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Briefing on How To Use the Federal Register
For information on briefing in Chicago, IL, see announcement on the inside cover of this issue.

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Presidential Documents

Title 3—

The President

Proclamation 6690 of May 18, 1994

World Trade Week, 1994

By the President of the United States of America

A Proclamation

As we observe World Trade Week, 1994, we find our Nation well-positioned to compete in the 1990s. Our economy is the strongest in the industrialized world. Our work force is second to none. Our system of higher education is unequalled. And our people are more optimistic—and have reason to be.

Yet, success in world markets is not automatic—it requires planning and effort.

"U.S. Exports Equal U.S. Jobs," the theme of World Trade Week, illustrates why the United States must make the push to increase the involvement of American business in international markets. Exports have become a critical engine of our Nation's economic progress. In the past 5 years, exports of goods and services have been responsible for more than 40 percent of U.S. economic growth.

Today one in every five manufacturing jobs is linked to exports. Exports of goods and services support some 10.5 million jobs. And exports lead to better paying jobs. American workers producing for export earn 17 percent more than the overall average wage.

The intersection of domestic and international business makes it more important than ever to emphasize all of the factors that make America competitive. Sustainable economic growth is possible only if we solve those societal problems that keep our people from achieving their best.

The first order of business for this Administration was to improve the economic climate at home, and this continues to be my priority. We have made great strides in bringing the Federal budget deficit under control. Fiscal restraint has prompted a surge in business investment. We are in the process of implementing a policy that encourages private and public partnerships. We have begun the difficult job of helping the defense industry to convert to a more commercial business. And we are devoting more attention to secondary education and to training and retraining our work force.

This Administration is working vigorously to secure a health care plan for all Americans, and we have proposed a reform of our welfare system. We have major initiatives underway to fight crime and drug trafficking.

These steps toward healthy economic growth and a more secure society represent the essential underpinning for America to compete in the world economy.

However, U.S. companies must have fair access to international markets. We have placed a high priority on reducing trade barriers abroad, and we are making progress. The North American Free Trade Agreement creates a vibrant, integrated market on our own continent and opens up great possibilities for an even larger free trade area in the future. The successful conclusion of the Uruguay Round of GATT trade negotiations after 7 years of hard bargaining now should lead to a significant expansion of global trade.

Partnership between the United States Government and the private sector is necessary if we are to reach the economic goals outlined early in my Administration. The Federal Government is committed to being a constructive partner by creating a favorable environment for the U.S. private sector to conduct business at home and abroad. However, the main responsibility for developing overseas markets lies with the private sector. It is up to business to take the risks, but the risks bring the right to reap the rewards.

Our workers will reap the rewards in the form of many new jobs, because exports can be our number one method of creating high-wage jobs.

All this leads to only one conclusion: We must thrive globally to secure a healthier economy, and it is in the interest of business, workers, and the entire population to do so. We must sell more in the global marketplace—and we are continuing to do our best to expand that marketplace for American goods. We must also promote trade in a way that benefits workers and encourages sustainable development.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim the week beginning May 22, 1994, as "World Trade Week." I invite the people of the United States to join in appropriate observances to reaffirm the potential of international trade for creating prosperity for all.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of May, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 94–12589
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Rules and Regulations

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

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

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1630

Privacy Act Regulations

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Final rule.

SUMMARY: The Board is amending its Privacy Act regulations to allow participants who are authorizing the disclosure of their records to submit a copy of a signed statement, instead of an originally signed statement.

EFFECTIVE DATE: June 20, 1994.

FOR FURTHER INFORMATION CONTACT: John J. O'Meara, Assistant General Counsel for Administration, (202) 942–1662, FAX (202) 942–1676.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 28, 1994 (59 FR 14371), the Board proposed to amend its Privacy Act regulations to allow participants authorizing disclosure of their records to submit a signed statement, instead of an originally signed statement. No comments were received; therefore, no change was made and rule is now being published as a final rule.

The rule change recognizes that no significant safeguard results from requiring the submission of originally signed disclosure authorizations. In addition, the requirement to submit originally signed authorizations is burdensome to the Department of Agriculture's National Finance Center, which is the Board's recordkeeper for TSP records. An individual seeking disclosure of his or her TSP record shall submit a signed statement authorizing that disclosure.

Other Matters

This rule is not a major rule for the purpose of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small business entities. As required by the Paperwork Reduction Act, I hereby certify that this rule will not require additional reporting.

List of Subjects in 5 CFR Part 1630

Administrative practice and procedure, Privacy, Records.

Accordingly, part 1630 of title 5 of the Code of Federal Regulations is amended to read as follows:

PART 1630—PRIVACY ACT REGULATIONS

1. The authority citation for part 1630 continues to read as follows:

Authority: 5 U.S.C. 552a.

2. Section 1630.5 is amended by revising paragraph (a) to read as follows:

§ 1630.5 Granting access to a designated individual.

(a) An individual who wishes to have a person of his or her choosing review a record or obtain a copy of a record from the Board shall submit a signed statement authorizing the disclosure of his or her record before the record will be disclosed. The authorization shall be maintained with the record.

* * * * *

Dated: May 13, 1994.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 94–12322 Filed 5–19–94; 8:45 am]

BILLING CODE 6760–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 28

[CN–94–002]

RIN 0581–AA86

User Fees for Cotton Classification Services to Growers

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is reducing user fees for cotton producers for cotton classification services under the Cotton Statistics and Estimates Act in accordance with the formula provided in the Uniform Cotton Classing Fees Act of 1987, as amended by Public Law 102–237. The 1993 user fee for this classification service was $1.87 per bale. This final rule will reduce the fee for the 1994 crop to $1.80 per bale. The reduced fee is due to increased efficiency in classing operations, and it is sufficient to recover the costs of providing classification services, including costs for administration, supervision, and standardization costs.

EFFECTIVE DATE: July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Lee Cliburn, 202–720–2145.

SUPPLEMENTARY INFORMATION: A proposed rule detailing the revisions was published in the **Federal Register** on March 18, 1994, (59 FR 12862). A 30-day comment period was provided for interested persons to respond to the proposed rule; no comments were received.

This final rule has been issued in conformance with Executive Order 12866 and has been reviewed by OMB.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any state or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administrator of the Agricultural Marketing Service (AMS), has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be disproportionately burdened. The Administrator of AMS has certified that this action will not have a significant economic impact on a substantial number of small entities as defined in the RFA because: (1) The fee reduction reflects a decrease in the cost-per-unit currently borne by those entities utilizing the services; (2) the cost reduction will not affect competition in the marketplace; and (3) the use of classification services is voluntary.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR Part 1320) which implement the Paperwork Reduction Act (PRA) of 1980 (44 U.S.C. 3501 *et seq.*), the information collection requirements contained in this final rule have been previously approved by OMB and were assigned OMB control number 0581–0009 under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

This revision will become effective July 1, 1994, as provided by the Cotton Statistics and Estimates Act.

Fees for Classification Under the Cotton Statistics and Estimates Act of 1927

The user fee charged to cotton producers for High Volume Instrument (HVI) classification services under the Cotton Statistics and Estimates Act (7 U.S.C. 473a) was $1.87 per bale during the 1993 harvest season as determined by using the formula provided in the Uniform Cotton Classing Fees Act of 1987 as amended by Public Law 102–237. The fees cover salaries, cost of equipment and supplies, and other overhead costs, including costs for administration, supervision, and standardization.

This final rule establishes the user fee charged to producers for High Volume Instrument (HVI) classification at $1.80 per bale during the 1994 harvest season.

Public Law 102–237 amended the formula in the Uniform Cotton Classing Fees Act of 1987 for establishing the producer's classification fee so that the producer's fee is based on the prevailing method of classification requested by producers during the previous year. HVI classing was the prevailing method of cotton classification requested by producers in 1993. Therefore, the 1994 producer's user fee for classification service is based on the 1993 base fee for HVI classification.

The fee was calculated by applying the formula specified in the Uniform Cotton Classing Fees Act of 1987, as amended by Public Law 102–237. The 1993 base fee for HVI classification exclusive of adjustments, as provided by the Act, was $1.91 per bale. A 2.7 percent, or five cents per bale increase due to the implicit price deflator of the gross domestic product added to the $1.91 would result in a 1994 base fee of $1.96 per bale. The formula in the Act provides for the use of the percentage change in the implicit price deflator of the gross national product (as indexed for the most recent 12-month period for which statistics are available). However, this has been replaced by the gross domestic product by the Department of Commerce as a more appropriate measure for the short-term monitoring and analysis of the U.S. economy.

