This upgrade will allow WRFG to reach a significant number of counties in north Georgia that currently do not receive the station's signal and will greatly improve the quality and reliability of its broadcast signal.

File No. 94168 CTB GA Public Telecomm. Commission, 1540 Stewart Ave., SW, Atlanta, GA 30310. Signed By: Mr. Frank D. Bugg, Jr., Deputy Director. Funds Requested: \$291,958. Total Project Cost: \$583,916. To improve public television station WGTW-TV, Ch 8 in Athens, GA by replacing the transmitter, so the station may continue service to the 3,926,884 residents of greater metropolitan Atlanta which is approximately 50% of the population of the State.

File No. 94173 PRB Southern College of Technology, 1100 So. Marietta Parkway, Marietta, GA 30060. Signed By: S.R. Cheshier, President. Funds Requested: \$98,700. Total Project Cost: \$180,485. To assess the technology-related educational needs in the state of Georgia for students, educators, lifelong learners and the workforce, to determine the availability and feasibility of instructional technology and telecommunications delivery systems to provide interactive voice, video and data services for distance learning courses and for technical education and training.

File No. 94191 PRB Georgia State University, 140 Decatur St., Rm. 812, Atlanta, GA 30302-4044. Signed By: Mr. William R. Decatur, Vice Pres., Financial Affairs. Funds Requested: \$153,252. Total Project Cost: \$174,727. To enable the public institutions of higher education in metropolitan Atlanta, in a cooperative arrangement as the Metropolitan Atlanta Distance Learning Consortium, develop a plan that would combine the telecommunications resources of these institutions along with those of public broadcasting, medical services, associations and other educational organizations, to establish an interactive distance learning network using existing and proposed interconnection systems.

File No. 94203 CTB Atlanta Board of Education, 740 Bismark Road, NE, Atlanta, GA 30324. Signed By: Dr. Lester W. Butts, Superintendent. Funds Requested: \$359,079. Total Project Cost: \$718,158. To improve the production

facilities of WPBA-TV, Ch. 30 in Atlanta by replacing a 20-year-old video switcher and audio console. The project will also purchase video tape recorders and upgrade a C-band satellite uplink to Ku-band to permit satellite distribution of instructional programming to schools in the Atlanta area.

File No. 94254 CTN Georgia Center/ Continuing Education, University of Georgia, Athens, GA 30602-3603. Signed By: S.E. Younts, Vice President for Services. Funds Requested: \$403,516. Total Project Cost: \$548,180. To extend the satellite delivered services of the Georgia Center for Continuing Education through the construction of a Ku-band uplink. The Ku-band uplink will serve 1,700 downlinks throughout the state recently funded by the State of Georgia and will supplement a C-band service operated by the Center for the past decade.

HI (Hawaii)

File No. 94270 PRB Kekahu Foundation, 2340 Kamalii Street, Kilauea, HI 96754. Signed By: Ms. Janet Friend, President. Funds Requested: \$30,000. Total Project Cost: \$35,100. To plan for the establishment of the first public radio station to serve the 51,000 residents of the island of Kauai, Hawaii.

IA (Iowa)

File No. 94052 CTB Iowa Public Broadcasting Board, 6450 Corporate Drive, Johnston, IA 50131. Signed By: Mr. C. David Bolender, Executive Director. Funds Requested: \$302,367. Total Project Cost: \$604,735. To improve the operational capability of Iowa Public Television, Johnston, IA, by replacing its routing switcher and to augment the operational capability of IPTV by acquiring an automation system. IPTV serves about 2.7-million people through a statewide system of eight public television stations.

File No. 94211 CTN Indian Hills Community College, 525 Grandview, Ottumwa, IA 52501. Signed By: Dr. Lyle Hellyer, President. Funds Requested: \$109,246. Total Project Cost: \$273,114. To establish a video production studio to be located in the Indian Hills Community College Advanced Technology Center. The classroom would allow for the origination of instructional programming such as laboratory demonstrations, experiments, and presentations beyond the capability of the usual video classroom. The course work produced in the studio would be transmitted via the Iowa Communications Network to K-12 public schools, post-secondary academic institutions and business/ industry.

File No. 94243 CTN SCOLA, RR #1, Box 204 Highway L52, McClelland, IA 51548. Signed By: Mr. Lee Lubbers, S.J., President. Funds Requested: \$250,000. Total Project Cost: \$500,000. To purchase four digital compressed video encoders to extend the satellite services of SCOLA. SCOLA provides foreign language news programming to 10,000 schools and universities throughout the United States. The digital compressed video encoders will permit SCOLA to use Ku-band satellite distribution to increase its programming from one channel to four channels. The three new channels will include documentaries, school courses, and children's programs presented in original foreign languages. SCOLA will also offer courses in speaking less-commonly-taught languages, such as Swahili, Lakota and Dutch.

File No. 94325 PRB Suntaman Communications, Inc., 1170 13th Street, Des Moines, IA 50314. Signed By: Mr. Wesley F. Hall, Executive Director. Funds Requested: \$40,000. Total Project Cost: \$40,000. To plan for a series of public radio stations across the country to be owned and operated by African Americans.

IL (Illinois)

File No. 94043 CRB Northern Illinois University, 801 North First Street, DeKalb, IL 60115. Signed By: Mr. Douglas J. Moore, Controller. Funds Requested: \$306,564. Total Project Cost: \$408,752. To activate public radio repeater stations in Freeport on 89.1 MHz, in LaSalle on 91.3 MHz, and in Sterling on 91.5 MHz, IL, to bring the first public radio signal to about 181,356 persons. The new stations will repeat the programming of WNIU, DeKalb, and WNIJ, Rockford, IL, and the radio reading service of WNIU will be broadcast on the subcarriers of the new stations.

File No. 94077 CTB University of Illinois, 1110 West Main Street, Champaign, IL 61801. Signed By: Mr. Craig S. Bazzani, Comptroller. Funds Requested: \$117,500. Total Project Cost: \$235,000. To improve the operation of public station WILL-TV, Ch. 12, Champaign-Urbana, IL, by replacing its worn-out and obsolete routing switcher, eight videotape recorders, and an automation control system. The station serves about 1.3 million persons.

File No. 94092 CTB Chicago Educational TV Assn, 5400 North St. Louis Avenue, Chicago, IL 60625. Signed By: Mr. Martin J. McLaughlin, Vice Pres, Corporate Affairs. Funds Requested: \$364,750. Total Project Cost: \$729,500. To improve the signal of public television station WTTW, Ch. 11,

Chicago, IL, by replacing its worn-out transmitter. The station serves about 10.5-million people.

File No. 94106 PTB City Colleges of Chicago, 226 West Jackson Boulevard, Chicago, IL 60606-6998. Signed By: Ms. Jacqueline E. Woods, Vice Chancellor. Funds Requested: \$50,000. Total Project Cost: \$50,000. To develop architectural and engineering plans for the move of public television station WYCC, Ch. 20, Chicago, to a larger facility.

File No. 94111 CTB Southern Illinois University, 1048 Comm Bldg, Mailcode 6602, Carbondale, IL 62901. Signed By: Mr. Benjamin A. Shepherd, VP for Academic Affairs. Funds Requested: \$191,650. Total Project Cost: \$383,300. To improve the production facilities of public station WUSI-TV, Ch. 16, Olney, IL, by replacing obsolete and worn-out videotape recording and editing equipment, a character generator, studio cameras, and a field production unit. WUSI serves a population of about 876,766 persons.

File No. 94113 CRB University of Illinois, 1110 West Main Street, Champaign, IL 61801. Signed By: Mr. Craig S. Bazzani, Comptroller. Funds Requested: \$6,031. Total Project Cost: \$12,063. To activate a public radio translator operating at 106.5 MHz in Danville, IL, to provide the first nighttime public radio service to the 43,000 residents of the area. The translator will repeat the programming of public radio station WILL-FM, Champaign.

File No. 94123 CTN College of DuPage, 22nd Street and Lambert Road, Glen Ellyn, IL 60137. Signed By: Mr. H.D. McAninch, President. Funds Requested: \$1,029,615. Total Project Cost: \$2,059,231. To assist the College of DuPage in implementing its distance learning system, called 502NET. The proposal would purchase video classroom equipment, including codes, that would allow the 502NET participants to interact fully on the network. Initially, the College will have eight partners: six local area high schools; the Illinois Math and Science Academy; and the Fermi National Accelerator Laboratory. The 502NET service area will be DuPage County and portions of Cook, Kane, Will Counties, all immediately to the west of Chicago. The network would allow participants to: receive two-way interactive video and computer instruction; receive coursework for skills upgrading, re-certifications, and workforce training and re-training; attend videoconferences; and have access to Internet and other data systems. The transmission will be via telephone/fiber optics lines.

File No. 94169 CTN Heartland Community College, 1226 Towanda Avenue, Bloomington, IL 61701. Signed By: Mr. Jerry Weber, Vice President/ Instruction. Funds Requested: \$655,646. Total Project Cost: \$849,175. To establish eight additional video classrooms, with associated test equipment, to permit Heartland Community College to expand its distance learning network to sites at underserved rural area high schools and other post-secondary academic institutions in eight counties in Central Illinois. Each interactive classroom will offer access to college preparatory, college credit, graduate-level, and vocational courses.

File No. 94255 CRB Quincy University Corporation, 1800 College Avenue, Quincy, IL 62301-2699. Signed By: Fr. James F. Toal, OFM, President. Funds Requested: \$69,665. Total Project Cost: \$92,887. To extend the signal of public radio station WQUB, 90.3 MHz, Quincy, IL, by increasing its power to 31 KW from 10 KW. The extension will bring the first public radio signal to about 18,000 persons. The project will also improve service to visually handicapped persons in the WQUB listening area by making it possible for the station to receive a radio reading service from public radio station WIUM, Macomb, IL, and retransmit it.

File No. 94283 CTN Oakton Community College, 1600 East Golf Road, Des Plaines, IL 60016. Signed By: Mr. Thomas HenHoeve, President. Funds Requested: \$90,966. Total Project Cost: \$181,932. To acquire and activate headend, distribution and playback equipment necessary for a combined distribution system that incorporates an existing ITFS service with a proposed cable television channel, for the delivery of distance learning courses and continuing education programs among educational institutions, the general population and workforce, and specialized skills locations such as acute medical care/nursing facilities. Through the resources of the twenty-one institutions of higher education in a regional consortium, instructional courses and teleconferences would be distributed over this system for academic coursework, professional development and workforce training/retraining.

File No. 94307 CRB Western Illinois University, 900 West Adams Street, Macomb, IL 61455. Signed By: Mr. Donald Spencer, President. Funds Requested: \$167,193. Total Project Cost: \$222,925. To extend the signal of public radio station WIUM, 91.3 MHz, Macomb, IL, by activating a repeater station in Warsaw, IL, operating at 89.5

MHz, to bring the first public radio signal to approximately 44,628 persons. The project also replaces some items of production equipment and provides a package of test equipment.

IN (Indiana)

File No. 94013 CTB Fort Wayne Public Television, 3632 Butler Road, Fort Wayne, IN 46808. Signed By: Mr. Roger G. Rhodes, President & General Manager. Funds Requested: \$174,209. Total Project Cost: \$256,190. To improve the transmission and production capabilities of public television station WFWA, Ch. 39, Fort Wayne, IN, by replacing its worn-out and obsolete klystron tube, video switcher, still store system, audio control board, and field production equipment. WFWA serves a population of about 665,100.

File No. 94014 CRB Ball State University, Building AD-103, Muncie, IN 47306-0550. Signed By: Mr. James L. Pyle, Exec. Dir. of Academic Resch. Funds Requested: \$293,370. Total Project Cost: \$391,161. To extend the signal of public radio station WBST, 92.1 MHz, Muncie, IN, by activating repeater stations in Marion, 91.1 MHz, Portland, 91.7 MHz, and Hagerstown, 90.5 MHz, IN, to bring the first public radio signal to about 148,714 residents of East Central Indiana.

File No. 94091 CTB Tri-State Public Teleplex, Inc., 405 Carpenter Street, Evansville, IN 47708-1027. Signed By: Mr. David L. Dial, President and General Manager. Funds Requested: \$70,696. Total Project Cost: \$141,392. To improve the production capability of public station WNIN-TV, Ch. 9, Evansville, IN, by replacing obsolete and malfunctioning items of equipment, including video tape recorders, a field production package, and test equipment. The station serves a population of about 750,000 persons.

File No. 94099 CTB Indiana University, Bloomington, IN 47405-6901. Signed By: Mr. George Walker, Vice President for Research. Funds Requested: \$48,680. Total Project Cost: \$97,360. To improve the operation of public television station WTIU, Ch. 30, Bloomington, IN, by replacing video tape recorders and associated equipment. The station serves 485,800 potential viewers in the Bloomington area.

File No. 94172 CRB Metro Indianapolis Pub Bdcstg Inc., 1401 North Meridian Street, Indianapolis, IN 46202-2389. Signed By: Mr. Lloyd Wright, President and General Manager. Funds Requested: \$36,758. Total Project Cost: \$73,517. To improve the operation of public station WFYI-FM, 90.1 MHz,

Indianapolis, IN, by replacing various items of worn-out and obsolete equipment, including audio tape recorders, control boards, and microphones. The station serves a population of about 2-million people.

File No. 94196 CRB Purdue University, West Lafayette, IN 47907. Signed By: Mr. Larry E. Pherson, Dir. Ofc of Contracts & Grants. Funds Requested: \$41,450. Total Project Cost: \$82,900. To augment the operational capabilities of public radio station WBAA, 920 KHz, West Lafayette, IN, by acquiring an automation system. The station serves 2.8-million people.

File No. 94253 CRB Purdue University, West Lafayette, IN 47907. Signed By: Mr. Larry E. Pherson, Dir. Ofc of Contracts & Grants. Funds Requested: \$13,250. Total Project Cost: \$26,500. To augment the production capabilities of public radio stations WBAA-AM (920 KHz) and WBAA-FM (101.3 MHz), West Lafayette, IN, by acquiring an audio production console. The stations serve a population of 2.8-million people.

KS (Kansas)

File No. 94066 CRB University of Kansas, Broadcasting Hall, Lawrence, KS 66045. Signed By: Dr. Robert C. Bearse, Associate Vice Chancellor. Funds Requested: \$54,180. Total Project Cost: \$108,360. To improve the facilities of public radio station KANU-FM, 91.5 MHz, in Lawrence, by purchasing replacement equipment for the on-air control and production room as well as audio test equipment. Much of the equipment being replaced was acquired in 1974. New equipment includes: two audio consoles, digital cart machines, DAT machines and related origination equipment. Station serves approximately 1.2 million people.

File No. 94078 CRB Wichita State University, 1845 Fairmont, Wichita, KS 67260. Signed By: Mr. Harry E. Williford, Director, Research Admin. Funds Requested: \$21,725. Total Project Cost: \$43,450. To improve the facilities of public radio station KMUW-FM, 89.1 MHz, in Wichita, by replacing the transmitter remote control and telemetry system, acquiring audio test equipment and origination equipment including a recorder, a DAT recorder and other related production equipment. Much of the equipment is over a decade old. The remote control equipment is out-of-date, and is no longer manufactured thus replacement parts are unavailable.

File No. 94178 CTB Kansas Public Telecom. Service, 320 West 21st St., N. Wichita, KS 67203. Signed By: Mr. Zoel Parenteau, President/General Manager. Funds Requested: \$2,907. Total Project

Cost: \$5,815. To improve the facilities of public television station KPTS-TV, Ch. 8, in Wichita, by adding equipment which will permit the broadcast of Descriptive Video Service (DVS). DVS enables the print-handicapped to better understand the televised program. The service will be carried on the Secondary Audio Program (SAP) channel. At this time, KPTS-TV does not intend to originate any DVS programming only pass through the PBS-provided service.

File No. 94215 CRB Kansas State University, Fairchild Hall, Room No. 2, Manhattan, KS 66506. Signed By: Dr. Timothy R. Donoghue, Vice Provost for Research. Funds Requested: \$30,319. Total Project Cost: \$60,638. To improve the facilities of public radio station KKSU-AM, 580 KHz, in Manhattan by replacing a 25 year-old Gates transmitter. Current transmitter requires frequent and expensive repairs. Station has an extremely large coverage area over parts of four states: KS, IA, MO and OK. Approximately 5.4 million people are served by KKSU-AM. Station shares time with WIBW-AM.

File No. 94239 CTB Kansas Public Telecom. Service, 320 West 21st Street N., Wichita, KS 67203. Signed By: Mr. Zoel Parenteau, President/General Manager. Funds Requested: \$37,087. Total Project Cost: \$74,175. To improve the facilities of public television station KPTS-TV, Ch. 8, in Wichita, by replacing equipment which is causing repetitive repair problems. Service and parts are unavailable. New equipment consists of a new proc amp, a sync generator, color and black/white monitors and a graphics generator. KPTS-TV serves approximately 388,000 people.

File No. 94271 CRB Kanza Society, Inc., 210 N. 7th Street, Garden City, KS 67846. Signed By: Mr. Dale A. Bolton, Executive Director. Funds Requested: \$14,500. Total Project Cost: \$29,000. To expand the coverage of public radio station KANZ-FM, 91.1 MHz, in Garden City, by relocating two FM translators, increasing their power and the height of their antennas. The two translators being relocated are in Liberal, 96.3 MHz, and Hays, 96.3 MHz. Approximately 600 people will receive a first public radio signal as a result of this change and another 2,500 will receive an additional service. KANZ-FM will also acquire a spectrum analyzer to assist in the diagnosis and repair of their broadcast equipment.

File No. 94297 CTB Washburn University of Topeka, 301 N. Wanamaker Road, Topeka, KS 66606-9601. Signed By: Mr. Hugh L. Thompson, President. Funds Requested: \$261,872. Total Project Cost: \$523,745.

To improve the facilities of public television station KTWU-TV, Ch. 11, in Topeka by replacing out-of-date production equipment. KTWU-TV is continuing the transition to the Beta format by purchasing four record/playback Beta video tape recorders and related items as well as acquiring three camera systems. Station currently is using old or inappropriate cameras not suitable for studio productions.

File No. 94319 CRB Hutchinson Community College, 815 N. Walnut, Suite 300, Hutchinson, KS 67501. Signed By: Dr. Edward E. Berger, President. Funds Requested: \$43,955. Total Project Cost: \$87,910. To improve the facilities of public radio station KHCC-FM, 90.1 MHz, in Hutchinson, by replacing the station's 1978 transmitter, stereo generator and related dissemination equipment. Transmitter is becoming more expensive and difficult to repair and the design degrades the stereo and SCA subcarrier signals. Station serves approximately 500,000 people.

KY (Kentucky)

File No. 94085 CRB Appalshop, Inc., 306 Madison Street, Whitesburg, KY 41858. Signed By: Mr. R. Raymond Moore, Administrative Director. Funds Requested: \$53,660. Total Project Cost: \$71,660. To improve and expand the signal of public radio station WMMT, 88.7 Mhz, Whitesburg, KY, by replacing its transmitter and antenna and increasing its power. The increase will add nearly 51,000 persons to the population of about 147,406 persons now served by the station.

File No. 94219 CTB Kentucky Educational Television, 600 Cooper Drive, Lexington, KY 40502. Signed By: Ms. Virginia G. Fox, Executive Director. Funds Requested: \$822,368. Total Project Cost: \$1,370,614. To improve the transmission capabilities of Kentucky Educational Television, Lexington, KY, by replacing worn-out elements of various transmitters in its statewide system; and to augment KET by upgrading an analog satellite uplink to provide two channels of digital compression, by upgrading 250 current downlink sites to receive compressed digital signals, by adding a digital telephone bridge, and by adding an interactive video classroom system at Kentucky State University. KET operates a statewide network of 15 transmitters and 6 translators.

LA (Louisiana)

File No. 94076 CRB Friends of WWOZ, Inc., 1201 St. Phillip Street, New Orleans, LA 70116. Signed By: Mr. David Freedman, General Manager.

Funds Requested: \$35,318. Total Project Cost: \$47,091. To provide a satellite downlink and digital audio recorders at WWOZ-FM, 90.7 MHz in New Orleans to permit access to national distributed programming from the Public Radio Satellite System. WWOZ provides a jazz format public radio service to 1,000,000 people in the greater New Orleans area.

File No. 94079 CTN Educational Broadcastng Found. Inc., 2929 So. Carrollton Ave., New Orleans, LA 70118. Signed By: Mr. John Pela, Station Manager. Funds Requested: \$1,133,040. Total Project Cost: \$1,510,721. To implement the New Orleans Educational Telecommunications Project (NOETP), which will use a two-channel ITFS system to serve approximately 250,000 students in 419 public, parochial, and private schools in the seven parishes that comprise greater New Orleans: Orleans, Jefferson, Plaquemines, St. Bernard, St. Charles, St. John the Baptist, and St. Tammany. The project would construct a production studio at public television station WLAE-TV, an origination video classroom at each of seven "hub" schools (one in each parish), a total of nine two-channel studio-to-transmitter microwave links to interconnect the "hub" schools and station WLAE-TV to a common transmission point, and microwave reception equipment to interconnect to the NOETP as many of the 419 schools as is technically feasible.

File No. 94116 CTB Greater New Orleans ETV Found, 916 Navarre Avenue, New Orleans, LA 70124. Signed By: Mr. Randall Feldman, President and General Manager. Funds Requested: \$140,417. Total Project Cost: \$280,835. To improve public television station WYES-TV, Ch 12 in New Orleans, LA, by replacing the production, master control, and router switchers, 2 monitors, distribution amplifiers, and cable and connectors, so the station may continue to provide quality service to the 800,600 residents in greater New Orleans.

File No. 94137 CRB University of New Orleans, 2000 Lakeshore Drive, New Orleans, LA 70148. Signed By: Ms. Shirley Laska, Vice Chancellor for Research. Funds Requested: \$31,837. Total Project Cost: \$42,450. To extend the signal public radio station WWNO-FM, 89.9 MHz, in New Orleans, LA by constructing a 200 watt translator system that will bring first signal to the cities of Houma and Thibodaux and surrounding communities in Lafourche and Terrebonne Parish, which, combined, total 59,103 unserved residents.

File No. 94157 CTB Louisiana ETV Authority, 7860 Anselmo Lane, Baton Rouge, LA 70810. Signed By: Ms. Beth Courtney, Executive Director. Funds Requested: \$305,250. Total Project Cost: \$610,500. To improve public television station WLPB-TV, Ch 27, the originating station in the Louisiana Public Broadcasting TV Network, in Baton Rouge, LA, by replacing three studio cameras and purchasing four, so the station may continue to serve the network which covers, 3,314,792 residents.

File No. 94207 CTN Louisiana State University, 347 Pleasant Hall, Baton Rouge, LA 70803. Signed By: Mr. Allen Copping, President. Funds Requested: \$370,856. Total Project Cost: \$494,475. To initiate a two-way interactive compressed video system that would connect the five campuses of Louisiana State University using a digital data network that operates over terrestrial T-1 circuits. The network would serve as the major carrier of videoconferences and computing data for the university's delivery of distance learning programs intended to equitably meet the state's targeted educational needs, with the possibility of future development and expansion of the network to other colleges/universities and research centers statewide.

MA (Massachusetts)

File No. 94025 CTN Mass. Corp. for Educational T/C, 38 Sidney Street, Suite 300, Cambridge, MA 02139-4135. Signed By: Ms. Linda DiRocco, Acting Executive Director. Funds Requested: \$161,615. Total Project Cost: \$323,230. To purchase videobridge, personal work stations, and associated equipment to allow for the establishment of a desktop videoconferencing system with learners in 15 secondary schools in Massachusetts. The system will utilize ISDN interconnection technology. It will enable students and teachers to interact from multiple locations using video, data exchange, and shared whiteboard capabilities. The proposal, which is a coordinated effort with the Massachusetts Executive Office of Education, is designed to be an element of the Mass Ed Online project, which is the state educational technology plan mandated by the State Legislature's Education Reform Act of 1993.

File No. 94026 CRB University of Massachusetts, Box 33630, Amherst, MA 01003-3630. Signed By: Ms. Dorothy Baronas, Dir., Grant & Contract Admin. Funds Requested: \$96,097. Total Project Cost: \$192,197. To replace an obsolete and worn-out transmitter at public radio station WFCR-FM, 88.5 MHz, Amherst, MA. The replacement

will accompany a relocation of the transmitter. The project would also replace WFCR-FM's antenna and erect a new tower that would allow the station to increase its antenna tower height. An important project objective is to overcome multipath and radiation problems.

File No. 94146 PTN Tufts University, 160 Packard Avenue, Medford, MA 02155. Signed By: Mr. William Edington, Associate Director, Grants. Funds Requested: \$73,791. Total Project Cost: \$117,592. To plan for an educational and instructional video facility and possible methods of providing a telecommunications interconnection system, originating from the Edward R. Murrow Center at Tufts University. The proposed video facility and two-way interactive network would be used for distance learning instruction in joint degree programs with Northwestern University and Dartmouth College, and would incorporate TECnet's (Technologies for Effective Cooperation Network) computer interactive services to manufacturing technology centers.

MD (Maryland)

File No. 94108 CTB Maryland Public Brdcstg. Comm., 11767 Owings Mills Boulevard, Owings Mills, MD 21117. Signed By: Mr. Raymond K. Ho, President & CEO. Funds Requested: \$593,050. Total Project Cost: \$1,186,100. To improve and extend public television station WWPB-TV, Ch 31, in Hagerstown, MD by replacing the transmitter and antenna, and, at the same time, extending the coverage to 809,078 residents who are unserved by any other TV station. This project will allow the Maryland TV Network to continue and expand its statewide service.

File No. 94112 CRB University of Maryland, E Shore, Backbone Road, JT Williams Admin, Princess Anne, MD 21853. Signed By: Dr. William P. Hytche, President. Funds Requested: \$78,771. Total Project Cost: \$105,028. To activate a repeater noncommercial Radio station, call letters to be assigned, operating on 88.7MHz with an ERP of 10 kw located at Massey, MD. This extension project will bring first signal to approximately 70,000 residents located in the southern tip of the western shore of Maryland.

File No. 94118 PRTBN Triangle for the Arts, Inc., 9410 Merust Lane, Gaithersburg, MD 20879. Signed By: Mr. Mark D. Pickett, Project Manager. Funds Requested: \$41,825. Total Project Cost: \$41,825. A proposal that intends to consider the possibility of planning for a facility that could potentially produce

and distribute audio and video educational programs, perhaps through an educational radio station, or by satellite, or a computer interactive network. One element of the proposal plan would be to design and arrange floor space configurations for the administrative, operational, engineering and programming areas of this facility.

File No. 94202 CRB Supporters of Public Brdcstg, Inc., 1130 East Coldspring Lane, Baltimore, MD 21239. Signed By: Mr. Lee E. Graham, President. Funds Requested: \$317,686. Total Project Cost: \$495,581. To construct a radio production facility with 3 on-air control rooms, 3 production studios and two news production facilities for a proposed three channel public radio network to serve 1,000 public radio stations that are not a part of the NPR Satellite Interconnection system as well as the 450 stations that are part of the system.

ME (Maine)

File No. 94080 CTN University of Maine System, 107 Maine Avenue, Bangor, ME 04401. Signed By: Mr. William J. Sullivan, Treasurer, Univ of Maine Sys. Funds Requested: \$782,231. Total Project Cost: \$1,042,975. To construct a statewide distance learning channel composed of ITFS and D-3 fiber optic interconnection. The channel would be an addition to the University of Maine System's already-operating network. The new channel would offer baccalaureate degrees in liberal arts and business, as well as masters degrees in library science, industrial technology, educational administration and business administration.

MI (Michigan)

File No. 94053 CTB Northern Michigan University, Elizabeth Harden Drive, Marquette, MI 49855. Signed By: Mr. Michael J. Roy, V.P. for Finance & Admin. Funds Requested: \$102,550. Total Project Cost: \$205,100. To improve the production and operational capabilities of public station WNMU-TV, Ch. 13, Marquette, MI, by replacing its worn-out and obsolete switcher and TV and waveform monitors. The station serves about 275,000 residents of Michigan's Upper Peninsula.

File No. 94096 CTB Detroit Educational TV Foundation, 7441 Second Boulevard, Detroit, MI 48202-2796. Signed By: Dr. Robert F. Larson, President & General Manager. Funds Requested: \$572,948. Total Project Cost: \$763,931. To improve the production facilities of public television station WTVS, Ch. 56, Detroit, MI, by replacing worn-out ENG packages and Betacam player/recorders, and to upgrade the

station's satellite system to transmit as well as receive. WTVS serves approximately 4.5-million people.

File No. 94109 CTN PACE Telecommunications Consort, 6065 Learning Lane, Indian River, MI 49749. Signed By: Mr. Jack A. Keck, Director. Funds Requested: \$362,800. Total Project Cost: \$477,800. To expand the PACE Telecommunications Consortium four-channel ITFS network to the K-12 schools in seven additional communities. The Consortium's ITFS network already reaches a number of school districts in its service area, using, beside the ITFS interconnection, cable television and CARS microwave. The PACE Telecommunications Consortium is located in a rural six-county area covering 3,302 sq. miles in the northern tip of Michigan's lower peninsula.

File No. 94162 CRB Central Michigan University, 3965 East Broomfield Road, Mt. Pleasant, MI 48858. Signed By: Mr. Leonard E. Plachta, President. Funds Requested: \$46,000. Total Project Cost: \$92,000. To improve the production capability of public station WCMU-FM, 89.5 Mhz, Mt. Pleasant, MI, by replacing worn-out and obsolete program origination equipment, including audio consoles and recorders, cartridge machines, and CD players.

File No. 94163 CTN Tuscola Intermediate School Dist, 4415 S. Seeger Street, Cass City, MI 48726. Signed By: Mr. Robert E. Townsend, R.E.M.C. #10 Director. Funds Requested: \$97,394. Total Project Cost: \$196,894. By constructing a two-channel ITFS system, to establish a distance learning network that would interconnect 24 cable headends in the Thumb Area of eastern Michigan. Via dedicated channels, the cable systems would retransmit the educational programming to K-12 schools in 33 communities. The goals would be to make available low-incidence middle and high school classes—such as advanced mathematics, science, and foreign languages—where they are not presently offered, to provide professional development activities and graduate level classes for teachers and administrators, to offer training opportunities to local business and industry, and to put into place a comprehensive community education program.

File No. 94259 CRB Northern Michigan University, Elizabeth Harden Drive, Marquette, MI 49855. Signed By: Mr. Michael J. Roy, VP, Finance & Administration. Funds Requested: \$22,755. Total Project Cost: \$45,510. To improve the operational capability of public station WNMU-FM, 90.1 MHz, Marquette, MI, by replacing worn-out and obsolete monitoring equipment and

substituting a hard-disc digital audio system for its existing reel-to-reel and cartridge audio recorder/playback machines. The station serves 250,000 residents of Michigan's Upper Peninsula.

File No. 94317 CTN Northwestern Michigan College, 1701 East Front Street, Traverse City, MI 49684. Signed By: Mr. Timothy G. Quinn, President. Funds Requested: \$1,000,000. Total Project Cost: \$3,903,854. To acquire the equipment for, construct and extend a two-way interactive interconnection system designated as Project Interconnect, that would provide video, voice and data services for distance learning and training to students, educators and the workforce in Northwestern Michigan. The proposed fiber optic network would connect colleges, universities, fifteen school districts, libraries, hospitals, and government offices to the present digital compressed video connection from Northwestern Michigan College's main campus in Traverse City to its satellite campus in Cadillac.

MN (Minnesota)

File No. 94046 CRB Minneapolis Public Schools, 807 NE Broadway, Minneapolis, MN 55413. Signed By: Mr. Robert E. Montesano, Station Manager. Funds Requested: \$64,114. Total Project Cost: \$85,484. To improve the production capability of public radio station KBEM, 88.5 MHz, Minneapolis, MN, by replacing an audio console, audio tape recorders, cassette machines, cart machines, and CD players. The station serves 2,250,000 residents of the Twin Cities area.

File No. 94098 PTBN Asian Media Access, Inc., 3028 Oregon Avenue South, Minneapolis, MN 55426. Signed By: Mr. Stephen J. Lu, President. Funds Requested: \$58,000. Total Project Cost: \$117,271. To plan for a television production studio in St. Paul, Minnesota that would be managed, operated and have Board control by Asian-Americans, for the purpose of producing and distributing distance learning courses and educational television programs specifically directed to the needs of Asian-Americans in Minnesota, and potentially nationally.

File No. 94100 CTB Native American Television, Inc., P.O. Box 455, St. Paul, MN 56302. Signed By: Ms. Martha Crow, President. Funds Requested: \$96,000. Total Project Cost: \$128,000. To activate a facility in St. Cloud, MN, for the production of programs by and for Native Americans.

File No. 94104 CRB Fresh Air, Inc., 1808 Riverside Avenue, Minneapolis, MN 55454. Signed By: Ms. Augustine

Dominguez, Board President. Funds Requested: \$10,000. Total Project Cost: \$20,000. To extend the signal of public radio station KFAI, 90.3 MHz, Minneapolis, MN, to the eastern half of the Minneapolis metro area, which is presently blocked by tall buildings from receiving the station's transmission. The project will construct a translator to operate at 106.7 MHz and bring KFAI's signal to approximately 400,000 persons now unable to receive it. The station presently serves approximately 1.2-million persons in the Minneapolis metro area.

File No. 94132 CTN Independent School District #492,202 Fourth Avenue N.E., Austin, MN 55912. Signed By: Dr. J. Douglas Myers, Superintendent of Schools. Funds Requested: \$527,301. Total Project Cost: \$878,835. To activate a distance learning system using ITFS, microwave, and fiber optics technologies. The system will interconnect the K-12 school districts, cable television systems, and post-secondary educational institutions in six rural communities in southern Minnesota: Austin, Adams, Lyle, Leroy, Grand Meadow, and Glenville. With the cable television connection, the instructional programming provided over the system will be made available to rural homes and libraries.

File No. 94147 CTN Minneapolis Telecommun. Network, 125 SE Main Street, Minneapolis MN 55414. Signed By: Mr. Anthony Riddle, Executive Director. Funds Requested: \$884,766. Total Project Cost: \$1,769,532. To construct a playback facility for the applicant's 18 channels of public, government, and educational programming distributed by the local cable television system, and to purchase studio production, editing, and remote production equipment.

File No. 94250 CTB Northern Minnesota Public TV, Inc, 1400 Birchmont Drive, Bemidji, MN 56601. Signed By: Ms. Emily K. Lahti, General Manager. Funds Requested: \$115,885. Total Project Cost: \$154,513. To improve the production capability of public television station KAWE, Ch 9, Bemidji, MN, by replacing worn-out and obsolete items of equipment, including a switcher, field cameras, and video tape recorders. The station serves population of 300,000.

File No. 94279 CTB West Central Minnesota ETV Co, 120 West Schlieman, Appleton, MN 56208. Signed By: Mr. Ansel W. Doll, General Manager. Funds Requested: \$1,245,497. Total Project Cost: \$2,490,995. To provide the first Minnesota-originated public television signal to 84,284 residents of the Worthington, MN, area

by activating a station on Channel 20 to repeat the signal of public station KWCM, Ch. 10, Appleton, MN, which serves a population of approximately 500,000.

File No. 94293 CRB Minnesota Public Radio, Inc., 45 East 7th Street, St. Paul, MN 55101. Signed By: Mr. Dennis Hamilton, Vice President. Funds Requested: \$272,851. Total Project Cost: \$545,702. To improve the production capability of Minnesota Public Radio by replacing worn-out and obsolete studio equipment, including audio tape recorders, CD players, audio consoles, microphones, and a telephone interface. MPR operates twenty public radio stations across Minnesota, two in Moorehead, ND, one in Decorah, IA, one in Sioux Falls, SD, and one in Sun Valley, ID. In addition, it operates ten translators in Minnesota, and one each in Michigan and Wisconsin. Altogether it serves a population of about 4.9-million persons through parallel networks of classical music and news stations that operate 24 hours a day.

MO (Missouri)

File No. 94061 CRB Southwest Missouri State Univ., 901 South National, Springfield, MO 65804-0089. Signed By: Mr. Frank A. Einhellig, Associate Vice President. Funds Requested: \$126,750. Total Project Cost: \$169,000. To replace the broadcast tower of public radio station KCOZ, 90.5 MHz, Point Lookout, MO, which serves 71,470 residents of southwest Missouri and northwest Arkansas. The tower has a structural failure that cannot be repaired. KCOZ repeats the programming of public radio station KSMU, 91.1 MHz, Springfield, MO.

File No. 94063 CTN Central Missouri State University, Humphreys 410, Warrensburg, MO 64093. Signed By: Ms. Kathleen D. Easter, Dean, Graduate Studies & Res., Funds Requested: \$226,521. Total Project Cost: \$348,155. To purchase video classroom and codec equipment to extend the applicant's distance learning system to the Clinton, MO, public school system. The project will also position Central Missouri State University and the Western Missouri Educational Technology Consortium (WeMET), of which the applicant is a part, to interconnect to the University of Missouri/Kansas City and to the Kansas City, MO, Public Schools.

File No. 94213 PTN St. Louis Community College, 300 South Broadway, St. Louis, MO 63102-2820. Signed By: Ms. Gwendolyn W. Stephenson, Chancellor. Funds Requested: \$24,845. Total Project Cost: \$33,184. To develop a unified educational technology plan that will

assist in a comprehensive study of the most effective use of telecommunications technology to facilitate the delivery of distance learning and training throughout the community. This project, when completed, would provide the necessary information to budget and acquire the technology considered consistent with institutional goals toward the integration of telecommunications in distance learning throughout the college's service area.

File No. 94233 Public Television 19, Inc., 125 E. 31st Street, Kansas City, MO 64103. Signed By: Mr. William T. Reed, President. Funds Requested: \$271,153. Total Project Cost: \$361,537. To construct and activate a new educational service by implementing an interactive compressed video classroom project and interconnection system, to be integrated into a network for student coursework and teacher training and development. The classroom origination facility, the compressed video CODEC, and the interconnecting fiber optic transceivers would comprise a Kansas City compressed video network hub delivering live interactive instruction to schools and educational centers across Kansas and Missouri.

File No. 94256 CTN Missouri School Boards Assoc., 2100 I-70 Dr. S.W., Columbia, MO 65203-0099. Signed By: Mr. Carter Ward, Executive Director. Funds Requested: \$905,750. Total Project Cost: \$1,207,667. To extend the satellite delivered educational services offered by the Missouri School Board by constructing a C-bank uplink with compressed digital video capability. The uplink will permit the extension of the applicant's service nationwide through participation in the IDEANET project (Interactive Distance Education Alliance) with three other satellite providers, Oklahoma State University, Northern Arizona University, and Educational Service District 101. The project will also fund a production studio so the applicant can increase its educational programming for nationwide distribution.

MP (Marianas Protectorate)

File No. 94323 CRB Northern Marianas College, P.O. Box 1250, Saipan, MP 96950. Signed By: Ms. Agnes McPhetres, President. Funds Requested: \$432,415. Total Project Cost: \$432,415. To provide the first noncommercial public radio station to the Northern Marianas by establishing a new station operating on 88.1 MHz. in Saipan. A translator will also be constructed operating on 88.9 MHz to serve Chalan Konoa and northern Saipan island. The facilities will serve

43,000 residents of the Northern Marianas Islands.

MS (Mississippi)

File No. 94156 CTN Mississippi Authority for ETV, 3825 Ridgewood Road, Jackson, MS 39211. Signed By: Mr. Larry D. Miller, Executive Director. Funds Requested: \$980,548. Total Project Cost: \$1,961,096. To purchase audio and video equipment to establish 18 multi-media Interactive Technology Centers across the State of Mississippi. Also purchased will be codec terminal equipment, a 32-port switcher, and related hardware and software to allow the Centers to be connected via T1 lines. Seventeen of the Centers will be housed at public high schools and one will be located in the Jackson headquarters of the Mississippi Authority for Educational Television. Each Center's primary objective will be to allow secondary students in poor, rural schools to have access to otherwise-unavailable instructional materials. The Centers, however, will also be used to provide professional support to teachers and administrators and to offer such functions as adult literacy courses and industrial training.

File No. 94167 CTB Jackson St. University, 1375 Lynch Street, Box 18590, Jackson, MS 39217-0990. Signed By: Mr. James Lyons, Sr., President. Funds Requested: \$885,668. Total Project Cost: \$1,415,749. To activate a low power public TV station, W23BC, with a power of 100 watts in Jackson, MS to provide a complete broadcast facility for the training of students and to provide programs for the 27,523 people who live in the 10 mile radius of the station. This proposed station received its FCC license in 1992, and has ordered, prior to the deadline, the antenna and transmitter. The \$1.4 million TPC is almost all for origination equipment, the transmitter and antenna are in the Pre-operational Expenses.

MT (Montana)

File No. 94095 CTBN SE Montana Telecomm. Educ. Coop., 500 No. Trautman, Broadus, MT 59317. Signed By: Mr. Brian Patrick, Chairman. Funds Requested: \$1,270,006. Total Project Cost: \$1,693,341. This project would accomplish two major objectives. First, it would establish low-power television stations, with local origination capability, that would bring the first public television signal to approximately 17,000 residents of a five-county area of southeast Montana. The station transmitters would be placed in the communities of Ashland, Broadus, Forsyth, Hysham, and Miles City. The stations would be associated

with the Rural Television System, Inc., which has its headquarters in Carson City, Nevada. Second, it would purchase video classroom and interconnection equipment to allow 11 K-12 schools to activate a two-way interactive distance learning system using fiber optics.

File No. 94193 CTB Plains—Paradise TV District, Box 215, 417 Rittenour Street, Plains, MT 59859. Signed By: Mr. Leo S. Rambur, Chairman. Funds Requested: \$47,194. Total Project Cost: \$62,925. To improve public low power television station K21CA in Plains, MT by improving the local production capability to serve this very rural area with the acquisition of two portable color cameras and associated items, portable light kits, microphones, 3/4" editing system, monitors, special effects unit, audio cassette, time base corrector, character generator, and head phones. This project will increase community access to the station's facilities and increase the quality of local programming.

File No. 94230 CTB National Indian Media Foundation, 631 North Center, Hardin, MT 59034. Signed By: Mr. Ronald Holt, Manager. Funds Requested: \$436,475. Total Project Cost: \$671,500. To activate a non-commercial television station, KOUS-TV, Ch 4, in Hardin, MT, providing first signal to 15,000 to members of the Crow and Northern Cheyenne Indian Tribes in Montana. Applicant recently purchased the existing Channel 4 station in Hardin which went off the air in January 1993, but even though the former owner is including all the TV equipment in the sale, much of it is not usable especially the dissemination equipment. So, The National Indian Media Foundation is requesting only dissemination items and, to start with, will not have local origination capability.

NC (North Carolina)

File No. 94023 CRB Wake Forest University, P.O. Box 7405, Winston-Salem, NC 27109. Signed By: Ms. Julie B. Cole, Dir. Office of Res. & Spon. Funds Requested: \$185,145. Total Project Cost: \$246,860. To improve public radio station WFDD-FM, 88.5 MHz Winston-Salem, NC, by replacing its transmitter, antenna and original tower, destroyed by a tornado, which is to be installed at a new site, allowing the station to return to its original 100 kw signal from its current Special Temporary Authority of 22 kw, and restore the original coverage of 1,275,175 residents from the current 746,689. WFDD-FM has been on temporary site which has required reauthorization every six months.

File No. 94048 CRB Isothermal Community College, U.S. Highway 74 Bypass, Spindale, NC 28160. Signed By: Dr. Willard L. Lewis, President. Funds Requested: \$12,261. Total Project Cost: \$24,522. To extend the public radio service provided by WNCW-FM, 88.7 MHz, Spindale, NC through the construction of translators operating on 92.9 MHz Boone, NC and 95.5 MHz, Beach Mtn., NC. The translators will provide first public radio service to 5,981 residents of Watauga County.

File No. 94088 CTN East Wake Education Foundation, 5101 Rolesville Road, Wendell, NC 27591. Signed By: Ms. Linda Johnson, Pres./East Wake Education Fnd. Funds Requested: \$55,825. Total Project Cost: \$74,434. To establish a television production studio at East Wake High School, to bring distance learning to students at eight public schools—the high school, two middle schools and five elementary schools—in the communities of Zebulon, Wendell, and Knightdale, which are located immediately to the east of Raleigh, NC. The studio would also be used by local law enforcement agencies and possibly by local governments for public service needs.

File No. 94090 CTB University of North Carolina, 10 T.W. Alexander Drive, Research Triangle Park, NC 27709. Signed By: Mr. Tom Howe, Direc & GM UNC Ctr for Pub TV. Funds Requested: \$1,344,880. Total Project Cost: \$3,362,200. To activate a non-commercial repeater TV network station on CH 31 in Lumberton, NC, providing first signal to 611,326 residents in 11 Southeast-central NC counties and 4 North-central SC counties.

File No. 94188 CTB Elizabeth City State University, 1704 Weeksville Road, Box 800, Elizabeth City, NC 27909. Signed By: Mr. Jimmy R. Jenkins, Chancellor. Funds Requested: \$8,474. Total Project Cost: \$11,299. To improve non-commercial low power TV station W18BB-TV in Elizabeth City, NC by completing the construction of its TV production studio, which requires adding the production console, editing console system, rack mount slide kits, duplication console, tape cabinets and mobile video carts, so the station may properly complete its local production capability to better serve the 14,292 residents in its coverage area.

File No. 94257 CTN NC Agency for Public T/C, 116 West Jones St., Ste. G-102, Raleigh, NC 27603-8003. Signed By: Ms. Leila Tvedt, Executive Director. Funds Requested: \$158,762. Total Project Cost: \$317,524. To extend the services provided by the North Carolina Agency for Public Telecommunications by constructing C/Ku-band satellite

downlinks at 6 emergency management field offices throughout the state, including sites in Washington, Butner, Burgaw, Asheboro, Conover, Asheville and Raleigh. The project will also equip a classroom as a teleconference production center which will be connected to the North Carolina Information Highway, a fiber optic network connecting public institutions statewide. The project will provide emergency management training and support emergency management communications.

File No. 94304 CRB University of North Carolina, Swain Hall, Chapel Hill, NC 27599-0915. Signed By: Dr. Robert P. Lowman, Director, Office of Res. Serv. Funds Requested: \$256,425. Total Project Cost: \$512,850. To improve the transmission facilities of WUNC-FM, 91.5 MHz. Chapel Hill by moving the antenna to a higher tower, thereby increasing the station's effective power and providing a first service to 70,000 additional people. The project would fund a new antenna, transmitter and Studio-Transmitter Link. The project would also fund a new satellite uplink and downlink for transmission and receipt of national radio programming. WUNC-FM currently provides service to 1.3 million people in North Carolina.

ND (North Dakota)

File No. 94093 CTN Turtle Mountain Community College, Box 340, Belcourt, ND 58316. Signed By: Mr. Gerald Monette, President. Funds Requested: \$271,498. Total Project Cost: \$361,997. To establish distance learning facilities at four Native American community colleges in North Dakota: Turtle Mountain Community College; Ft. Berthold Community College; Little Hoop Community College (serving the Ft. Totten Reservation); and United Tribes Technical College, Bismarck. The four schools will be connected by T-1 transmission lines; all schools will have video classroom origination facilities. The system will permit the schools to share instructional programming; to do this, they will interconnect with and use the switching facilities of Standing Rock College, located at Ft. Yates, ND. The project would also allow the schools to participate in the North Dakota University System's Interactive Video Network (IVN).

NE (Nebraska)

File No. 94086 CRB Nebraska Educ. T/C Commission, P.O. Box 83111, 1800 N. 33rd St., Lincoln, NE 68501-3111. Signed By: Mr. Jack G. McBride, Secretary & General Manager. Funds Requested: \$37,955. Total Project Cost: \$75,911. To extend and improve the

facilities of the Nebraska Public Radio Network by activating four FM translators: Max (93.3 MHz), Harrison (89.5 MHz), Falls City (91.7 MHz), and Culbertson (92.7 MHz). Translators would provide first public signal in areas unserved by the network. In addition, project would replace an obsolete 1980 master control console that is inadequate for the nine station network's needs.

File No. 94154 CRB Omaha Community Broadcasting 4914 Ames Avenue, Omaha, NE 68104. Signed By: Mr. William J. Thompson, Chairperson. Funds Requested: \$139,000. Total Project Cost: \$185,643. To activate a new minority controlled and operated public radio station on 88.9 MHz, in Omaha. Proposed 3 kilowatt station would target programming to minority community. There are three other public radio stations serving the market.

File No. 94263 CTB Nebraska Educ. T/C Commission, 1800 N. 33rd Street, Lincoln, NE 68501-3111. Signed By: Mr. Jack G. McBride, Secretary/General Manager. Funds Requested: \$187,475. Total Project Cost: \$374,950. To improve the Nebraska Educational TV Network by replacing three worn out television translators at the following locations: Falls City, K24AC, Ch. 24; Neligh, K65AT, Ch. 65; and Decatur, K66AR, Ch. 66. In addition, project would replace worn out/obsolete control and network production equipment by purchasing a new still store, character generator and digital test equipment. This project would continue the network's phased upgrade to digital equipment.

NH (New Hampshire)

File No. 94074 CRB New Hampshire Public Radio, 207 North Main Street, Concord, NH 03301-5048. Signed By: Mark D. Handley, President. Funds Requested: \$34,517. Total Project Cost: \$86,717. To purchase microwave equipment to improve the interconnection between two public radio repeater stations and the flagship station of New Hampshire Public Radio, Station WEVO-FM, 89.1 Mhz, Concord. One repeater, already on-air, is WEVH-FM (91.3 Mhz) in Hanover; the second, scheduled to go on-air in June 1994, is WEVN-FM (90.7 Mhz), in Keene. The proposed microwave STL systems would provide higher quality signals to the repeaters than are possible from off-air signals. The project would therefore allow approximately 67,000 residents of the Hanover and Keene areas to receive truly reliable public radio signals for the first time. This proposal would also allow for some regionalization of public radio services to the affected areas.

File No. 94155 CTB University of New Hampshire, Rt. 155A, Mast Road, PO Box 1100, Durham, NH 03824. Signed By: Mr. Steven Bernstein, Sr. Grant & Contract Officer. Funds Requested: \$375,000. Total Project Cost: \$750,000. To replace a 12-year-old transmitter and antenna for New Hampshire Public Television's station WENH-TV, Ch. 11, Durham. WENH-TV is the flagship station in the applicant's statewide network, which comprises three stations and two translators. WENH's present transmission equipment is unreliable and costly to maintain. The project would also replace an outmoded, low-quality ENG field production unit consisting of a camera, recorder, microphones, and associated accessory equipment.

NJ (New Jersey)

File No. 94187 CRB Electronic Info. & Ed. Service, 59 Scotland Rd., South Orange, NJ 07079. Signed By: Mr. John F. Mulvihill, Jr., General Manager. Funds Requested: \$96,990. Total Project Cost: \$129,320. To upgrade the applicant's SCA capabilities, using the sub-carrier of WSOU-FM at Seton Hall University in South Orange, NJ, by replacing the audio consoles, reel-to-reel tape recorder, cassette recorder, microphones, digital cart machines, CD players, DAT recorders, booth control system, booth microphones and arm, compressor/limiters, automation mike mixer, studio speaker, reel-to-reel decks, monitor speakers, cabinet racks, custom cabinet for console, headphone, off air receiver and lot of wire. Applicant claims service to 70,000 blind, site impaired and physically disabled.

File No. 94288 PTN Hunterdon Central Regional H.S. Dist, 84 Route 31 North, Flemington, NJ 08822-1239. Signed By: Mr. Raymond Farley, Superintendent. Funds Requested: \$150,831. Total Project Cost: \$196,957. To conduct a feasibility study to determine possible approaches to the development of an interactive telecommunications network that would connect the schools in twenty-six school districts within five counties of New Jersey and one county in Pennsylvania, using a prototype school facility as a model. The proposed plan would assess the various technologies that might be appropriate with respect to engineering, content development, and distribution systems, to determine the telecommunications methods to employ in establishing an interactive network capable of providing video, voice and data services among the schools, libraries, museums, government agencies, and other organizations.

File No. 94290 CRB Burlington County College, Rte 530, Pemberton-Browns Mills R, Pemberton, NJ 08068. Signed By: Mr. Robert C. Messina, Jr., President. Funds Requested: \$49,960. Total Project Cost: \$66,614. To construct a C-band satellite downlink at a WBZC-FM 88.9 MHz. Pemberton, a new noncommercial radio station to be operated by Burlington County College. The earth station will provide access to nationally distributed programming for the station, which will provide the first public radio service to 24,916 in Burlington County.

NM (New Mexico)

File No. 94040 PTN Hispanic Educational Telecom System, 1130 University Blvd., N.E., Albuquerque, NM 87102. Signed By: Mr. Jose F. Mendez, President & Chairman, HETS. Funds Requested: \$128,940. Total Project Cost: \$168,940. To develop the plan for a new Hispanic Educational Telecommunications System (HETS) to interconnect institutions of higher education serving significant Hispanic populations with video and data resources, facilitating the sharing of credit, non-credit and outreach programs to on-campus and off-campus students as well as Hispanics in the work force. The founding HETS institutions are seven universities and community colleges in the states of Arizona, Mississippi, New Mexico, New York, Texas, and in Puerto Rico.

File No. 94045 CRB The Bd of Regents of the Univ of NM, Bernalillo County, Albuquerque, NM 87131. Signed By: Ms. Jane Blume, Interim General Manager. Funds Requested: \$37,995. Total Project Cost: \$50,660. To extend the signal of KUNM-FM, 89.9 MHz, in Albuquerque by constructing six new translators at the following locations: Cuba, 91.1 MHz; Dzilth-na-o-dith-hle, 91.9 MHz; Socorro, 91.9 MHz; Eagle Nest/Cimarron, 91.1 MHz; Thoreau, 91.1 MHz (will also feed KGLP-FM, in Gallup), and Farmington, 89.7 MHz. The Farmington translator will provide a second signal to 38,576 persons in the area. The other translators will provide a first public radio signal to a total of 16,607 persons.

File No. 94049 CRB The Bd of Regents of the Univ of NM, Bernalillo County, Albuquerque, NM 87131. Signed By: Ms. Jane Blume, Interim General Manager. Funds Requested: \$30,825. Total Project Cost: \$61,650. To improve the facilities of public radio station KUNM-FM, 89.9 MHz, in Albuquerque by replacing and improving the station's obsolete/worn out multi-track console and 8-track recorder and also acquiring two digital

workstations and a digital audio tape field production recorder.

File No. 94083 CTB New Mexico State University, Milton Hall, Room 121, Las Cruces, NM 88003. Signed By: Ms. Carol L. Walker, Associate Dean/Director. Funds Requested: \$48,401. Total Project Cost: \$96,802. To improve the facilities of public television station KRWG-TV, Ch. 22, in Las Cruces by replacing a 1972 intercom system and a 1976 audio console as well as adding dissemination equipment which will allow for the transmission of Descriptive Video Service (DVS) and second audio programming in Spanish for the large Hispanic audience within the station's converge area.

File No. 94165 CTB Regents/Univ of NM & Bd Of Ed Albuq, 1130 University Blvd. N.E., Albuquerque, NM 87102. Signed By: Ms. Ann Powell, Director, Research Admin-UNM. Funds Requested: \$38,750. Total Project Cost: \$77,500. To improve/extend the signal of public television station KNME-TV, Ch. 8, in Albuquerque by replacing three TV translators: K61BA, Ch. 61, in Ft. Wingate; K60AA, Ch. 60, Cimarron; and K63BD, Ch. 63, in Gallup. The Cimarron translator, a 1990 vintage unit, will be replaced with a more powerful unit. The other two translators are 1978 vintage.

File No. 94258 CRB San Juan College, 4601 College Blvd, Farmington, NM 87402. Signed By: Mr. James C. Henderson, President. Funds Requested: \$22,660. Total Project Cost: \$45,320. To improve the facilities of public radio station KSJE-FM, 90.9 MHz, in Farmington, by acquiring a receive-only satellite downlink system. KSJE-FM serves approximately 90,000 people.

File No. 94268 CTB Eastern New Mexico University, 15th & Avenue O KENW-TV, Portales, NM 88130. Signed By: Mr. Duane Ryan, Director of Broadcasting. Funds Requested: \$170,000. Total Project Cost: \$340,000. To improve the facilities of public television station KENW-TV, Ch. 3, in Portales, by replacing old, worn-out/outdated production equipment. Station would acquire a dual channel still store, a 1/2" editing system (including tape machines, a video switcher, edit controller, audio board and related equipment), and a sync generator. Equipment will further KENW-TV's move toward broadcasting in stereo.

File No. 94287 PTN Northern New Mexico Network, #50 County Road 13, Cuba, NM 87013. Signed By: Mr. Joe A. Lopez, President. Funds Requested: \$45,000. Total Project Cost: \$47,400. To develop a comprehensive distance learning plan that would consider the feasibility of possible

telecommunications systems for a two-way interactive network offering specialized and advanced level courses for K-12 academic students and vocational students, and professional development and in-service training to educators and support staff. The proposed plan would also review long-range options for such an interconnection system to provide continuing education and training to the workforce in various professions and occupations, and information services to the general population in northern New Mexico.

NV (Nevada)

File No. 94140 CTB Clark County School District, 4210 Channel 10 Drive, Las Vegas, NV 89119. Signed By: Dr. Brian Cram, Superintendent. Funds Requested: \$348,500. Total Project Cost: \$348,500. To improve the facilities of public television station KLVX-TV, Ch. 10, in Las Vegas by replacing old 2 inch video tape recorders, video production switcher, edit-only edit bay, cameras, character generator and associated production and test equipment. KLVX-TV serves approximately 919,388 residents of NV, western AZ and eastern CA.

File No. 94176 PRIN Univ. & Cmnty College Sys. of NV, Computing Center Building, Reno, NV 89557. Signed By: Dr. Donald Zitter, Executive Director. Funds Requested: \$55,992. Total Project Cost: \$55,992. To conduct a planning project for the purpose of assessing the capabilities and possible activation and extension of sites and facilities using digital technology, for the interactive distance learning system providing video, audio and data services to on-campus and off-campus locations of the University and Community College System of Nevada.

NY (New York)

File No. 94018 CRB Greece Central School District, P.O. Box 300, North Greece, NY 14515. Signed By: Mr. Eric Gruner, Operations Director. Funds Requested: \$20,829. Total Project Cost: \$27,772. To purchase a satellite receive-only earth station for noncommercial radio station WGMC-FM, licensed to the Greece Central School District, North Greece, NY, which is in the area of Greater Rochester.

File No. 94031 CTB Long Island ETV Council, Inc., Channel 21 Drive, Plainview, NY 11803. Signed By: Mr. Terrel L. Cass, President & General Manager. Funds Requested: \$275,000. Total Project Cost: \$550,000. To replace aged and obsolete items of studio and test equipment at public television station WLIW-TV, Ch. 21, Plainview, on

Long Island, NY. The major items that would be purchased are video tape recorders, video editors, and a digital monitor.

File No. 94064 CTN Hispanic Info. & T/C Network, Inc., 449 Broadway, 3rd Floor, New York, NY 10013. Signed By: Mr. Jose L. Rodriguez, President. Funds Requested: \$748,500. Total Project Cost: \$998,000. To construct an satellite interconnection system to distribute Hispanic television programming to fifteen communities throughout the United States for dissemination by Instructional Television Fixed Service (IFTS). Ku-band uplinks will be constructed in Brooklyn, NY, San Antonio and in Puerto Rico. Downlinks will be constructed to serve ITFS systems in Colorado Springs, CO, Las Vegas, NV, New Orleans, LA, Orlando, FL, Philadelphia, PA, Riverside, CA, Tucson, AZ, Houston, TX, Kansas City, MO, Oklahoma City, OK, Providence, RI, Portland, OR, Dayton, OH, San Antonio, TX, and New York City, NY.

File No. 94107 CTN Dutchess County BOCES, 578 Salt Point Turnpike, Poughkeepsie, NY 12601-9784. Signed By: Mr. Duane E. Hutton, Chief Executive Officer. Funds Requested: \$676,352. Total Project Cost: \$1,352,704. To expand the number of school districts and sites served by Dutchess County's INFNET 2000 fiber-optic distance learning network (from eleven sites to eighteen), to serve new elements of the population (e.g., elementary school students), to broaden the reach of the applicant's classroom computer network (from three sites and 150 personal computers to 6 sites and almost 300 personal computers), and to provide access to the Internet.

File No. 94135 CRB Research Fdn, SUNY Buffalo, 520 Lee Entrance, Amherst, NY 14228-2567. Signed By: Mr. Bradley A. Bermudez, Sponsored Programs Associate. Funds Requested: \$116,832. Total Project Cost: \$166,903. To extend the signal of public radio station WBFO-FM, which operates on 88.7 MHz in Buffalo, NY. The project would increase the station's transmission power from 10kw to 25kw, change its antenna pattern from directional to nondirectional, and purchase the station a new, taller tower. The station estimates that this will allow its signal to reach 24,273 residents of the greater Buffalo area who do not now receive a public radio signal.

File No. 94148 CRTB Public Broadcasting Council of, 506 Old Liverpool Rd., Box 2400, Syracuse, NY 13220-2400. Signed By: Mr. Richard W. Russell, President and CEO. Funds Requested: \$188,302. Total Project Cost: \$376,604. To replace studio equipment

for public television station WCNY, Ch. 24, and for public radio station WCNY-FM, 91.3 MHz. Both stations are licensed to The Public Broadcasting Council of Central New York, Inc., Syracuse, NY. For the television station, the project would purchase three types of switchers: master control; routing; and production. For the radio station, the proposal includes three SCA generators (for the local radio reading service for the print-handicapped) as well as audio distribution amplifiers and digital audio record players (both for studio use and for portable use).

File No. 94166 CTN Columbia University, 530 West 120th Street, New York, NY 10027. Signed By: Mr. John R. Kender, V. Dean, Eng & Applied Science. Funds Requested: \$414,712. Total Project Cost: \$552,450. To construct a Ku-band satellite uplink at Columbia University which will provide nationwide distribution of educational programming from the School of Engineering and Applied Science. Columbia is a member of the National Technological University (NTU) and the uplink will be compatible with the compressed digital system used by NTU.

File No. 94180 CTB Western NY Public Brdcastg. Assn., P.O. Box 1263, Buffalo, NY 14240. Signed By: Mr. J. Michael Collins, President & CEO. Funds Requested: \$723,514. Total Project Cost: \$964,686. To improve the studio production facilities of public television station WNEB, Ch. 17, Buffalo. The project would replace aged and worn-out cameras by purchasing one portable and four studio cameras, along with separate camera control units for use in a mobile production van. The proposal also calls for the purchase of three digital video tape recorders, a nonlinear edit system, and associated test equipment.

File No. 94234 CTB WSKG Public T/C Council, 601 Gates Road, Vestal, NY 13850. Signed By: Mr. Michael J. Ziegler, President & CEO. Funds Requested: \$400,000. Total Project Cost: \$800,000. To replace aged and worn-out studio equipment at public television station WSKG, Ch. 46, Binghamton, NY. The project would purchase a master control/routing switcher, six editing video tape recorders, two production video tape recorders, five studio cameras, and an intercom system.

File No. 94238 PRB Indigenous Communications Assoc., Route 37, (P.O. Box 748), Hogansburg, NY 13655. Signed By: Mr. Ray Cook, Executive Director. Funds Requested: \$183,735. Total Project Cost: \$183,735. To plan for the activation of noncommercial radio stations to serve Native American

reservations or communities, most of which receive no public radio signal. The communities or native American institutions to be covered by this planning would be: Pueblo of Acoma, NM; All Indian Pueblo Council, Albuquerque (representing 19 New Mexican Pueblo Tribes); Ft. Peck Reservation, northeast MT; St. Regis Mohawk Tribe, Hogansburg, NY; the Tohono O'odham Nation, in south central AZ; the Confederated Tribes and Bands of the Yakima Indian Nation, Toppenish, WA; the Oneida Tribe of Indians of Wisconsin; and the Red Lake Band of Chippewa Indians, Red Lake, MN.

File No. 94280 CTN Cornell Cooperative Extension of, 246 Griffing Avenue, Riverhead, NY 11901-3086. Signed By: Mr. Kermit W. Graf, Cooperative Extension Agent. Funds Requested: \$85,760. Total Project Cost: \$123,821. To extend the services provided by the Cornell Cooperative Extension Satellite Network by purchasing a C/Ku-band satellite downlink at Yaphank, NY to provide service to residents of Suffolk County.

File No. 94291 CTN Herkimer, Fulton, Hamilt, Ots BOCES, 400 Gros Blvd., Herkimer, NY 13350. Signed By: Mr. William E. Whitehill, Jr., District Superintendent. Funds Requested: \$378,178. Total Project Cost: \$504,238. To acquire the necessary equipment to activate a fiber optic interconnection system in Herkimer County and parts of six surrounding counties in central New York State among twelve school districts, a community college, and the Board of Cooperative Educational Services (BOCES) office. The links in this proposed network would include fourteen teaching/learning classrooms that could originate and receive fully interactive video, voice and data materials for instructional distance learning classes, in-service courses, professional development programs, and other community service needs.

File No. 94301 CRB Colleges of the Seneca, Hobart and Will. Smith Colleges, Geneva, NY 14456. Signed By: Mr. Richard Guarasci, Dean, Hobart College. Funds Requested: \$65,140. Total Project Cost: \$130,280. To extend the signal coverage of public radio station WEOS-FM, 89.7 Mhz, Geneva, NY. By purchasing a more powerful transmitter and a new antenna, the project will increase the station's ERP from 1.5kw to 4kw. Together with moving the transmitter to a more favorable site, the project should allow the station's signal to reach an additional 68,000 persons. The proposal also includes a microwave studio-to-

transmitter link and two items of test equipment.

File No. 94313 CTN Orange County Community College, 115 South Street, Middletown, NY 10940. Signed By: Mr. William F. Messner, President. Funds Requested: \$13,415. Total Project Cost: \$17,887. To construct a C/Ku-band satellite downlink for the Newburgh campus of Orange County Community College to provide nationally distributed instructional programming to 1,000 students at that location.

OH (Ohio)

File No. 94005 CRB Ohio University, 9 South College Street, Athens, OH 45701. Signed By: Mr. T. Lloyd Chesnut, Vice President. Funds Requested: \$130,685. Total Project Cost: \$261,370. To improve the signal of public radio station WOUB-AM, 1340 KHz. Athens, OH, by replacing its worn-out and obsolete transmitter and antenna and converting the station to AM stereo. WOUB-AM serves a population of 59,549.

File No. 94056 CTB ETV Assn of Metro Cleveland, 4300 Brookpark Road, Cleveland, OH 44134. Signed By: Mr. Jerry Wareham, President and General Manager. Funds Requested: \$698,960. Total Project Cost: \$1,397,920. To improve the operation of public television station WVIZ, Ch. 25, Cleveland, OH, by replacing three obsolete and worn-out video switchers. The station serves a population of 3.7-million persons.

File No. 94071 PTN Ohio Valley Reg. Dev. Commission, 740 Second Street, Rm. 102, Portsmouth, OH 45662-4088. Signed By: Mr. Jeffrey Spencer, Executive Director. Funds Requested: \$27,000. Total Project Cost: \$36,000. To plan for an interactive distance learning network that could potentially involve educational institutions at all levels, libraries, health care facilities and other public service agencies in the Ohio Valley Regional Development District of Southern Ohio, in a consortium effort to consider the alternative technologies that might be feasible to develop a telecommunications system for providing educational and training services.

File No. 94082 CRB Ohio State University, 2400 Olentangy River Road, Columbus, OH 43210-1027. Signed By: Mr. Dale K. Ouzts, General Manager, WOSU Stations. Funds Requested: \$202,650. Total Project Cost: \$270,200. To activate a public radio station, WOSC, 91.1 MHz, in Coshocton County, OH, to bring the first public radio signal to approximately 45,569 people. WOSC will repeat the programming of WOSU, Columbus, OH.

File No. 94084 CTB Ohio State University, 2400 Olentangy River Road, Columbus, OH 43210. Signed By: Mr. Dale K. Ouzts, General Manager, WOSU Stations. Funds Requested: \$113,532. Total Project Cost: \$227,064. To improve the production capability of public station WOSU-TV, Ch. 34, Columbus, OH, by replacing worn-out and obsolete camera pedestals, color and black-and-white monitors, and test equipment. The station serves a population of about 1.8-million people.

File No. 94110 CTB Bowling Green State University, 245 Troup Street, Bowling Green, OH 43403-0060. Signed By: Mr. Louis I. Katzner, Associate V.P. for Research. Funds Requested: \$117,200. Total Project Cost: \$234,400. To improve the production capability of public station WBGU-TV, Ch. 27, Bowling Green, OH, by replacing worn-out and outdated analog video tape machines and editing with digital technology and also replacing its field production equipment. The station serves a population of about 1.3-million people.

File No. 94131 CRB Public Bdcstg Fdn of NW Ohio, 136 Huron Street, Toledo, OH 43604. Signed By: Ms. Shirley E. Timonere, President & General Manager. Funds Requested: \$182,625. Total Project Cost: \$243,500. To activate a public radio repeater station at 88.5 Mhz to bring the first public radio signal to 99,010 people in and around Bryan, OH. The new station will repeat the programing of public radio station WGTE-FM, 91.3.MHZ. Toledo.

File No. 94177 CTB Public Bdcstg Fdn of NW Ohio, 136 Huron Street, Toledo, OH 43697. Signed By: Ms. Shirley E. Timonere, President & General Manager. Funds Requested: \$109,945. Total Project Cost: \$219,890. To improve the production capability of public station WGTE-TV, Ch. 30, Toledo, OH, by replacing worn-out and outdated equipment, including a field production system, a video tape editing system, and a character generator. The station serves a population of about 1.3-million people.