The number of bales to be classed by the United States Department of Agriculture from the 1994 crop is estimated at 16,550,000. The 1994 base fee was decreased 15 percent based on the estimated number of bales to be classed (one percent for every 100,000 bales or portion thereof above the base of 12,500,000, limited to a maximum adjustment of 15 percent). This percentage factor amounts to a 29 cents per bale reduction and was subtracted from the 1994 base fee of $1.96 per bale, resulting in a fee of $1.67 per bale.

The formula requires addition of a five cents per bale surcharge to the $1.67 per bale fee since the projected operating reserve would be less than 25 percent. The five cent surcharge would result in a 1994 season fee of $1.72 per bale. Assuming a fee of $1.72, the projected operating reserve would be 6.6 percent. An additional 8 cents per bale would be required to provide an ending accumulated operating reserve for the fiscal year of at least 10 percent of the projected cost of operating the program. This would establish the 1994 season fee at $1.80 per bale.

Accordingly, in § 28.909, paragraph (b) will be revised to reflect the reduction in the HVI classification fees.

As provided for in the Uniform Cotton Classing Fees Act of 1987, as amended, a five cent per bale discount will continue to be applied to voluntary centralized billing and collecting agents as specified in § 28.909 (c).

Growers or their designated agents will continue to incur no additional fees if only one method of receiving classification data is requested. The fee for each additional method of receiving classification data in § 28.910 will remain at five cents per bale, and it will be applicable even if the same method is requested. The other provisions of § 28.910 concerning the fee for an owner receiving classification data from the central database and the fee for new classification memoranda issued for the business convenience of such an owner without reclassification of the cotton will remain the same.

The fee for review classification in § 28.911 will be reduced from $1.87 per bale to $1.80 per bale.

The fee for returning samples after classification in § 28.911 will remain at 40 cents per sample.

List of Subjects in 7 CFR Part 28

Administrative practice and procedures, Cotton, Cotton samples, Grades, Market news, Reporting and recordkeeping requirements, Standards, Staples, Testing, Warehouses.

For the reasons set forth in the preamble, 7 CFR Part 28 is amended as follows:

PART 28—[AMENDED]

1. The authority citation for subpart D of part 28 will continue to read as follows:

Authority: Sec. 3a, 50 Stat. 62, as amended (7 U.S.C. 473a); Sec. 3c, 50 Stat. 62 (7 U.S.C. 473c).

2. In § 28.909, paragraph (b) is revised to read as follows:

§ 28.909 Costs.

* * * * *

(b) The cost of High Volume Instrument (HVI) cotton classification service to producers is $1.80 per bale.

* * * * *

3. In § 28.911, the last sentence of paragraph (a) is revised to read as follows:

§ 28.911 Review classification.

(a) * * * The fee for review classification is $1.80 per bale.

* * * * *

Dated: May 16, 1994.

Lon Hatamiya,

Administrator.

[FR Doc. 94–12378 Filed 5–19–94; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 61

[CN–93–004]

RIN 0581–AB05

Revision of Cottonseed Sampler License Procedures

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is making final the restructuring of procedures for licensing cottonseed samplers to draw, prepare and submit cottonseed samples for USDA's official cottonseed grading program. The revision will significantly reduce the paperwork burden involved in the licensing of official cottonseed samplers by eliminating the bonding requirement and the license fee, and extending the license period from 1 to 5 years. Official cottonseed samplers will still be required to obtain a license from USDA, and sampling equipment and procedures will continue to receive the same level of supervision from AMS Cotton Division personnel.

EFFECTIVE DATE: July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Lee Cliburn, 202–720–2145.

SUPPLEMENTARY INFORMATION: A proposed rule detailing the revisions was published in the **Federal Register** on February 14, 1994, (59 FR 6914). A 60-day comment period was provided for interested persons to respond to the proposed rule; only one comment, in support of the revisions, was received.

This final rule has been issued in conformance with Executive Order 12866 and has been reviewed by OMB.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any state or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administrator of the Agricultural Marketing Service (AMS), has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be disproportionately burdened. The Administrator of AMS has certified that this action will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act because: (1) The changes in licensing procedures will decrease the cottonseed sampler's paperwork burden; (2) the change in licensing procedures will not affect competition in the marketplace; and (3) participation in USDA's official cottonseed grading program is voluntary.

In compliance with OMB regulations (5 CFR part 1320) which implement the Paperwork Reduction Act (PRA) of 1980 (44 U.S.C. 3501 *et seq.*), the information collection requirements contained in this final rule for cottonseed sampler licenses have been previously approved by the OMB and were assigned OMB control number 0581–0008 under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This final rule would significantly reduce the information collection requirements for 34 licensed cottonseed samplers.

The cottonseed sampler license form CN–248 requires an estimated 0.17 hours or 10.2 minutes to complete. The paperwork burden for the 34 cottonseed samplers' license renewal each year amounts to 5.78 hours. This final rule, by requiring that licenses be renewed every 5 years, will reduce the paperwork burden to 1.16 hours, an 80 percent reduction.

The simplification of licensing procedures for cottonseed samplers will become effective on July 1, 1994, so that implementation can be coordinated with preparations for the start of the 1994 cotton harvest. Otherwise, the cottonseed industry will not realize the full benefit of the revisions in the first year of implementation.

USDA provides official grading of cottonseed under the authority of the Agricultural Marketing Act of 1946 (7 U.S.C. 1624), which requires USDA to supervise the drawing, preparation, and handling of samples submitted for official grading. Current regulations require that applications for initial and renewal cottonseed sampler's licenses, both of which expire in 1 year, be accompanied by proof that the sampler is bonded by an approved surety company, including a power of attorney, and a small fee ($20.00 for new licenses and $18.00 for renewals). These requirements are unnecessary for the maintenance of an acceptable level of supervision of cottonseed sampling by USDA. In addition, the licensing process will be simplified once these requirements are eliminated and the license period extended to 5 years. The licensing procedures for cotton samplers were revised similarly 15 years ago with no adverse effects to the level of supervision provided by AMS, and this revision will make the procedures for cottonseed sampler licensing consistent with those for cotton samplers.

Under this revision, official cottonseed samplers will still be required to obtain a license, and sampling equipment and procedures will continue to receive the same level of supervision from Agricultural Marketing Service, Cotton Division personnel. The expected effects of this final rule are that it will: (1) Decrease both the applicant's expense and paperwork burden required for licensing; and (2) simplify the procedures and reduce the time required by the Cotton Division employees to process the applications and maintain license records. While the effects are expected to be nominal in both cases, justification for continuing the bonding requirement, license fee, and 1-year license period is not supported by experience in the supervision of USDA's official cottonseed grading program in recent years.

Accordingly, §§ 61.26 and 61.28, which detail the bonding requirements for both newly issued and renewal cottonseed sampling licenses, will be deleted.

In § 61.27, the period of new and renewal licenses will be extended from 1 to 5 years.

Sections 61.29 and 61.43, which set forth the designation of bond approval authority and the fees for new and renewal licenses, respectively, will be deleted.

List of Subjects in 7 CFR Part 61

Cottonseed, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 61 will be revised as follows:

PART 61—[AMENDED]

1. The authority citation for subpart A of part 61 continues to read as follows:

Authority: Sec. 205, 60 Stat. 1090, as amended, (7 U.S.C. 1624).

2. Section 61.26 is removed.

3. Section 61.27 is revised to read as follows:

§ 61.27 Period of license; renewals.

The period for which a license may be issued under the regulations in §§ 61.25 through 61.42 shall be from the first day of August following receipt of the application, and shall continue for 5 years, ending on the 31st of July in the fifth year. Renewals shall be for 5 years also, beginning with the first day of August and ending on the 31st day of July in the fifth year: Provided, That licenses or renewals issued on and after June 1 of any year shall be for the period ending July 31 of the fifth year following.

§§ 61.28, 61.29, 61.43 [Removed]

4. Sections 61.28, 61.29, and 61.43 and the heading "Fees and Costs" preceding § 61.43 are removed.

Dated: May 16, 1994.

Lon Hatamiya,

Administrator.