File No. 94221 CRB Kent State University, 1613 East Summit Street, Kent, OH 44242. Signed By: Ms. Anita D. Herington, Acting VP for Inst Advancement. Funds Requested: \$621,195. Total Project Cost: \$847,585. To activate a public radio repeater station in Thompson, OH, to bring a first public radio signal to 162,716 residents of extreme northeastern Ohio; it will repeat the programing of public radio station WKSU, 89.3 MHz, Kent, OH. To extend the coverage area of WKSU by replacing its transmitter and moving it

to Copley, OH. And to improve WKSU's production capability by replacing and upgrading unreliable equipment.

File No. 94245 CTN City of Columbus, Ohio, 90 West Broad Street, Columbus, OH 43215. Signed By: Ms. Maria Caprio, Deputy Director, Admin Svcs. Funds Requested: \$233,923. Total Project Cost: \$467,845. To purchase the equipment necessary to construct and activate at the Martin Luther King, Jr. Performing/Cultural Arts Complex in Columbus, Ohio, a telecommunications facility, production studio, and fiber optic link to the existing fiber optic interconnection system in the city of Columbus. This project would be a part of a larger Telecomplex Project in which the city would establish a telecommunications and production center in a central Columbus urban area where the population is 90% African-American. The proposed production studio and fiber optic link would enable the residents of this area to produce educational and training materials for video, voice and data applications, through which they could interact with other city residents and service providers on the fiber optic network.

OK (Oklahoma)

File No. 94059 CTB Rogers State College, Will Rogers and College Hill, Claremore, OK 74017-2099. Signed By: Mr. Richard H. Mosier, President. Funds Requested: \$418,667. Total Project Cost: \$837,334. To improve the facilities of public television station, KRSC-TV, Ch. 35, in Claremore by acquiring equipment to upgrade its origination capabilities to current broadcast standards. In 1987, KRSC-TV went on the air with industrial grade, non-broadcast quality equipment. Much of that equipment is now worn-out, obsolete and experiences significant maintenance problems and downtime. Equipment being replaced includes video tape machines, cameras, master control switcher, edit controller, sequencer and related items. In addition, KRSC-TV will acquire a KU Band satellite downlink terminal to obtain programming from a variety of sources.

OR (Oregon)

File No. 94081 PRTN Treasure Valley Community College, 650 College Blvd., Ontario, OR 97914. Signed By: Dr. Berton L. Glandon, President. Funds Requested: \$152,618. Total Project Cost: \$152,628. To develop a plan and analyze the feasibility of providing a distance learning service through alternative forms of telecommunications such as fiber optic lines and microwave distribution to learning centers for

different levels of education, in a four-county area with a significant Hispanic population in Eastern Oregon.

File No. 94102 CTB Oregon Public Broadcasting, 7140 SW Macadam Avenue, Portland, OR 97219-3013. Signed By: Mr. Maynard E. Orme, President and CEO. Funds Requested: \$71,125. Total Project Cost: \$142,250. To purchase three one-half inch Beta video recorders to replace three three-quarter inch video recorders located at public television station KOPB-TV, Channel 10, in Portland, Oregon, originating program service to Oregon Public Broadcasting stations in Corvallis, Bend, LaGrand, and Eugene, Oregon.

File No. 94216 CTB Southern Oregon Public TV, Inc., 34 South Fir Street (PO Box 4688, Medford, OR 97501). Signed By: Mr. William R. Campbell, Vice President/General Manager. Funds Requested: \$23,250. Total Project cost: \$31,000. To construct a translator which will provide first public television service to 2,200 people in Bookings Harbor, Oregon, by extending the signal of public television station KSYS-TV, Channel 8, Medford, Oregon. The project will also provide an additional 11,000 people with their first Oregon based public television service and provide this service to the last significant geographic area of the state without such service.

File No. 94220 CTB Southern Oregon Public TV, Inc., 34 South Fir Street (PO Box 4688, Medford, OR 97501). Signed By: Mr. William R. Campbell, Vice President/General Manager. Funds Requested: \$259,298. Total Project Cost: \$345,730. To replace obsolete, unreliable origination videotape machines with six 1/2 inch videotape machines and one digital, tapeless playback system for use on KSYS-TV, Channel 8, Medford, Oregon.

File No. 94225 CRB Mt. Hood Community College District, 26000 S.E. Stark Street, Gresham, OR 97030-3300. Signed By: Dr. Bill Becker, Dean of Administration. Funds Requested: \$112,415. Total Project cost: \$224,831. To improve the transmission, origination, and interconnection facilities at KMHD-FM, 89.1, Gresham, Oregon, by constructing a new STL, replacing unreliable studio production equipment, replacing obsolete control room origination equipment, constructing a satellite receive terminal and replacing test equipment.

File No. 94235 PTBN KWSO. P.O. Box 489, Warm Springs, OR 97761. Signed By: Mr. Warren R. Clements, Director of Public Information. Funds Requested: \$65,450. Total Project Cost: \$65,450. To plan for the creation of a consolidated

Telecommunications Center that would serve the Confederated Tribes on the Warm Springs Reservation in Oregon. This proposed center would incorporate facilities for the present public radio station with other possible telecommunications operations such as a cable television channel, a satellite earth station, community library, and interactive computer network. The Telecommunications Center would provide educational and training components that would help meet the needs of Native Americans on the reservation.

File No. 94261 CTN Deschutes Cnty Education Ser Dist, 1340 N.W. Wall Street, Bend, OR 97701. Signed By: Mr. Dennis Douglass, Superintendent. Funds Requested: \$807,900. Total Project Cost: \$1,162,960. To acquire the equipment necessary to construct and activate non-broadcast facilities for an interactive system that would include a production studio to produce instructional programming, and a microwave link and ITFS network through four counties of central Oregon for distance learning, workforce training and economic development services to an underserved population. The proposed project would be a cooperative effort of the Central Oregon Strategic Training and Education Partnership (CO-STEP), which includes school districts, education service agencies, colleges, businesses, government agencies, and telephone and broadcast companies, to accomplish youth education and workforce training initiatives.

PA (Pennsylvania)

File No. 94029 CRB Pennsylvania State University, 202 Wagner Building, University Park, PA 16802-3899. Signed By: Mr. Robert Killoren, Director of Sponsored Programs. Funds Requested: \$47,151. Total Project Cost: \$62,869. To extend the signal of public radio station WPSU, 91.1 MHz, State College, PA, by activating translators in Clearfield, Lewistown, and DuBois, PA, to bring first public radio service to 33,028 unserved residents of central Pennsylvania.

File No. 94117 CTB Northeastern PA ETV Association, 70 Old Boston Road, Pittston, PA 18640. Signed By: Mr. A. William Kelly, President & CEO. Funds Requested: \$193,760. Total Project Cost: \$387,520. To improve the broadcast signal of public station WVIA-TV, Ch. 40, Scranton (Pittston), PA, by replacing its worn-out and failing studio-transmitter link, and to improve its production capability by replacing worn-out video tape recorders. The situation serves approximately one

million residents of northeast Pennsylvania.

File No. 94228 CTB WHYI, Inc., 150 North Sixth Street, Philadelphia, PA 19106. Signed By: Mr. Frederick Breitenfeld, Jr., President. Funds Requested: \$442,387. Total Project Cost: \$884,774. To improve the operational capability of public station WHYI-TV, Ch. 12, Philadelphia, PA, by replacing worn-out and obsolete equipment, including its on-air and routing switchers, video tape recorders, monitors, a character generator, and test equipment. The station serves a potential audience of about 7-million people.

File No. 94231 CTB QED Communications, Inc., 4802 Fifth Avenue, Pittsburgh, PA 15213. Signed By: Mr. Donald C. Korb, Chief Executive Officer. Funds Requested: \$351,045. Total Project Cost: \$702,090. To improve the production capability of public station WQED-TV, Ch. 12, Pittsburgh, PA, by replacing worn-out and obsolete video tape recorders and a character generator. The station serves a population of about 3.25-million.

File No. 94247 CTN Allegheny Intermediate Unit, 4 Station Square, Flr. 2, Pittsburgh, PA 15219. Signed By: Dr. Joseph F. Lagana, Executive Director. Funds requested: \$62,538. Total Project Cost: \$125,076. To extend the satellite delivered services of the Allegheny Intermediate Unit (AIU) to 14 additional school districts through the purchase of 14 C/Ku-band steerable downlinks. The downlinks will be connected by fiber-optic cable to school buildings in each district to deliver teacher in-service, administrative and instructional programming to an additional 50,000 students and faculty. AIU currently provides satellite delivered services to 16 school districts in the suburban Pittsburgh area.

File No. 94274 CRB Lehigh Valley Cmty Bdcstrs Assn, P.O. Box 1456, Allentown, PA 18102. Signed By: Mr. Brian F. Landers, President. Funds Requested: \$23,908. Total Project Cost: \$47,817. To expand the signal of public radio station WDIY, 88.1 MHz, Allentown, PA, by activating a translator to operate on 93.9 MHz in Easton, PA, to enhance the signal by activating a translator to operate on 93.5 MHz in Bethlehem, PA, and to equip the station with remote broadcast equipment. The station presently serves a population of approximately 351,167 persons. The translators will add about 69,547 persons to that number.

File No. 94315 CRB Public Broadcasting of NW PA, 8425 Peach Street, Erie, PA 16509. Signed By: Mr. Paul Stankavich, President & General

Manager. Funds Requested: \$104,238. Total Project Cost: \$208,477. To activate a public radio station to operate on 90.5 MHz in Erie, PA, to provide a second public radio service to approximately 229,000 residents of Erie County. The station will be affiliated with WQLN-FM, 91.3 MHz, Erie, which serves approximately 420,000 persons.

File No. 94316 CRB Public Broadcasting of NW PA, 8425 Peach Street, Erie, PA 16509. Signed By: Mr. Paul Stankavich, President & General Manager. Funds Requested: \$17,265. Total Project Cost: \$34,530. To extend the signal of public station WQLN-FM, 91.3 MHz, Erie, by activating translators at 91.5 MHz in Titusville, PA, and at 91.9 MHz in Franklin/Oil City, PA, and by upgrading its existing translator at 90.1 MHz in Warren, PA. Approximately 45,000 persons will receive their first public radio signal from this project.

PR (Puerto Rico)

File No. 94320 CTN Fundacion Educativa Ana G. Mendez, State Road 176 Km. 0.3, Cupey Rio Piedras, PR 00928. Signed By: Mr. Jose F. Mendez, President. Funds Requested: \$778,274. Total Project Cost: \$1,037,699. To extend the geographic reach of the Mendez Universities' ITFS signal to portions of Puerto Rico not currently able to receive the signal, by constructing five ITFS repeaters or relay stations in the Southeast, Southcentral and Southwest regions as part of an island-wide ITFS plan. This project would also include construction of a video classroom for the production of instructional courses and programs for distance learning and training through the ITFS system.

RI (Rhode Island)

File No. 94194 CTN Brown University in Providence, 164 Angell Street, Providence, RI 02912-1929. Signed By: Ms. Alice Tangredi-Hannon, Director-Ofc of Research Admin. Funds Requested: \$671,967. Total Project Cost: \$895,956. To activate a currently non-functioning ITFS system that would enable Brown University to extend its academic, scientific, cultural and medical resources throughout the state of Rhode Island in cooperation with K-12 school districts, colleges/universities, libraries, professional development organizations, government agencies, hospitals/medical facilities, and community centers. In combination with the activated ITFS system, the university also seeks to purchase and install the equipment for a KU-Band satellite uplink/downlink system for distance learning and training, and to

interconnect other educational institutions as participants in its international satellite project involving NASA and the Institute for Space Research in Russia.

SC (South Carolina)

File No. 94153 CTN Horry-Georgetown Technical College, 2050 Hwy 501 E., P.O. Box 1966, Conway, SC 29526. Signed By: Mr. D. Kent Sharples, President. Funds Requested: \$660,936. Total Project Cost: \$881,248. To activate the first phase of a distance learning system featuring two-way, interactive, computer-aided video instruction, the main interconnection being by microwave. In this phase, Horry-Georgetown Technical College will link its main campus, in Conway, to its satellite campus at Georgetown.

File No. 94210 CTN The World Class Partnership, 5588 Airport Road, Anderson, SC 29624. Signed By: Ms. Jane S. Cahaly, Director. Funds Requested: \$1,929,572. Total Project Cost: \$1,929,572. To acquire equipment and establish a two-way interactive telecommunications network to regional centers and high schools throughout South Carolina using ISDN (Integrated Services Digital Network) technology through telephone or possible fiber optic lines, as an interconnection system providing video, voice and data services statewide, and possibly nationally and internationally. The proposed network would incorporate desktop video and data units at each location, in order for students and educators to participate in a partnership to exchange programs and videoconferences focusing particularly on international understanding.

SD (South Dakota)

File No. 94020 CTB SD Bd of Dir for Educ Telecom, Cherry & Dakota Sts, Box 5000, Vermillion, SD 57069-5000. Signed By: Mr. Don Checots, Executive Director. Funds Requested: \$70,925. Total Project Cost: \$141,850. To extend the signal coverage of the SD Educational Television Network by activating a new medium power (13 kW ERP) public television station on Ch. 23 in Sioux Falls. Station would improve signal strength of the network and improve reception problems caused by terrain factors.

File No. 94037 CTB SD Bd of Dir for Educat'l Telcomm., Cherry & Dakota Sts, Box 5000, Vermillion, SD 57069-5000. Signed By: Mr. Don Checots, Executive Director. Funds Requested: \$237,500. Total Project Cost: \$475,000. To improve the facilities of public television station KTSD-TV, Ch. 10, in Pierre, by replacing a 25-year old

transmitter, transmission line, diplexer, exciter and related dissemination equipment as well as associated test equipment. Station serves 84,397 residents.

File No. 94073 CRB Dakota Nation Broadcasting Corp., 410 East 2nd Avenue, Sisseton, SD 57262. Signed By: Mr. Michael Simon, Station Manager. Funds Requested: \$581,615. Total Project Cost: \$775,486. To extend the public radio service of KSWS, 89.3 MHz, Sisseton, SD to serve additional members of the Dakota and Sioux nations. Six FM translators will be constructed from a list that includes eleven communities including Shakopee, Welsch, Granite Fall, and Redwood Falls in MN; Flandreau, Marty, Lower Brule and Ft. Thompson in SD; Niobrara and Ft. Totten in ND; and Ft. Peck in MT. A C-band uplink will be constructed in Sisseton SD and each of the six translator will have C-band downlink capability. A Ku-band uplink to provide news programming to the system and four production studios will also be constructed in Sisseton. The project will be affiliated with the ARIOS service which distributes Native American programming to public radio stations nationwide.

TN (Tennessee)

File No. 94039 CTB Mid-Atlantic Public Comm Fdn., 900 Getwell, Memphis, TN 38111. Signed By: Mr. Michael J. LaBonia, President & CEO/Treasurer. Funds Requested: \$33,584. Total Project Cost: \$67,168. To improve public television station WKNO-TV, Ch. 10, in Memphis, TN by replacing the STL microwave link with hot standby, so the station may continue uninterrupted service to the 2,140,000 residents.

File No. 94047 CTN Univ. of Tennessee at Chattanooga, 615 McCallie Avenue, Chattanooga, TN 37403-2598. Signed By: Mr. Frederick W. Obear, Chancellor. Funds Requested: \$49,666. Total Project Cost: \$99,332. To establish a second two-way interactive video classroom, using T-1 transmission, on the applicant's campus. The facility will provide continuing education courses to rural health nurses and special education teachers. The project will serve southeast Tennessee, northeast Alabama, and northwest Georgia. The specific project objectives are as follows: to increase the number of rural health nurses trained in advanced childbirth care to better provide services to the women and children in these remote areas; to increase the number of certified special education teachers who work in the remote areas of southeast Tennessee; and to increase the number of master's

level speech/language teachers in southeast Tennessee to state mandates for certification by the year 2000.

File No. 94103 CTB Upper Cumberland Broadcast Cncl, PO Box 2040, Cookeville, TN 38502. Signed By: Mr. Richard L. Castle, Jr., President & General Manager. Funds Requested: \$230,270. Total Project Cost: \$460,540. To improve the operation of public station WCTE-TV, Ch. 22, Cookeville, TN, by replacing obsolete master control and production equipment, including video tape recorders and editing, a field camera, graphics system, an audio console, and test equipment.

File No. 94197 CRB University of TN at Chattanooga, 615 McCallie Avenue, Chattanooga, TN 37403-2598. Signed By: Mr. Frederick W. Obear, Chancellor. Funds Requested: \$7,775. Total Project Cost: \$15,550. To improve the signal of public radio station WUTC, 88.1 MHz, Chattanooga, TN, by replacing its obsolete shared-frequency analog microwave STL with a digital STL to reduce crosstalk from the shared frequency.

File No. 94262 CRB Guiding Hands for the Blind, Inc., 1970-D North Highland Ave., Jackson, TN 38305. Signed By: Mr. Ernest Harper, Jr., General Manager. Funds Requested: \$90,000. Total Project Cost: \$120,000. To construct a noncommercial public radio station operating on 88.7 MHz, Lexington, TN to provide information to visually and physically impaired residents of West Tennessee. The station would also provide the first public radio service to 33,000 people, and the first locally originated service to 99,000 additional persons. The applicant currently provides service for the visually impaired on a Second Audio Program (SAP) channel of WLJT, Ch. 11, Lexington. The proposed station will serve 133,000 people, which includes an estimated 2,500 visually impaired individuals.

File No. 94284 CTB West Tennessee Public TV Council, University of Tennessee @ Martin, Martin, TN 38237. Signed By: Mr. John C. Hesse, General Manager. Funds Requested: \$258,016. Total Project Cost: \$516,032. To improve public television station WLJT-TV, Ch. 11, in Lexington, KY by acquiring applicant owned first local production capability which will replace presently loaned production items. Equipment requested includes studio cameras, VTR's, audio console and related, monitors, intercom system, signal distribution/monitoring items and installation supplies. This project will enable this station to radically increase its local program production by

not having to use not always available, badly worn, borrowed equipment.

TX Texas

File No. 94004 CTB South Texas Pub. Brdcstg. System, 4255 S. Padre Island Dr. No. 38, Corpus Christi, TX 78411. Signed By: Mr. Peter A. Frid, President and General Manager. Funds Requested: \$718,500. Total Project Cost: \$958,000. To improve the facilities of public television station KEDT-TV, Ch. 16, in Corpus Christi, by replacing worn out studio equipment including cameras, video tape recorders, character generator, video switcher, cart machines, increasing capacity of their routing switcher as well as other associated origination equipment. KEDT-TV also seeks to update transmitter to stereo and Secondary Audio Programming (SAP) and acquire appropriate test equipment. Station provides only public television signal to about 580,000 residents.

File No. 94010 PRIN Southwest Texas State University, 601 University Drive, San Marcos, TX 78666. Signed By: M. Marion Tangum, Director, Research & Spon Prog. Funds Requested: \$134,601. Total Project Cost: \$178,226. To conduct a feasibility study and develop a strategic plan for the telecommunications infrastructure within a fifteen county area of Southwest Texas for the purpose of considering possible collaborative efforts in distance learning projects at all levels of education, from elementary school through graduate level courses.

File No. 94016 CTN Alliance for Higher Education, 17103 Preston Road, Dallas, TX 75248-1373. Signed By: Dr. Allan Watson, President. Funds Requested: \$465,342. Total Project Cost: \$930,684. To purchase equipment for six "candid" video classrooms, one each at the Baylor College of Dentistry (Dallas), Collin County Community College (Plano), Dallas Education Center, East Texas State University (Commerce), Midwestern State University (Wichita Falls), and the University of North Texas Health Science Center (Fort Worth). Using the TAGER Television Network, these entities will produce instructional programming for new and historically underserved members of the population in K-12 education, teacher training, health, dental health, and allied health training.

File No. 94030 CTB University of Houston, 1600 Smith, Suite 3400, Houston, TX 77002. Signed By: Mr. E. Dell Felder, Senior Vice Chancellor. Funds Requested: \$295,410. Total Project Cost: \$590,820. To improve the facilities of public television station

KUHT-TV, Ch. 8, in Houston, by replacing (rebuilding) the aged and worn-out inter conductor tower transmission line. KUHT-TV also seeks to upgrade and replace its existing editing equipment by acquiring new digital editing equipment including video cassette recorders, production, switcher, audio console, edit controller, digital video effects, graphics generator and associated origination equipment. KUHT-TV provides the only public television signal to approximately 3.6 million residents.

File No. 94065 CRB University of Texas at Austin, P.O. Box 7726, University Station, Austin, TX 78713-7726. Signed By: Mr. Stephen A. Monti, Vice Provost. Funds Requested: \$33,399. Total Project Cost: \$66,800. To improve public radio station KUT-FM, 90.5 MHz, in Austin, by replacing worn-out origination equipment including tape recorders, digital cart machines, on-air and production microphones and a telephone hybrid. KUT-FM also seeks equipment that will allow it to meet FCC requirements for unattended operation. Station reaches more than 1 million people in central TX.

File No. 94144 CTN Houston Community College System, 22 Waugh Drive, P.O. Box 7849, Houston, TX 77270-7849. Signed By: Dr. Charles A. Green, Chancellor. Funds Requested: \$146,513. Total Project Cost: \$293,027. To establish a video production studio, with mobile capability, to originate educational and instructional programming for an educational access channel on the cable television system serving the city of Houston.

File No. 94149 CTN San Isidro Independent School Dist., Highway 1017, P.O. Box 10, San Isidro, TX 78588. Signed By: Mr. Lisandro Ramon, San Isidro Superintendent. Funds Requested: \$292,045. Total Project Cost: \$584,090. To establish a two-way, interactive distance learning network—the Valley Inter-Active Network, or VIA-MET-1—interconnecting four Independent School Systems in South Texas: San Isidro, Raymondville, Mirando City, and San Perlita. The project will use compressed video technology, with the programming transmitted over the fiber optics lines of the Valley Telephone Cooperative; the Cooperative is an active partner in the proposal.

File No. 94182 PTN Amarillo Junior College District, 2201 South Washington, Amarillo, TX 79109. Signed By: Mr. Neil Mosley, Vice President for Business. Funds Requested: \$48,908. Total Project Cost: \$55,128. To develop a comprehensive telecommunications plan for a distance

learning system that would provide instructional courses and educational programs throughout the twenty six counties of the northern Texas Panhandle. The plan would be developed by the six colleges and universities in the Texas Higher Education Consortium of Texas and Oklahoma, and would cooperatively involve institutions and agencies in K-12 education, continuing education, government services and other non-profit activities to consider the feasibility of options.

File No. 94185 CRB North Texas Public Brdcstg., Inc., 3000 Harry Hines Blvd., Dallas, TX 75201. Signed By: Mr. Richard J. Meyer, President. Funds Requested: \$18,876. Total Project Cost: \$37,752. To extend the signal of public radio station KERA-FM, 90.1 MHz, in Dallas by constructing a new FM translator on 88.7 MHz, in Wichita Falls. Translator will bring first public radio signal to 68,696 residents. In addition, KERA-FM seeks Integrated Service Digital Network (ISDN) system equipment which will allow it direct access to the uplink in Austin.

File No. 94192 PTB Alamo Public T/C Council, 501 Broadway, San Antonio, TX 78215. Signed By: Ms. Joanne Winik, President and General Manager. Funds Requested: \$23,750. Total Project Cost: \$23,750. To plan for the extension of public television station KLRN-TV, Ch. 9, in San Antonio, by constructing a lower power television station in Laredo. The initial programming would originate largely from KLRN-TV but there would be a provision for local origination insertion. This would provide first public television service to approximately 38,600 residents. Project would conduct engineering surveys, research microwave tower locations and prepare the appropriate FCC applications for the new station.

File No. 94195 PTN Texas Environmental Center, 1609 Virginia Avenue, Austin, TX 78704. Signed By: Mr. Marshall Frech, Director. Funds Requested: \$73,340. Total Project Cost: \$155,340. A proposal to plan for the extension of an electronic environmental library project initiated by the Texas Environmental Center and Rice University, using high-speed phone lines and the internet in several schools providing students with the opportunity to monitor water quality of area rivers and to contribute data to a state assessment of area watersheds. The plan would consider the expansion of this network and the testing of teleconference lines so that water monitoring trainers could instruct students from remote sites, to

standardize scientific procedures and ensure validity of the data collected.

File No. 94244 CRB University of Texas at Austin, P.O. Box 7726, University Station, Austin, TX 78713-7726. Signed By: Mr. Stephen A. Monti, Vice Provost. Funds Requested: \$91,534. Total Project Cost: \$122,046. To provide the first public radio service to 99,000 residents of Tom Green County by constructing an FM repeater station in San Angelo operating on 91.1 MHz. The station will rebroadcast the program service of KUT, 90.5 MHz, Austin and will be fed by satellite delivery.

File No. 94252 CTN Texas Tech. University, 17th Street & Indiana Avenue, Lubbock, TX 79409-2161. Signed By: Mr. Donald R. Haragan, Executive Vice President. Funds Requested: \$198,941. Total Project Cost: \$265,255. To acquire the distribution and origination equipment necessary to activate a fiber optic distribution system from Texas Tech University to school systems, universities, regional education service centers and medical facilities in southwestern Texas, to provide distance learning coursework at many levels from adult basic education to GED to graduate courses in areas such as health sciences. The proposed two-way interactive network would interface with and interconnect the University's Health Science Center TechLink Network, presently using T-1 lines with future expansion to DS-3 services, and the West Texas Educational Network which provides a compressed video service through T-1 lines.

File No. 94289 PTN Austin Independent School District, 1111 West 6th Street, Austin, TX 78703-5399. Signed By: Mr. Terry N. Bishop, Superintendent. Funds Requested: \$105,424. Total Project Cost: \$146,467. To develop a telecommunications plan as a cooperative project among representatives of a consortium that includes school districts, colleges and other organizations formed as the Central Texas Distance Learning Network, to identify, integrate and utilize non-broadcast technologies throughout ten counties in central Texas for distance learning classes and training programs. The proposed plan would determine the appropriate equipment and potential educational materials for both one-way and two-way interactive systems for video, voice and data services to as many as forty school districts, incorporating a planned fiber optic network in the overall design.

UT (Utah)

File No. 94248 PRTB University of Utah, 101 Wasatch Drive, Salt Lake City, UT 84112. Signed By: Mr. Ted Capener,

Vice President. Funds Requested: \$17,966. Total Project Cost: \$20,417. To plan for the construction of a transmission facility in southwestern UT. Proposed facility would provide service from public radio and television stations KULC-TV, Ch. 9; KUED-TV, Ch. 7; and KUER-FM, 90.1 MHz. Although much of this area is covered by a series of public TV/radio translators, the proposed facility should improve signal penetration and allow for some of the existing translators to be relocated to pockets that are unserved.

File No. 94260 CRTB University of Utah, 101 Wasatch Drive, Salt Lake City, UT 84112. Signed By: Mr. Ted R. Capener, Vice President. Funds Requested: \$197,157. Total Project Cost: \$274,106. To extend the signal of KULC-TV, Ch. 9, Salt Lake City, by activating nine (9) public television translators to carry the educational/instructional programming of KULC-TV. Project will also extend the (PBS) signal of KUED-TV, Ch. 7, Salt Lake City, by installing a new translator and replacing two worn-out translators. Lastly, to extend the signal of public radio station KUER-FM 90.1 MHz, in Salt Lake City, by activating two new translators in Dutch John-Manila and Mt. Hillers-Ticaboo. This project affects the following counties in UT: Kane, Garfield, Wasatch, Millard, Iron, Tooele, Juab, Daggett, and Duchesne.

VA (Virginia)

File No. 94015 PTN Arlington Cmmnty Access Corp. & TV, 3401 N. Fairfax Drive, #300, Arlington County, VA 22201. Signed By: Mr. Paul LeValley, Executive Director. Funds Requested: \$85,963. Total Project Cost: \$85,963. To conduct a comprehensive study of Arlington County, Virginia's non-profit service organizations regarding their telecommunications needs, in order to effectively plan methods to use the resources of Arlington Community Television, which incorporates public access television and other methods of telecommunications in providing community services.

File No. 94033 CRB CAPRA, Inc., Route 2, Box 50, Mechanicsville, VA 23111. Signed By Ms. Catherine Patterson, Project Manager. Funds Requested: \$11,820. Total Project Cost: \$23,640. To construct a satellite downlink at WCPB-FM, a proposed public radio station for operation on 91.9 MHz in Charlottesville, VA. The satellite downlink will enable WCPB-FM to provide programming distributed nationally by the public radio satellite system.

File No. 94042 CTN Clarendon Foundation, 13422 Elliot An Court, Herndon, VA 22071. Signed By: Mr. Kemp R. Harshman, President. Funds Requested: \$4,200. Total Project Cost: \$8,400. To expand the services provided by the applicant through the purchase of a satellite downlink and S-VHS recorder to record public domain educational programs for distribution by ITFS systems in Henderson, NV, Syracuse, NY and other potential locations.

File No. 94050 CTB Hampton Roads Educ. T/C Assoc., 5200 Hampton Boulevard, Norfolk, VA 23508. Signed By: Mr. John R. Morison, President and General Manager. Funds Requested: \$571,719. Total Project Cost: \$1,143,438. To improve the transmission facilities of public television station WHRO-TV, Ch. 15, Norfolk by replacing a 20 year old transmitter and related equipment. The project will also replace three 14 year old 1" videotape recorders. WHRO-TV serves 1.6 million people in the southeast Virginia and Northeast North Carolina.

File No. 94055 CRB James Madison University, Seeger-Hall, 821 South Main St., Harrisonburg, VA 22807. Signed By: Mr. Henry J. Schiefer, Asst. V.P. Finance. Funds Requested: \$9,602. Total Project Cost: \$19,204. To improve the production capabilities of noncommercial radio station WXJM-FM, 88.7 MHz., Harrisonburg, by replacing an obsolete audio console. WXJM-FM is operated by the students of James Madison University and serves 89,300 residents of Rockingham County.

File No. 94236 CTN Old Dominion University, Room 228 Education Building, Norfolk, VA 23539-0228. Signed By: Dr. James C. Phillips, Director, Academic TV Services. Funds Requested: \$1,822,352. Total Project Cost: \$3,644,705. To extend the satellite delivered instructional services of Old Dominion University and initiate a new higher education service called Teletechnet. This service will provide the final two years of bachelors degree programs via satellite to 13 community colleges within Virginia. The project will fund 5 instructional classrooms at Old Dominion University and Ku-band satellite video downlinks, VSAT downlinks for data, and instructional classrooms at each community college. Community Colleges participating in the project are located in Weyers Cave, Clifton Forge, Dansville, Locust Grove, Middletown, Dublin, Annandale, Martinsville, Richlands, Roanoke, and Wytheville.

File No. 94302 CTN Black College Satellite Network, 2011 Crystal Drive, Suite 1100, Arlington, VA 22202.

Signed by: Dr. Mabel P. Phifer, President. Funds Requested: \$1,151,250. Total Project Cost: \$1,535,000. To add five additional satellite uplinks to the Black College Satellite Network (BCSN) in order to provide additional minority programming for distribution to 105 historically and predominantly black colleges and universities nationwide. New satellite uplinks will be placed at Tuskegee University in Alabama, Hampton University in Virginia, Cheumney University in Pennsylvania, Clark Atlanta University in Georgia, and at BCSN headquarters in Washington, DC. Microwave equipment will also be constructed to connect Bowie State University in Maryland and Delaware State University in Delaware with existing BCSN member school uplinks.

File No. 94314 CTB Great WA Educ. T/C Association, 3620 South 27th Street, Arlington, VA 22206. Signed by: Mr. Jerry Butler, V.P. Eng and Computer Service. Funds Requested: \$595,300. Total Project Cost: \$1,190,600. To improve the production capabilities of public television station WETA-TV, Ch. 26, Washington, by replacing 10 videotape recorders over 10 years old with an automated tape cart system. The videotape equipment will permit continuation of production of local and national programming.

File No. 94318 CRB Greater WA Educ. T/C Association, 3700 S. Four Mile Run Drive, Arlington, VA 22206-2304. Signed by: Mr. Tom Livingston, Senior VP/GM WETA-FM. Funds Requested: \$324,259. Total Project Cost: \$432,345. To establish a repeater FM station operating on 91.7 MHz, Leonardtown, MD to provide the first public radio service to 130,000 people in southern Maryland and the northern neck of Virginia. The proposed station will rebroadcast the program service of WETA-FM, Washington.

VT (Vermont)

File No. 94001 CRB Vermont Public Radio, 107.9 Ethan Allen Avenue, Colchester, VT 05446. Signed by: Mr. Mark Vogelzang, President and CEO. Funds Requested: \$194,970. Total Project Cost: \$389,940. To replace obsolete studio equipment and improve the program production capabilities of Vermont Public Radio, which operates three stations in that state—in Windsor, Colchester, and Rutland. Vermont Public Radio is moving its headquarters—which will include its main production facility—from Windsor to Colchester. This project is part of that relocation. The project would purchase full master control room, production control room, news production room, and talk studio equipment. It would also

purchase subcarrier units to permit Vermont Public Radio to use Vermont ETV's existing microwave system; this would provide a technically superior transmission of Vermont Public Radio's signal from its main studio to its two repeater stations.

File No. 94044 CTB Vermont ETV, Inc., 88 Ethan Allen Avenue, Colchester, VT 05446-3129. Signed by: Mr. John E. King, VP/Finance & Administration. Funds Requested: \$1,042,500. Total Project Cost: \$1,390,000. To improve the switching and interconnection facilities of Vermont ETV, Inc. ("VETV"), which operates four stations and offers the sole public TV signal to most of the State's residents. For VETV's control center in Colchester, the project would purchase machine control and signal switching systems as well as a control room automation package. This would increase the center's signal routing capacity and greatly improve the integration of its signal and control systems. The proposed microwave would provide a full duplex, digital system connecting the Colchester studio to VETV's four transmission sites. It would be able to transmit three TV, 12 audio, and many data circuits. This would enable VETV to distribute diverse distant learning services via cable television, wireless cable, and ITFS and to offer data interconnection to varied noncommercial entities.

File No. 94094 PTB Critical Lang&Area Stud's Cons, Inc., Kipling Road, P.O. Box 676, Brattleboro, VT 05302. Signed by: Mr. Harry G. Barnes, Jr., Executive Director. Funds Requested: \$82,701. Total Project Cost: \$108,707. To plan a telecommunications service for the forty-three member organizations of the Critical Language and Area Studies Consortium (CLASC) plus other K-12 and higher education schools, distance learning providers, national foreign language centers, research institutes and other organizations involved in foreign language education and training. The plan would assess possible options for a national and potentially international interactive distance learning network, particularly to focus on Arabic, Chinese, Japanese and Russian languages and cultures.