[FR Doc. 94–12377 Filed 5–19–94; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 27

[Docket No. 94–09]

RIN 1557–AB33

Fair Housing Home Loan Data System

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is issuing a final rule amending its Fair Housing Home Loan Data System (FHHLDS). This final rule enhances the OCC's ability to use data collected under the Home Mortgage Disclosure Act (HMDA) in fair lending examinations and reduces recordkeeping requirements on national banks that are currently required to maintain duplicative information under both the FHHLDS and the HMDA. In order to relieve duplicative recordkeeping for those national banks, this final rule replaces the current FHHLDS monthly recordkeeping requirement with the HMDA Loan/Application Registers already maintained by national banks, which will be required to be updated on a quarterly basis. In order to improve the OCC's ability to use HMDA data in fair lending examinations, this final rule requires that all national banks subject to the HMDA, including those banks not subject to the FHHLDS, maintain information on the HMDA Loan/Application Registers on a quarterly basis. National banks that are not subject to the HMDA requirements will continue to be subject to the original FHHLDS recordkeeping requirement, which will be updated quarterly under this final rule. The intended effect of this final rule is to improve the OCC's supervision of national banks while also reducing a duplicative recordkeeping burden on affected national banks.

EFFECTIVE DATE: June 20, 1994.

FOR FURTHER INFORMATION CONTACT: Larry Riedman, Fair Lending Specialist, Compliance Management Division, (202) 874–4446; or F. John Podvin, Jr., Attorney, Bank Operations and Assets Division, (202) 874–4460, Office of the Comptroller of the Currency, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is amending 12 CFR part 27, pursuant to 12 U.S.C. 93a, to improve its ability to use HMDA data in fair lending examinations of national banks and reduce burden on national banks. The final rule requires that HMDA Loan/Application Registers be updated quarterly, requires the reason(s) for loan denial be indicated on the HMDA Loan/Application Registers and relieves the requirement to maintain duplicative records for those national banks that currently maintain records under both the FHHLDS and the HMDA, 12 U.S.C. 2801 *et seq.*

Background

On November 2, 1979, the OCC published a final rule (1979 final rule) in the **Federal Register** (44 FR 63084), which implemented 12 CFR part 27. The 1979 final rule provided a basis for a more effective fair housing monitoring program for home loans. The 1979 final rule established new recordkeeping requirements and a data collection system for monitoring national bank compliance with the Fair Housing Act (Title VIII of the Civil Rights Act of 1968), 42 U.S.C. 3601 *et seq.* and the Equal Credit Opportunity Act, 15 U.S.C. 1691 *et seq.*

In August 1989, the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), section 1211, Public Law 101–73, 103 Stat. 183 (12 U.S.C. 2803) amended the HMDA. On December 15, 1989, the Federal Reserve Board published a final rule (FRB final rule) in the **Federal Register** (54 FR 51356). The FRB final rule implemented a revised version of 12 CFR part 203 (Regulation C), which is the implementing regulation for the HMDA. Under the FRB final rule, certain national banks and their majority-owned mortgage banking subsidiaries must maintain individual loan application registers and forward them annually to the appropriate OCC office.

In response to FIRREA and the FRB final rule, the Office of Thrift Supervision (OTS) and the Federal Deposit Insurance Corporation (FDIC) amended their regulations concerning home loan activity to make them similar to Regulation C.

OCC Proposed Rule

On May 10, 1993, the OCC issued a notice of proposed rulemaking, pursuant to 12 U.S.C. 93a, to amend the FHHLDS. See 58 FR 27484. In its proposed rule, the OCC recognized that national banks subject to the recordkeeping requirements of both the FHHLDS and the HMDA were required to maintain duplicative information on home loan activity. The OCC proposal sought to relieve the duplicative recordkeeping burden on these banks without affecting banks that are not subject to the HMDA, but currently are subject to the monthly recordkeeping requirement in the FHHLDS.

In its proposed rule, the OCC sought to amend the FHHLDS to relieve the duplicative recordkeeping requirement for banks subject to both FHHLDS and HMDA by replacing the recordkeeping requirement on monthly home loan activity, currently located at § 27.3(a), with the existing requirement in the HMDA and Regulation C. Regulation C generally requires that national banks (and their majority-owned mortgage banking subsidiaries) with an office or branch located in a metropolitan statistical area (MSA) or primary MSA, as defined by the Office of Management and Budget (OMB), and with total assets greater than $10 million as of December 31 of the preceding calendar year, maintain information on home loan activity.

Under the proposal, national banks subject to the HMDA would maintain the information in a format similar to that prescribed under Regulation C (Loan/Application Register or LAR), except that (1) if a loan is denied, the reason(s) for denial are required to be entered on the Loan/Application Register; and (2) all the required information is entered on the Loan/Application Register within 30 calendar days after final disposition of the loan application.

The OCC proposal retained the existing monthly recordkeeping requirements in the FHHLDS for national banks that are not subject to the HMDA and Regulation C. The OCC proposal also retained the remaining provisions of the FHHLDS, which authorize the Comptroller to use his or her discretion in requiring national banks to maintain a Fair Housing Inquiry/Application Log or to complete Home Loan Data Submission Forms if the Comptroller has reason to believe that a national bank is engaging in discriminatory practices. Also, several clarifying amendments to § 27.7 were proposed. These changes made § 27.7 conform with the proposed amendments to the recordkeeping requirements in § 27.3(a). The proposal also stated that the OCC is studying the FHHLDS to determine what data are most effective in identifying discrimination in home lending, to identify the most effective and least burdensome method for collecting home loan data, and to develop an improved statistical model that will enhance its ability to analyze home loan data.

The OCC invited public comment on any aspect of the proposed rule for a 60 day period ending on July 9, 1993. The OCC specifically sought comment on the issue of whether the recordkeeping burden imposed by the proposal was minimal. The OCC received 44 comment letters from banks, bank holding companies, trade groups and the OMB. Forty-one commenters expressed general support for the proposed rule; however, several of these same commenters objected to specific provisions of the proposal. Two commenters made recommendations without expressing support for or opposition to the proposed rule. The OMB did not express support for or opposition to the proposed rule.

Pursuant to 12 U.S.C. 93a, this final rule revises the proposed rule based on the 44 comment letters and makes other changes to clarify the requirements in the proposed rule.

Review of Comments

The following is a discussion of the issues raised by the commenters, the OCC's responses to those issues, and a summary of changes made to the proposed rule.

A. Update Requirement

The proposed rule stated that a national bank subject to the HMDA was required to record all information on the HMDA–LAR within 30 calendar days after the final disposition of the loan application (i.e., the application is denied, withdrawn, or the loan closes).

Commenters in favor of the 30-day update requirement included both small and large national banks. Generally, these banks indicated that they were already updating their LARs within the 30-day time period. One comment letter from a bank trade association agreed and stated that the 30-day update requirement would not impose a significant additional burden on banks.

Commenters opposed to the 30-day update requirement also included small and large national banks. These commenters suggested that the OCC extend the 30-day period to various lengths of time, including: 45 days, 60 days, and quarterly. These commenters stated that they would have to change their current recordkeeping procedures in order to comply with the 30-day update requirement, resulting in an increase in recordkeeping burden. Some of the specific problems or concerns cited by these commenters include the following:

- Banks with many branches generally submit home loan data monthly to a central location for entry onto the bank's central LAR. In order to meet the 30-day requirement, branches would have to submit the information bi-weekly.
- Some banks do not input the geo-coding information (*i.e.*, state, county, MSA and census tract codes) because it is time consuming and can be managed better by automated systems operated by third-party specialists. Because this process is expensive, it is done on a quarterly basis. These banks also stated that it would be very expensive to bring this process in-house.
- Banks will have a problem assuring data accuracy on a 30 day, loan-by-loan basis. A longer updating time frame will allow more time for editing and correcting the data.
- A group of commenters recommended that the OCC consider the impact the 30-day update requirement may have on small national banks that do not have automated reporting systems.

In response to these comments and in the interest of minimizing recordkeeping burden on national banks, the OCC replaced the 30-day update requirement with a quarterly update requirement in the final rule. The final rule states that a national bank subject to the HMDA is required to record all information on the HMDA–LAR within 30 calendar days after the end of each calendar quarter.

The OCC also changed the update requirement for non-HMDA banks that are required to maintain the FHHLDS's monthly home loan activity report. Under the proposed rule, non-HMDA banks that receive 50 or more home loan applications a year were required to maintain home loan data in a report that was updated monthly, within 10 working days after the close of the month, in a format consistent with the bank's recordkeeping procedures. Under this final rule, that report is updated quarterly, within 30 calendar days after the end of each calendar quarter, in a format consistent with the bank's recordkeeping procedures. This change will make both HMDA banks and non-HMDA banks subject to the same updating requirement.

B. Reasons for Denial

Under the proposed rule, a national bank subject to the HMDA was required to maintain the reason(s) for denying a loan application.

The commenters in favor of the reasons for denial requirements generally stated that they were already voluntarily providing the reason(s) for denial. Several commenters also stated that it was a good idea to require the reasons for denial in order to better monitor the bank's lending activity and compliance with fair housing statutes.

The commenters opposed to the reason(s) for denial requirement provided various reasons for their opposition. One commenter stated that the nine HMDA codes are too limited to fully explain the reason(s) for the denial and that the true reason(s) for the denial can be found by examiners in the loan file. Another commenter stated that the FDIC does not require the reason(s) for denial in its regulation. Finally, another commenter preferred the treatment under Regulation C, which states that providing the reason(s) for denial is optional. See 12 CFR 203.4(c).

After considering these comments, the OCC determined that the final rule will retain the requirement that national banks maintain the reason(s) for denying a loan application for the following reasons. The OCC believes that requiring the reason(s) for denial will improve both the OCC's and national banks' monitoring of lending activity and compliance with fair housing statutes. The OCC notes that the OTS also requires the reason(s) for denial in its regulation, codified at 12 CFR 528.6(d)(2)(viii).

Several commenters suggested that the OCC include provisions in the final rule requiring national banks to use the nine HMDA codes when entering the reason(s) for denial. Another commenter suggested that the OCC devise a key of various reason(s) for denial based upon a list used in adverse action notices under the Equal Credit Opportunity Act. Based on these comments, the OCC determined that HMDA codes are needed for consistency. The final rule requires national banks to use the nine HMDA codes provided in Regulation C.

C. Recordkeeping Burden Comments

In the proposed rule, the OCC specifically requested comments on the issue of whether the recordkeeping burden imposed by the proposal was minimal. Commenters stating that burden would be increased under the proposal were substantially outnumbered by commenters stating that burden would be decreased.

Many commenters stated generally that the proposal would reduce recordkeeping burden. Several commenters referred to the reduction in staff hours and resources used in recording home loan information. Another commenter stated that those resources could be used in other areas if the proposal was adopted.

Commenters stating that burden would be increased generally focused on the 30-day update requirement and the burden associated with changing procedures to meet the proposed time period. The OCC changed the 30-day update requirement in the proposed rule to a quarterly update requirement in the final rule to alleviate the potential burden increase identified by these commenters.

D. Accuracy of the Data

While the proposed rule was silent on the issue of data accuracy, several commenters were concerned about this issue. One commenter stated that currently the bank employed procedures to check the accuracy of the data annually, just before the bank must report its HMDA data. The commenter stated that the 30-day update requirement would require a significant

change in the bank's procedures in order to ensure that the data are accurate. Another commenter suggested that a bank should only be held to a standard of reasonable diligence and good faith as to the accuracy of the data prior to the annual filing.

The OCC believes that updating quarterly rather than monthly will reduce the burden of ensuring the accuracy of the data entered onto the LAR. The OCC notes that Regulation C already contains a provision relating to data accuracy. Regulation C provides that an error in compiling or recording loan data is not a violation of the HMDA or Regulation C if it was unintentional and occurred despite the maintenance of procedures reasonably adapted to avoid such errors. See 12 CFR 203.6(b). The OCC believes that this standard is adequate and does not need to be restated. National banks subject to the HMDA that do not have this type of procedure in place should develop a procedure to meet this standard.

E. Compliance Alternatives

Under the proposed rule, national banks subject to the HMDA could not comply with the monthly recordkeeping requirement by completing the monthly home loan activity report in § 27.3(a)(2). Similarly, non-HMDA national banks could not comply with the monthly recordkeeping requirement by maintaining a HMDA–LAR in accordance with the requirements in § 27.3(a)(1).

One commenter suggested that all banks be given an alternative to comply with the FHHLDS monthly recordkeeping requirement by using either the HMDA–LAR or the monthly home loan activity report. Two other commenters suggested that non-HMDA banks be allowed to record their monthly home loan activity in the HMDA–LAR format in order to take advantage of available on-line automated systems for LAR preparation rather than requiring them to maintain a handwritten monthly home loan activity report.

The OCC believes that not all banks should be given a compliance alternative, particularly in light of the change to a quarterly update requirement in the final rule. However, the OCC believes that national banks not subject to HMDA should be allowed to comply with the quarterly recordkeeping requirement by maintaining either the monthly home loan activity report or the HMDA–LAR, in accordance with this final rule. This alternative will allow non-HMDA national banks that are subject to the FHHLDS to take advantage of available on-line automated systems for LAR preparation. The final rule reflects this change.

F. Frequency of Reporting

The proposed rule addressed only maintenance of home loan data and did not include provisions on the filing or reporting of the data. One bank was concerned that, while not stated as a purpose of the proposal, the increased processing and editing of the LAR could be the foundation for increasing the frequency of filing the HMDA data from the current annual requirement. According to the commenter, increased filing ran the risk of presenting an unrealistic snapshot of the bank's lending performance.

The quarterly recordkeeping requirement in § 27.3(a) is a records maintenance requirement and *not* a reporting requirement. The reporting requirement for the HMDA is located in Regulation C at 12 CFR 203.5(a). Changes in the frequency of reporting or filing HMDA data, if any, would be made to Regulation C, a FRB regulation.

G. Retroactivity

One commenter recommended that the final rule be promulgated on a retroactive basis, effective January 1, 1993. The OCC declines to accept the commenter's recommendation. While the OCC believes that the final rule reduces recordkeeping burden, certain national banks must be given time to change their procedures to comply with these requirements. Therefore, the final rule will become effective June 20, 1994.

H. Differences Between the FHHLDS and HMDA

Five commenters pointed out differences between the FHHLDS and the HMDA. One commenter submitted two exhibits detailing differences in coverage and information requirements. Another commenter suggested that the two systems should be subject to the same reporting standards. A third commenter suggested that the definition of "home loan" be the same for both regulations. Another commenter suggested that the loans covered in 12 CFR 202.13(a) should be used as a guide for the FHHLDS. Finally, one commenter pointed out that the FHHLDS does not have a mechanism to deal with cases where a mail or telephone applicant for a loan declines to provide information regarding race or sex. The commenter pointed out that Regulation C has this type of mechanism.

As noted in the proposed rule, the OCC is studying the FHHLDS to determine what data are most effective in identifying discrimination in home lending, to identify the most effective and least burdensome method for collecting home loan data, and to develop an improved statistical model that will enhance our ability to analyze home loan data. The OCC is considering, but chose not to implement these commenters' suggestions into this final rule because of the necessity and importance of enhancing the HMDA data and reducing regulatory burden as soon as possible. However, the issues raised by the commenters will be considered further in the context of the OCC's ongoing study of the FHHLDS. After the study is complete, the OCC expects to publish in the **Federal Register** a notice of proposed rulemaking to explain any further proposed changes to the FHHLDS.

I. The OMB Comment

In an official comment, the OMB stated that "the OCC should revise 12 CFR 27.3(b)(1)(xx) and 12 CFR 27.4(c)(5) so that the race and ethnic categories in its regulations are consistent with OMB Statistical Policy Directive No. 15, 'Race and Ethnic Standards for Federal Statistics and Administrative Reporting.'" The effect of the suggested revisions is to change the way the regulation refers to various racial and ethnic groups. The OCC determined that the suggested technical revisions are in keeping with the intent of the proposal. Therefore, the OCC has adopted OMB's suggested revisions of §§ 27.3(b)(1)(xx) and 27.4(c)(5) and has made conforming changes to Appendices II, III, and IV.

Paperwork Reduction Act

The collection of information contained in this final rule has been submitted to the Office of Management and Budget (OMB) under control number 1557–0159 in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)).

For those banks required to submit Home Loan Data Submission Forms, pursuant to § 27.7, the reporting burden for the estimated 13 banks filing reports will average approximately 100 hours annually, varying by the size and activity of the bank. The recordkeeping burden for the estimated 3,750 banks maintaining records will average approximately 1.3 hours annually.

Comments concerning the accuracy of these burden estimates and suggestions for reducing burden should be directed to the Office of the Comptroller of the Currency, Legislative, Regulatory, and International Activities, Attention: 1557–0159, 250 E Street SW., Washington, DC 20219, and the Office of Management and Budget, Paperwork

Reduction Project (1557–0159), Washington, DC 20503.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This regulation relieves an unnecessary duplicative recordkeeping burden on banks that are subject to the recordkeeping requirements of both the FHHLDS and the HMDA.

Executive Order 12866

The OCC has determined that this regulation is not a significant regulatory action.