WA (Washington)

File No. 94032 CRB Washington State University, Administration Road, Pullman, WA 99164-2530. Signed by: R.V. Smith, Vice Provost for Research. Funds Requested: \$315,996. Total Project Cost: \$450,801. To bring first public radio service to 62,428 people in eastern Washington by constructing FM repeaters at Moses Lake and Walla

Walla, to carry the signal of the Northwest Public Radio Network in Pullman, WA; to construct new digital audio interconnection facilities to provide service to those stations; and to replace an analog microwave interconnection that can no longer provide service to other receiving stations on the system.

File No. 94034 CTB Washington State University, Administration Road, Pullman, WA 99164-2530. Signed by: Mr. R.V. Smith, Vice Provost and Dean. Funds Requested: \$35,407. Total Project Cost: \$70,814. To provide local program production capability for public television station KNTW, Ch. 31, Richland, WA, a repeater station of public station KWSU-TV, Pullman, WA, by equipping an editing suite and an electronic field production unit.

File No. 94161 CTB KCTS Television, 401 Mercer Street, Seattle, WA 98109. Signed by: Mr. Burnill F. Clark, President and CEO. Funds Requested: \$249,663. Total Project Cost: \$499,326. To improve the production capability of public television station KCTS, Ch. 9, Seattle, WA, by replacing unreliable and obsolete analog videotape machines, a switcher and a digital video effects machine. The station serves 3 million persons.

File No. 94171 PRTN City of Richland, 505 Swift Blvd., Richland, WA 99352. Signed by: Mr. Joseph C. King, City Manager. Funds Requested: \$150,000. Total Project Cost: \$250,000. To develop a master plan for a civic information highway within the city of Richland, Washington, that would be a coordinated effort involving community stakeholders including educational institutions at all levels, libraries, foundations, public utilities and services, and local government agencies. In developing the plan and consensus for the aspects of a voice, video and data network for distance learning/training, public safety, emergency communications and other services, the city would appoint a Citizen's Advisory Council to provide advice and recommendations.

File No. 94175 CRB Centralia College, 600 West Locust, Centralia, WA 98531. Signed by: Dr. Henry P. Kirk, President. Funds Requested: \$182,231. Total Project Cost: \$242,975. To replace and relocate obsolete transmitter and tower, and to upgrade studio production equipment at KCED-FM, 91.3 MHz, Centralia, WA, which will provide first public radio service to 30,000 persons in the proposed coverage area.

WI (Wisconsin)

File No. 94041 CRTB Educational Communications Board 3319 West

Beltline Highway, Madison, WI 53713-4296. Signed by: Mr. Glenn A. Davison, Executive Director. Funds Requested: \$599,917. Total Project Cost: \$1,199,835. To improve the signals of two public radio stations, two public television stations, and one television translator in the Wisconsin statewide public broadcasting system by replacing various worn-out and outmoded components of their transmission systems. The stations are WHHI-FM, 91.3 MHz, Highland; WHWC-TV/FM, Ch. 28/88.3 MHz, Menomonie; WHRM-FM, 90.9 MHz, Wausau; and translator W64AU, Adams. The improvements will assist approximately 120,000 persons to receive better signals from these stations.

File No. 94189 CTB University of Wisconsin, 821 University Avenue, Madison, WI 53706. Signed by: Ms. Cheryl E. Gest, Admin. Officer/Res. Adm.-Fin. Funds Requested: \$150,000. Total Project Cost: \$300,000. To improve the production capability of WHA Television/Green Bay, Green Bay, WI, by replacing worn-out and unreliable field and studio production equipment, including cameras and a character generator. The facility provides programming to the six stations of Wisconsin Public Television, which serve the entire state.

File No. 94201 PTN University of Wisconsin Centers, 150 E. Gilman Street, Madison, WI 53703. Signed by: Mr. Robert Erikson, Director, Research Admin. Funds Requested: \$50,041. Total Project Cost: \$57,589. To design a distance education network to connect the thirteen campuses that comprise the University of Wisconsin Centers, with the central administration in Madison and with local, regional, state and national networks. The proposed distance learning network could potentially involve various technologies in an interconnected system that would enable participating organizations in higher education, professional development, K-12 education, libraries and government offices to be included in interactive video, voice and data services.

File No. 94269 CRB University of Wisconsin, 821 University Avenue, Madison, WI 53706. Signed by: Ms. Cheryl E. Gest, Administrative Officer. Funds Requested: \$114,710. Total Project Cost: \$229,420. To improve the production capability of public station WHA-TV, Ch. 21, Madison, WI, by developing a digital video exchange network to allow for the timely exchange of works in progress among widely dispersed workstations for collaborative productions.

File No. 94305 CRB White Pine Community Bdcstg, Inc., 303 West Prospect Street, Rhinelander, WI 54501. Signed By: Mr. Robert M. Fiocchi, President. Funds Requested: \$30,800. Total Project Cost: \$30,800. To expand the signal of public radio station WXPR, 91.7 MHz, Rhinelander, WI, by raising the power of its translator, W265AI, at Ironwood, WI, to 100 watts and providing first public radio service to 3,500 residents in addition to the more than 12,500 persons presently served by the translator; to improve the production capability of WXPR by replacing worn-out and obsolete equipment, including an audio console, a CD player, and switchers. The project will also make some minor adjustments to the operation of the main transmitter. WXPR currently serves 63,000 residents of northern Wisconsin.

WV (West Virginia)

File No. 94008 CTB WV Educational Bdcstg Authority, 600 Capitol Street, Charleston, WV 25301. Signed By: Ms. Rita Ray, Acting Executive Director. Funds Requested: \$116,080. Total Project Cost: \$232,160. To improve public television station WPBY-TV, Ch. 33, in Charleston, WV, by upgrading its local production capability to meet PBS station standards, through securing Beta tape machines, a portable camera and a dockable tape machine, so the station may continue quality State, and PBS, acceptable production of programs to serve the West Virginia Network of 772,451 residents and the national audience.

File No. 94028 CRB WV Educational Bdcstg Authority, 600 Capitol Street, Charleston, WV 25301. Signed By: Ms. Rita Ray, Acting Executive Director. Funds Requested: \$523,611. Total Project Cost: \$758,130. To improve the West Virginia Public Radio Network, whose originating station is WVPN-FM in Charleston, WV, by constructing two repeater stations, one at Petersburg and one at White Sulphur Springs, each with its own satellite downlink, bringing first signal to 80,575 unserved residents. Additionally, applicant is requesting an upgrade of the Charleston production studio which includes 4 studio consoles and 6 downlinks for its 6 other radio stations resulting in providing quality programs to many unserved rural people and increase the signal reliability over the present microwave system. This network currently serves 1,956,264 people.

File No. 94309 CTB WV Educational Bdcstg Authority, 600 Capitol Street, Charleston, WV 25301. Signed By: Ms. Rita Ray, Acting Executive Director. Funds Requested: \$149,500. Total

Project Cost: \$299,000. To improve public television station WNPB-TV, Ch. 24, in Morgantown, WV by replacing basic studio production equipment, including 3 studio cameras, video monitors, switcher, video control console and vectorscope, so the station may continue to serve 718,016 residents in the State TV Network with programs of statewide interest.

WY (Wyoming)

File No. 94069 CRB Northern Arapaho Tribe, 533 Ethete Road, Ethete, WY 82520. Signed By: Mr. John Smith, Chairman, Radio Commun. Commit. Funds Requested: \$325,744. Total Project Cost: \$434,325. To construct a new noncommercial radio station operating on 89.5 MHz, Ethete, to provide the first public radio service to 35,733 people in the Big Horn Basin and the Wind River Indian Reservation. The station will provide local broadcasts and also rebroadcast programming from KUWR(FM), Wyoming Public Radio in Laramie. A satellite receive terminal will provide Native American programming from the ARIOS program service.

File No. 94306 CTN Campbell Co. Board of Cooperative, 525 West Lakeway, Suite 107, Gillette, WY 82718. Signed By: Mr. Mark A. Higdon, Superintendent. Funds Requested: \$431,000. Total Project Cost: \$806,000. To establish a distance learning network using varied technologies to serve diverse entities in Campbell Co. and the community of Kaycee in southern Johnson Co., WY. The project would purchase a four-channel ITFS system (with two transmission sites), a fixed VSAT uplink, a mobile VSAT uplink, video classrooms, a C/Ku-band satellite video receive-only earth station, a telephone bridge, codec equipment, a community fiber loop, and other associated equipment.

AK (Alaska)

File No. 94002 CRB, Old File No. 93080, Raven Radio Foundation, Inc., Sitka, AK.

File No. 94022 CRB, Old File No. 93234, Kuskokwim Public Bdcstg Corp, McGrath, AK.

File No. 94142 CTBN, Old File No. 93259, University of Alaska-Fairbanks, Fairbanks, AK.

File No. 94285 CRB, Old File No. 93191, Kashunamiut School District, Chevak, AK.

AL (Alabama)

File No. 94143 CTB, Old File No. 93084, Auburn University, Auburn Univ., AL.

CA (California)

File No. 94212 CRB, Old File No. 93125, Mendocino County Public Bdcstg, Philo, CA.

File No. 94249 CRB, Old File No. 93019, Santa Monica Community College, Santa Monica, CA.

CO (Colorado)

File No. 94214 CTB, Old File No. 93037, University of Southern Colorado, Pueblo, CO.

CT (Connecticut)

File No. 94019 CRB, Old File No. 93226, Connecticut Radio Info. System, Inc., Wethersfield, CT.

File No. 94038 CTB, Old File No. 93293, Connecticut Public Brdcstg., Inc., Hartford, CT.

FL (Florida)

File No. 94120 CTB, Old File Nos. 93285, 92052, Community Communications, Inc., Orlando, FL.

File No. 94150 CTB, Old File No. 93288, WJCT, Inc., Jacksonville, FL.

File No. 94282 CTB, Old File No. 93235, FL Keys Educat'l Broadcasters, Inc., Key West, FL.

KS (Kansas)

File No. 94119 CTB, Old File No. 93271, Smoky Hills Public Television, Bunker Hill, KS.

MA (Massachusetts)

File No. 94199 CRB, Old File No. 93255, University of Massachusetts, Boston, MA.

MI (Michigan)

File No. 94012 CTB, Old File No. 93090, Grand Valley State University, Grand Rapids, MI.

File No. 94127 CTB, Old File No. 93116, Michigan State University, East Lansing, MI.

File No. 94272 CRB, Old File No. 93179, Central Michigan University, Mt. Pleasant, MI.

MO (Missouri)

File No. 94200 CTB, Old File No. 93005, Ozarks Public T/C, Inc., Springfield, MO.

File No. 94206 CTB, Old File No. 93278, St. Louis Regional Ed & Public TV, St. Louis, MO.

NC (North Carolina)

File No. 94299 CTN, Old File No. 93071, Pembroke State University, Pembroke, NC.

NY (New York)

File No. 94058 CTB, Old File No. 93255, WMHT Educational Telecomm., Inc., Schenectady, NY.

File No. 94240 CTB, Old File No. 93061, Mountain Lake Public T/C Council, Plattsburgh, NY.

OK (Oklahoma)

File No. 94152 CRB, Old File No. 93300, Langston University, Langston, OK.

File No. 94292 CRB, Old File No. 93158, East Central University, Ada, OK.

TN (Tennessee)

File No. 94007 CTB, Old File No. 93137, Metropolitan Board of Pub. Educ., Nashville, TN.

TX (Texas)

File No. 94003 CRB, Old File No. 93266, South Texas Public Broadcasting, Corpus Christi, TX.

File No. 94181 CTB, Old File No. 93189, Capital of TX Public T/C Council, Austin, TX.

VA (Virginia)

File No. 94087 CTB, Old File Nos. 93168, 92100, Shenandoah Valley ETV Corp., Harrisonburg, VA.

WA (Washington)

File No. 94241 CRB, Old File No. 93114, Bellevue Community College, Bellevue, WA.

[FR Doc. 94-11550 Filed 5-12-94; 9:45 am]
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Friday
May 13, 1994

Federal Register

Part V

Department of Housing and Urban Development

Office of the Assistant Secretary for
Public and Indian Housing

NOFA for the Public and Indian Housing
Tenant Opportunities Program Technical
Assistance; Notice

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

**Office of the Assistant Secretary for
Public and Indian Housing**

[Docket No. N-94-3753; FR-3669-N-01]

**NOFA for the Public and Indian
Housing Tenant Opportunities
Program Technical Assistance**

AGENCY: Office of the Assistant
Secretary for Public and Indian
Housing, HUD.

ACTION: Notice of funding availability
for FY 1994.

SUMMARY: HUD is announcing the availability of \$25 million for Fiscal Year 1994 under the Public and Indian Housing Tenant Opportunities Program (TOP). HUD has reinvented resident management and created the TOP which expands the range of the resident managed activities so that resident organizations can set priorities based on the needs in their communities. The program provides assistance to resident grantees, including Resident Councils (RCs), Resident Management Corporations (RMCs), Resident Organizations (ROs), National Resident Organizations (NRO), Statewide Resident Organizations (SRO), and Regional Resident Organizations (RRO), to fund training and other tenant opportunities, such as the formation of such entities, identification of the relevant social support needs, and securing of such support for residents of public and Indian housing. The NOFA discusses eligibility, funding amounts, selection criteria, how to apply for funding, and the selection process.

DATES: Application kits may be requested beginning May 10, 1994. The application deadline will be specified in the application kit, and will be firm as to date and time. Applicants will have at least 60 days from today's publication of the NOFA to prepare and submit their proposals.

ADDRESSES: To obtain a copy of the application kit, please write the Resident Initiatives Clearinghouse, Post Office Box 6424, Rockville, MD 20850, or call the toll free number 1-800-955-2232. Requests for application kits must include your name, mailing address (including zip code), telephone number (including area code), and should refer to document FR-3669. This NOFA cannot be used as the application.

FOR FURTHER INFORMATION CONTACT:
Christine Jenkins or Barbara J.
Armstrong, Office of Resident
Initiatives, Department of Housing and
Urban Development, 451 Seventh Street

SW., room 4112, Washington, DC 20410. Telephone number (202) 708-3611. All Indian applicants may contact Dom Nessi, Director, Office of Native American Programs, Department of Housing and Urban Development, 451 Seventh Street SW., room 4140, Washington, DC 20410. Telephone number (202) 708-1015. Hearing- or speech-impaired persons may use the Telecommunications Devices for the Deaf (TDD) by contacting the Federal Information Relay Service on 1-800-877-TDDY (1-800-877-8339) or 202-708-9300 for information on the program. (Other than the "800" TDD number, telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520), and assigned OMB control number 2577-0127.

I. Purpose and Description

A. Authority

Section 20, United States Housing Act of 1937 (42 U.S.C. 1437r); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

B. Statutory Background

Section 122 of the Housing and Community Development Act of 1987 (Pub. L. 100-42, approved February 5, 1988) amended the U.S. Housing Act of 1937 (1937 Act) by adding a new section 20. In part, section 20 states as its purpose the encouragement of "increased resident management of public housing projects [and the provision of funding] * * * to promote formation and development of resident management entities" (Sec. 20(a)). Under section 20(f)(1):

[The Secretary shall provide financial assistance to resident management corporations or resident councils that obtain, by contract or otherwise, technical assistance for the development of resident management entities, including the formation of such entities, the development of the management capability of newly formed or existing entities, the identification of the social support needs of residents of public housing projects, and the securing of such support.]

Under section 20(f)(2), this financial assistance may not exceed \$100,000 with respect to any public and Indian housing project, and subsection (f)(3) limits the assistance within the context of funds available under section 14 of

the 1937 Act (Comprehensive Improvement Assistance Program). Section 20 is implemented in 24 CFR part 964 and, for Native American Programs, in 24 CFR part 905, subpart O. The rules set forth, among other things, the policies, procedures, and requirements of resident participation and management of public and Indian housing.

In FY 1988, \$2.5 million was awarded to 27 resident organizations; in FY 1989, \$2.5 million was awarded to 35 resident organizations; in FY 1990, \$2.4 million was awarded to 37 resident organizations; in FY 1991, \$4.9 million was awarded to 96 organizations; in FY 1992 \$4.6 million was awarded to 94 organizations; and in FY 1993, \$4.7 million was awarded to 94 organizations. In FY 1994, \$25 million is available for technical assistance and training for activities under the TOP program.

Today, 383 resident groups throughout the country are in training under this public and Indian housing program. HUD supports the resident management movement, as well as other self-sufficiency and improvement programs designed to benefit public and Indian housing residents. The Office of Resident Initiatives in Public and Indian Housing has been created to deliver a variety of resident initiative programs, with assistance from a network of Resident Initiatives Coordinators (RICs) or Community Relations and Involvement Specialists (CRIs) in HUD's field structure. The RICs/CRIs are available to provide direct assistance to residents and resident groups interested in resident initiatives programs.

C. Key Features of This NOFA

(1) This NOFA announces the new Tenant Opportunity Program (TOP), which was formerly the Public and Indian Housing Resident Management Program. Resident organizations and housing authorities across the country overwhelmingly requested that the Department of Housing and Urban Development (HUD) revamp the Resident Management Program to meet the needs in their communities for business development, education, job training and development, social services, and opportunities for other self-help initiatives. In complying with the request of residents and housing authorities, HUD has reinvented resident management and created the TOP. The new TOP will enable resident organizations to establish priorities based on the needs in their public and Indian housing communities aimed at furthering economic lift and independence.

The authority for the TOP program comes from Section 20 of the 1937 Act; section 20(f) authorizes technical assistance and training. Financial assistance in the form of technical assistance grants is provided by the Secretary to resident grantees to prepare for management activities in their housing development (hereinafter referred to as TOP technical assistance grants). Technical assistance grants are available for "the development of resident management entities, including the formation of such entities, the development of the management capability of newly formed or existing entities, the identification of the social support needs of residents of public housing projects and the securing of such support."

TOP technical assistance grants prepare residents to manage their projects or portions of their projects. The results are significant and multifaceted. For example, resident-managed activities have resulted in economic development, resident self-sufficiency, improved living conditions, and enhanced social services for residents (i.e., child care and other youth projects). TOP will provide public and Indian housing residents the opportunity to be trained and move toward a responsible role in their community. The training will aim to enhance the functioning of the resident council as well as gain skills to engage in resident managed activities in its community. TOP will strongly encourage resident organizations to develop a partnership with a public or Indian housing authority (hereafter referred to as "HA"). Secretary Cisneros is committed to building a real partnership among HAs, residents, and HUD.

(2) The "Mini Grants" are eliminated this year for the purpose of streamlining program requirements. RCs/RMCs/ROs that have been in existence for several years or that were recently formed may receive up to \$100,000 for start-up activities, as well as for community organizing, participation in public and Indian housing and community affairs, and training in other tenant opportunities activities.

(3) All resident grantees that are selected for funding (including additional funding grantees) will access the grant funds through a line of credit control system (LOCCS), as explained in Section I.D, "Funding," of this NOFA.

(4) An application kit is required as the formal submission to apply for funding. The kit includes information on the preparation of a Work Plan and Budget for activities proposed by the applicant. This process facilitates the

expeditious execution of a TOP Technical Assistance Grant (TOP TAG) for those applicants that are selected to receive funding.

(5) The information listed below is regarding all HOPE I grantees:

All HOPE I applicants' applications will be screened. A cross-check will be made against the HOPE I Planning grants and HOPE I Implementation grants, to assure compliance with section 20(f)(4) of the 1937 Act, which states: "The Secretary may not provide financial assistance under this subsection to any resident management corporation or resident council with respect to which assistance for the development or formation of such entity is provided under title III." HOPE I Planning and Implementation grantees were required to propose plans to establish a RC, RMC, or cooperative association where one did not exist for the proposed homeownership site, including the development or formation of that entity. In addition, HOPE I Full Planning and Implementation grant applicants were expected to include in their applications all eligible activities necessary to make their proposed homeownership program feasible (even if some of the proposed activities were to be carried out with non-HOPE I funds, such as resident management funds). Consequently, in reviewing Tenant Opportunities Program grant applications, the following rules apply:

Rule 1. An applicant for TOP funds that has received a HOPE I Full Planning or Implementation grant (as a lead or joint applicant) may not also receive a TOP grant, unless the applicant proposed in its HOPE I application to use resident management funding to carry out those activities.

Rule 2. An applicant for TOP funds that has received a HOPE I Mini Planning grant (as a lead or joint applicant) may not receive a TOP grant for any activity proposed for funding in the HOPE I grant.

(6) All applicants will have an opportunity to correct technical deficiencies in this application submission as provided for in this NOFA.

D. Funding

As noted, \$25 million is being made available on a competitive basis under this NOFA to resident grantees that submit timely applications and are selected for funding. Section 20 provides that not more than an aggregate of \$100,000 may be approved with respect to any TOP project.

Of the \$25 million total current funds, \$1 million will be awarded to National Resident Organizations (NROs),

Statewide Resident Organizations (SROs), and Regional Resident Organizations (RROs) to provide technical assistance to public and Indian housing residents desiring either to establish an RC/RMC/RO where one does not exist or organize an inactive RC/RMC/RO. The awards will be competitive, using the Rating Factors in Section I.M of this NOFA, and applicants must meet eligibility requirements.

With the remainder of the available funding, the Department will be providing two kinds of grants: (1) Basic Grants; and (2) Additional Grants.

Basic Grants

All resident grantees that are selected for funding (including additional funding grantees) will access the grant funds through a line of credit control system (LOCCS), based on the line items approved in the work plan/budget. To monitor and ensure the progress of the funded resident grantees this year, each resident grantee will be allowed to draw down up to 10% of the grant funds to begin implementing Tasks 1 and 2 of the workplan. If the resident grantee has reached the 10% limit and all activities set forth in Tasks 1 and 2 are not completed, the resident grantee will not be allowed to draw down any additional funds until all activities are completed. The local field office will monitor this progress through the semiannual progress reports that are required to be submitted by the resident grantees.

Additional Grants

RCs/RMCs/ROs selected for funding in FYs 1988-1993 (including a mini-grant for start-up activities) that received less than a total of \$100,000 may apply for an Additional Grant not to exceed (including previous grants) the total statutory maximum of \$100,000. A RC/RMC/RO considered for additional funding will be asked to demonstrate progress based on its Work Plan previously approved by HUD. All additional grantees will be evaluated to determine if Tasks 1 and 2 of the workplan have been completed. If the tasks are not completed, the grantee will follow the same procedures as the Basic Grantees and, upon completion of the tasks, proceed to complete all other tasks listed in the workplan.

This year applicants will not be disqualified for funding if all of the activities identified in the work plan are not completed. However, applicants applying for additional grants will receive a higher score if the RC/RMC/RO can demonstrate the accomplishment of all of the following activities:

- (1) Developed an active community organization that includes democratically elected officers;
- (2) Issued by-laws governing the operation of the organization;
- (3) Developed an organizational structure that consists of one or more of the following: floor/block captains or residential community groups and program committees to carry out specific tasks;
- (4) Developed a basic financial management and accounting system that will provide effective control over and accountability for all grant funds, or acquired an accounting service to perform this function;
- (5) Identified community needs and interests for achieving resident management, and determined the level and degree of skills and community participation available to support program development;
- (6) Obtained a Memorandum of Understanding (MOU) between the RC/RMC/RO and the HA that states the elements of their relationship and delineates what support the HA will provide to the resident organization (e.g., on-the-job training, technical assistance, equipment, space, etc.) and the activities to be conducted by the RC/RMC/RO;
- (7) Completed the first phase of the Board and Leadership Training provided by the consultant/trainer that is selected by the RC/RMC/RO; and
- (8) Has formal recognition from the HA as the duly elected RC/RMC/RO to represent residents in meetings with the HA or other entities.

E. TOP Technical Assistance Grant (TOP TAG)

Grant awards will be made through a TOP Technical Assistance Grant (TOP TAG), which defines the legal framework for the relationship between HUD and a resident grantee for the proposed activities approved for funding. The TAG will contain all applicable requirements, including administrative requirements such as progress reports, a final report, a final audit, and accessing the Line of Credit Control System (LOCCS) to draw down funds. All necessary materials regarding the TAG will be furnished at a later date to applicants that are selected to receive funding.

F. Definitions

The following definitions apply to applicants:

National Resident Organization (NRO). An incorporated nonprofit organization or association for public or Indian housing that meets each of the following requirements:

- (1) It is national (i.e., conducts activities or provides services in at least two HUD Areas or two States); and
- (2) It has experience in providing start-up and capacity-building training to residents and resident organizations.

Regional Resident Organization (RRO). An incorporated nonprofit organization or association for public or Indian housing that meets the following requirements:

- (1) It is regional (i.e., not limited by HUD Areas, including Tribal Areas); and
- (2) It has experience in providing start-up and capacity-building training to residents and resident organizations.

Statewide Resident Organization (SRO). An incorporated nonprofit organization or association for public or Indian housing that meets the following requirements:

- (1) It is statewide; and
- (2) It has experience in providing start-up and capacity-building training to residents and resident organizations.

The following definitions apply to Public Housing:

Project. Includes any of the following that meets the requirements of 24 CFR part 964:

- (1) One or more contiguous buildings;
- (2) An area of contiguous row houses;
- (3) Scattered site buildings.

Resident Council (RC)/Resident Organization (RO). An incorporated or unincorporated nonprofit organization or association that meets each of the following requirements:

- (1) It must be representative of the tenants it purports to represent;
- (2) It may represent tenants in more than one project or in all of the projects of a PHA, but it must fairly represent tenants from each project that it represents;
- (3) It must adopt written procedures providing for the election of specific officers on a regular basis (but at least once every three years);
- (4) It must have a democratically elected governing board; and
- (5) The voting membership of the governing board must consist of tenants of the project or projects that the tenant organization or resident council represents.

Resident Management. The performance of one or more management activities for one or more projects by a resident management corporation under a management contract with the PHA.

Resident Management Corporation (RMC). The entity that proposes to enter into, or enters into, a management contract with a PHA that meets the requirements of subpart C of 24 CFR part 964. The entity must have each of the following characteristics:

- (1) It must be a nonprofit organization that is incorporated under the laws of the State in which it is located;
- (2) It may be established by more than one tenant organization or resident council, so long as each organization or council:
 - (a) Approves the establishment of the corporation; and
 - (b) Has representation on the Board of Directors of the corporation;
- (3) It must have an elected Board of Directors;
- (4) Its by-laws must require the Board of Directors to include representatives of each resident organization involved in

(1) It must be a nonprofit organization that is incorporated under the laws of the State in which it is located;

(2) It may be established by more than one tenant organization or resident council, so long as each organization or council:

(a) Approves the establishment of the corporation; and

(b) Has representation on the Board of Directors of the corporation;

(3) It must have an elected Board of Directors;

(4) Its by-laws must require the Board of Directors to include representatives of each resident council involved in establishing the corporation;

(5) Its voting members must be tenants of the project or projects it manages;

(6) It must be approved by the resident council. If there is no council, a majority of the households of the project must approve the establishment of such an organization to determine the feasibility of establishing a corporation to manage the project; and

(7) It may serve as both the resident management corporation and the resident council, so long as the corporation meets the requirements of this part for a resident council.

The following definitions apply to Indian Housing:

Project. Includes any of the following that meet the requirements of 24 CFR part 905.962:

- (1) One or more contiguous buildings;
- (2) An area of contiguous row houses;
- (3) Scattered site buildings;
- (4) Scattered site single-family units.

Resident Management. The performance of one or more management activities for one or more projects by a resident management corporation under a management contract with the HA.

Resident Management Corporation (RMC). A Resident Management Corporation is an entity that proposes to enter into, or enters into, a management contract with an IHA under this NOFA. The corporation must have each of the following characteristics:

(1) It is a nonprofit organization that is incorporated under the laws of the State or Indian tribe within which it is located;

(2) If it is established by more than one resident organization, each such organization both approves the establishment of the corporation and has representation on the Board of Directors of the corporation;

(3) It has an elected Board of Directors;

(4) Its by-laws require the Board of Directors to include representatives of each resident organization involved in

establishing the corporation. (It may serve as both the resident management corporation and the resident organization, so long as the corporation meets the requirements of this section for a resident organization.);

(5) Its voting members are required to be residents of the project or projects it manages;

(6) Its establishment is approved by the resident organization or, if there is no organization, creation of an organization is approved by a majority of the households of the project for the purpose of determining the feasibility of establishing a RMC to manage the project.

Resident Organization (RO). A Resident Organization (or "Resident Council" as defined in section 20 of the Act) is an incorporated or unincorporated nonprofit organization or association that meets each of the following criteria:

(1) It is representative of the residents it purports to represent.

(2) If it represents residents in more than one project or in all of the projects of an IHA, it fairly represents residents from each project that it represents.

(3) It has adopted written procedures providing for the election of specific officers on a regular basis (but at least once every three years).

(4) It has a democratically elected governing board. The voting membership of the board shall consist of the residents of the project or projects that the RO represents.

G. Eligibility

Only organizations that meet the definitions of a RC/RMC/RO or a NRO/RRO/SRO set forth under the subheading "Definitions" (Section I.F) of this NOFA will be eligible for funding under this NOFA, as follows:

(1) A RC/RMC/RO that has been in existence for several years as well as new emerging organizations may apply for a basic grant of up to \$100,000.

(2) A RC/RMC/RO selected for funding in FYs 1988-1993 that received less than the statutory maximum of \$100,000 may apply for an Additional Grant not to exceed (including previous grants) the total statutory maximum of \$100,000. The RC/RMC/RO will receive consideration for the additional amount based on the Ranking Factors contained in Section I.L of this NOFA. No special considerations will be given to previously funded applicants.

(3) Projects that were awarded the maximum total amount of \$100,000 in FYs 1988-1993 are not eligible to apply.

(4) A RC/RMC/RO that represents more than one project may apply on behalf of some or all of the projects it

represents. In that case, an individual project represented by the organization may not apply for technical assistance funding for the same activities that are included in the application submitted by the larger organization.

(5) A city-wide/tribal-wide organization (consisting of members from RCs/RMCs/ROs who reside in housing projects that are owned and operated by the same HA) may represent more than one RC/RMC/RO within a HA. In that case, an individual project represented by the city-wide/tribal-wide organization that has received technical assistance funding of \$100,000 in a previous year may not receive additional funding based on the application submitted by the organization.

(6) A NRO/SRO/RRO that is organized to provide technical assistance to RCs/RMCs/ROs may receive grants up to \$100,000.

H. Eligible Activities

Activities that may be funded and carried out by an eligible RC/RMC/RO or NRO/RRO/SRO include any combination of, but are not limited to, the following:

(1) **Resident Capacity Building:**

(a) Training Board members in community organizing, Board development and leadership training, and

(b) Determining the feasibility of the Tenant Opportunity Program initiatives for a specific project or projects.

(2) **Resident Management:**

(a) Start-up activities for a RC/RMC/RO, as well as building and strengthening its capacity as an organization (e.g., conduct democratic elections for officers of the organization, establish operating/planning committees and block building captains to carry out specific organizational tasks, develop by-laws, etc.); developing a cohesive relationship between the residents and the local community; and building a partnership with the HA.

(b) Training residents, as potential employees of an RMC, in skills directly related to the operation, management, maintenance and financial systems of a project;

(c) Training of residents with respect to fair housing and equal opportunity requirements; and

(d) Gaining assistance in negotiating management contracts and designing a long-range planning system.

(3) **Resident Management Business Development**

(a) Economic development training related to resident management and technical assistance for job training and placement in RMC developments;

(b) Technical assistance and training in business development related to resident management through:

- Feasibility and market studies;
- Development of business plans;
- Affirmative outreach activities;
- Innovative financing methods

including revolving loan funds; and
(c) Legal advice in establishing resident management required business entities.

(4) **Partnerships:**

(a) Establish and provide training related to the Partnership Paradigm Technical Assistance (PPTA) model to residents in each community. This partnership would bring together residents, the HA, and HUD in an effort to create a community-based process that offers technical assistance and training related to building the partnership between the residents, the HA, and HUD, and to oversee and carry out activities in the TOP program.

(b) Other partnerships developed by the local residents/HA in the community are also allowed under this program.

(5) **Social Support Services** (such as self-sufficiency and youth initiatives):

(a) Feasibility studies to determine training and social services needs;

(b) Coordination of social services;

(c) Resident management training for programs such as child care, early childhood development, parent involvement, volunteer services, parenting skills, and before- and after-school programs;

(d) Resident management training programs on health, nutrition, and safety;

(e) Resident management workshops for youth services, child abuse and neglect prevention, and tutorial services, in partnership with community-based organizations, such as local Boys and Girls Clubs, YMCA/YWCA, Boys/Girls Scouts, Campfire and Big Brother/Big Sisters, etc.

(f) Resident management training in the development of strategies to successfully implement youth programs. For example, assessing the needs and problems of the youth, improving existing youth programs, and training youth and RMCs/RCs/ROs on youth initiatives.

(6) **General:** (a) Training in resident management-related skills, such as computer skills, clerical (payroll clerk/records management);

(b) Resident management-related employment training and counseling;

(c) Training in accessing other funding sources;

(d) Hiring trainers or other experts (resident grantees must ensure that any training is provided by a qualified

housing management specialist, a community development specialist, the HA, or other sources knowledgeable about the program);

(e) Rental of car, van, or bus by resident grantees to attend training related to the TOP initiatives;

(f) Stipends, as provided in this paragraph. Officers and members of a RC/RMC/RO should not receive stipends for participating or receiving training under the TOP. If RCs/RMCs/ROs are interested in achieving resident-managed activities, stipends will be approved, subject to the availability of funds, when the officers and members of the resident organization are within 3-6 months of apprenticeship or dual management contract with the HA. Generally, no more than 10% of the grant funds should be used for this purpose. If approved, Officers and members should use the stipends only for costs incurred for resident management activities (i.e., child care, transportation to training, etc.).

(7) *Capacity building and training to facilitate resident participation in the Comprehensive Grant Program.*

(8) *Funds may be used to assist in the creation of a RC/RMC/RO, such as:*

(a) Consulting and legal assistance to incorporate the RC/RMC/RO;

(b) Preparing by-laws and drafting a corporate charter;

(c) Developing performance standards and assessment procedures to measure the success of the RC/RMC/RO;

(d) Assistance in acquiring fidelity bonding and insurance, but not the cost of the bonding and insurance; and

(e) Assessing potential management functions or tasks that the RC/RMC/RO might undertake.

(9) *Implementation of activities by a RC/RMC/RO associated with the operation and maintenance of the public and Indian housing project(s). Examples of eligible activities, in addition to those cited in paragraphs (1) through (7) of Section I.H., "Eligible Activities," of this NOFA, are:*

(a) Designing and implementing financial management systems that include provisions for budgeting, accounting, and auditing;

(b) Assisting in developing and negotiating management contracts, and related contract monitoring and management procedures;

(c) Designing and implementing a long-range planning system;

(d) Designing and implementing personnel policies; performance standards for measuring staff productivity; policies and procedures covering organizational structure, recordkeeping, maintenance, insurance, occupancy, and management

information systems; any other recognized functional responsibilities relating to property management, in general, and public/Indian housing management, in particular; and responsibilities relating to any TOP initiative;

(e) Identifying the social support needs of residents, and the securing of that support by hiring a services coordinator to coordinate and assist in implementing the services needed by the residents, such as health clinics, day care, and security; and

(f) Assessing potential homeownership opportunities for residents within public and Indian housing or anywhere in the community.

(10) *Administrative costs necessary for the implementation of activities outlined in paragraphs (1) through (7) of Section I.H., "Eligible Activities," of this NOFA. Appropriate administrative costs include, but are not limited to, the following items or activities:*

(a) Telephone, telegraph, printing, and sundry, nondwelling equipment (such as office supplies, computer software, and furniture). In addition, a reasonable portion of funds may be applied to the acquisition of hardware equipment, such as computer hardware and copying machines, unless purchase of this equipment can be made from a resident grantee's operating budget. A resident grantee must justify the need for this equipment in relationship to its management capability and the level of management responsibilities;

(b) HUD-approved travel directly related to activities for the development/training and implementation of resident management or any tenant opportunity initiatives, including conference fees, related per diem for meals, and miscellaneous travel expenses for individual staff or Board members of the resident grantee; and

(c) Child care expenses for individual resident grantees staff and Board members in cases where residents or Board members who need child care are involved in training-related activities associated with the development of resident management entities. Not more than two percent of the total grant amount (.02 times the grant award amount) may be used for expenses to support child care needs.

(11) *For NROs/RROs/SROs only:* Organize and establish democratically elected and effective RCs/RMCs/ROs, in addition to providing to RCs/RMCs/ROs any of the services described in paragraphs (1)-(10) of this Section.

I. Ineligible Activities

Ineligible items or activities include, but are not limited to, the following:

(1) Entertainment, including associated costs such as food and beverages, except normal per diem for meals;

(2) Purchase or rental of land or buildings or any improvements to land or buildings;

(3) Activities not directly related to the TOP, e.g., lead-based paint testing and abatement and operating capital for economic development activities;

(4) Purchase or rental of any vehicle (car, van, bus etc.) or any other property, other than as described under Section I.H., "Eligible Activities," of this NOFA (see, e.g., paragraphs (6)(e) and (10)(a)), unless approved by HUD;

(5) Architectural and engineering fees;

(6) Payment of salaries for routine project operations, such as security and maintenance, or for RC/RMC/RO staff, except that a reasonable amount of grant funds may be used to hire a person to coordinate the resident management grant activities;

(7) Payment of fees for lobbying services;

(8) Any fraudulent or wasteful expenditures or expenditures otherwise incurred contrary to HUD program regulations or directives will be considered ineligible expenditures upon appropriate determination by an audit or HUD Field Office staff, and HUD will reduce the resident grantee's grant for the amount expended; and

(9) Any activity otherwise eligible under this NOFA for which funds from any other source are being provided or are requested by the applicant.

J. Selection Process

Each application for a grant award that is submitted in a timely manner, as specified in the application kit, 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 60 points (out of the maximum of 85) for a Basic Grant, or a minimum score of 50 points (out of a maximum of 75) for Additional Grants, to be eligible for funding. NROs/RROs/SROs must receive a minimum score of 60 points (out of a maximum of 85) to be eligible for funding. RCs/RMCs/ROs should submit applications to the local HUD Field Office (Office of Native American Programs, for IHAs; see Appendix to this NOFA). The local Field Office will submit all RC/RMC/RO applications to a grant review site for processing by a

Grants Management Team. NROs/SROs/RROs should submit applications to HUD Headquarters: Department of Housing and Urban Development, PIH/ORI, 451 Seventh Street SW., Room 4112, Washington, DC 20410.

K. Rating Factors—Basic Grant Applicants

An application for funding for a Basic Grant will be reviewed based on the following Rating Factors (maximum of 85 points):

(1) Describe the Goals and Objectives of the RC/RMC/RO (30 points):

- A high score (16–30 points) is received where the RC/RMC/RO provides a detailed plan clearly showing proposed methods for accomplishing the overall goals and objectives of the TOP initiatives.

- A medium score (6–15 points) is received where the RC/RMC/RO provides a general explanation of proposed methods for accomplishing TOP initiatives.

- A low score (0–5 points) is received where the RC/RMC/RO provides a plan that is unclear or the RC/RMC/RO does not clearly state the goals and objectives.

(2) Evidence of Support by Project Residents and RC/RMC/RO Board (15 points):

- A high score (11–15 points) is received where the RC/RMC/RO provides documentation that shows support by the residents and the support is evidenced by a board resolution, petitions, minutes of meetings, or letters of support.

- A medium score (1–10 points) is received where the RC/RMC/RO provides documentation that is limited to petitions and minutes of meetings.

- No score (0 points) is received where the RC/RMC/RO fails to provide documentation of support by project residents and no support is mentioned.

(3) Evidence that the RC/RMC/RO has a Partnership with the HA (20 points):

- A high score (13–20 points) is received where the RC/RMC/RO provides a letter of support from the local HA that states the support of the RC/RMC/RO, as well as a description of what the HA will undertake to assist the RC/RMC/RO.

- A medium score (6–12 points) is received where the RC/RMC/RO provides a letter of support from the HA but does not state the activities for which the HA will provide assistance.

- A low score (0–5 points) is received where the RC/RMC/RO fails to submit a letter of support from the local HA, but support is mentioned in the narrative summary.

(4) Evidence that the RC/RMC/RO has Support of Other Local/Tribal Agencies (10 points):

- A high score (8–10 points) is received where the RC/RMC/RO provides letters of support discussing assistance from, at least, one or two local/tribal agencies in target areas, such as Weed and Seed or Distressed housing.

- A medium score (1–7 points) is received where the RC/RMC/RO provides letters of support discussing assistance from one or two local/tribal agencies.

- No score is received where the RC/RMC/RO fails to submit letters of support from local/tribal agencies.

(5) Capability of Handling Financial Resources—demonstrated through previous experience, adequate financial control procedures, or similar evidence, or an explanation of how such capability will be obtained (10 points):

- A high score (7–10 points) is received where the RC/RMC/RO provides evidence of having over two years of experience in handling financial resources and has adequate accounting procedures in place.

- A medium score (1–6 points) is received where the RC/RMC/RO provides evidence of having less than two years of experience in handling financial resources or has provided a plan for developing financial controls that is adequate.

- No score (0 points) is received where the RC/RMC/RO has no experience in handling financial matters and no evidence is submitted that shows that an adequate accounting system is in place or under development.

L. Rating Factors—Additional Grant Applicants

An application for funding for an Additional Grant will be reviewed based on the following Rating Factors (maximum of 75 points):

(1) Describe the Goals and Objectives of the RC/RMC/RO (25 points):

- A high score (14–25 points) is received where the RC/RMC/RO provides a detailed plan clearly showing proposed methods for accomplishing the overall goals and objectives of the proposed TOP initiatives.

- A medium score (6–15 points) is received where the RC/RMC/RO provides a general explanation of proposed methods for accomplishing its TOP initiatives.

- A low score (0–5 points) is received where the RC/RMC/RO does not provide a plan of the goals and objectives or the plan submitted is unclear.

(2) Evidence of the Progress of the RC/RMC/RO (30 points) (some examples of the documents applicants should include in their applications are listed in parentheses):

- A high score (16–30 points) is received where the RC/RMC/RO show evidence of completing six to eight of the following activities:

- (a) Developed an active community organization which includes democratically elected officers (example: fact sheet, minutes of meetings, petitions);

- (b) Issued by-laws governing the operation of the organization (example: a copy of the RC/RMC/RO by-laws);

- (c) Developed an organizational structure that consists of floor/block captains or residential community groups and program committees to carry out specific tasks (example: a copy of the RC/RMC/RO's organizational structure that lists floor/block captains, community groups and program committees);

- (d) Developed a basic financial management and accounting system that will provide effective control over and accountability for all grant funds, or acquired an accounting service to perform this function (example: a certification that the accounting system is developed);

- (e) Identified community needs and interests for achieving any TOP initiatives and determined the level and degree of skills and community participation available to support program development (example: a copy of the RC/RMC/RO's needs assessment);

- (f) Obtained a Memorandum of Understanding (MOU) between the RC/RMC/RO and HA that states the elements of their relationship and delineates what support the HA will provide to the resident organization (e.g., on-the-job training, technical assistance, equipment, space, etc.) and the activities to be conducted by the RC/RMC/RO (example: a copy of a MOU between the RC/RMC/RO and HA);

- (g) Completed the first phase of the Board and Leadership Training provided by the consultant/trainer which is selected by the RC/RMC/RO (example: a copy of the certificate of completion of training); and

- (h) Has formal recognition from the HA to represent residents in meetings with the HA or other entities.

- A medium score (6–15 points) is received where the RC/RMC/RO shows evidence of completing four or five of the eight activities listed above.

- A low score (0–5 points) is received where the RC/RMC/RO shows evidence of completing zero to three of the eight activities listed above.

(3) *Evidence That the RC/RMC/RO has a Strong Partnership with the HA* (10 points):

- A high score (8–10 points) is received where the RC/RMC/RO provides a copy of a letter from the HA that indicates there is a cooperative relationship and a commitment from the HA to provide support (i.e., technical assistance, on-the-job training, or in-kind services) to the resident organization;

- A medium score (4–7 points) is received where the RC/RMC/RO provides a copy of a letter from the HA that indicates its support for the resident organization, but does not commit to providing tangible support to the resident organization; and

- A low score (0–3 points) is received where the RC/RMC/RO does not provide a letter from the HA, even if HA support is mentioned.

(4) *Evidence That the RC/RMC/RO has the Support of the State/Local/County/Tribal Government, Community Organizations, or Other Public/Private Sector Groups.* (10 points) (Maximum point value is given where the support letters contain commitments, such as financial assistance, technical assistance, on-the-job training, or other tangible support.)

- A high score (8–10 points) is received where the RC/RMC/RO provides copies of letters discussing assistance from more than three entities (e.g., State/local/county/tribal government, community organizations, or other public/private sector groups);

- A medium score (4–7 points) is received where the RC/RMC/RO provides letters discussing assistance from two or three entities; and

- A low score (0–3 points) is received where the RC/RMC/RO provides a letter from only one entity or was unable to obtain any letters of support.

M. Rating Factors—NROs/RROs/SROs

(1) *Describe the Goals and Objectives of the NRO/RRO/SRO* (30 points):

- A high score (16–30 points) is received where the NRO/RRO/SRO provides a detailed plan clearly showing proposed methods for accomplishing the overall goals and objectives of the TOP initiatives.

- A medium score (6–15 points) is received where the NRO/RRO/SRO provides a general explanation of proposed methods for accomplishing TOP initiatives.

- A low score (0–5 points) is received where the NRO/RRO/SRO provides a plan that is unclear or the NRO/RRO/SRO does not clearly state the goals and objectives.

(2) *Evidence of Support by NRO/RRO/SRO Board* (15 points):

- A high score (11–15 points) is received where the NRO/RRO/SRO provides documentation that shows support, as evidenced by a board resolution, minutes of meetings, and letters of support.

- A medium score (1–10 points) is received where the NRO/RRO/SRO provides documentation of support that is limited to minutes of meetings.

- No score (0 points) is received where the RC/RMC/RO fails to provide documentation of support.

(3) *Evidence of the Capability to Provide Local on-Site Training.* The applicant should demonstrate its capability to identify and provide local on-site training and coordinate activities of the local on-site training, so that RCs/RMCs/ROs may have access to continued training and technical assistance at the end of the grant agreement. (20 points)

- A high score (13–20 points) is received where the applicant provides a detailed plan clearly showing its capability to identify and provide local on-site training.

- A medium score (6–12 points) is received where the applicant provides a general explanation of its capability to identify and provide local on-site training.

- A low score (0–5 points) is received where the applicant provides a plan that is unclear or does not clearly state its capability to identify and provide local on-site training.

(4) *Evidence of Prior Resident Training Experience.* The applicant should provide documented evidence, i.e., letters of support, Board resolution, etc., of prior experience, indicating success and quality of work from RCs/RMCs/ROs. (10 Points)

- A high score (8–10 points) is received where the applicant provides documentation that shows support by the residents, i.e., letters of support, board resolutions, petitions, and minutes of meetings.

- A medium score (1–7 points) is received where the applicant provides documentation that is limited to petitions and minutes of meetings.

- No score is received where the applicant fails to provide documentation of support by project residents, and no support is mentioned.

(5) *Capability of Handling Financial Resources*—demonstrated through previous experience, adequate financial control procedures, or similar evidence, or an explanation of how such capability will be obtained (10 points):

- A high score (7–10 points) is received where the NRO/RRO/SRO

provides evidence of having over two years of experience in handling financial resources and has adequate accounting procedures in place.

- A medium score (1–6 points) is received where the NRO/RRO/SRO provides evidence of having less than two years of experience in handling financial resources or has provided a plan for developing financial controls that is adequate.

- No score (0 points) is received where the NRO/RRO/SRO has no experience in handling financial matters and no evidence is submitted that shows that an adequate accounting system is in place or under development.

N. HA Notification

HUD will send a notification to the HAs associated with the applications selected for funding.

II. Application Process

A. Actions Preceding Application Submission

Consistent with this NOFA, HUD may direct a HA to notify its existing RCs/RMCs/ROs, as well as NROs, SROs, and RROs, of this funding opportunity. It is important for residents to be advised that even in the absence of a RC/RMC/RO, the opportunity exists to establish a RC/RMC/RO. If no RC/RMC/RO exists for any of the developments, HUD encourages a HA to post this NOFA in a prominent location within the HA's main office, as well as in each development's office.

B. Application Development and Submission

(1) *Submission.* An application kit is required as the formal submission to apply for funding. The kit includes information on the preparation of a Work Plan and Budget for activities proposed by the applicant. An application may be obtained by writing the Resident Initiatives Clearinghouse, Post Office Box 6091, Rockville, MD 20850, or by calling the toll-free number 1-800-955-2232. Requests for application kits must include your name, mailing address (including zip code), and telephone number (including area code), and should refer to document FR3669. Applications may be requested beginning May 13, 1994.

An applicant RC/RMC/RO must submit its application to the local HUD field office or, in the case of IHAs, to the appropriate HUD Office of Native American Programs, listed in the Appendix to this NOFA. An applicant NRO/SRO/RRO must submit its application to: Department of Housing

and Urban Development, PIH/ORI, 451 Seventh Street, SW, Room 4112, Washington, DC 20410.

(2) **Preparation.** The application must contain the following information:

(a)(i) **RCs/RMCs/ROs:** Name and address of the RC/RMC/RO. Name and title of the board members of the RC/RMC/RO and date of the last election. A copy of the RC's/RMC's/RO's organizational documents, i.e., charter, articles of incorporation (if incorporated), and by-laws. Name and phone number of contact person (in the event further information or clarification is needed during the application review process).

(ii) **NROs/RROs/SROs:** Name and address of the applicant. Name, title, and telephone number of a contact person (in the event further information or clarification is needed during the application review process).

(b)(i) **RCs/RMCs/ROs:** Name, address, and phone number of the Public Housing Agency (PHA)/Indian Housing Authority (IHA) responsible for the development(s) to which inquiries may be addressed concerning the application.

(ii) **NROs/RROs/SROs:** A narrative statement discussing the geographical areas in which the applicant wishes to organize RCs/RMCs/ROs. In addition, the name of the PHA/IHA where the applicant proposes to organize new or inactive RCs/RMCs/ROs, and a proposed schedule of activities.

(c) A narrative statement addressing the following issues:

(i) **For all applicants:**

- The name of the project(s) for which the funds are proposed to be used;
- A summary description which include the proposed amount of funding requested. The schedule for completion of all activities is three to five years;
- The application must be signed by an authorized member of the board of the RC/RMC/RO or NRO/RRO/SRO, and must include a resolution from the RC/RMC/RO or NRO/RRO/SRO stating that it agrees to comply with the terms and conditions established under this program and under 24 CFR part 964 (for Public Housing) and 24 CFR part 905, subpart O (for Indian Housing);
- Assurances (e.g., Board Resolution or Certificate) that the RC/RMC/RO or NRO/RRO/SRO will comply with all applicable Federal laws, Executive Orders, regulations, and policies governing this program, including all applicable civil rights laws, regulations, and program requirements.

(ii) **For Basic Grants:**

- A discussion of the needs of the RC/RMC/RO and the overall group

objectives for specified TOP initiatives and how the proposed activities will meet the needs of the RC/RMC/RO;

- A description of the extent to which the residents and the board of the RC/RMC/RO support the proposed activities;

- A discussion of the extent to which the local HA supports the activities outlined in the proposal;

- A discussion of the extent to which local agencies, community organizations, and the private sector support the activities outlined in the proposal, including the provision of financial resources, technical assistance, or other support;

- A description of the project financial and accounting procedures that are available, or plans to develop these procedures, to ensure that funds are properly spent; and

- A description of other funding the RC/RMC/RO has received and how the requested funding will complement ongoing activities.

(iii) **For Additional Grants:**

- A discussion of the needs of the RC/RMC/RO and the overall group objectives for specified TOP initiatives and an explanation of how the proposed activities will meet the needs of the RC/RMC/RO;

- An explanation of the RC's/RMC's/RO's progress in carrying out activities in the work plan previously approved by HUD;

- A detailed discussion of the extent to which the local HA supports the activities outlined in the proposal; and

- A description of other funding the RC/RMC/RO has received and how the requested funding will complement ongoing activities.

(iv) **For grants to NROs/RROs/SROs:**

- A description of the extent to which the board of the NRO/RRO/SRO support the proposed activities;

- A description of the training to be provided, including identification of trainers and support letters;

- A description of project financial and accounting procedures, or plans to develop these procedures to ensure that funds are spent properly.

(3) **HA Support.** (a) HUD is in full support of a cooperative relationship between each RC/RMC/RO and its HA. A resident organization is urged to involve its HA in the application planning and submission process. This can be achieved through meetings to discuss resident concerns and objectives and how best to transfer these objectives into activities in the application. The RC/RMC/RO is also encouraged to obtain a letter of support from the HA indicating to what extent the HA supports the proposed activities listed

by the RC/RMC/RO and how the HA will assist the RC/RMC/RO.

(b) A RC/RMC/RO is encouraged to include an indication of support and assistance by development residents and Board (e.g., RC/RMC/RO Board resolution, copies of minutes, letters, petition, etc.); the neighboring community; and local public or private organizations.

(4) **Submission.** The original and 2 copies of the Application must be submitted. The Appendix lists addresses of HUD Field/Native American Program Offices that will accept a completed application. The application must be received by the local HUD Field Office no later than 4 p.m. (local time) on the deadline date listed in the application kit.

In the interest of fairness to all competing applicants, any application that is received after the deadline date will be considered ineligible. 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 unanticipated delays or other delivery-related problems. HUD will date-stamp incoming applications to evidence (timely or late) receipt, and, upon request, will provide an acknowledgement of receipt. Facsimile and telegraphic applications are not authorized and will not be considered.

HUD also encourages an applicant to submit a copy of the application to the HA for the jurisdiction in which the RC/RMC/RO is located.

III. Checklist of Application Submission Requirements

The Application Kit will contain a checklist of all application submission requirements to complete the application process.

A. Training Requirements

(1) RC/RMC/RO grantees are required to have training, and NRO/SRO/RRO grantees are requested to provide training, in the areas listed below, but the amount and scope of training will depend on the resident groups' goals. For example, training required to assume property management is more extensive than training needed to establish a landscaping enterprise. The required training areas are:

(a) HUD regulations and policies governing the operation of low-income housing, which includes the part 900 series of 24 CFR and Section 3 (of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u) and other Fair Housing Act requirements, and applicable civil rights laws for Public

Housing or for Indian Housing (24 CFR part 905);

(b) Financial management, including budgetary and accounting principles and techniques, in accordance with Federal guidelines, including OMB Circulars A-110 and A-122, which contain Federal administrative requirements for grants, and OMB Circular A-133, relating to audit requirements for nonprofit organizations;

(c) Capacity building to develop the necessary skills to assume management responsibilities at the project; and

(d) Based on the goals of the RC/RMC/RO, property management and/or any TOP activity training that is required.

(2) Each grantee must ensure that this training is provided by a qualified housing management specialist (Consultant-Trainer), community development specialist, the HA, or other local/tribal agencies knowledgeable about the program.

B. OMB Procurement Requirements

(1) The resident grantees must follow Circular A-110, Uniform Administrative Requirements for Grants, and other agreements with recipients of Federal funds. OMB Circular A-110 prescribes standards and policies essential to the proper execution of procurement transactions, including standards of conduct for resident grantees' employees, officers, or agents engaged in procurement actions to avoid any conflict of interest.

(2) A resident grantee may use two methods in obtaining consultant services:

(a) A "full service" approach may be used where the applicant solicits competitive proposals for assisting in the preparation of the application, with inclusion of the consultant work if the applicant is selected to receive a grant. The evaluation criteria in the solicitation must address the qualifications and experience of prospective consultants for all tasks (the contract may stipulate that in the event that the application is not approved, the consultant is not entitled to any payment); and

(b) Separation of Application Preparation from Consultant Work After Grant Award. This approach allows an applicant to solicit competitive proposals and contract with a Consultant-Trainer/Housing Management Specialist for the development of an application for technical assistance funding. If the applicant is selected for funding, the Consultant-Trainer/Housing Management Specialist must compete along with other prospective

Consultant-Trainer/Housing Management Specialists through an open and free procurement process for a training and technical assistance contract. This will eliminate any competitive advantage attained by the Consultant-Trainer/Housing Management Specialist who was awarded a contract for the development of the application/Work Plan and Budget.

IV. Corrections to Deficient Applications

HUD will notify an applicant in writing of any technical deficiencies in the application. Any deficiency capable of cure will involve only items not necessary for HUD to assess the merits of an application against the Rating Factors specified in this NOFA. For example, signatures needed on certain forms, certifications, workplan, budget, and other required forms may be considered curable deficiencies. The applicant must submit corrections within 14 calendar days from the date of HUD's letter notifying the applicant of any technical deficiency.

After the application due date, applicants will not have an opportunity to submit independently information omitted from the Application Kit that directly relates to the evaluation factors contained in the subheading "Rating Factors" of this NOFA so as to enhance the merits of the application. HUD encourages all applicants to submit all documents with their application before the due date, so that applicants will not be affected by the technical deficiency period.

V. Other Matters

A. Freedom of Information Act

Applications submitted in response to this NOFA are subject to disclosure under the Freedom of Information Act (FOIA). To assist the Department in determining whether to release information contained in an application in the event a FOIA request is received, an applicant may, through clear earmarking or otherwise, indicate those portions of its application that it believes should not be disclosed. The applicant's views will be used solely to aid the Department in preparing its response to a FOIA request; however, the Department is required by the FOIA to make an independent evaluation of the information.

HUD suggests that an applicant provide a basis, when possible, for its belief that confidential treatment is appropriate; general assertions or blanket requests for confidentiality, without more information, are of limited

value to the Department in making determinations concerning the release of information under FOIA. The Department is required to segregate disclosable information from non-disclosable items, so an applicant should be careful to identify each portion of the application for which confidential treatment is requested.

The Department emphasizes that the presence or absence of comments or earmarking regarding confidential information will have no bearing on the evaluation of applications submitted in response to this solicitation.

B. Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(b) of the HUD regulations, the policies and procedures contained in this rule relate only to technical assistance and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

C. Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this notice does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this notice, as those policies and programs related to family concerns.

D. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this notice will not have substantial direct effects on States or their political subdivisions, or on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the Order. The NOFA will fund technical assistance and activities for resident management and other empowerment initiatives of public and Indian housing. It will have no meaningful impact on States or their political subdivisions.

E. Documentation and Public Access Requirements; Applicant/Recipient Disclosures: HUD Reform Act

Documentation and public access requirements. Pursuant to section 102 of

the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a) (HUD Reform Act), HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these documentation and public access requirements.)

Disclosures. HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR part 12, subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

F. Prohibition Against Advance Information on Funding Decisions

Section 103 of the HUD Reform Act proscribes the communication of certain information by HUD employees to persons not authorized to receive that information during the selection process for the award of assistance. HUD's regulation implementing section 103 is codified at 24 CFR part 4 (see 56 FR 22088, May 13, 1991). In accordance with the requirements of section 103, HUD employees involved in the review of applications and in the making of funding decisions are restrained by 24 CFR 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 (voice/TDD). (This is not a toll-free number.)

G. Prohibition Against Lobbying of HUD Personnel

Section 112 of the HUD Reform Act added a new section 13 to the Department of Housing and Urban Development Act (42 U.S.C. 3531 *et seq.*). Section 13 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 is implemented in 24 CFR part 86. If readers are involved in any efforts to influence the Department in these ways, they are urged to read part 86, particularly the examples contained in Appendix A of that part.

Any questions about the rule should be directed to the Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-3000. Telephone: (202) 708-3815 (voice/TDD) (these are not toll-free numbers). Forms necessary for compliance with the rule may be obtained from the local HUD office.

H. Drug-Free Workplace Certification

The Drug-Free Workplace Act of 1988 (42 U.S.C. 701) requires grantees of federal agencies to certify that they will provide drug-free workplaces. Each potential recipient under this NOFA must certify that it will comply with drug-free workplace requirements in accordance with the Act and with HUD's rules at 24 CFR part 24, subpart F.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program number is 14.853.

Authority: 42 U.S.C. 1437r; 42 U.S.C. 3535(d).

Dated: May 9, 1994.

Joseph H. Shuldiner,
Assistant Secretary for Public and Indian Housing.

Appendix—Names, Addresses, and Telephone Numbers of HUD Field Offices and Offices of Native American Programs Accepting Applications for Tenant Opportunities Program Technical Assistance

Boston, Massachusetts Field Office

Public Housing Division
Room 375
Thomas P. O'Neill, Jr. Federal Building
10 Causeway Street
Boston, Massachusetts 02222-1092
(617) 565-5234

Hartford, Connecticut Office

Public Housing Division
330 Main St. First Floor
Hartford, Connecticut 06106-1860
(203) 240-4522

Manchester, New Hampshire Office

Public Housing Division
Norris Cotton Federal Building
275 Chestnut St.
Manchester, New Hampshire 03101-2487
(603) 666-7681

Providence, Rhode Island Office

Public Housing Division
330 John O. Pastore Federal Building & U.S.
Post Office—Kennedy Plaza
Providence, Rhode Island 02903-1785
(401) 528-5351

New York, New York Field Office

Public Housing Division
26 Federal Plaza
New York, New York 10278-0068
(212) 264-6500

Buffalo, New York Office

Public Housing Division
465 Main Street
Lafayette Court, 5th Fl.
Buffalo, New York 14203-1780
(716) 846-5755

Newark, New Jersey Office

Public Housing Division
Military Park Building
60 Park Place
Newark, New Jersey 07102-5504
(201) 877-1662

Washington, D.C. Office

Public Housing Division
820 First St. NE., suite 300
Washington, DC 20002-4502
(202) 275-9200

Philadelphia, Pennsylvania Field Office

Public Housing Division
Liberty Square Building
105 South 7th Street
Philadelphia, Pennsylvania 19106-3392

Baltimore, Maryland Office

Public Housing Division
City Crescent Building
10 South Howard St., 5th Floor
Baltimore, Maryland 21202-2505
(410) 962-2520

Pittsburgh, Pennsylvania Office

Public Housing Division
Old Post Office Courthouse Building
700 Grant St.
Pittsburgh, Pennsylvania 15219-1939
(412) 644-6428

Richmond, Virginia Office

Public Housing Division
The 3600 Centre
3600 West Broad St.
P.O. Box 90331
Richmond, Virginia 23230-0331
(804) 278-4507

Charleston, West Virginia Office

Public Housing Division
405 Capitol St., suite 708
Charleston, West Virginia 25301-1795
(304) 347-7000

Atlanta, Georgia Field Office

Public Housing Division
Richard B. Russell Federal Building
75 Spring Street, SW.
Atlanta, Georgia 30303-3388
(404) 331-5136

Birmingham, Alabama Office

Public Housing Division
Beacon Ridge Tower
600 Beacon Parkway West, suite 300
Birmingham, Alabama 35209-3144
(205) 290-7617

Louisville, Kentucky Office

Public Housing Division
P.O. Box 1044
601 W. Broadway
Louisville, Kentucky 40201-1044
(502) 582-5251

Jackson, Mississippi Office

Public Housing Division
Dr. A.H. McCoy Federal Building
100 West Capitol St., room 910
Jackson, Mississippi 39269-1096
(601) 965-5308

Greensboro, North Carolina Office

Public Housing Division
2306 W. Meadowview Rd.
Greensboro, North Carolina 27407
(919) 547-4000

Caribbean Office

Public Housing Division
New San Juan Office Building
159 Carlos E. Chardon Ave.
San Juan, Puerto Rico 00918-1804
(809) 766-6121

Columbia, South Carolina Office

Public Housing Division
Strom Thurmond Federal Building
1835 Assembly St.
Columbia, South Carolina 29201-2480
(803) 765-5592

Knoxville, Tennessee Office

Public Housing Division
John J. Duncan Federal Building
710 Locust St. 3rd Floor
Knoxville, Tennessee 37902-2526
(615) 549-4384

Nashville, Tennessee Office

Public Housing Division

251 Cumberland Bend Drive, suite 200,
Nashville, Tennessee 37228-1803
(615) 736-5213

Jacksonville, Florida Office

Public Housing Division
301 West Bay Street, suite 2200
Jacksonville, Florida 32202-5121
(904) 232-2626

Chicago, Illinois Field Office

Public Housing Division
Ralph Metcalfe Federal Building
77 West Jackson Boulevard
Chicago, Illinois 60604-3507
(312) 353-5680

Detroit, Michigan Office

Public Housing Division
Patrick V. McNamara Federal Building
477 Michigan Ave.
Detroit, Michigan 48226-2592
(313) 226-7900

Indianapolis, Indiana Office

Public Housing Division
151 North Delaware St.
Indianapolis, Indiana 46204-2526
(317) 226-6303

Grand Rapids, Michigan Office

Public Housing Division
2922 Puller Ave., N.E.
Grand Rapids, Michigan 49505-3499
(616) 456-2100

Minneapolis-St. Paul, Minnesota Office

Public Housing Division
220 2nd St. South
Bridge Place Building
Minneapolis, Minnesota 55401-2195
(612) 370-3000

Cincinnati, Ohio Office

Public Housing Division
Federal Office Building, room 9002
550 Main St.
Cincinnati, Ohio 45202-3253
(513) 684-2884

Cleveland, Ohio Office

Public Housing Division
Renaissance Building
1350 Euclid Ave., 5th Floor
Cleveland, Ohio 44115-1815
(216) 522-4058

Columbus, Ohio Office

Public Housing Division
200 North High Street
Columbus, Ohio 44115-1815
(216) 522-4058 1

Milwaukee, Wisconsin Office

Public Housing Division
Henry S. Reuss Federal Plaza
310 W. Wisconsin Ave., suite 1380
Milwaukee, Wisconsin 53203-2289
(414) 297-3214

Fort Worth, Texas Field Office

Public Housing Division
1600 Throckmorton
P.O. Box 2905
Fort Worth, Texas 76113-2905
(817) 885-5401

Houston, Texas Office

Public Housing Division
Norfolk Tower
2211 Norfolk, suite 200
Houston, Texas 77098-4096
(713) 653-3274

San Antonio, Texas Office

Public Housing Division
Washington Square Building
800 Dolorosa St.
San Antonio, Texas 78207-4563
(210) 229-6800

Little Rock, Arkansas

Public Housing Division
TCBY Tower
425 West Capitol Ave.
Little Rock, Arkansas 72201-3488
(501) 324-5931

New Orleans, Louisiana Office

Public Housing Division
Fisk Federal Building
1661 Canal St., suite 3100
New Orleans, Louisiana 70112-2887
(504) 589-7200

Albuquerque, NM Office

Public Housing Division
625 Truman Street NE.
Albuquerque, NM 87110-6472
(505) 262-6463

Omaha, Nebraska Office

Public Housing Division
10909 Mill Valley Rd.
Omaha, Nebraska 68154-3955
(402) 492-3100

St. Louis, Missouri Office

Public Housing Division
1222 Spruce St., room 3207
St. Louis, Missouri 63103-2836
(314) 539-6583

Kansas City Field Office

Public Housing Division
Room 200
Gateway Tower II
400 State Avenue
Kansas City, Kansas 66101-2406
(913) 551-5462

Des Moines, Iowa Office

Public Housing Division
Federal Building
210 Walnut St., rm. 239
Des Moines, Iowa 50309-2155
(515) 284-4512

Denver, Colorado Field Office

Public Housing Division
633 17th Street
First Interstate Tower North
Denver, Colorado 80202-3607
(303) 672-5448

San Francisco, California Field Office

Public Housing Division
Philip Burton Federal Building & U.S.
Courthouse
450 Golden Gate Avenue
P.O. Box 36003
San Francisco, California 94102-3448
(415) 556-4752

Honolulu, Hawaii Office

Public Housing Division
7 Waterfront Plaza
500 Ala Moana Blvd., suite 500
Honolulu, Hawaii 96813-4918
(808) 541-1323

Los Angeles, California Office

Public Housing Division
1615 W. Olympic Blvd.
Los Angeles, California 90015-3801
(213) 251-7122

Sacramento, California Office

Public Housing Division
777 12th St., suite 200
Sacramento, California 95814-1997
(916) 551-1351

Phoenix, Arizona Office

Public Housing Division
Two Arizona Center
400 N. 5th St., suite 1600
Phoenix, Arizona 85004-2361
(602) 379-4434

Portland, Oregon Office

Public Housing Division
Cascade Building
520 Southwest Sixth Ave.
Portland, Oregon 97204-1596
(503) 326-2561

Seattle, Washington Field Office

Public Housing Division
Suite 200

Seattle Federal Office Building
909 First Avenue
Seattle, Washington 98104-1000
(206) 220-5101

Anchorage, Alaska Office

Public Housing Division
University Plaza Building
949 E. 36th Ave., suite 401
Anchorage, Alaska 99508-4399
(907) 271-4170

Native American Program Offices

Serves: All States east of the Mississippi River and Iowa

Mr. Leon Jacobs, Administrator
Chicago Office of Native American Programs,
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Chicago, Illinois 60604-3507
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Serves: Oklahoma, Kansas, Missouri, Texas, Arkansas and Louisiana

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Murrah Federal Building
200 N.W. 5th Street
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Denver Office of Native American Programs,
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First Interstate Tower North
633 17th Street
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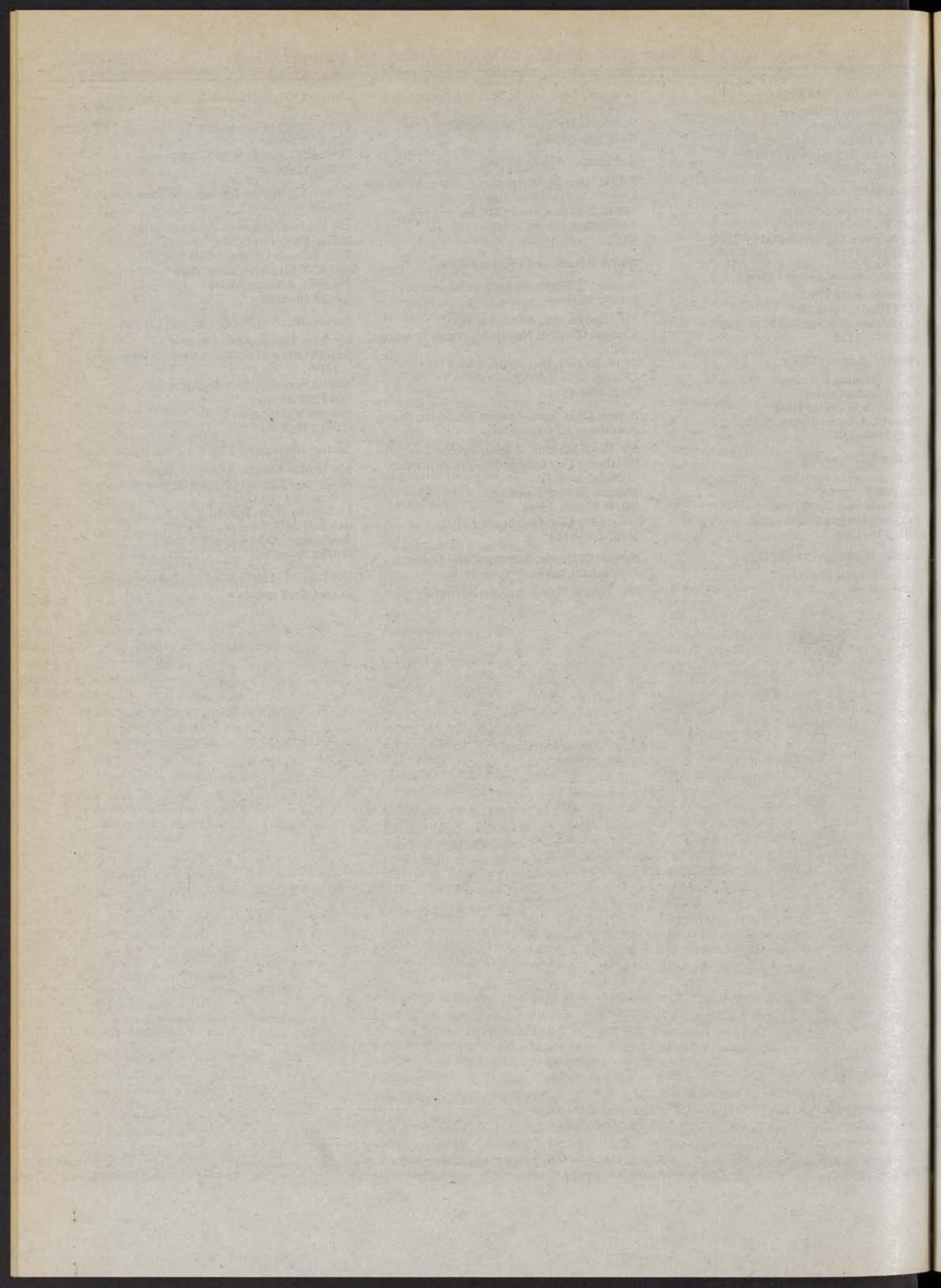
Mr. Jerry Leslie, Administrator
Seattle Office of Native American Programs,
10PI
Seattle Federal Office Building
909 First Avenue
Seattle, Washington 98104
(206) 220-5270

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Mr. Marlin Knight, Administrator
Anchorage Office of Native American Programs, 10.1PI
University Plaza Building
949 East 36th Avenue, suite 401
Anchorage, Alaska 99508-4399
(907) 271-4633

[FR Doc. 94-11609 Filed 5-12-94; 8:45 am]

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Federal Register

Friday
May 13, 1994

Part VI

Department of Housing and Urban Development

Office of Assistant Secretary for Public
and Indian Housing

NOFA for Youth Development Initiative
Under Public and Indian Housing Family
Investment Centers; Notice

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

**Office of Assistant Secretary for
Public and Indian Housing**

[Docket No. N-94-3756; FR-3707-N-01]

**NOFA for Youth Development Initiative
Under Public and Indian Housing
Family Investment Centers**

AGENCY: Office of the Assistant
Secretary for Public and Indian
Housing, HUD.