List of Subjects in 12 CFR Part 27

Civil rights, Credit, Fair housing, Mortgages, National banks, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set out in the preamble, part 27 of chapter I of title 12 of the Code of Federal Regulations is amended as set forth below:

PART 27—FAIR HOUSING HOME LOAN DATA SYSTEM

1. The authority citation for part 27 is revised to read as follows:

Authority: 5 U.S.C. 301; 12 U.S.C. 1 *et seq.*, 93a, 161, 481, and 1818; 15 U.S.C. 1691 *et seq.*; 42 U.S.C. 3601 *et seq.*; 12 CFR part 202.

2. In § 27.3, paragraphs (a) and (b)(1)(xx) are revised to read as follows:

§ 27.3 Recordkeeping requirements.

(a) *Quarterly recordkeeping requirement.* (1) A bank that is required to collect data on home loans under part 203 of this title shall present the data on Federal Reserve Form FR HMDA-LAR or in an automated format in accordance with the instructions, except that:

(i) A bank shall maintain the reason(s) it denied a loan application, using the codes provided in part 203 of this title; and

(ii) A bank shall record all information required by this paragraph and part 203 of this title within 30 calendar days after the end of each calendar quarter.

(2) A bank that receives 50 or more home loan applications a year, as measured by the previous calendar year, and that is not required to collect data under paragraph (a)(1) of this section, shall record and maintain for each decision center the following information on home loan activity:

(i) Number of applications received for each of the following: Purchase; construction-permanent; refinance.

(ii) Number of loans closed for each of the following: Purchase; construction-permanent; refinance.

(iii) Number of loans denied for each of the following: Purchase; construction-permanent; refinance.

(iv) Number of loans withdrawn by applicant, for each of the following: Purchase; construction-permanent; refinance.

(3) The information required to be maintained under paragraph (a)(2) of this section shall be updated quarterly, within 30 calendar days after the end of each calendar quarter, in a format consistent with the bank's recordkeeping procedures.

(4) A bank exempted under paragraph (a)(2) of this section shall be covered by that requirement beginning the month following any quarter in which their average monthly volume of home loan applications exceeds four applications per month. Banks which are subject to this paragraph may discontinue keeping this information beginning the month following two consecutive quarters in which their average monthly volume of home loan applications drops to four or fewer applications per month. A bank which is otherwise exempted under this paragraph may be required upon notification received from the Comptroller, to record and maintain such information where there is cause to believe that the bank is not in compliance with the fair housing laws based on prior examinations and/or has substantive consumer complaints, among other factors.

(5) A bank required to maintain information under paragraph (a)(2) or (a)(4) of this section may choose to comply with the quarterly recordkeeping requirement by maintaining information in accordance with paragraph (a)(1) of this section.

(b) * * *

(1) * * *

(xx) Race/national origin of applicant(s) using the categories: American Indian or Alaskan Native; Asian or Pacific Islander; Black, not of Hispanic origin; White, not of Hispanic origin; Hispanic; Other.

* * * * *

3. In § 27.4, paragraph (c)(5) is revised to read as follows:

§ 27.4 Inquiry/Application Log.

* * * * *

(c) * * *

(5) Race/national origin of the inquirer(s) or applicant(s) using the categories: American Indian or Alaskan Native; Asian or Pacific Islander; Black, not of Hispanic origin; White, not of Hispanic origin; Hispanic; Other. In the case of inquiries, this item shall be noted on the basis of visual observation or surname(s) only. In the case of applications, the information shall be obtained pursuant to § 27.3(b)(2).

* * * * *

4. In § 27.7, paragraph (b), the introductory text for paragraph (c), and paragraph (d) are revised to read as follows:

§ 27.7 Availability, submission and use of data.

* * * * *

(b) Prior to a scheduled bank examination, the Comptroller may request the information maintained under § 27.3(a). A bank required to maintain information under § 27.3(a)(2) shall submit the information to the Comptroller on the form prescribed in appendix I of this part. A bank which is exempt from maintaining the information required under § 27.3(a) shall notify the Comptroller of this fact in writing within 30 calendar days of its receipt of the Comptroller's request.

(c) If, upon review of the information maintained under § 27.3(a), the Comptroller determines that statistical analysis prior to examination is warranted, the bank will be notified.

* * * * *

(d) If there is cause to believe that a bank is in noncompliance with fair housing laws, the Comptroller may require submission of additional Home Loan Data Submission Forms. The Comptroller may also require submission of the information maintained under § 27.3(a) and Home Loan Data Submission Forms at more frequent intervals than specified in paragraphs (b) and (c) of this section.

5. A heading is added preceding Appendix I to read as follows:

Appendixes to Part 27

6. Appendix II is revised to read as follows:

Appendix II—Information for Government Monitoring Purposes

The following language is approved by the Comptroller of the Currency and will satisfy the requirements of 12 CFR part 27. It may be inserted to complete the "Information for Government Monitoring Purposes" section of the Residential Loan Application Form (FHLMC Form 65/FNMA 1003) or may be used separately. This information may also be provided orally by the applicant.

The following information is requested by the Federal Government if this loan is related to a dwelling, in order to monitor the lender's compliance with equal credit

opportunity and fair housing laws. You are not required to furnish this information, but are encourage to do so. The law provides that a lender may neither discriminate on the basis of this information, nor on whether you choose to furnish it. However, if you choose not to furnish it, under Federal regulations this lender is required to note race and sex on the basis of visual observation or surname. If you do not wish to furnish the above information, please initial below.

Borrower

I do not wish to furnish this information (initial)_____.

Race/National Origin

☐ American Indian or Alaskan Native
☐ Asian or Pacific Islander
☐ Black, not of Hispanic origin
☐ Hispanic
☐ White, not of Hispanic origin
☐ Other (specify)_____

Sex

☐ Female
☐ Male

Co-borrower

I do not wish to furnish this information (initial)_____.

Race/National Origin

☐ American Indian or Alaskan Native
☐ Asian or Pacific Islander
☐ Black, not of Hispanic origin
☐ Hispanic
☐ White, not of Hispanic origin
☐ Other (specify)_____

Sex

☐ Female
☐ Male

BILLING CODE 4810-33-P

6. Appendix III is revised to read as follows:

Appendix III

Bank Name	OCC Charter No.	COMPTROLLER OF THE CURRENCY FAIR HOUSING LENDING INQUIRY/APPLICATION LOG SHEET	City
Branch, Office or Subsidiary Name			County State
Name of Person Responsible For Form	Phone Number		SMSA

INSTRUCTIONS: Use the codes listed below. Indicate by an asterisk (*) if the information recorded is the banker's observation rather than the borrower's statement.

Race Codes: W - White, not of Hispanic origin; I - American Indian or Alaskan Native; A - Asian or Pacific Islander; B - Black, not of Hispanic origin; H - Hispanic; O - Other

Type of Loan: P - Purchase; R - Refinance; C - Construction-Permanent; F - FHA (Federal Housing Admin); V - VA (Veteran's Administration); M - FMHA (Farmers Home Administration)

Date of Application or Inquiry	Type of Loan Code	Inquiry or Application (I) or (A)	Case Identification (Case Number or Name/Address)	Inquirer or Applicant		Co-Inquirer or Co-Applicant		LOCATION OF PROPERTY WHICH WILL SECURE LOAN			
				Sex (M or F)	Race Code	Sex (M or F)	Race Code	Street & Number, City, State	County	Zip Code	Census Tract

7. Appendix IV is revised to read as follows:

Appendix IV

COMPTROLLER OF THE CURRENCY
HOME LOAN DATA SUBMISSION

NAME OF BANK _____

CHARTER NUMBER _____ (1-5)
DECISION CENTER NO. _____ (6-9)

(Enter dollar amount as whole dollars)

APPLICATION FORM

1. Application file Number _ _ _ _ _ _ _ _ _ _ _ _ (10-21)
2. Amount of Loan Requested $ _ _ _ , _ _ _ (22-27)
3. Number of Months Requested to Maturity _ _ _ (28-30)
4. County _ _ _ _ _ _ _ (31-37)
5. State _ _ (38-39)
6. Number of Units 1 ☐ 2 ☐ 3 ☐ 4 ☐ (40)
7. Year House Was Built _ _ _ _ (41-44)
8. Purpose of Loan 1 ☐ Purchase 2 ☐ Construction-Permanent 3 ☐ Refinance (45)

Applicant	11 **Co-Applicant?** 1 ☐ Yes 2 ☐ No (49) (If #11 is No, proceed to #14)
9. Age _ _ (46-47)	12. Age _ _ (50-51)
10. Marital Status (48) 1 ☐ Married 2 ☐ Separated 3 ☐ Unmarried (Includes single divorced, widowed)	13. Marital Status (52) 1 ☐ Married 2 ☐ Separated 3 ☐ Unmarried (Includes single divorced, widowed)