ACTION: Notice of funding availability.

SUMMARY: HUD is announcing the availability of \$5 million in funding for Fiscal Year 1994 for a Youth Development Initiative under the Family Investment Center Program (FIC). The Youth Development Initiative under FIC will provide five grants for innovative violence abatement strategies that have been developed by youth for public housing. The Youth Development Initiative furthers the mission of Operation Safe Home, a major Clinton Administration Initiative that addresses the larger problem of violence in America's low-income communities. The Youth Development Initiative will provide young individuals (ages 13-25), including noncustodial parents with child support agreements for children that are public housing residents and who would be capable of meeting their obligations by being provided such services, with better access to comprehensive education and employment opportunities and supportive services. The grants will be for up to three to five years in duration, depending upon the activities undertaken, and will involve youth as active partners, to provide leadership opportunities and improve the capacity for long-term training and services for young residents. The Department has proposed regulations for this program as part of the Tenant Participation and Tenant Opportunity (TOP) rule, published on April 19, 1994 (59 FR 18666).

In the body of this document is information concerning the purpose of the NOFA, eligibility, available amounts, ranking factors, and application processing, including how to apply and how selections will be made.

DATES: Application kits will be available beginning May 13, 1994. The application deadline will be 4:30 p.m., local time, on July 12, 1994.

ADDRESSES: An application kit may be obtained from the local HUD Field Office with delegated responsibilities

over an applicant public housing agency (see Appendix for listing), or by calling the HUD Resident Initiatives Clearinghouse toll free number 1-800-955-2232. Telephone requests must include your name, mailing address, or post office address (including zip code), telephone number (including area code), and should refer to document FR-3707-N-01. This NOFA cannot be used as the application.

FOR FURTHER INFORMATION CONTACT: Bertha M. Jones, Office of Resident Initiatives (ORI), Department of Housing and Urban Development, 451 Seventh Street, S.W., Room 4112, Washington, DC 20410; telephone number: (202) 708-3611 (this is not a toll-free number). Hearing- or speech-impaired persons may use the Telecommunications Devices for the Deaf (TDD) by contacting the Federal Information Relay Service on 1-800-877-TDDY (1-800-877-8339) or 202-708-9300 (not a toll free number) for information on the program.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520), and assigned OMB control number 2577-0189.

I. Purpose and Substantive Description

A. Authority

Section 22 of the United States Housing Act of 1937 (42 U.S.C. 1437t) provides for the establishment of Family Investment Centers (FIC). The Department has proposed regulations for this program as part of the Tenant Participation and Tenant Opportunity (TOP) rule, published on April 19, 1994 (59 FR 18666). This NOFA is being issued in conformity with the statutory requirements of FIC, in order to make funding available as soon as possible.

B. Allocation Amounts

In the NOFA for Public and Indian Housing Family Investment Centers published on February 28, 1994 (59 FR 9592), as amended on April 19, 1994 (59 FR 18570), the Department announced the availability of \$69 million for funding Family Investment Center activities by public housing agencies (PHAs) or Indian housing authorities. In today's NOFA, an additional \$5 million is being made available to public housing agencies (PHAs) under FIC for the Youth Development Initiative, to further advance the goals of FIC and the

Administration's Operation Safe Home (OSH). If the entire \$5 million is not needed to carry out the Youth Development Initiative, remaining funds will be made available for funding FIC activities.

The FIC Youth Development Initiative grants will be targeted to assist youth in gaining access to education, employment, and supportive services. HUD expects that this funding will demonstrate the importance of comprehensive supportive services in contributing to the reduction of unemployment among our youth and crime and violence in public housing communities. This Youth Development Initiative requires the design and implementation by the targeted youth in partnership with the PHA.

Each applicant may submit only one application under this NOFA. For this Youth Development Initiative, the maximum grant amount per applicant under this NOFA is \$1 million. Although both PHAs and IHAs are eligible applicants in the main FIC NOFA published earlier, only PHAs may apply for the set-aside funds announced in this NOFA.

C. Overview and Policy

The stated purpose of Section 22 for FIC is:

[T]o provide families living in public housing with better access to educational and employment opportunities to achieve self-sufficiency and independence by: (a) developing facilities in or near public housing for training and support services; (b) mobilizing public and private resources to expand and improve the delivery of such services; (c) providing funding for such essential training and support services that cannot otherwise be funded; and (d) improving the capacity of management to assess the training and service needs of families, coordinate the provision of training and services that meet such needs, and ensure the long-term provision of such training and services.

Although section 22 is phrased in terms of "families" living in public housing, because of section 527 of the National Affordable Housing Act (104 Stat. 4216; 42 U.S.C. 1437aa note) (NAHA), the definition of "families" may be used interchangeably as individuals. This special Initiative is being made available to individuals (youths, ages 13-25), including noncustodial parents with child support agreements for children living in public housing and who would be made capable of meeting their obligations by being provided these services.

The Department envisions that this Initiative under FIC will complement other youth programs, drug elimination efforts, and Youth Sports activities to

increase the rates of school completion, enrollment in advanced education, or training and employment. PHAs that are recipients of or applicants for other programs with youth training opportunities must coordinate this FIC Youth Development Initiative with these programs. As an incentive to becoming self-sufficient, the earnings of public housing "individuals/youths" participating in this Youth Development Initiative shall not be treated as income for the purpose of rent calculation, and services are not treated as income for the purposes of any other program or provision of State or Federal law, including rent assistance, subject to the limitations set out in section LF(5), "Treatment of Income," of this NOFA. This Initiative is administered by the Department's Office of Resident Initiatives in the Office of Public and Indian Housing, with assistance from a network of Community Relations and Involvement Specialists in HUD Field Offices.

D. Definitions

For purposes of this NOFA, the following definitions apply:

Eligible Residents means public housing residents aged 13-25 of a participating PHA, including noncustodial parents with child support agreements for children living in public housing when those parents would be made capable of meeting their obligations by being provided services.

Secretary means the Secretary of Housing and Urban Development.

Service Coordinator means any person, including youth, who is responsible for:

- (1) Determining the eligibility of individuals to be served by this Youth Development Initiative;
- (2) Assessing training and service needs of eligible residents;
- (3) Working with service providers to coordinate the provision of services on a PHA-wide or less-than-PHA-wide basis, and to tailor the services to the needs and characteristics of eligible residents;
- (4) Mobilizing public and private resources to ensure that the supportive services identified can be funded over the five-year period, at least, following the initial receipt of funding under this NOFA;
- (5) Monitoring and evaluating the delivery, impact, and effectiveness of any supportive service funded with capital or operating assistance under this program;
- (6) Coordinating the development and implementation of this Youth FIC Initiative with other self-sufficiency

programs and other education and employment programs; or

(7) Performing other duties and functions that are appropriate for providing eligible residents with better access to educational and employment opportunities.

Supportive Services means new or significantly expanded services essential to providing youth in public housing with better access to educational and employment opportunities to achieve self-sufficiency and independence. (PHAs applying for funds to provide supportive services must demonstrate that the services will be provided at a higher level than currently provided). Program funds may be used for the provision of not more than 15 percent of the cost of any supportive services (which may be provided directly to eligible residents by the public housing agency or by contract or lease through other appropriate agencies or providers). Supportive services may include:

- (1) Child care, of a type that provides sufficient hours of operation and serves appropriate ages as needed to facilitate parental access to education and job opportunities;
- (2) Employment training and counseling (e.g., job training, preparation and counseling, job development and placement, business management training and entrepreneurship development, and follow-up assistance after job placement);
- (3) Computer skills training;
- (4) Education (e.g., remedial education, literacy training, completion of secondary or post-secondary education, and assistance in the attainment of certificates of high school equivalency);
- (5) Transportation as necessary to enable any participating youth to receive available services or to commute to his or her place of employment;
- (6) Personal welfare (e.g., substance/alcohol abuse treatment and counseling, self-development counseling, etc.);
- (7) Supportive Health Care Services (e.g., outreach and referral services); and
- (8) Any other services and resources, including case management, that are determined to be appropriate in assisting eligible residents.

Vacant Unit means a dwelling unit that is not under an effective lease to an eligible family. An effective lease is a lease under which an eligible family has a right to possession of the unit and is being charged rent, even if the amount of any utility allowance equals or exceeds the amount of a total tenant payment that is based on income and,

as a result, the amount paid by the family to the PHA is zero.

E. Eligibility

(1) **Eligible Applicants.** Funding for this program is limited to public housing authorities. The factors for award reflect that half of the points possible are for the provision of supportive services, whether provided by the PHA or through partnerships with other social service agencies. Facilities assisted shall be on or near the premises of public housing. For all families using FIC services, other than eligible residents (as defined in Section I.D of this NOFA), any additional costs incurred are to be borne by other resources.

To be eligible under this NOFA, a PHA cannot have serious unaddressed, outstanding Inspector General audit findings; fair housing and equal opportunity monitoring review findings; or Field Office management review findings. In addition, the PHA must be in compliance with civil rights laws and equal opportunity requirements. A PHA will be considered to be in compliance if:

(a) As a result of formal administrative proceedings, there are no outstanding findings of noncompliance with civil rights laws unless the PHA is operating in compliance with a HUD-approved compliance agreement designed to correct the area(s) of noncompliance;

(b) There is no adjudication of a civil rights violation in a civil action brought against it by a private individual, unless the PHA demonstrates that it is operating in compliance with a court order, or implementing a HUD-approved resident selection and assignment plan or compliance agreement, designed to correct the area(s) of noncompliance;

(c) There is no deferral of Federal funding based upon civil rights violations;

(d) HUD has not deferred application processing by HUD under Title VI of the Civil Rights Act of 1964, the Attorney General's Guidelines (28 CFR 50.3) and HUD's Title VI regulations (24 CFR 1.8) and procedures (HUD Handbook 8040.1) or under Section 504 of the Rehabilitation Act of 1973 and HUD regulations (24 CFR 8.57);

(e) There is no pending civil rights suit brought against the PHA by the Department of Justice; and

(f) There is no unresolved charge of discrimination against the PHA issued by the Secretary under section 810(g) of the Fair Housing Act, as implemented by 24 CFR 103.400.

(2) **Eligible Activities.** To develop such a Youth Development Initiative,

program funds may be used for the following activities to guarantee youth access to comprehensive services:

(a) The renovation, conversion, or combination of vacant dwelling units in a PHA development to create common areas to accommodate the provision of supportive services;

(b) The renovation of existing common areas in a PHA development to accommodate the provision of supportive services;

(c) The renovation, acquisition, or construction of facilities located near the premises of one or more PHA developments to accommodate the provision of supportive services. Under this NOFA, acquisition and new construction will be treated the same as substantial rehabilitation (renovation/conversion) activities, for such purposes as ranking and submission requirements.

(d) The provision of not more than 15 percent of the total cost of supportive services (which may be provided directly to eligible residents by the PHA or by contract or lease through other appropriate agencies or providers), but only if the PHA demonstrates that:

(i) The supportive services are appropriate to improve the access of eligible residents for employment and educational opportunities; and

(ii) The PHA has made diligent efforts to use or obtain other available resources to fund or provide such services; and

(e) The employment of service coordinators.

(3) *Other Eligibility Related Requirements.* (a) Grants used solely for the activities listed in paragraphs (a), (b), or (c) of Section I.E(2), "Eligible Activities," of this NOFA, shall be completed within three years of the effective date of the grant. Other eligible activities may be funded over a maximum five-year period.

(b) Each applicant should submit a description of the Supportive Services Activities and/or the renovation or conversion to be conducted, along with a budget and timetable for those activities. This description should include the PHA's plans to:

(i) Ensure provision of employment, on-the-job training and work experience, education, childcare, transportation, and assistance in resolving personal or family crises;

(ii) Encourage the active involvement of local labor unions, junior and senior high schools, two- and four-year post secondary institutions, and community agencies; and

(iii) Ensure outreach and recruitment efforts and integrate service delivery,

intake assessment, and case management.

(c) Each applicant must submit a budget, timetable, and list of milestones for the five-year period (following initial receipt of funding), at least, covered by the applicant's description of supportive services. Milestones shall include the number of youth to be served, types of services, and dollar amounts to be allocated over the five-year period.

(d) Each applicant must demonstrate a firm commitment of assistance from one or more sources ensuring that supportive services will be provided for not less than one year following the completion of activities funded under this NOFA.

(e) When a grant application is approved, the PHA must receive approval from HUD to conduct renovation or conversions. Approval must be provided prior to drawing down funds.

(f) If a renovation is done off-site, the PHA must provide documentation that it has control of the proposed property. Control can be evidenced through a lease agreement, ownership documentation, or other appropriate documentation (see Sections III.B(3) and III.C(14) of this NOFA).

F. Other Program Requirements

(1) *Youth/Resident Involvement.* The Department has a longstanding policy of encouraging PHAs to promote resident involvement, and to facilitate cooperative partnerships to achieve specific and mutual goals. Therefore, youth/residents must be included in the planning and implementation of this program. The PHA shall develop a process that assures that public housing youth, through their Resident Council if feasible, are active partners in the development of the content of the PHA's application in response to this NOFA. The PHA shall give full consideration to the comments and concerns of the youth representatives. The Department envisions that the youth representatives will work in concert with the duly elected Resident Council. The process shall include:

(a) Informing youth of the selected developments regarding the preparation of the application, and providing for residents to become active partners in the development of the application.

(b) Once a draft application has been prepared, the PHA shall make a copy available for reading in the management office; provide copies of the draft to the duly-elected resident organization representing the residents of the developments involved; and provide adequate opportunity for comment by all residents, including youth, of the

development and their representative organizations prior to making the application final. A copy of all comments shall be kept on file for review, at their request, by the duly elected Resident Council and HUD.

(c) After HUD approval of a grant, notify youth and other residents of the development, and any representative organizations, of approval of the grant; notify the youth of the availability of the HUD-approved implementation schedule in the management office for reading; and develop a system to facilitate a regular youth role in all aspects of program implementation.

(2) *Training/Employment of PHA Youth Residents.*

(a) Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Section 3) requires that programs of direct financial assistance administered by HUD provide, to the greatest extent feasible, opportunities for job training and employment to lower income residents in connection with projects in their neighborhoods. For purposes of training and employment, the PHA may offer opportunities to Section 3 residents in the following priority: (i) Youth residents of the housing development for which the assistance is being provided; (ii) residents who reside within a project area as defined in 24 CFR 135.15 and who reside in developments managed by the PHA that is expending the assistance; and (iii) other residents of the Section 3 area. Therefore, at a minimum each PHA, and each of its contractors and subcontractors receiving funds under this program, shall to the greatest extent feasible, employ PHA residents to provide services and renovation or conversion work.

(b) For purposes of the requirements under Section 3, to the greatest extent feasible means that the PHA shall:

(1) Attempt to recruit PHA youth from the appropriate areas through Resident/Youth Councils, local advertising media, signs placed at the proposed FIC project site, and community organizations and public or private institutions operating within the development area. The PHA shall include in its outreach and marketing efforts, procedures to attract the least likely to apply for this program because it includes construction/renovation type of activities, *i.e.*, low-income households headed by women and persons with disabilities; and

(2) Determine the qualifications of PHA residents when they apply, either on their own or on referral from any source, and employ PHA youth if their qualifications are satisfactory and the

contractor has openings. If the PHA is unable to employ youth determined to be qualified, those residents shall be listed for the first available openings.

(3) *Davis-Bacon Requirements.* All laborers and mechanics employed by contractors or the PHA in renovation or conversion (including combining of units) on the premises of the PHA development to accommodate the provision of supportive services under this program shall be paid not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a-276a-5). All architects, technical engineers, draftsmen, and technicians employed with respect to such work shall be paid not less than the wages prevailing in the locality as determined by HUD. These requirements do not apply to volunteers under the conditions set out in 24 CFR part 70.

(4) *Youth/Resident Compensation.* Residents employed to provide services funded under this program or described in the application shall be paid at a rate not less than the highest of:

(a) The minimum wage that would be applicable to the employees under the Fair Labor Standards Act of 1938 (FLSA), if section 6(a)(1) of the FLSA applied to the resident and if the resident were not exempt under section 13 of the FLSA;

(b) The State or local minimum wage for the most nearly comparable covered employment; or

(c) The prevailing rate of pay for persons employed in similar public occupations by the same employer.

(5) *Treatment of Income.* (a) 1937 Act. As provided in section 22(i) of the United States Housing Act of 1937 (1937 Act), no service provided to a PHA resident under this program may be treated as income for the purpose of any other program or provision of State, or Federal law. Program participation shall begin on the first day the resident enters training or begins to receive services. Furthermore, the earnings of and benefits to any PHA youth resulting from participation in the FIC program shall not be considered as income in computing the tenant's total annual income that is used to determine the tenant rental payment during:

(i) The period that the youth participates in the program; and

(ii) The period that begins with the commencement of employment of the youth in the first job acquired by the youth after completion of the program that is not funded by assistance under the 1937 Act, and ends on the earlier of:

(A) The date the youth ceases to continue employment without good cause; or

(B) The expiration of the 18-month period beginning on the date of commencement of employment in the first job not funded by assistance under this program.

(6) *Reports.* Each PHA receiving a grant shall submit to HUD an annual progress report, participant evaluation and assessment data, and other information, as needed, regarding the effectiveness of the Youth Development Initiative in providing youth with access to education and job opportunities and supportive services.

G. Ranking Factors

Each application for grant award will be evaluated if it is submitted as required under Section II.B of this NOFA and meets the eligibility requirements in Section I.E of this NOFA. Applications submitted for funds that include renovation (including acquisition and new construction), conversion, or combination of dwelling unit activities will be competitively selected based on the highest scores out of a possible 150 points. Applications submitted for funds solely to implement supportive services will be competitively selected based on the highest scores out of a possible 150 points. Grants will be awarded to the five highest-ranked eligible applicants.

HUD will review and evaluate the application as follows, according to whether the application seeks funds for supportive services only or for other activities:

(1) *Conversion/Renovation/Supportive Services Activities* (Maximum 150 points). If the applicant is proposing to build or rehab a facility to render programmatic services, applications will be scored on the following factors:

(a) Evidence of the need for supportive services by eligible residents [10 points];

(b) The extent to which the envisioned renovation, conversion, and combination activities are appropriate to facilitate the provision of youth FIC services [15 points];

(c) The extent to which each service provider has evidenced that supportive services and other resources will be provided until at least the later of: (i) five years following the initial receipt of funding under this NOFA; or (ii) one year following the completion of activities funded under this NOFA [25 points];

(d) The extent to which the PHA has demonstrated that it has partnered with

youth in the planning phase for the Youth FIC, and will further include the youth residents in the implementation phase [40 points];

(e) The extent to which the PHA has demonstrated that it will contract with or employ youth to provide services and conduct conversion and renovation activities [15 points];

(f) The ability of the PHA or designated service provider to provide the supportive services [5 points];

(g) The extent to which the PHA has coordinated implementation of the program, including those in target areas such as Weed and Seed, Distressed, etc., with State and or local service agencies [5 points]. In assigning points for this factor, HUD shall consider the extent of the involvement of those agencies in the development of the application and their commitment of assistance in the implementation of the Youth FIC. The commitment of these agencies may be demonstrated through evidence of intent to provide direct financial assistance or other resources, such as social services (i.e., counseling and training); the use of public housing funds available through existing State and local programs; or other commitments; and

(h) The extent to which the PHA has demonstrated success in modernization activities under the Comprehensive Grant/Comprehensive Improvement Assistance (CIAP) Programs (see 24 CFR part 968); has a good record of maintaining and operating public housing, as determined by the Public Housing Management Assessment Plan (PHMAP) (see 24 CFR part 901); and has utilized innovative and workable strategies to improve management [10 points]; and

(i) The extent to which the PHA has demonstrated that it will commit to its Youth FIC part of its formula allocation of Comprehensive Grant Program (CGP) funds for CGP-eligible activities that result in employment, training, and contracting opportunities for eligible youth [25 points].

(2) *Supportive Services Only* (Maximum 150 points). If applicant is proposing to use funds solely for the provision of supportive services, applications for funds for these activities will be scored on the following factors:

(a) Evidence of the need for supportive services by eligible youth. [10 points];

(b) Certification that the PHA has control of a site to facilitate the provision of supportive services appropriate for the FIC program [10 points];

(c) The extent to which each service provider has evidenced that supportive services and other resources will be provided until at least the later of: (i) five years following the initial receipt of funding under this NOFA; or (ii) one year following the completion of activities funded under this NOFA [25 points];

(d) The extent to which the PHA has demonstrated that it has partnered with youth in the planning phase for the FIC, and will further include the youth in the implementation phase [40 points];

(e) The extent to which the PHA has demonstrated that it will contract with or employ youth to provide services [15 points];

(f) Past experience in obtaining and providing similar services for PHA youth [5 points];

(g) The ability of the PHA or a designated service provider to provide the supportive services [5 points];

(h) The extent to which the PHA has a good record of maintaining and operating public housing, as determined by its Public Housing Management Assessment Plan (PHMAP), and has utilized innovative and workable strategies to improve management [10 points];

(i) The extent to which the PHA has coordinated implementation of the program, including those in target areas such as Weed and Seed, Distressed, etc., with State and/or local social service agencies [5 points]. In assigning points for this factor, HUD shall consider the involvement of those agencies in the development of the application and their commitment of assistance in the implementation of the FIC. The commitment of these agencies may be demonstrated through evidence of intent to provide direct financial assistance or other resources, such as social services (e.g., counseling and training); the use of public housing funds available through existing State and local programs; or other commitments; and

(j) Extent to which the PHA has demonstrated that it will commit to its Youth FIC part of its formula allocation of Comprehensive Grant Program (CGP) funds for CGP-eligible activities that result in employment, training, and contracting opportunities for its residents [25 points].

H. Environmental Review

Any environmental impact regarding eligible activities will be addressed through an environmental review of that activity as required by 24 CFR part 50, including the applicable related laws and authorities under section 50.4, to be completed by HUD, to ensure that any

environmental impact will be addressed before assistance is provided to the PHA. Grantees will be expected to adhere to all assurances applicable to environmental concerns as contained in this NOFA and grant agreements.

II. Application Submissions Process

A. Application Kit

An application kit is required as the formal submission to apply for funding. The kit includes information and guidance on preparation of a Plan and Budget for activities proposed by the applicant. This process facilitates the execution of the grant for those selected to receive funding. An application may be obtained from the local HUD Field Offices with delegated responsibilities over an applying PHA (See Appendix A for listing), or by calling HUD's Resident Initiatives Clearinghouse toll free number 1-800-955-2232. Requests for application kits must include your name, mailing address or P.O. Box (including zip code), and telephone number (including area code), and should refer to document FR-3707-N-01. Applications may be requested beginning May 13, 1994.

B. Application Submission

The original and two copies of the application must be submitted. The Appendix lists addresses of HUD Field Offices that will accept the completed application.

The application must be physically received by 4:30 p.m., local time, on July 12, 1994. This application deadline is firm 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 applications to avoid any risk of loss of eligibility brought on by unanticipated delays or other delivery-related problems. Facsimile and telegraphic applications are not authorized and shall not be considered.

III. Checklist of Application Submission Requirements

The Application Kit will contain a checklist of all application submission requirements to complete the application process.

A. *Applications for Supportive Services Only* must contain the following information: (1) Name and address (or P.O. Box) of the PHA. Name and telephone number of contact person (in the event further information or clarification is needed during the application review process);

(2) SF-424A, Budget Information, Non-Construction Programs, and SF-424B, Assurances, Non-Construction Programs;

(3) A description of the need for supportive services by eligible youth residents;

(4) A description of the supportive services that are to be provided over at least a 5-year period after the initial receipt of funding under this NOFA, and one year following the completion of activities funded under this NOFA and how the supportive services will enhance education and job opportunities for youth residents;

(5) Evidence of a firm commitment of assistance from one or more sources ensuring that the supportive services will be provided for not less than one year following the completion of activities funded under this NOFA. Evidence shall be in the form of a letter or resolution. A cost allocation plan shall be submitted outlining the one-year commitment;

(6) A description of public or private sources of assistance that can reasonably be expected to fund or provide supportive services, including evidence of any intention to provide assistance expressed by State and local governments, private foundations, and other organizations (including profit and nonprofit organizations);

(7) A description of the plan for continuing operation of the Youth FIC, and the provision of services to youth after completion of the later of: (i) Five years following the initial receipt of funding under this NOFA; or (ii) one year following the completion of activities funded under this NOFA;

(8) A certification from an appropriate service agency (in the case of FSS, the certification may be from the Coordinating Committee) that:

(a) The provision of supportive services is well designed to provide youth with better access to educational and employment opportunities; and

(b) There is a reasonable likelihood that such services will be funded or provided for the entire five-year period, at least, after the initial receipt of funding under this NOFA.

(9) A description of assistance for which the PHA is applying;

(10) A narrative on the location of the Youth FIC facility. Provide the precise location of the facility to be used for Youth FIC, and indicate its accessibility to residents, including distance from the development(s), and transportation necessary to receive services;

(11) Evidence that the PHA has control of the Youth FIC site. If the facility is off-site, the PHA shall include copies of the negotiated lease and the

terms, an option to lease, indicating that the facility is available to the PHA for use as a Youth FIC for the period ending the later of: (1) Five years following the initial receipt of funding under this NOFA, or (ii) one year following the completion of activities funded under this NOFA;

(12) A certification that funds used to pay for a Service Coordinator are not duplicate expenses from any other program;

(13) A description of the youth involvement and participation in the planning and implementation phases of this program;

(14) A description of the services that PHA residents will be employed to provide;

(15) Letters of commitment. The letters should identify all commitments for additional resources to be made available to the program from the applicant and other State, local, or private entities. The description shall include, but is not limited to, the commitment source, source committed, availability and use of funds, and other conditions associated with the loan, grant, gift, donation, contribution, etc.

Commitments from State or local agencies may include, but are not limited to, vocational, adult, and bilingual education; Job Training Partnership Act (JTPA) and Family Support Act of 1988 job training programs; child care; and social services assistance, counseling or drug addiction services. Commitments may include in-kind contributions, on-site journeymen or equivalent instructors, transportation, or other resources for use by participants of the Youth FIC;

(16) Certification that efforts were made to use or obtain other resources to fund or provide the services proposed;

(17) Certification of the extent to which the PHA will commit to its Youth FIC part of its formula allocation of Comprehensive Grant Program funds for CGP eligible activities that result in employment, training, and contracting opportunities for eligible residents, if applicable;

(18) A project budget, timetable and narrative;

(19) Certification that Youth FIC funding will not duplicate any other HUD funding, including CGP funding.

(20) Equal Opportunity Requirements. The PHA must certify that it will carry out activities assisted under the program in compliance with:

(a) The requirements of the Fair Housing Act (42 U.S.C. 3601-3619) and implementing regulations at 24 CFR parts 100, 107, 109, 110, and 121; and Executive Order 11063 (Equal Opportunity Housing implementing

regulations at 24 CFR Part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1;

(b) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and implementing regulations at 24 CFR part 146; the prohibition against discrimination against individuals with a disability under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8; and the requirements of Executive Order 11246 and the implementing regulations issued at 41 CFR chapter 60;

(c) The requirements of section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u and implementing regulations at 24 CFR part 135; and

(d) The requirements of Executive Orders 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, the grantee must make efforts to encourage the use of minority and women's business enterprises in connection with activities funded under this notice.

(21) Form HUD-2880, Applicant/Recipient Disclosure Update Report must be completed in accordance with 24 CFR part 12, Accountability in the Provision of HUD Assistance. A copy is provided in the application kit.

(22) Drug-Free Workplace Certification. The Drug-Free Workplace Act of 1988 (42 U.S.C. 701) requires grantees of federal agencies to certify that they will provide drug-free workplaces. Each potential recipient under this NOFA must certify that it will comply with drug-free workplace requirements in accordance with the Act and with HUD's rules at 24 CFR part 24, subpart F.

(24) Certification regarding Lobbying. Section 319 of the Department of the Interior Appropriations Act, Public Law 101-121, approved October 23, 1989 (31 U.S.C. 1352) (the "Byrd Amendment") generally prohibits recipients of Federal contracts, grants, 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. The Department's regulations on these restrictions on lobbying are codified at 24 CFR part 87. To comply with 24 CFR 87.110, any PHA submitting an application under this announcement for more than \$100,000 of budget authority must submit a certification and, if applicable, a Disclosure of Lobbying Activities (SF-LLL form).

(25) A certification that:

(a) The PHA will include in any contract for renovation or conversion (including combining of units) on the premises of the PHA development to accommodate the provision of supportive services under this program, a requirement that all laborers and mechanics (other than volunteers under the conditions set out in 24 CFR part 70) shall be paid not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a-276a-5);

(b) The PHA will include in such contracts a requirement that all architects, technical engineers, draftsmen, and technicians (other than volunteers) shall be paid not less than the wages prevailing in the locality as determined by HUD; and

(c) The PHA will pay such wage rates to its own employees engaged in this work.

B. Applications for Renovation/Conversion Activities Only must contain the following information:

(1) Name and address (or P.O. Box) of the PHA. Name and telephone number of contact person (in the event further information or clarification is needed during the application review process);

(2) A narrative on the location of the off-site facility, if applicable. Provide the precise location of the Youth FIC facility (street address) and indicate its accessibility to residents, including distance from the development(s), and transportation necessary to receive services;

(3) A narrative description of how the funds will be used;

(4) Evidence that the PHA has control of the proposed premises. This shall include copies of the negotiated lease and the terms, an option to lease, indicating that the facility will be available to the PHA for use as a Youth FIC for the period ending the later of: (i) five years following the initial receipt of funding under this NOFA; or (ii) one year following the completion of activities funded under this NOFA;

(5) A description of services that the PHA expects to be provided, to the greatest extent practicable, by youth residents, as described in Section I.F(2) of this NOFA. The Description shall include the position titles and numbers of youth expected to be employed for renovation/conversion activities;

(6) Certification of the extent to which the PHA will commit to its Youth FIC part of its formula allocation of Comprehensive Grant Program (CGP) funds for CGP eligible activities that result in employment, training, and

contracting opportunities for eligible residents;

(7) A project budget, timetable and narrative;

(8) Certification that Youth FIC funding will not duplicate any other HUD funding, including CGP funding.

(9) Equal Opportunity Requirements. The PHA must certify that it will carry out activities assisted under the program in compliance with:

(a) The requirements of the Fair Housing Act (42 U.S.C. 3601-3619) and implementing regulations at 24 CFR parts 100, 107, 109, 110, and 121; and Executive Order 11063 (Equal Opportunity Housing implementing regulations at 24 CFR Part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1;

(b) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and implementing regulations at 24 CFR part 146; the prohibition against discrimination against individuals with a disability under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8 and Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131) and implementing regulation at 28 CFR Part 35; and the requirements of Executive Order 11246 and the implementing regulations issued at 41 CFR chapter 60;

(c) The requirements of section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u and implementing regulations at 24 CFR part 135; and

(d) The requirements of Executive Orders 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, the grantee must make efforts to encourage the use of minority and women's business enterprises in connection with activities funded under this notice.