14. Applicant Gross Monthly Income $ _ _ _ , _ _ _ (53-58)
15. Co-Applicant Gross Monthly Income $ _ _ _ , _ _ _ (59-64)
16. Proposed Monthly Housing Payments $ _ _ , _ _ _ (65-69)
17. Purchase/Sales Price $ _ _ _ , _ _ _ (70-75)
18. Other Total Monthly Payments $ _ _ _ , _ _ _ (76-81)

Applicant	**Co-Applicant?** (If none, proceed to #23)
19. Race 1 ☐ American Indian or Alaskan Native (82) 2 ☐ Asian or Pacific Islander 3 ☐ Black, not of Hispanic origin 4 ☐ White, not of Hispanic origin 5 ☐ Hispanic 6 ☐ Other	21 Race 1 ☐ American Indian or Alaskan Native (84) 2 ☐ Asian or Pacific Islander 3 ☐ Black, not of Hispanic origin 4 ☐ White, not of Hispanic origin 5 ☐ Hispanic 6 ☐ Other
20. Sex 1 ☐ Female 2 ☐ Male (83)	22. Sex 1 ☐ Female 2 ☐ Male (85)

23. Bank Relationship at Subject Bank (86)

1 ☐ Current Banking Relationship 2 ☐ Past Banking Relationship

BILLING CODE 4810-33-C

Appraisal

24. Census Tract _ _ _ _ . _ _ . (87-92)
25. Appraised Value $ _ _ _ , _ _ _ . (93-98)

Action Taken

26. Description of Action (99)

1 ☐ Withdrawn Before Terms Were Offered
2 ☐ Denied
} (If checked, skip remaining questions)

3 ☐ Withdrawn After Terms Were Offered
4 ☐ Approved and Loan Closed
} (If checked, complete remaining questions)

Terms of Mortgage or of Mortgage Offer

27. Committment Date _ _ / _ _ / _ _ (100-105)
M M D D Y Y

28. Type of Mortgage (106)

1 ☐ Standard Fixed Payment 2 ☐ Variable Rate
3 ☐ Graduated Payment 4 ☐ Roll-Over 5 ☐ Other

29. Private Mortgage Insurance Required? (107)

1 ☐ No 2 ☐ Yes

30. Loan Amount $ _ _ _ , _ _ _ (108-113)

31. Note (Simple) Interest Rate _ _ _ _ % (114-117)

32. Points to Buyer _ _ _ (118-120)

33. Months to Maturity _ _ _ (121-123)

34. Downpayment Amount $ _ _ _ , _ _ _ . (124-129)

Dated: May 16, 1994.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 94–12270 Filed 5–19–94; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93–ASW–8]

Alteration to Jet Route J–50

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; delay of effective date.

SUMMARY: On April 25, 1994, the Federal Aviation Administration (FAA) published a final rule altering Jet Route J–50 between Lufkin, TX, and Alexandria, LA. The final rule for Jet Route J–50 was inadvertently published without the completion of the required flight check to meet the June 23, 1994, effective date. This action delays the rule's effective date until August 18, 1994.

EFFECTIVE DATE: Effective May 20, 1994, the effective date of the Final Rule at 59 FR 19633 is delayed until 0901 u.t.c., August 18, 1994.

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 April 25, 1994, the FAA published a final rule altering Jet Route J–50 between Lufkin, TX, and Alexandria, LA (59 FR 19633). This final rule was inadvertently published without the completion of the required flight check to meet the June 23, 1994, effective date of the final rule. Therefore, the FAA intends to delay the effective date so that the required flight check can be completed.

In consideration of the foregoing, the effective date of the final rule altering Jet Route J–50 (59 FR 19633; April 25, 1994) is delayed from June 23, 1994, to August 18, 1994.

Issued in Washington, DC, on May 11, 1994.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 94–12382 Filed 5–19–94; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 74

[Docket No. 90C–0221]

Listing of Color Additives for Coloring Sutures; D&C Violet No. 2; Confirmation of Effective Date

AGENCY: Food and Drug Administration, HHS

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of April 14, 1994, of the final rule published in the **Federal Register** of March 14, 1994 (59 FR 11718) that amended the color additive regulations to provide for the safe use of D&C Violet No. 2 to color poly(ε-caprolactone) absorbable sutures for general surgery.

DATES: Effective date confirmed: April 14, 1994.

FOR FURTHER INFORMATION CONTACT: Mitchell A. Cheeseman, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204–0001, 202–254–9511.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 14, 1994 (59 FR 11718), FDA amended 21 CFR 74.3602 to provide for the safe use of D&C Violet No. 2 to color poly(ε-caprolactone) absorbable sutures for general surgery.

FDA gave interested persons until April 13, 1994, to file objections or requests for a hearing. The agency received no objections or requests for a hearing on the final rule. Therefore, FDA finds that the final rule published in the **Federal Register** of March 14, 1994, should be confirmed.

List of Subjects in 21 CFR Part 74

Color additives, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201, 401, 402, 403, 409, 501, 502, 505, 601, 602, 701, 721 (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the March 14, 1994, final rule. Accordingly, the amendments promulgated thereby became effective April 14, 1994.

Dated: May 13, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–12290 Filed 5–19–94; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 177

[Docket No. 91F–0254]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of petroleum hydrocarbon resins (cyclopentadiene-type), hydrogenated, as an adjuvant in the manufacture of polypropylene homopolymer or a copolymer of propylene and ethylene containing not less than 94 weight percent propylene for use in contact with food. This action is in response to a petition filed by Exxon Chemical Co.

DATES: Effective on May 20, 1994; written objections and requests for a hearing by June 20, 1994. The Director of the Office of the Federal Register approves the incorporations by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of certain publications in 21 CFR 177.1520(b), effective on May 20, 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: Julius Smith, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9500.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of August 1, 1991 (56 FR 36814), FDA announced that a food additive petition (FAP 1B4267) had been filed by Exxon Chemical Co., P.O. Box 241, Baton Rouge, LA 70821. The petition proposed that the food additive regulations be amended to provide for the safe use of hydrogenated cyclodiene resins for use as a component of polypropylene film intended to contact food.

Upon thorough review of the petition, the agency noted that the petitioner requested use of the additive in copolymers of propylene and ethylene containing not less than 94 weight percent propylene, in addition to its use in polypropylene films. Therefore, in the **Federal Register** of December 1, 1993 (58 FR 63381), FDA amended the filing notice of August 1, 1991, to state that the petitioner requested that the food additive regulations be amended to provide for the safe use of petroleum hydrocarbon resins (cyclopentadiene-type), hydrogenated, as a component of polypropylene or a copolymer of propylene and ethylene containing not less than 94 weight percent propylene for use in contact with food. This final rule is in response to both filing notices.

FDA, in its safety evaluation, reviewed the safety of the additive and the chemical impurities that may be present in the additive resulting from its manufacturing process. Although the additive itself has not been shown to cause cancer, it may contain minute amounts of polynuclear aromatic hydrocarbons (PAH's), carcinogenic impurities resulting from the manufacture of the additive.

Residual amounts of reactants, manufacturing aids, and their constituent impurities, such as polynuclear aromatic hydrocarbons in this instance, are commonly found as contaminants in chemical products, including food additives.

I. Determination of Safety

Under section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), the so-called "general safety clause," a food additive cannot be approved for a particular use unless a fair evaluation of the evidence establishes that the additive is safe for that use. FDA's food additive regulations (21 CFR 170.3(i)) define safe as "a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use."

The food additives anticancer, or Delaney, clause (section 409(c)(3)(A) of the act) further provides that no food additive shall be deemed safe if it is found to induce cancer when ingested by man or animal. Importantly, however, the Delaney clause applies to the additive itself and not to constituents of the additive. That is, where an additive itself has not been shown to cause cancer, but contains a carcinogenic impurity, the additive is properly evaluated under the general safety clause using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive (*Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984)).

II. Safety of the Petitioned Use of the Additive

FDA estimates that the petitioned use of the additive, petroleum hydrocarbon resins (cyclopentadiene-type), hydrogenated, will result in levels of exposure to the additive no greater than 40 parts per billion in the daily diet (Ref. 1).

FDA does not ordinarily consider chronic toxicological testing to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Ref. 2), and the agency has not required such testing here. However, the agency has reviewed the available toxicological data from acute toxicity and subchronic studies on the additive. No adverse effects were reported in these studies.

FDA has evaluated the safety of this additive under the general safety clause, considering all available data. The agency has also used risk assessment procedures to estimate the upper-bound limit of risk presented by polynuclear aromatic hydrocarbons that may be present as impurities in the additive. This risk evaluation of polynuclear aromatic hydrocarbons has two aspects: (1) Assessment of the exposure to the impurity from the proposed use of the additive; and (2) extrapolation of the risk observed in the animal bioassays to the conditions of probable exposure to humans.

A. Polynuclear Aromatic Hydrocarbons

FDA has estimated the hypothetical worst-case exposure to polynuclear aromatic hydrocarbons from the petitioned use of the additive in the manufacture of polypropylene film to be 0.7 nanograms per person per day (ng/person/day), based on a polynuclear aromatic hydrocarbon dietary concentration of 4.9 parts per trillion and a daily diet of 3 kilograms of food per person per day (Ref. 1).

The agency used data from a carcinogenesis bioassay on benzo[a]pyrene, conducted by Brune, H. et al., to estimate the upper-bound limit of lifetime human risk from exposure to this chemical stemming from the proposed use of petroleum hydrocarbon resins (cyclopentadiene-type), hydrogenated (Ref. 3). The results of the bioassay on polynuclear aromatic hydrocarbons demonstrated that the material was carcinogenic for Sprague-Dawley rats under the conditions of the study. The test material induced treatment-related benign forestomach tumors or esophageal tumors in male rats.

Based on a potential exposure of 0.7 ng/person/day, FDA estimates that the upper-bound limit of individual lifetime risk from the potential exposure to polynuclear aromatic hydrocarbons from the use of the subject additive is 2.1×10^{-8}, or less than 1 in 50 million (Ref. 4). Because of the numerous conservative assumptions used in calculating the exposure estimate, actual lifetime averaged individual exposure to polynuclear aromatic hydrocarbons is expected to be substantially less than the worst-case exposure, and therefore, the calculated upper-bound limit of risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from the exposure to polynuclear aromatic hydrocarbons that might result from the proposed use of the additive.

B. Need for Specifications

The agency has also considered whether specifications are necessary to control the amount of polynuclear aromatic hydrocarbon impurity in the food additive. The agency finds that specifications are not necessary for the following reasons: (1) Because of the low level at which polynuclear aromatic hydrocarbons may be expected to remain as impurities following production of the additive, the agency would not expect PAH's to become components of food at other than extremely low levels; and (2) the upper-bound limit of lifetime risk from exposure to polynuclear aromatic hydrocarbons, even under worst-case assumptions, is very low, less than 1 in 50 million.

C. Conclusions on Safety

FDA has evaluated the data in the petition and other relevant material. The agency concludes that the proposed uses for the additive in polypropylene homopolymer films and propylene/ethylene copolymer films in contact with nonfatty foods are safe. Based on this information, the agency has also concluded that the additive will have the intended technical effect and therefore 21 CFR 177.1520 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 21 CFR 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.

III. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

IV. Objections

Any person who will be adversely affected by this regulation may at any time on or before June 20, 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.

V. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum from the Chemistry Review Branch to the Indirect Additives Branch, FDA, concerning "FAP 1B4267—Exxon Chemical Company. Submission dated 5–4–93. Hydrogenated Cyclodiene Resins as an Adjuvant in Polypropylene Film," June 25, 1993.

2. Kokoski, C. J., "Regulatory Food Additive Toxicology," in *Chemical Safety Regulation and Compliance*, edited by Homburger, F., J. K. Marquis, and S. Karger, New York, NY, pp. 24–33, 1985.

3. Brune, H., R. P. Deutsch-Wenzel, M. Habs, S. Ivankovis, and D. Schmahl, "Investigation of the Tumorigenic Response to Benzo(a)pyrine in Aqueous Caffine Solution Applied Orally to Sprague-Dawley Rats," *Journal of Cancer Research and Clinical Oncology*, 102:153–157, 1981.

4. Memorandum from Julius Smith, Indirect Additive Branch, to Sara H. Henry, Quantitative Risk Assessment Committee, on "Estimation of the Upper Bound Lifetime Risk From Polynuclear Aromatic Hydrocarbons (PAH's) in Hydrogenated Cyclodiene Resin, the Subject of Food Additive Petition No. 1B4267 (Exxon Chemical Company)," August 6, 1993.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

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

2. Section 177.1520 is amended in the table in paragraph (b) by alphabetically adding a new entry under the headings "Substance" and "Limitations" to read as follows:

§ 177.1520 Olefin polymers.

* * * * *

(b) * * *

Substance	Limitations
* * * *	* * *
Petroleum hydrocarbon resins (cyclopentadiene-type), hydrogenated (CAS Reg. No. 68132–00–3) produced by the thermal polymerization of dicyclopentadiene and cyclodiene codimers (consisting of a mixture of cyclopentadiene, methyl cyclopentadiene, and C_4–C_5 acyclic dienes), followed by hydrogenation and having a ring-and-ball softening point of 119 °C minimum as determined by ASTM Method E 28–67 (Reapproved 1982), "Standard Test Method for Softening Point by Ring-and-Ball Apparatus," and a minimum viscosity of 3,000 cubic centimeters per second, measured at 160 °C, as determined by ASTM Method D 3236–88, "Standard Test Method for Apparent Viscosity of Hot Melt Adhesives and Coating Materials," both of which are incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the American Society for Testing and Materials, 1916 Race St., Philadelphia, PA 19103, or from the Division of Petition Control, Center For Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or may be examined at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.	For use only as an adjuvant at levels not to exceed 30 percent by weight in blends with: (1) Polypropylene complying with paragraph (c), item 1.1 of this section, or (2) a copolymer of propylene and ethylene containing not less than 94 weight percent propylene and complying with paragraph (c), item 3.2 of this section. The average thickness of the food-contact film is not to exceed 0.1 millimeter (0.004 inch). The finished polymer may be used in contact with food types I, II, IV–B, VI–A, VI–B, VII–B, and VIII identified in Table 1 of § 176.170(c) of this chapter and under conditions of use C through G described in Table 2 of § 176.170(c) of this chapter.
* * * *	* * *

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Dated: May 16, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–12429 Filed 5–19–94; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Salinomycin in Combination With Bacitracin Zinc, or Lincomycin, or Roxarsone

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of three abbreviated new animal drug applications (ANADA's) filed by Hoechst-Roussel Agri-Vet Co. The ANADA's provide for using approved Type A medicated articles to make Type C medicated broiler feeds containing salinomycin with bacitracin zinc, salinomycin with lincomycin, or salinomycin with roxarsone.

EFFECTIVE DATE: May 20, 1994.

FOR FURTHER INFORMATION CONTACT: Charles J. Andres, Center For Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1602.

SUPPLEMENTARY INFORMATION: Hoechst-Roussel Agri-Vet Co., P.O. Box 2500, Somerville, NJ 08876–1258, filed the following ANADA's:

ANADA 200–089, salinomycin with bacitracin zinc, which provides for using approved single ingredient Type A medicated articles to make Type C medicated broiler feeds containing 40 to 60 grams per ton (g/t) salinomycin sodium activity and 10 to 50 g/t bacitracin zinc for prevention of coccidiosis and for increased rate of weight gain. The ANADA is approved as a generic copy of American Cyanamid's new animal drug application (NADA) 139–235.

ANADA 200–093, salinomycin with lincomycin, which provides for using approved single ingredient Type A medicated articles to make Type C medicated broiler feeds containing 40 to 60 g/t salinomycin sodium activity with 2 to 4 g/t lincomycin, for prevention of coccidiosis and for improved feed efficiency. The ANADA is approved as a generic copy of Agri-Bio Corp.'s NADA 137–537.

ANADA 200–097, salinomycin with roxarsone, which provides for using approved single ingredient Type A medicated articles to make Type C medicated broiler feeds containing 40 to 60 g/t salinomycin sodium activity with 22.7 to 45.4 g/t roxarsone for prevention of coccidiosis and for improved feed efficiency. The ANADA is approved as a generic copy of Agri-Bio Corp.'s NADA 132–447.

ANADA's 200–089 and 200–093 are approved as of April 6, 1994. ANADA 200–097 is approved as of May 20, 1994. The regulations are amended in 21 CFR 558.550 to reflect the approvals.