(10) Evidence of a firm commitment of assistance from one or more sources ensuring that the supportive services will be provided for not less than one year following the completion of activities funded under this NOFA. Evidence shall be in the form of a letter or resolution. A cost allocation plan shall be submitted outlining the one-year commitment;

(11) Form HUD-2880, Applicant/Recipient Disclosure Update Report must be completed in accordance with 24 CFR part 12, Accountability in the Provision of HUD Assistance. A copy is provided in the application kit.

(12) Drug-Free Workplace Certification. The Drug-Free Workplace Act of 1988 (42 U.S.C. 701) requires grantees of federal agencies to certify that they will provide drug-free workplaces. Each potential recipient under this NOFA must certify that it will comply with drug-free workplace requirements in accordance with the Act and with HUD's rules at 24 CFR part 24, subpart F.

(13) Certification Regarding Lobbying. Section 319 of the Department of the Interior Appropriations Act, Public Law 101-121, approved October 23, 1989 (31 U.S.C. 1352) (the "Byrd Amendment") generally prohibits recipients of Federal contracts, grants, 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. The Department's regulations on these restrictions on lobbying are codified at 24 CFR part 87. To comply with 24 CFR 87.110, any PHA submitting an application under this announcement for more than \$100,000 of budget authority must submit a certification and, if applicable, a Disclosure of Lobbying Activities (SF-LLL form).

(14) A certification that:

(a) The PHA will include in any contract for renovation or conversion (including combining of units) on the premises of the PHA development to accommodate the provision of supportive services under this program, a requirement that all laborers and mechanics (other than volunteers under the conditions set out in 24 CFR part 70) shall be paid not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a-276a-5);

(b) The PHA will include in such contracts a requirement that all architects, technical engineers, draftsmen, and technicians (other than volunteers) shall be paid not less than the wages prevailing in the locality as determined by HUD;

(c) The PHA will pay such wage rates to its own employees engaged in this work; and

(d) If new construction is undertaken, the PHA has looked at other appropriate facilities and cannot make those usable for FIC purposes.

C. *Applications for Both Supportive Services and Renovation/Conversion Activities* must contain the following information:

(1) Name and address (or P.O. Box) of the PHA. Name and telephone number of contact person (in the event further information or clarification is needed during the application review process);

(2) SF-424A, Budget Information, Non-Construction Programs, and SF-424B, Assurances, Non-Construction Programs;

(3) A description of assistance for which the PHA is applying;

(4) A description of the need for supportive services by eligible residents;

(5) Evidence of a firm commitment of assistance from one or more sources ensuring that the supportive services will be provided for not less than one year following the completion of activities funded under this NOFA. Evidence shall be in the form of a letter or resolution. A cost allocation plan shall be submitted outlining the one-year commitment;

(6) A description of the plan for continuing operation of the Youth FIC and the provision of supportive services to families after the later of: (i) five years following the initial receipt of funding under this NOFA; or (ii) one year following the completion of activities funded under this NOFA;

(7) A description of services that the PHA expects to be provided, to the greatest extent practicable by PHA residents as provided under Section I.F(2) of this NOFA;

(8) A description of the positions and numbers of residents expected to be employed for renovation, conversion, and other eligible activities;

(9) A description of the youth involvement in the planning and implementation phases of this program.

(10) Certification of the extent to which the PHA will commit to its Youth FIC part of its formula allocation of Comprehensive Grant Program (CGP) funds for CGP eligible activities that result in employment, training, and contracting opportunities for eligible residents;

(11) A project budget, timetable, and narrative;

(12) Letters of commitment. Identify all commitments for additional resources to be made available to the program from the applicant and other State, local, or private entities. The description shall include, but is not limited to, the commitment source, source committed, availability and use of funds, and other conditions associated with the loan, grant, gift, donation, contribution, etc. Commitments from State or local agencies may include, but are not limited to, vocational, adult, and bilingual education; JTPA and Family Support Act of 1988 job training programs; child care; and social services assistance, counseling or drug addiction services. Commitments may include in-kind contributions, on-site journeymen or equivalent instructors, transportation,

or other resources for use by participants of the FIC.

(13) A narrative on the location of the facility. Provide the precise location of the Youth FIC facility (street address) and its accessibility to residents including distance from the development(s), and transportation necessary to receive services;

(14) Evidence that the PHA has control of the proposed off-site premises. This shall include copies of the negotiated lease and the terms, an option to lease, indicating that the facility will be available to the PHA for use as a Youth FIC for the period ending the later of: (i) five years following the initial receipt of funding under this NOFA; or (ii) one year following the completion of activities funded under this NOFA;

(15) Certification that Youth FIC funding will not duplicate any other HUD funding, including CGP funding.

(16) *Equal Opportunity Requirements*. The PHA must certify that it will carry out activities assisted under the program in compliance with:

(a) The requirements of the Fair Housing Act (42 U.S.C. 3601-3619) and implementing regulations at 24 CFR parts 100, 107, 109, 110, and 121; and Executive Order 11063 (Equal Opportunity Housing implementing regulations at 24 CFR part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1;

(b) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and implementing regulations at 24 CFR part 146; the prohibition against discrimination against individuals with a disability under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8 and Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131) and implementing regulation at 28 CFR Part 35; and the requirements of Executive Order 11246 and the implementing regulations issued at 41 CFR chapter 60;

(c) The requirements of section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u and implementing regulations at 24 CFR part 135; and

(d) The requirements of Executive Orders 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, the grantee must make efforts to encourage the use of minority and women's business

enterprises in connection with activities funded under this notice.

(17) Form HUD-2880, Applicant/Recipient Disclosure Update Report must be completed in accordance with 24 CFR part 12, Accountability in the Provision of HUD Assistance. A copy is provided in the application kit.

(18) Drug-Free Workplace Certification. The Drug-Free Workplace Act of 1988 (42 U.S.C. 701) requires grantees of federal agencies to certify that they will provide drug-free workplaces. Each potential recipient under this NOFA must certify that it will comply with drug-free workplace requirements in accordance with the Act and with HUD's rules at 24 CFR part 24, subpart F.

(19) Certification regarding Lobbying. Section 319 of the Department of the Interior Appropriations Act, Public Law 101-121, approved October 23, 1989 (31 U.S.C. 1352) (the "Byrd Amendment") generally prohibits recipients of Federal contracts, grants, 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. The Department's regulations on these restrictions on lobbying are codified at 24 CFR part 87. To comply with 24 CFR 87.110, any PHA submitting an application under this announcement for more than \$100,000 of budget authority must submit a certification and, if applicable, a Disclosure of Lobbying Activities (SF-LLL form).

(20) A certification that:

(a) The PHA will include in any contract for renovation or conversion (including combining of units) on the premises of the PHA development to accommodate the provision of supportive services under this program, a requirement that all laborers and mechanics (other than volunteers under the conditions set out in 24 CFR part 70) shall be paid not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a-276a-5);

(b) The PHA will include in such contracts a requirement that all architects, technical engineers, draftsmen, and technicians (other than volunteers) shall be paid not less than the wages prevailing in the locality as determined by HUD.

(c) If new construction is undertaken, the PHA has looked at other appropriate facilities and cannot make those usable for FIC purposes.

IV. Corrections to Deficient Applications

After the submission deadline date, HUD will screen each application to determine whether it is complete. If an application lacks certain technical items, such as certifications or assurances, or contains a technical error, such as an incorrect signatory, HUD will notify the applicant in writing that it has 14 calendar days from the date of HUD's written notification to cure the technical deficiency. If the applicant fails to submit the missing material within the 14-day cure period, HUD will disqualify the application.

This 14-day cure period applies only to nonsubstantive deficiencies or errors. Deficiencies capable of cure will involve only items not necessary for HUD to assess the merits of an application against the ranking factors specified in this NOFA.

V. Other Matters

A. Other Federal Requirements

In addition to the Equal Opportunity Requirements set forth in Section III, Checklist of Application Submission Requirements, of this NOFA, grantees must comply with the following requirements:

(1) *Ineligible contractors*. The provisions of 24 CFR part 24 relating to the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status.

(2) *Flood insurance*. No building proposed for acquisition, construction, reconstruction, repair, or improvement to be assisted under this program may be located in an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless the community in which the area is situated is participating in the National Flood Insurance Program and the regulations thereunder (44 CFR parts 59-79), or less than a year has passed since FEMA notification regarding such hazards, and the grantee ensures that flood insurance on the structure is obtained in compliance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et seq.).

(3) *Lead-based paint*. The requirements, as applicable, of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), and implementing regulations at 24 CFR parts 35, 965 and 968.

(4) *Applicability of OMB Circulars*. The policies, guidelines, and requirements of OMB Circular Nos. A-

110 and A-122 with respect to the acceptance and use of assistance by private nonprofit organizations.

(5) *Relocation and Real Property Acquisition.* The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition, apply to the acquisition of real property for an assisted project and the displacement of any person (family, individual, business, nonprofit organization, or farm) as a direct result of acquisition, rehabilitation, or demolition for the project.

B. Environmental Review

A finding of no significant impact with respect to the environment has been made for the NOFA for Public and Indian Housing Family Investment Centers (FR-3397) in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969. (42 U.S.C. 4332) and applies equally to this NOFA. The finding of no significant impact is available for public inspection and copying Monday through Friday during regular business hours at the Office of the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

C. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the Order. The notice announces the availability of funds to provide youth living in public housing, or with children living in public housing, with better access to education and job opportunities to achieve self-sufficiency and independence.

D. Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this notice has potential for a significant impact on family formation, maintenance, and general well-being. The purpose of the notice is to provide funding to assist youth living in public housing, or with children

living in public housing, with better access to education and job opportunities to achieve self-sufficiency and independence, and, thus, could benefit families. However, because the impact on families is beneficial, no further review is considered necessary.

E. 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 requirements.)

F. Section 103 of the HUD Reform Act

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a) 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 restrained 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 (voice/TDD). (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.

G. Section 112 of the Reform Act

Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b) 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 about the rule should be directed to the Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-3000. Telephone: (202) 708-3815 (voice/TDD) (This is not a toll-free number.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

H. Freedom of Information Act

Applications submitted in response to this NOFA are subject to disclosure under the Freedom of Information Act (FOIA). To assist the Department in determining whether to release information contained in an application in the event a FOIA request is received, and applicant may, through clear earmarking, or otherwise, indicate those portions of its application that it believes should not be disclosed. The applicant's views will be used solely to aid the Department in preparing its response to a FOIA request; however, the Department is required by the FOIA to make an independent evaluation of the information.

HUD suggests that an applicant provide a basis, when possible, for its belief that confidential treatment is appropriate; general assertions or

blanket requests for confidentiality, without more information, are of limited value to the Department in making determinations concerning the release of information under FOIA. The Department is required to segregate disclosable information from nondisclosable items, so an applicant should be careful to identify each portion of the application for which confidential treatment is requested.

The Department emphasizes that the presence or absence of comments or earmarking regarding confidential information will have no bearing on the evaluation of applications submitted in response to this solicitation.

I. Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act of Fiscal Year 1990 (31 U.S.C. 1352) (the "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of federal contracts, grants or loans from using appropriated funds for lobbying the Executive or Legislative branches of the Federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding \$100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance.

Authority: 42 U.S.C. 1437t and 3535(d).

Dated: May 6, 1994.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

APPENDIX—NAMES, ADDRESSES, AND TELEPHONE NUMBERS OF HUD FIELD OFFICES ACCEPTING APPLICATIONS FOR YOUTH DEVELOPMENT INITIATIVE UNDER FAMILY INVESTMENT CENTERS

Boston, Massachusetts Field Office

Public Housing Division
Room 375,
Thomas P. O'Neill, Jr. Federal Building,
10 Causeway Street,
Boston, Massachusetts 02222-1092,
(617) 565-5234

Hartford, Connecticut Office

Public Housing Division,
330 Main St. First Floor,
Hartford, Connecticut 06106-1860,
(203) 240-4522

Manchester, New Hampshire Office

Public Housing Division,
Norris Cotton Federal Building,
275 Chestnut St.,
Manchester, New Hampshire 03101-2487,
(603) 666-7681

Providence, Rhode Island Office

Public Housing Division,
330 John O. Pastore Federal Building and
U.S.
Post Office—Kennedy Plaza,
Providence, Rhode Island 02903-1785,
(401) 528-5351

New York, New York Field Office

Public Housing Division,
26 Federal Plaza,
New York, New York 10278-0068,
(212) 264-6500

Buffalo, New York Office

Public Housing Division,
465 Main Street,
Lafayette Court, 5th Fl.,
Buffalo, New York 14203-1780,
(716) 846-5755

Newark, New Jersey Office

Public Housing Division,
Military Park Building,
60 Park Place,
Newark, New Jersey 07102-5504,
(201) 877-1662

Washington, DC Office

Public Housing Division,
820 First St. NE., Suite 300,
Washington, DC 20002-4502,
(202) 275-9200

Philadelphia, Pennsylvania Field Office

Public Housing Division,
Liberty Square Building,
105 South 7th Street,
Philadelphia, Pennsylvania 19106-3392

Baltimore, Maryland Office

Public Housing Division,
City Crescent Building,
10 South Howard St., 5th Floor,
Baltimore, Maryland 21202-2505,
(410) 962-2520

Pittsburgh, Pennsylvania Office

Public Housing Division,
Old Post Office Courthouse Building,
700 Grant St.,
Pittsburgh, Pennsylvania 15219-1939,
(412) 644-6428

Richmond, Virginia Office

Public Housing Division,
The 3600 Centre,
3600 West Broad St.,
P.O. Box 90331,
Richmond, Virginia 23230-0331,
(804) 278-4507

Charleston, West Virginia Office

Public Housing Division,
405 Capitol St., Suite 708,
Charleston, West Virginia 25301-1795,
(304) 347-7000

Atlanta, Georgia Field Office

Public Housing Division,

Richard B. Russell Federal Building,
75 Spring Street, SW.,
Atlanta, Georgia 30303-3388,
(404) 331-5136

Birmingham, Alabama Office

Public Housing Division,
Beacon Ridge Tower,
600 Beacon Parkway West, Suite 300,
Birmingham, Alabama 35209-3144,
(205) 290-7617

Louisville, Kentucky Office

Public Housing Division,
P.O. Box 1044,
601 W. Broadway,
Louisville, Kentucky 40201-1044,
(502) 582-5251

Jackson, Mississippi Office

Public Housing Division,
Dr. A.H. McCoy Federal Building,
100 West Capitol St., Room 910,
Jackson, Mississippi 39269-1096,
(601) 965-5308

Greensboro, North Carolina Office

Public Housing Division,
2306 W. Meadowview Rd.,
Greensboro, North Carolina 27407,
(919) 547-4000

Caribbean Office

Public Housing Division,
New San Juan Office Building,
159 Carlos E. Chardon Ave.,
San Juan, Puerto Rico 00918-1804,
(809) 766-6121

Columbia, South Carolina Office

Public Housing Division,
Strom Thurmond Federal Building,
1835 Assembly St.,
Columbia, South Carolina 29201-2480,
(803) 765-5592

Knoxville, Tennessee Office

Public Housing Division,
John J. Duncan Federal Building,
710 Locust St. 3rd Floor,
Knoxville, Tennessee 37902-2526,
(615) 549-4384

Nashville, Tennessee Office

Public Housing Division,
251 Cumberland Bend Drive, Suite 200,
Nashville, Tennessee 37228-1803,
(615) 736-5213

Jacksonville, Florida Office

Public Housing Division,
301 West Bay Street, Suite 2200,
Jacksonville, Florida 32202-5121,
(904) 232-2626

Chicago, Illinois Field Office

Public Housing Division,
Ralph Metcalfe Federal Building,
77 West Jackson Boulevard,
Chicago, Illinois 60604-3507,
(312) 353-5680

Detroit, Michigan Office

Public Housing Division,
Patrick V. McNamara Federal Building,
477 Michigan Ave.,
Detroit, Michigan 48226-2592,

(313) 226-7900

Indianapolis, Indiana Office

Public Housing Division,
151 North Delaware St.,
Indianapolis, Indiana 46204-2526,
(317) 226-6303

Grand Rapids, Michigan Office

Public Housing Division,
2922 Fuller Ave., NE.,
Grand Rapids, Michigan 49505-3499,
(616) 456-2100

Minneapolis-St. Paul, Minnesota Office

Public Housing Division,
220 2nd St. South,
Bridge Place Building,
Minneapolis, Minnesota 55401-2195,
(612) 370-3000

Cincinnati, Ohio Office

Public Housing Division,
Federal Office Building, Room 9002
550 Main St.,
Cincinnati, Ohio 45202-3253,
(513) 684-2884

Cleveland, Ohio Office

Public Housing Division,
Renaissance Building,
1350 Euclid Ave., 5th Floor,
Cleveland, Ohio 44115-1815,
(216) 522-4058

Columbus, Ohio Office

Public Housing Division,
200 North High Street,
Columbus, Ohio 44115-1815,
(216) 522-4058

Milwaukee, Wisconsin Office

Public Housing Division,
Henry S. Reuss Federal Plaza,
310 W. Wisconsin Ave., Suite 1380,
Milwaukee, Wisconsin 53203-2289,
(414) 297-3214

Forth Worth, Texas Field Office

Public Housing Division,
1600 Throckmorton,
P.O. Box 2905,
Fort Worth, Texas 76113-2905
(817) 885-5401

Houston, Texas Office

Public Housing Division,
Norfolk Tower,
2211 Norfolk, Suite 200,
Houston, Texas 77098-4096,
(713) 653-3274

San Antonio, Texas Office

Public Housing Division
Washington Square Building
800 Dolorosa St.
San Antonio, Texas 78207-4563
(210) 229-6800

Little Rock, Arkansas Office

Public Housing Division,
TCBY Tower,
425 West Capitol Ave.,
Little Rock, Arkansas 72201-3488,
(501) 324-5931

New Orleans, Louisiana Office

Public Housing Division,
Fisk Federal Building,
1661 Canal St., Suite 3100,
New Orleans, Louisiana 70112-2887,
(504) 589-7200

Albuquerque, NM Office

Public Housing Division,
625 Truman Street N.E.,
Albuquerque, NM 87110-6472,
(505) 262-6463

Omaha, Nebraska Office

Public Housing Division,
10909 Mill Valley Rd.,
Omaha, Nebraska 68154-3955,
(402) 492-3100

St. Louis, Missouri Office

Public Housing Division, 1222 Spruce St.,
Room 3207, St. Louis, Missouri 63103-
2836, (314) 539-6583

Kansas City Field Office

Public Housing Division, Room 200, Gateway
Tower II, 400 State Avenue, Kansas City,
Kansas 66101-2406, (913) 551-5462

Des Moines, Iowa Office

Public Housing Division, Federal Building,
210 Walnut St., Rm. 239, Des Moines, Iowa
50309-2155, (515) 284-4512

Denver, Colorado Field Office

Public Housing Division, 633 17th Street,
First Interstate Tower North, Denver,
Colorado 80202-3607, (303) 672-5448

San Francisco, California Field Office

Public Housing Division, Philip Burton
Federal Building and U.S. Courthouse, 450
Golden Gate Avenue, P.O. Box 36003, San
Francisco, California 94102-3448, (415)
556-4752

Honolulu, Hawaii Office

Public Housing Division, 7 Waterfront Plaza,
500 Ala Moana Blvd., Suite 500, Honolulu,
Hawaii 96813-4918, (808) 541-1323

Los Angeles, California Office

Public Housing Division, 1615 W. Olympic
Blvd., Los Angeles, California 90015-3801,
(213) 251-7122

Sacramento, California Office

Public Housing Division, 777 12th St., Suite
200, Sacramento, California 95814-1997,
(916) 551-1351

Phoenix, Arizona Office

Public Housing Division, Two Arizona
Center, 400 N. 5th St., Suite 1600, Phoenix,
Arizona 85004-2361, (602) 379-4434

Portland, Oregon Office

Public Housing Division, Cascade Building,
520 Southwest Sixth Ave., Portland,
Oregon 97204-1596, (503) 326-2561

Seattle, Washington Field Office

Public Housing Division, Suite 200, Seattle
Federal Office Building, 909 First Avenue,
Seattle, Washington 98104-1000, (206)
220-5101

Anchorage, Alaska Office

Public Housing Division, University Plaza
Building, 949 E. 36th Ave., Suite 401,
Anchorage, Alaska 99508-4399, (907) 271-
4170

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Federal Register

Friday
May 13, 1994

Part VII

Department of Housing and Urban Development

Office of the Assistant Secretary for
Community Planning and Development

NOFA for the John Heinz Neighborhood
Development Program; Notice

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

Office of the Assistant Secretary for
Community Planning and
Development

[Docket No. N-94-3759; FR-3662-N-01]

**NOFA for the John Heinz
Neighborhood Development Program**

AGENCY: Office of the Assistant
Secretary for Community Planning and
Development, HUD.

ACTION: Notice of funding availability
for Fiscal Year 1994.

SUMMARY: This NOFA announces the
availability of \$4,750,000 in funding for
the FY 1994 Neighborhood
Development Program. Interested
persons should apply for FY 1994
program funds according to the
procedures and requirements set out in
this NOFA.

In the body of this NOFA is information
concerning:

- (1) This year's round of funding for this program;
- (2) The purposes and objectives of the program;
- (3) The method of allocation and distribution of funds;
- (4) Eligibility requirements for neighborhood development organizations;
- (5) Eligible neighborhood development activities;
- (6) Selection criteria for the award of funds;
- (7) Application requirements for the funds;
- (8) Grantee reporting requirements; and
- (9) Other applicable administrative requirements associated with the program.

DATES: Applications may be requested beginning May 13, 1994. Completed applications must be submitted no later than 4:30 p.m. (E.S.T.), by the date specified in the application kit. The application deadline will be 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 unanticipated delays or other delivery-related problems.

ADDRESSES: To obtain a copy of the application kit, contact: American Communities, P.O. Box 7189, Gaithersburg, MD 20898-7189. Requests for application kits must be in writing, but requests may be faxed to: (301) 251-5747 (this is not a toll-free number). Requests for application kits must include the applicant's name, mailing address (including zip code), telephone

number (including area code), and must refer to the FR-3662. Completed applications may not be submitted by fax.

FOR FURTHER INFORMATION CONTACT:

Gene Hix, Office of Community Planning and Development, Department of Housing and Urban Development, room 7218, 451 Seventh Street, SW., Washington, DC 20410; telephone number (202) 708-1189 and (202) 708-2565 (TDD). (These numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The control number for information collections described in this document is 2535-0084.

I. Purpose and Substantive Description

A. Authority

Section 123 of the Housing and Urban-Rural Recovery Act of 1983 (42 U.S.C. 5318 note) (section 123) authorized the John Heinz Neighborhood Development Program. For Fiscal Year 1994, a total of \$5 million has been appropriated for this program under the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1994 (Pub. L. 103-124, approved October 18, 1993).

Section 123(e)(6)(D) permits the Secretary of Housing and Urban Development (Secretary) to use no more than five percent of the funds appropriated for administrative or other expenses in connection with the program. The remaining funds are to be used to match monetary support raised over a one-year grant period from individuals, businesses, and nonprofit or other organizations located within established neighborhood boundaries, and from neighborhood development funding organizations. For purposes of this NOFA the term "neighborhood development funding organization" means:

- (1) A depository institution, the accounts of which are insured pursuant to the Federal Credit Union Act, and any subsidiary (as such term is defined in section 3(w) of the Federal Deposit Insurance Act) thereof;
- (2) A depository institution holding company and any subsidiary (as such term is defined in section 3(w) of the Federal Deposit Insurance Act) thereof; or

(3) A company at least 75 percent of the common stock of which is owned by one or more insured depository institutions or depository institution holding companies.

The purpose of the program is to support eligible neighborhood development activities using cooperative efforts and monetary contributions from local sources. The Federal funds are incentive funds to promote the development of this concept and encourage neighborhood organizations to become more self-sufficient in their development activities. Not more than 50 percent of the 1994 awards may be to previous grantees in the program; the remaining awards will be made to organizations selected from among new applicants. Applications will be selected for funding on the basis of evaluation criteria that reflect the program purposes and priorities and are contained in this notice.

The objectives of the Neighborhood Development Program are:

- To help neighborhood development organizations increase their capacities to carry out larger or more complex activities, in cooperation with private and public institutions; and
- To assist neighborhood development organizations to achieve long-term financial support for their activities. The activities must benefit low- and moderate-income persons within the neighborhood.

B. Allocation Amounts

The Department will make grants, in the form of matching funds, to eligible neighborhood development organizations. Under section 123(e)(3), a grantee organization may receive no more than \$75,000 in Federal matching funds in a single program year. HUD reserves the right to make grants for less than the maximum amount. The amount of Federal matching funds that an applicant receives during the program year will depend in part upon the amount of monetary contributions raised in the preceding quarter of the program year from individuals, businesses, and nonprofit and other organizations located within established neighborhood boundaries, and from neighborhood development funding organizations. Contributions attributable to organizations or persons not residing in or conducting business within the grantee's neighborhood, loans, in-kind services, contributions by owners of properties to be improved, fees for services, public funds, and any in-lieu-of-cash contributions cannot be used to match Federal funds. These contributions may, however, be used to

carry out project activities. The neighborhood monetary contributions for matching purposes must be raised within the one-year grant period. However, grant activities may be programmed over a one- to three-year period.

A Federal matching ratio will be established for each participating applicant in accordance with the statutory requirement that the highest ratios be established for neighborhoods having the "smallest number of households or greatest degree of economic distress." Subject to the statutory maximum of \$75,000, the Federal match for this program year will range from one to six Federal dollars for each qualifying dollar raised by the grantee. Applications selected to receive Federal funds will be rank-ordered and the matching ratios will be determined in accordance with these two criteria.

Any application selected for the award of Federal funds that proposed a matching funds ratio in excess of the ratio HUD determines for it will be offered an award of funds at the HUD determined ratio. However, any application selected for award that proposed a match below the maximum ratio HUD determines for it will be funded at the level proposed by the applicant.

Federal payments to participating neighborhood organizations will be made on a quarterly basis following receipt of quarterly performance and financial reports. The maximum Federal payment to an applicant will be governed by the amount of verified, qualifying monetary contributions received from local sources in the preceding quarter, multiplied by the matching funds ratio established for the neighborhood.

C. Eligibility

1. Eligible Applicants—Definition

An eligible neighborhood development organization must be located in and serve the neighborhood for which assistance is to be provided. It cannot be a city-wide organization, a multi-neighborhood consortium, or, in general, an organization serving a large area of the city. The applicant must meet all of the following statutory requirements:

(a) The applicant must be incorporated as a private, voluntary, nonprofit corporation under the laws of the State in which it operates;

(b) The applicant must be responsible through a governing body to the residents of the neighborhood it serves. Not less than 51 percent of the members

of the governing body must be residents of the neighborhood;

(c) The applicant must have conducted business for at least one year before the date of its application;

(d) The applicant must operate within an area that meets at least one of the following criteria:

(i) The area meets the requirements for Federal assistance under section 119 of the Housing and Community Development Act of 1974 (Urban Development Action Grants);

(ii) The area is designated as an empowerment zone or an enterprise community under Federal law;

(iii) The area is designated as an enterprise zone under State law, and is recognized by the Secretary as a State enterprise zone for purposes of this section; or

(iv) The area is a qualified distressed community within the meaning of section 233(b)(1) of the Bank Enterprise Act of 1991; and

(e) The applicant must have conducted one or more eligible neighborhood development activities that primarily benefit low- and moderate-income persons, as defined in section 102(a)(2) of the Housing and Community Development Act of 1974. (In general, low- and moderate-income residents means families and individuals whose incomes do not exceed 80 percent of the median income of the area involved.)

2. Eligible Applicants—Other Threshold Requirements

In addition, an applicant must:

(a) Demonstrate measurable achievements in one or more of the activities listed in section I.C(3), Eligible Activities, of this NOFA;

(b) Specify a business plan for accomplishing one or more of the activities listed in section I.C(3), Eligible Activities, of this NOFA;

(c) Specify a strategy for achieving greater long-term private sector support, especially in cooperation with a neighborhood development funding organization. An applicant that is otherwise eligible will be deemed to have the full benefit of the cooperation of a neighborhood development funding organization if the eligible applicant:

(i) Is located in an area described in paragraph (d) of Section I.C(1) of this NOFA (Eligible Applicants—Definition) that does not contain a neighborhood development funding organization; or

(ii) Demonstrates that it has been unable to obtain the cooperation of any neighborhood development funding organization in the area despite having made a good faith effort to obtain such cooperation; and

(d) Specify a strategy for increasing the capacity of the applicant.

3. Eligible Activities

Eligible activities include the following, but are not limited to the examples given:

(a) Developing economic development activities that include:

(i) Creating permanent jobs in the neighborhood; and

(ii) Establishing or expanding businesses within the neighborhood (such as a business incubator);

(b) Developing new housing, rehabilitating existing housing, or managing housing stock within the neighborhood;

(c) Developing delivery mechanisms for essential services that have lasting benefits to the neighborhood. Examples include fair housing counseling services, child care centers, youth training, and health services; or

(d) Planning, promoting, or financing voluntary neighborhood improvement efforts. Examples include establishing a neighborhood credit union, demolishing abandoned buildings, removing abandoned cars, and establishing an on going street and alley cleanup program.

D. Selection Criteria/Ranking Factors

Applications will be evaluated on the basis of the following factors:

(1) The degree of economic distress within the neighborhood. This is based on census data, including poverty level relative to population. Applicants with the highest poverty level relative to their population will get higher points. (15 points)

(2) The record of past performance of the applicant in one or more of the activities specified under paragraph I.C(3), Eligible Activities, of this NOFA, and in promoting fair housing, equal employment opportunity, and minority-owned business and entrepreneurial opportunities. (10 points)

(3) The extent of neighborhood residents' participation in the activities of the applicant and the extent to which the households and businesses in the neighborhood are members of the applicant organization. (10 points)

(4) The extent to which the proposed activities will benefit persons of low- and moderate-income residing in the neighborhood served by the applicant. (15 points)

(5) The extent of monetary contributions that the applicant proposes as a match to the Federal funds, supported by reasonable evidence that private funding sources within the neighborhood have been realistically identified. This requirement shall be waived, and an application may

be awarded the full points available under this factor, if the application is submitted by a small eligible organization, involves activities in a very low-income neighborhood, or is especially meritorious. (10 points)

(6) The extent to which the applicant has developed a strategy to increase its capacity to carry out larger or more complex project activities and to address its long-term financial and organizational development needs. (8 points)

(7) The extent of participation in the proposed activities by a neighborhood development funding organization. An eligible applicant shall be credited with the maximum score under this factor if the applicant demonstrates that it has made a good faith effort to obtain such participation, even if the applicant is not successful. (7 points)

(8) The quality of the management plan submitted for accomplishing the activities proposed by the applicant including evidence of sound financial management, the experience and capability of the applicant's director and staff, and the level of coordination efforts, including working relationships with local governments or neighborhood development funding organizations. (25 points)

E. Determination of Ratio for Federal Contribution

The Secretary will determine the ratio by which Federal funds will be used to match monetary contributions made to each eligible applicant that is selected for funding under this NOFA. The ratio will be based on:

(1) The number of households in the neighborhood. Neighborhoods having the smallest number of households will be assigned higher ratios under this factor; and

(2) The degree of economic distress. Neighborhoods indicating the greatest degree of economic distress will be assigned higher ratios under this factor than those with lesser degrees of economic distress.

F. Environmental Reviews

HUD will conduct the appropriate environmental review and comply with all the environmental requirements in 24 CFR part 50 before award of a grant. Grantees will be expected to adhere to all assurances applicable to environmental concerns as contained in the RFGA and grant agreements.

II. Application Submissions Process

A. Obtaining Application

For an application kit, contact: American Communities, P.O. Box 7189,

Gaithersburg, MD 20898-7189. Requests for Grant Applications (RFGAs) must be in writing, but the request may be faxed to (301) 251-5747. (This is not a toll-free number). We strongly recommend the use of the fax transmission option to promote accuracy and expedite response time. Requests for application kits must include the applicant's name, mailing address (including zip code), telephone number (including area code), and must refer to FR-3662. The RFGA contains the application, forms, and other information regarding the application process and the administration of the program, including relevant provisions from OMB Circulars A-110 and A-122. (This NOFA summarizes major provision of the RFGA).

B. Application Submission

An original and three copies of an application must be submitted to: Processing and Control Branch, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., room 7255, Washington, DC 20410. HUD will accept only one application per neighborhood organization.

C. Application Deadline

Applications may be requested beginning May 13, 1994. Applications must be submitted no later than 4:30 p.m. (E.S.T.), by the date specified in the application kit. The application deadline will be 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 unanticipated delays or other delivery-related problems.

III. Checklist of Application Submission Requirements

A. Preapplication Determination of Eligibility

Before preparing an application, the applicant should carefully check the eligibility requirements described in section I.C, Eligibility, of this NOFA. Applicants that are uncertain whether the city or urban county in which they are located meets the current minimum standards of physical and economic distress (used in determining which cities and urban counties were potentially eligible applicants under the Urban Development Action Grant Program) are advised to consult the following two notices published by the

Department in the Federal Register: (1) "Urban Development Action Grant: Revised Minimum Standards for Small Cities" (52 FR 37876, October 9, 1987); and (2) "Urban Development Action Grant: Revised Minimum Standards for Large Cities and Urban Counties" (52 FR 38174, October 14, 1987).

Any applicant that needs additional help in determining its eligibility should contact the nearest Department of Housing and Urban Development Field Office (Community Planning and Development Division). If assistance is needed, the city or county community development office serving a neighborhood organization should be able to provide an applicant with the HUD Field Office contact number. If unable to obtain a local contact, the HUD Headquarters contact for this information is Mrs. Stella Hall, telephone number (202) 708-2186; or contact the TDD number: (202) 708-0564. (These are not toll-free numbers.)

B. Application Checklist

Each application must contain the following, as required by the RFGA.

(1) A signed copy of Standard Form SF-424;

(2) An abstract describing, among other things, the applicant and its achievements, the proposed project, its intended beneficiaries, its projected impact on the neighborhood, and the manner in which the proposed project will be carried out;

(3) A completed fact sheet that lists neighborhood and organizational characteristics;

(4) Evidence that the applicant meets eligibility criteria and provides the following data:

(a) An original city map, with street names, delineating the applicant's neighborhood boundaries and indicating where project activities will take place;

(b) Census tract, block, or enumeration district references and zip code references must also be delineated on the map or on other maps submitted;

(c) Census data on the size of the neighborhood population, including the number of low- and moderate-income persons and the size of the minority population, broken down by ethnic, racial, and gender composition;

(d) A copy of the applicant organization's corporate charter, along with the incorporation papers, bylaws, and a statement of purpose;

(e) A list of the names of the neighborhood governing board members and their addresses (with zip codes) to show that at least 51% reside in the neighborhood. Indicate those who reside in the neighborhood separately

from those who conduct business in the neighborhood;

(f) Identification of the applicant organization's past and current neighborhood projects, including those projects that are eligible neighborhood development activities as defined in section I.C(3), Eligible Activities, of this NOFA;

(g) A description of the means by which the governing board members account to residents of the neighborhood, including the method and frequency of selection of members of the governing board, the consultation process with residents, the frequency of meetings, and a statement showing how the board is representative of the demographics of the neighborhood (i.e., a breakdown by tenants, homeowners, race, sex, ethnic composition, etc.);

(h) Evidence of the applicant's sound financial management system, determined from its financial statements or audits;

(i) A letter from the Chief Executive Officer of the unit of general local government in which assisted activities are to be carried out, certifying that the activities are not inconsistent with the government's comprehensive housing affordability strategy (CHAS), section 104(m) of the Housing and Community Development Act of 1974, or the local government's housing and community development plans;

(j) Evidence of cooperation with a neighborhood development funding organization. In lieu of this participation, evidence may be presented that the applicant:

(i) Has no neighborhood development funding organization within the applicable boundaries; or

(ii) Has been unsuccessful, despite having made a good faith effort, in obtaining this participation.

(k) A certification that the applicant will comply with the requirements of Federal law governing the application, acceptance, and use of Federal funds;

(l) A narrative statement defining how neighborhood matching funds will be raised and their anticipated sources; what neighborhood development activities will be funded; and a strategy for achieving greater long-term private sector support;

(m) A project management plan, including a schedule of tasks for both fund raising and project implementation;

(n) A project budget and budget narrative; and

(o) A certification that a potential grantee will comply with the drug-free workplace requirements in accordance with 24 CFR part 24, subpart F; and

(5) *Equal Opportunity Requirements.* The neighborhood development organization must certify that it will carry out activities assisted under the program in compliance with:

(a) The requirements of Title VIII of the Fair Housing Act (42 U.S.C. 3601-3619) and implementing regulations at 24 CFR parts 100, 108, 109, 110, and 115; part 200, subpart M; and Executive Order 11063 (Equal Opportunity Housing implementing regulations at 24 CFR part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1;

(b) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and implementing regulations at 24 CFR part 146; the prohibition against discrimination against individuals with a disability under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8; and the requirements of Executive Order 11246 and the implementing regulations issued at 41 CFR chapter 60;

(c) The requirements of section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u and implementing regulations at 24 CFR part 135; and

(d) The requirements of Executive Orders 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, the grantee must make efforts to encourage the use of minority and women's business enterprises in connection with activities funded under this notice.

(e) The prohibitions against discrimination and related requirements of section 109 of the Housing and Community Development Act of 1974 (42 U.S.C. 5309).

(f) The requirements of the Americans with Disabilities Act (42 U.S.C. 12181-12189) and implementing regulations at 28 CFR part 36, as applicable.

IV. Corrections to Deficient Applications

After the submission deadline date, HUD will screen each application to determine whether it is complete. If an application lacks certain technical items or contains a technical error, such as an incorrect signatory, HUD will notify the applicant in writing that it has 14 calendar days from the date of HUD's written notification to cure the technical deficiency. If the applicant fails to submit the missing material within the 14-day cure period, HUD will disqualify the application.

This 14-day cure period applies only to nonsubstantive deficiencies or errors. Deficiencies capable of cure will involve only items not necessary for HUD to assess the merits of an application against the factors specified in this NOFA.

Examples of deficiencies that may be cured are:

- Omitted or improper signatures;
- Omitted certifications or assurances; and
- Omitted financial statements or audits.

V. Other Matters

A. Reporting Requirements

In addition to complying with relevant provisions of OMB Circulars A-110 and A-122, grantees will be required to submit quarterly performance and financial reports. These reports should inform HUD of any changes that may affect the outcome of the program, such as changes in any of the following: the governing board membership, staffing, working relationships with local government and private organizations, fund raising activities, volunteer efforts, the management plan, and the budget. The quarterly reports must also verify the amount of monetary contributions received from within the neighborhood, as a basis for Federal disbursement of matching funds. Grantees must certify that none of the monetary contributions originated through public funding sources.

Grantees will be required also to submit a final report at the completion of the grant period. This final report must describe fully the successes and failures associated with the project, including the reasons for the successes and failures. It should also describe possible improvements in the methods used. The quarterly and final reports will be used for evaluation purposes, reports to the Congress on the program, and a report on successful projects that will be distributed to other neighborhood organizations.

B. Other Federal Requirements

In addition to the Equal Opportunity Requirements set forth in section III.B(4) of this NOFA, grantees must comply with the following requirements:

(1) *Ineligible contractors.* The provisions of 24 CFR part 24 relating to the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status.

(2) *Flood insurance.* No building proposed for acquisition, construction,

reconstruction, repair, or improvement to be assisted under this program may be located in an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless the community in which the area is situated is participating in the National Flood Insurance Program and the regulations thereunder (44 CFR parts 59-79), or less than a year has passed since FEMA notification regarding such hazards, and the grantee ensures that flood insurance on the structure is obtained in compliance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et seq.).

(3) *Lead-based paint.* The requirements, as applicable, of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), and implementing regulations at 24 CFR part 35.

(4) *Applicability of OMB Circulars.* The policies, guidelines, and requirements of OMB Circular Nos. A-110 and A-122 with respect to the acceptance and use of assistance by private nonprofit organizations.

(5) *Relocation and Real Property Acquisition.* The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), 49 CFR part 24, and HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition, apply to the acquisition of real property for an assisted project and the displacement of any person (households, business, nonprofit organization, or farm) as a direct result of acquisition, rehabilitation, or demolition for the HUD-assisted project.

C. National Environmental Policy Act

A finding of no significant impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The finding of no significant impact is available for public inspection and copying Monday through Friday during regular business hours at the Office of the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

D. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this notice will not have substantial direct effects on states or their political subdivisions, or the relationship

between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the order. The notice announces incentive funds to encourage neighborhood organizations to become more self-sufficient in their development activities.

E. Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this notice has potential for a significant impact on family formation, maintenance, and general well-being. The purpose of the notice is to provide funding to improve neighborhood opportunities relating to employment, business, housing, and the provision of essential services, all of which could benefit families significantly. However, because the impact on families would be indirect and would be beneficial, no further review is considered necessary.

F. 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 requirements.)

G. Section 103 of the HUD Reform Act

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a) was published on 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 restrained 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 (voice/TDD). (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 Area or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

H. Section 112 of the Reform Act

Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b) 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 has been implemented by 24 CFR part 86. If readers are involved in any efforts to influence the Department in these ways, they are urged to read part 86, particularly the examples contained in Appendix A of that part.

Any questions about the rule should be directed to the Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-3000. Telephone: (202) 708-3815 (voice/TDD) (This is not a toll-free number.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

Authority: Sec. 123, Housing and Urban-Rural Recovery Act of 1983 (42 U.S.C. 5318 note); 42 U.S.C. 3535(d).

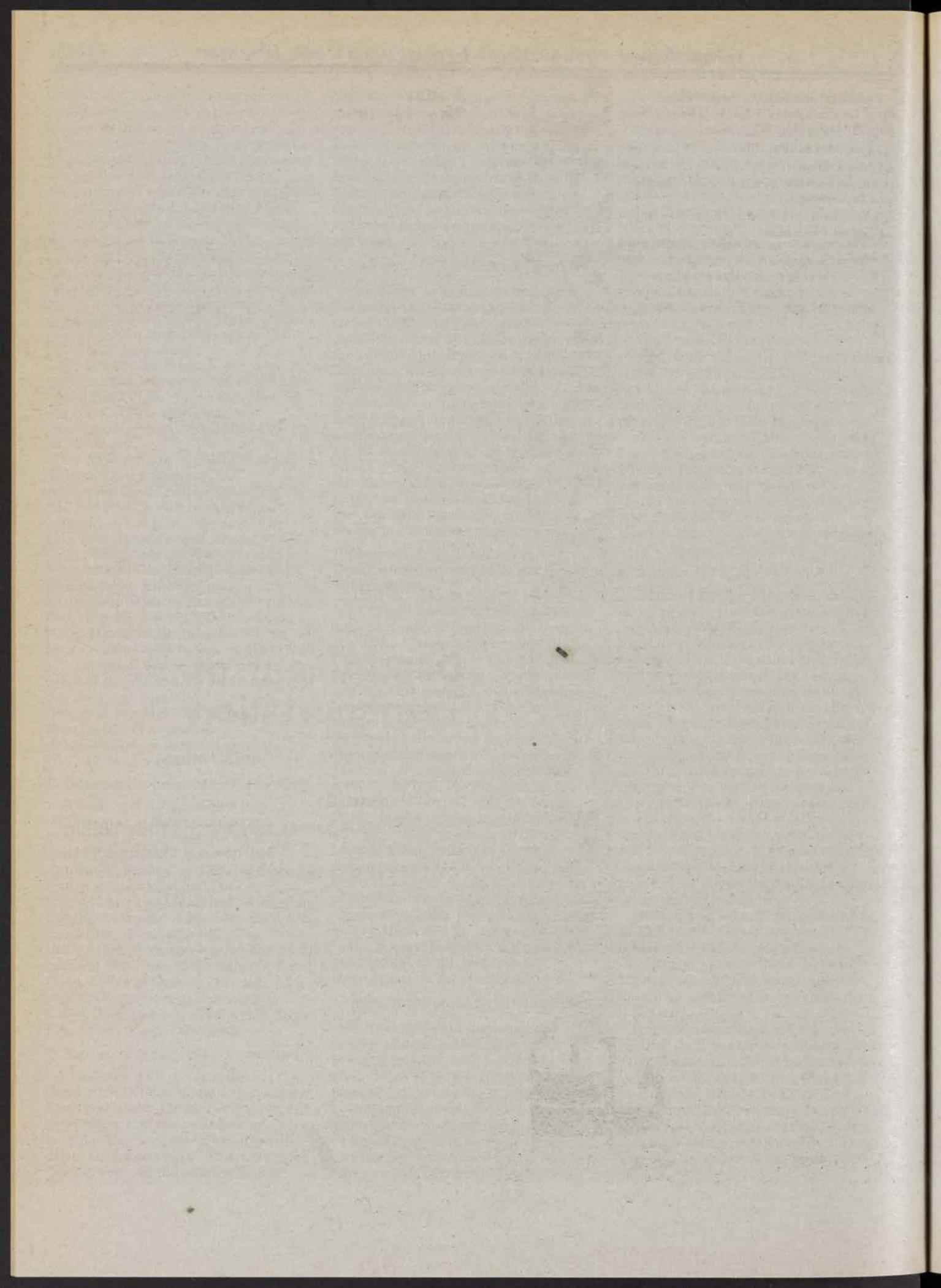
Dated: May 6, 1994.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 94-11611 Filed 5-12-94; 8:45 am]

BILLING CODE 4210-29-P



Federal Register

Friday
May 13, 1994

Part VIII

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Prohibition Against Certain Flights Within
the Territory and Airspace of Afghanistan
and Yemen; Final Rules

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 27744; Special Federal Aviation Regulation (SFAR) No. 67]

RIN 2120-AF38

Prohibition Against Certain Flights Within the Territory and Airspace of Afghanistan

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action prohibits flight operations within the territory and airspace of Afghanistan by any United States air carrier and commercial operator, by any person exercising the privileges of an airman certificate issued by the FAA, or by an operator using an aircraft registered in the United States unless the operator of such aircraft is a foreign air carrier. This action is taken to prevent an undue hazard to persons and aircraft engaged in such flight operations as a result of the ongoing civil war in Afghanistan.

DATES: *Effective Date:* May 10, 1994.
Expiration date: May 10, 1995.

FOR FURTHER INFORMATION CONTACT: Patricia Lane, Airspace and Air Traffic Law Branch, AGC-230, or Mark W. Bury, International Affairs and Legal Policy Staff, AGC-7, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591. Telephone: (202) 267-3491.

SUPPLEMENTARY INFORMATION:**Availability of Document**

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 267-3484. Communications must identify the number of this SFAR. Persons interested in being placed on a mailing list for future rules should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

Background

The Federal Aviation Administration (FAA) is responsible for the safety of flight in the United States and for the safety of U.S.-registered aircraft and U.S. operators throughout the world. Section 103(1) of the Federal Aviation Act of 1958 (Act) declares, as a matter of

policy, that the regulation of air commerce to promote safety is in the public interest. Section 601(a) of the Act provides the FAA with broad authority to carry out this policy by prescribing regulations governing the practices, methods, and procedures necessary to ensure safety in air commerce. In the exercise of these statutory responsibilities, the FAA has determined that the current civil war in Afghanistan justifies the imposition of certain measures to ensure the safety of U.S.-registered aircraft and operators that are conducting flight operations in the vicinity of Afghanistan's territory and airspace.

Fighting between the current government and various factions had been localized to an area around Kabul and the northern portion of the country. However, recent fighting has intensified and spread to a larger area of the country. Areas of northern Afghanistan, including major airbases and military garrisons at Mazare Sharif, have come under the control of heavily armed insurgent forces opposed to the Kabul regime.

Government and rebel forces possess a wide range of sophisticated weapons that potentially could be used to attack overflying civil aviation aircraft at cruising altitudes. These weapons include various surface-to-air missiles (SAMs) and antiaircraft artillery. Russian made fighter and attack aircraft, armed with cannons and air-to-air missiles, are also being utilized by government and rebel forces. Opposition forces have attacked Kabul with rockets, artillery, and bombs. Government aircraft have countered with air strikes on rebel airfields and other key facilities. According to press reports, some air-to-air encounters have occurred between aircraft from the Afghan factions and SAMs have been used to target aircraft. Segments of Afghanistan continue to be the scene of factional fighting and consequently pose a threat to transiting civilian aircraft. Fluctuations in the level and intensity of combat create an unsafe environment for any aircraft in Afghan airspace.

As a result of the stepped-up fighting, advisories have been issued by the governments of Russia and the United Kingdom and by the International Civil Aviation Organization (ICAO) urging civil air carriers to avoid Afghan airspace. On January 11, 1994, the Russian Civil Aviation Authority issued a notice specifically advising all aircraft crossing Afghanistan airspace to avoid the Termez-Mazare-Sharif-Kabul air corridor. On January 21, a communiqué was issued by the Coordination Council of the Afghan opposition calling on all

international airline organizations to restrict passenger-carrying aircraft from flying in Afghan airspace. On February 22, 1994, the British government issued a notice advising that there may be a risk to civilian aircraft flying along certain air routes in northern and southern Afghanistan, and that British and Hong Kong carriers are now avoiding these routes. ICAO also has issued a directive urging air carriers to discontinue flights over Afghanistan. These notices and the communiqué reflect the violent and uncertain nature of the situation and underscore the danger to flights in Afghan airspace.

While there are no indications that any faction in Afghanistan intends to deliberately target civil aircraft, both sides have the capability to do so and such a possibility cannot be ruled out in the current environment. At the very least, central Afghan government control over installations critical to navigation and communication cannot be assured. Use of combat aircraft and SAMs by all factions in the conflict calls into question the security of Afghan airspace for civilian aircraft. It is uncertain how long these conditions will last.

Prohibition Against Certain Flights Within the Territory and Airspace of Afghanistan

On the basis of the above information, and in furtherance of my responsibilities to promote the safety of flight of civil aircraft in air commerce, I have determined that immediate action by the FAA is required to prevent the injury to or loss of certain U.S.-registered aircraft and U.S. operators conducting flights in the vicinity of Afghanistan. I find that the current civil war in Afghanistan presents an immediate hazard to the operation of civil aircraft in the territory and airspace of Afghanistan. Accordingly, I am ordering a prohibition of flight operations (excluding those operations approved by the U.S. Government and emergency operations) within the territory and airspace of Afghanistan by any United States air carrier and commercial operator, by any person exercising the privileges of an airman certificate issued by the FAA, or by an operator using an aircraft registered in the United States unless the operator of such aircraft is a foreign air carrier. This action is necessary to prevent an undue hazard to aircraft and to protect persons on board those aircraft. Because the circumstances described in this notice warrant immediate action by the FAA to maintain the safety of flight, I also find that notice and public comment under 5 U.S.C. 553(b) are impracticable and

contrary to the public interest. Further, I find that good cause exists for making this rule effective immediately upon issuance. I also find that this action is fully consistent with my obligations under section 1102(a) of the Federal Aviation Act to ensure that I exercise my duties consistently with the obligations of the United States under international agreements. The Department of State has been advised of, and has no objection to, the action taken herein.

The rule contains an expiration date of May 10, 1995, but may be terminated sooner or extended through the publication of a corresponding notice if circumstances so warrant.

Regulatory Evaluation Summary

Benefits

This regulation will generate potential benefits in the form of ensuring that the current acceptable level of safety continues for U.S. commercial air carriers and other operators. The potential benefits of this action will accrue only to those air carriers and other operators currently engaging in overflights of Afghanistan's territory. Since this action is proactive rather than reactive, there are no statistics from which a quantitative estimate of benefits can be derived.

Costs

The SFAR will impose a potential incremental cost of compliance in the form of the circumnavigation (including the additional time for preflight planning) of Afghanistan's territory and airspace. Based on information available to informed FAA personnel, there are no U.S. air carriers or commercial operators currently conducting revenue flights into Afghanistan. Therefore, these operators will not be impacted by this action. However, there are overflights of Afghanistan's territory by U.S. commercial air carriers. Thus, these operators will be the only entities affected by this action. These operators will incur costs for additional fuel and time as the result of diverting from their normal flight routes over Afghanistan between Europe, Africa, and Asia. Since the FAA does not know at this time to what extent the potential cost of compliance will be, the FAA solicits comments from potentially affected operators. Please provide detailed cost information on the extent the action will impose costs in the form of additional preflight planning and circumnavigation of Afghanistan's territory.

Paperwork Reduction Act

This rule contains no information collection requests requiring approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

International Trade Impact Assessment

This final rule could have an impact on the international flights of U.S. air carriers and commercial operators because it will restrict their ability to overfly the territory of Afghanistan and therefore may impose additional costs relating to the circumnavigation of Afghanistan's territorial airspace. This final rule will not restrict the ability of foreign air carriers to overfly Afghanistan's territory. Given the narrow scope of this rule, it will not eliminate existing or create additional barriers to the sale of foreign aviation products in the United States or to the sale of U.S. aviation products and services in foreign countries.

Federalism Determination

The SFAR set forth herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612 (52 FR 41685; October 30, 1987), it is determined that this regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Conclusion

For the reasons set forth above, FAA has determined that this action is not a "significant regulatory action" under Executive Order 12866. This action is considered a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Because revenue flights to Afghanistan are not currently being conducted by U.S. air carriers or commercial operators, the FAA certifies that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulation Flexibility Act.

List of Subjects in 14 CFR Part 91

Afghanistan, Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Freight.

The Amendment

For the reasons set forth above, the Federal Aviation Administration is amending 14 CFR part 91 as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. app. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 *et seq.*, E.O. 11514, 35 FR 4247, 3 CFR, 1966-1970 Comp., p. 902; 49 U.S.C. 106(g).

2. Special Federal Aviation Regulation (SFAR) No. 67 is added to read as follows:

Special Federal Aviation Regulation No. 67—Prohibition Against Certain Flights Within the Territory and Airspace of Afghanistan

1. *Applicability.* This rule applies to all U.S. air carriers and commercial operators, all persons exercising the privileges of an airman certificate issued by the FAA, and all operators using aircraft registered in the United States except where the operator of such aircraft is a foreign air carrier.

2. *Flight prohibition.* Except as provided in paragraph 3 and 4 of this SFAR, no person described in paragraph 1 may conduct flight operations within the territory and airspace of Afghanistan.

3. *Permitted operations.* This SFAR does not prohibit persons described in paragraph 1 from conducting flight operations within the territory and airspace of Afghanistan where such operations are authorized either by exemption issued by the Administrator or by another agency of the United States Government with the approval of the FAA.

4. *Emergency situations.* In an emergency that requires immediate decision and action for the safety of the flight, the pilot in command of an aircraft may deviate from this SFAR to the extent required by that emergency. Except for U.S. air carriers and commercial operators that are subject to the requirements of 14 CFR 121.557, 121.559, or 135.19, each person who deviates from this rule shall, within ten (10) days of the deviation, excluding Saturdays, Sundays, and Federal holidays, submit to the nearest FAA Flight Standards District Office a complete report of the operations of the aircraft involved in the deviation, including a description of the deviation and the reasons therefor.

5. *Expiration.* This Special Federal Aviation Regulation expires May 10, 1995.

Issued in Washington, DC, on May 10, 1994.

David R. Hinson,
Administrator.

[FR Doc. 94-11714 Filed 5-10-94; 2:57 pm]

BILLING CODE 4910-18-P

14 CFR Part 91

[Docket No. 27745; Special Federal Aviation Regulation (SFAR) No. 68]

RIN 2120-AF39

Prohibition Against Certain Flights Within the Territory and Airspace of Yemen

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This action prohibits flight operations within the territory and airspace of Yemen by any United States air carrier and commercial operator, by any person exercising the privileges of an airman certificate issued by the FAA, or by an operator using an aircraft registered in the United States unless the operator of such aircraft is a foreign air carrier. This action is taken to prevent an undue hazard to persons and aircraft engaged in such flight operations as a result of the ongoing civil war in Yemen.

DATES: Effective Date: May 10, 1994.

Expiration date: May 10, 1995.

FOR FURTHER INFORMATION CONTACT:

Patricia Lane, Airspace and Air Traffic Law Branch, AGC-230, or Mark W. Bury, International Affairs and Legal Policy Staff, AGC-7, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591. Telephone: (202) 267-3491.

SUPPLEMENTARY INFORMATION:

Availability of Document

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 267-3484. Communications must identify the number of this SFAR. Persons interested in being placed on a mailing list for future rules should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

Background

The Federal Aviation Administration (FAA) is responsible for the safety of

flight in the United States and for the safety of U.S.-registered aircraft and U.S. operators throughout the world. Section 103(1) of the Federal Aviation Act of 1958 (Act) declares, as a matter of policy, that the regulation of air commerce to promote safety is in the public interest. Section 601(a) of the Act provides the FAA with broad authority to carry out this policy by prescribing regulations governing the practices, methods, and procedures necessary to ensure safety in air commerce. In the exercise of these statutory responsibilities, the FAA has determined that the current civil war in Yemen justifies the imposition of certain measures to ensure the safety of U.S.-registered aircraft and operators that are conducting flight operations in the vicinity of Yemen's territory and airspace.

Political violence and power struggles have plagued Yemen since North and South Yemen were unified in 1990. Civil hostilities have expanded over the past four months, culminating in the recent outbreak of widespread fighting throughout the country. President Ali Abdallah Salih of Yemen has declared a state of emergency, and a radio station in the capital of Sanaa announced the beginning of an all-out war. Both sides in the conflict possess military aircraft and anti-aircraft weapons.

The current situation in Yemen is volatile and fluid, making it potentially dangerous for civil aircraft to fly into or over Yemen. The ability of either side in the conflict to distinguish between hostile, friendly, and neutral aircraft is questionable. Military aircraft have been shot down, and airports throughout Yemen have reportedly been bombed. Complicating the civil aviation situation is the lack of air traffic control services and facilities in Yemen.

The government of the United Kingdom (U.K.) has issued a flight advisory referencing the civil war in Yemen. On May 5, 1994, the British Civil Aviation Authority, in cooperation with the U.K. Department of Transport's International Aviation Directorate, issued a statement advising airlines to avoid Yemen's airspace because of the serious outbreak of fighting in the country.

Prohibition Against Certain Flights Within the Territory and Airspace of Yemen

On the basis of the above information, and in furtherance of my responsibilities to promote the safety of flight of civil aircraft in air commerce, I have determined that immediate action by the FAA is required to prevent the injury to or less of certain U.S.-

registered aircraft and U.S. operators conducting flights in the vicinity of Yemen. I find that the current civil war in Yemen presents an immediate hazard to the operation of civil aircraft in the territory and airspace of Yemen. Accordingly, I am ordering a prohibition of most flight operations (excluding operations conducted with the specific approval of the United States Government or emergency operations) within the territory and airspace of Yemen by any United States air carrier and commercial operator, by any person exercising the privileges of an airman certificate issued by the FAA, or by an operator using an aircraft registered in the United States unless the operator of such aircraft is a foreign air carrier. This action is necessary to prevent an undue hazard to aircraft and to protect persons on board those aircraft. Because the circumstances described in this notice warrant immediate action by the FAA to maintain the safety of flight, I also find that notice and public comment under 5 U.S.C. 553(b) are impracticable and contrary to the public interest. Further, I find that good cause exists for making this rule effective immediately upon issuance. I also find that this action is fully consistent with my obligations under section 1102(a) of the Federal Aviation Act to ensure that I exercise my duties consistently with the obligations of the United States under international agreements. The Department of State has been advised of, and has no objection to, the action taken herein.

The rule contains an expiration date of May 10, 1995, but may be terminated sooner or extended through the publication of a corresponding notice if circumstances so warrant.

Regulatory Evaluation Summary

Benefits

This regulation will generate potential benefits in the form of ensuring that the current acceptable level of safety continues for U.S. commercial air carriers and other operators. The potential benefits of this action will accrue only to those air carriers and other operators currently engaging in overflights of Yemen's territory. Since this action is proactive rather than reactive, there are no statistics from which a quantitative estimate of benefits can be derived.

Costs

The SFAR will impose a potential incremental cost of compliance in the form of the circumnavigation (including the additional time for preflight planning) of Yemen's territory and

airspace. Based on information available to informed FAA personnel, there are no U.S. air carriers or commercial operators currently conducting revenue flights into Yemen. Therefore, these operators will not be affected by this action. However, there are overflights of Yemen's territory by U.S. commercial air carriers. Thus, these operators will be the only entities affected by this action. These operators will incur costs for additional fuel and time as the result of diverting from their normal flight routes that cross over Yemen. Since the FAA does not know at this time to what extent the potential cost of compliance will be, the FAA solicits comments from potentially impacted operators. Please provide detailed cost information on the extent the action will impose costs in the form of additional preflight planning and circumnavigation of Yemen's territory.

Paperwork Reduction Act

This rule contains no information collection requests requiring approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act (44 U.S.C. 3507 et seq.).

International Trade Impact Assessment

This final rule could have an impact on the international flights of U.S. air carriers and commercial operators because it will restrict their ability to overfly the territory of Yemen and therefore may impose additional costs related to the circumnavigation of Yemen's territorial airspace. This final rule will not restrict the ability of foreign air carriers to overfly the territory of Yemen. Given the narrow scope of this rule, it will not eliminate existing or create additional barriers to the sale of foreign aviation products or services in the United States or to the sale of U.S. aviation products and services in foreign countries.

Federalism Determination

The amendment set forth herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612 (52 FR 41685; October 30, 1987), it is determined that this regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Conclusion

For the reasons set forth above, FAA has determined that this action is not a "significant regulatory action" under Executive Order 12866. This action is considered a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Because revenue flights to Yemen are not currently being conducted by U.S. air carriers or commercial operators, the FAA certifies that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulation Flexibility Act.

List of Subjects in 14 CFR Part 91

Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Freight, Yemen.

The Amendment

For the reasons set forth above, the Federal Aviation Administration is amending 14 CFR part 91 as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. app. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321

et seq., E.O. 11514, 35 FR 4247, 3 CFR, 1966-1970 Comp., p. 902; 49 U.S.C. 106(g).

2. Special Federal Aviation Regulation (SFAR) No. 68 is added to read as follows:

Special Federal Aviation Regulation No. 68—Prohibition Against Certain Flights Within the Territory and Airspace of Yemen

1. Applicability. This rule applies to all U.S. air carriers and commercial operators, all persons exercising the privileges of an airman certificate issued by the FAA, and all operators using aircraft registered in the United States except where the operator of such aircraft is a foreign air carrier.

2. Flight prohibition. Except as provided in paragraph 3 and 4 of this SFAR, no person described in paragraph 1 may conduct flight operations within the territory and airspace of Yemen.

3. Permitted operations. This SFAR does not prohibit persons described in paragraph 1 from conducting flight operations within the territory and airspace of Yemen where such operations are authorized either by exemption issued by the Administrator or by another agency of the United States Government with the approval of the FAA.

4. Emergency situations. In an emergency that requires immediate decision and action for the safety of the flight, the pilot in command of an aircraft may deviate from this SFAR to the extent required by that emergency. Except for U.S. air carriers and commercial operators that are subject to the requirements of 14 C.F.R. 121.557, 121.559, or 135.19, each person who deviates from this rule shall, within ten (10) days of the deviation, excluding Saturdays, Sundays, and Federal holidays, submit to the nearest FAA Flight Standards District Office a complete report of the operation of the aircraft involved in the deviation, including a description of the deviation and the reason therefor.

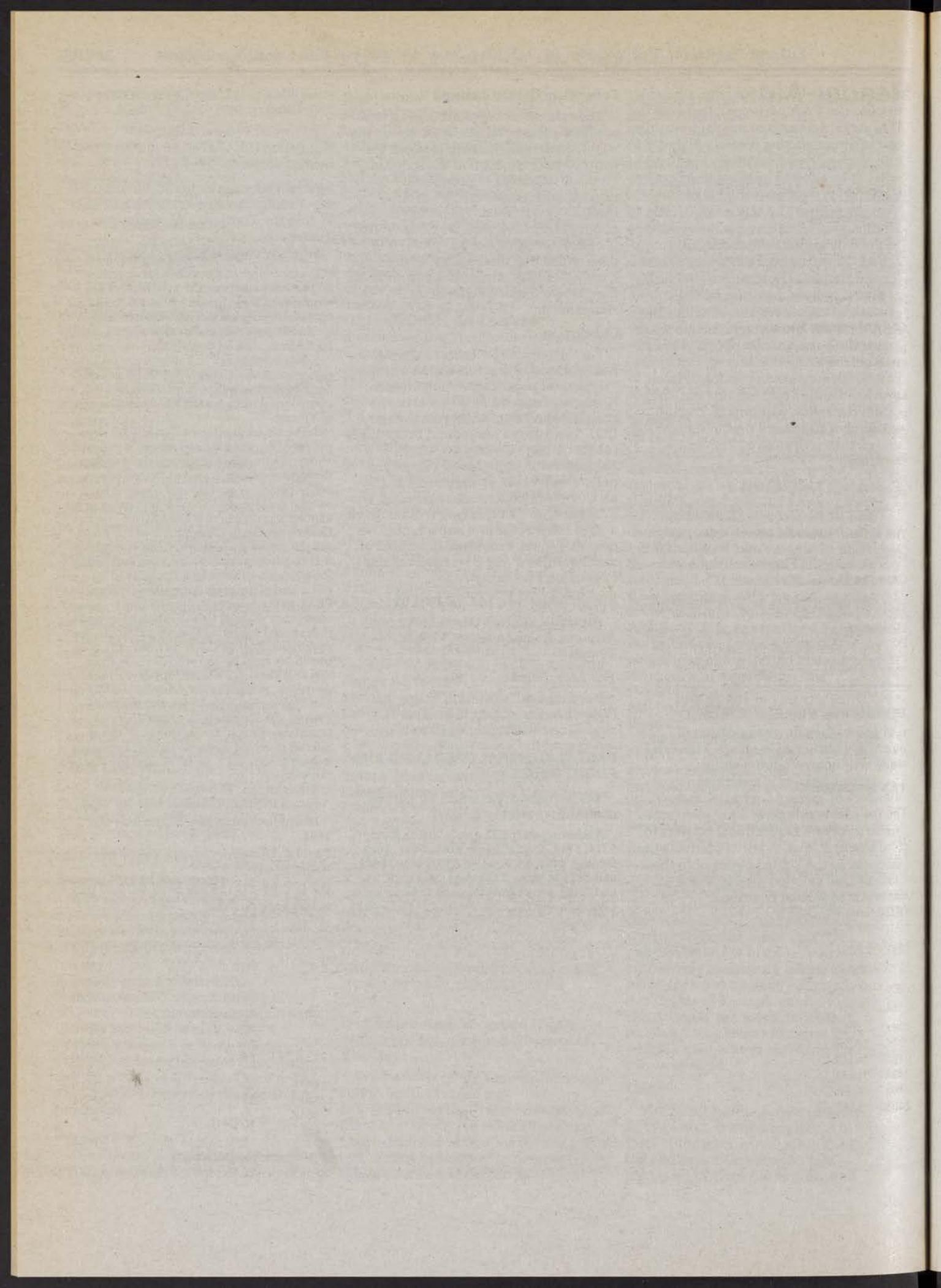
5. Expiration. This Special Federal Aviation Regulation expires May 10, 1995.

Issued in Washington, DC, on May 10, 1994.

David R. Hinson,
Administrator.

[FR Doc. 94-11713 Filed 5-10-94; 2:57 pm]

BILLING CODE 4910-13-P



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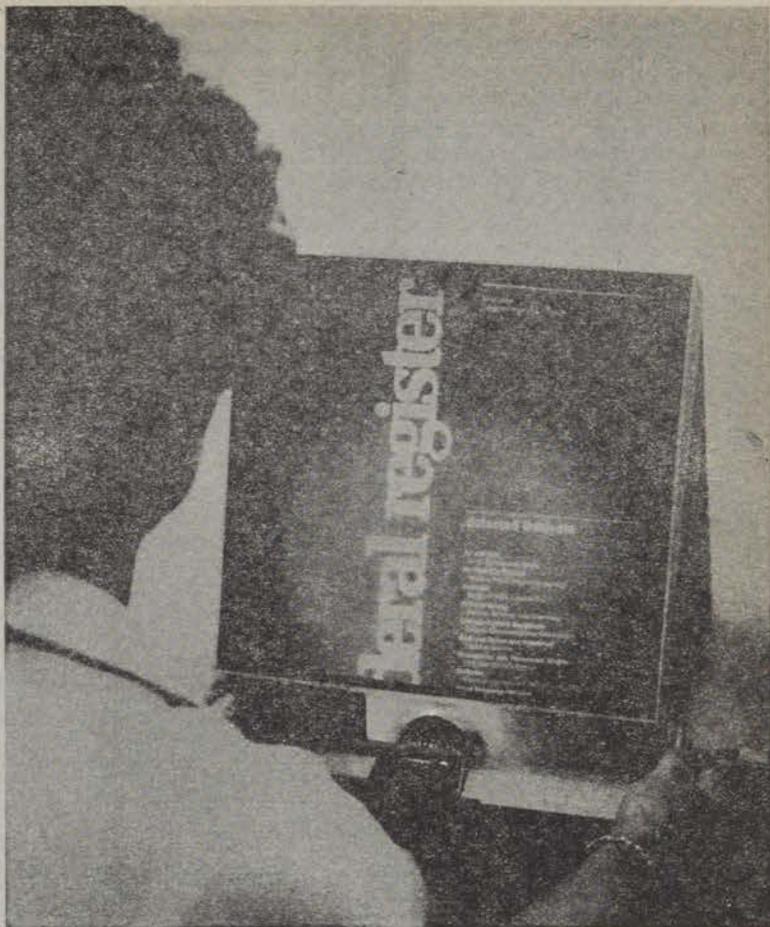
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