These approvals are for use of Type A medicated articles to make Type C medicated feeds. Salinomycin, bacitracin zinc, and lincomycin are Category I drugs which, as provided in § 558.4 (21 CFR 558.4), do not require an approved Form FDA 1900. However, roxarsone is a Category II drug which, as provided in § 558.4, requires an approved Form FDA 1900 for making a Type C medicated feed. Use of salinomycin and roxarsone to make Type C medicated feeds as in ANADA 200–097 requires an approved Form FDA 1900.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of these applications may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(ii) that these actions are of a type that do not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

§ 558.550 [Amended]

2. Section 558.550 *Salinomycin* is amended in paragraph (a)(2) by removing "(b)(1)(vi), (b)(1)(viii), (b)(1)(x), (b)(1)(xi)," and "(b)(1)(xii)," and adding in its place "(b)(1)(v), (b)(1)(vi), (b)(1)(vii), (b)(1)(viii), (b)(1)(x), (b)(1)(xi), (b)(1)(xii), (b)(1)(xiii),".

Dated: May 3, 1994.

Richard H. Teske,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 94–12289 Filed 5–19–94; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 558

New Animal Drugs for Use In Animal Feeds; Salinomycin In Combination With Roxarsone and Lincomycin, or Virginiamycin, or Roxarsone and Virginiamycin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of three abbreviated new animal drug applications (ANADA's) filed by Hoechst-Roussel Agri-Vet Co. The ANADA's provide for using approved Type A medicated articles to make Type C medicated broiler feeds containing salinomycin with virginiamycin, salinomycin with roxarsone and virginiamycin, or salinomycin with roxarsone and lincomycin.

EFFECTIVE DATE: May 20, 1994.

FOR FURTHER INFORMATION CONTACT: Glenn A. Peterson, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1602.

SUPPLEMENTARY INFORMATION: Hoechst-Roussel Agri-Vet Co., P.O. Box 2500, Somerville, NJ 08876–1258, filed the following ANADA's:

ANADA 200–090, salinomycin with roxarsone and lincomycin, provides for using approved single ingredient Type A medicated articles to make Type C medicated broiler feeds containing 40 to 60 grams per ton (g/t) of salinomycin sodium activity with 45.4 g/t of roxarsone and 2 g/t of lincomycin for the prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. maxima, E. brunetti,* and *E. mivati,* including some field strains of *E. tenella* that are more susceptible to roxarsone combined with salinomycin than to salinomycin alone, and for improved feed efficiency. The ANADA

is approved as a generic copy of Agri-Bio Corp.'s new animal drug application (NADA) 140–581.

ANADA 200–092, salinomycin with virginiamycin, provides for using approved single ingredient Type A medicated articles to make Type C medicated broiler feeds containing 40 to 60 g/t of salinomycin sodium activity with either: (1) 5 g/t of virginiamycin for the prevention of coccidiosis caused by the aforementioned *Eimeria species*, and for increased rate of weight gain and improved feed efficiency, or (2) 5 to 15 g/t of virginiamycin for the prevention of coccidiosis caused by the aforementioned *Eimeria* species and for increased rate of weight gain. The ANADA is approved as a generic copy of SmithKline Beecham Animal Health's NADA 138–828.

ANADA 200–094, salinomycin with roxarsone and virginiamycin, provides for using approved single ingredient Type A medicated articles to make Type C medicated broiler feeds containing 40 to 60 g/t of salinomycin sodium activity with 45.4 g/t of roxarsone and 5 g/t virginiamycin for prevention of coccidiosis caused by the aforementioned *Eimeria* species, including some field strains of *E. tenella* which are more susceptible to roxarsone combined with salinomycin than to salinomycin alone, and for improved feed efficiency. The ANADA is approved as a generic copy of SmithKline Beecham Animal Health's NADA 138–953.

ANADA's 200–090 and 200–094 are approved as of May 20, 1994. ANADA 200–092 is approved as of April 6, 1994. The regulations are amended in § 558.550 *Salinomycin* (21 CFR 558.550) to reflect the approvals.

These approvals are for use of Type A medicated articles to make Type C medicated feeds. Roxarsone is a Category II drug which, as is provided in § 558.4(a) and (d), requires an approved Form FDA 1900 to make Type C medicated feeds. Use of salinomycin in combination with roxarsone and lincomycin, or salinomycin in combination with roxarsone and virginiamycin to make Type C medicated feeds as in ANADA's 200–090 and 200–094, respectively, requires an approved Form FDA 1900.

In addition, FDA published a final rule in the **Federal Register** of October 8, 1991 (56 FR 50652), that announced a change of sponsor name from "SmithKline Animal Health Products, Division of SmithKline Beckman Corp." to "SmithKline Beecham Animal Health." The change of sponsor name affected NADA 091–467 (virginiamycin), however, the references concerning virginiamycin in § 558.550(b)(1)(x), (b)(1)(xi), and (b)(1)(xii) were not amended to reflect the new sponsor name. At this time, those references are amended.

Finally, when § 558.550(b)(1)(xii)(*b*) was codified, an error was made in the indications language and it is now corrected to read "* * * which are more susceptible to roxarsone combined with salinomycin than to salinomycin alone, * * *."

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(ii) 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.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

§ 558.550 [Amended]

2. Section 558.550 *Salinomycin* is amended in paragraph (a)(2) by adding "(b)(1)(x), (b)(1)(xi), (b)(1)(xii), and (b)(1)(xiv)" after "(b)(1)(viii)", in paragraphs (b)(1)(x)(*c*) and (b)(1)(xii)(*c*) by removing "000007" and adding in its place "053571", and paragraph (b)(1)(xii)(*b*) by revising the phrase "salinomycin than to roxarsone alone," to read "salinomycin than to salinomycin alone".

Dated: May 13, 1994.

Richard H. Teske,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 94–12288 Filed 5–19–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Prisoners Transferred to the United States Under Prisoner-Exchange Treaties

AGENCY: Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The U.S. Parole Commission is amending its regulation concerning transfer treaty prisoners to suspend the requirement for a downward adjustment of 15 percent from the release date determined by the Commission under 18 U.S.C. 4106A and to remove a provision authorizing the Commission to reopen a decision if the prisoner is denied good time credit for prison misconduct. The amendment reflects the new policy of the U.S. Bureau of Prisons which now deducts foreign and domestic good time credits from the release date set by the Commission under 18 U.S.C. 4106A. The 15 percent downward adjustment was instituted by the Commission to compensate transferees, whose release dates are set pursuant to the sentencing guidelines, for the absence of the statutory good time deductions that would reduce the guideline sentences of similarly-situated U.S. Code offenders. An interim rule suspending that downward adjustment is necessary because, in three judicial circuits, federal appellate courts have now ruled that the U.S. Bureau of Prisons must deduct a transferee's foreign and domestic good time credits under 18 U.S.C. 4105.

EFFECTIVE DATE: The Final Rule takes effect on May 20, 1994.

FOR FURTHER INFORMATION CONTACT: Richard K. Preston, Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland, Telephone (301) 492–5959.

SUPPLEMENTARY INFORMATION: The U.S. Parole Commission introduced the 15 percent downward adjustment in release dates for transferees and the reopening for institutional misconduct at 58 FR 30703 (May 27, 1993). The Commission announced that it was adopting a provision that required each

release date determined under 18 U.S.C. 4106A contain a 15 percent downward adjustment recognizing that under the Bureau of Prisons policy in effect at the time, that all good time (both foreign and domestic) was deducted from the full term of the foreign sentence pursuant to 18 U.S.C. 4105. The Commission recognized that this interpretation of the law raised a legitimate concern about disparity between transferees and similarly-situated U.S. Code offenders as well as problems of discipline for the Bureau of Prisons. To ameliorate this disparity, the Commission adopted the 15 percent adjustment to reflect the potential good time that would reduce the guideline sentence of a similarly-situated U.S. Code offender. The rule also instituted a means for modifying the adjusted release date if the transferee violated prison rules. This reopening was found to be necessary because under the Bureau of Prisons policy then in effect, the withholding of good time credit pursuant to 18 U.S.C. 3624(b) only had a real impact in cases where the Commission had continued the transferee to expiration of his foreign sentence.

Since that time, three federal appellate courts (See *Ajala* v. *United States Parole Comm'n*, 997 F.2d 651 (9th Cir.), *reh'g denied*, ____ F.2d ____ (9th Cir. Oct. 13, 1993); *Trevino-Casares* v. *United States Parole Comm'n*, 992 F.2d 1086 (10th Cir.), *reh'g denied*, ____ F.2d ____ (10th Cir. Aug. 10, 1993); *Asare* v. *United States Parole Comm'n*, 2 F.3d 540 (4th Cir. 1993)) have held that the Bureau of Prisons must deduct the offender's foreign and domestic service credits from the release date established by the U.S. Parole Commission under 18 U.S.C. 4106A as if it were a new domestic sentence rather than the equivalent of a parole date (which the Commission understood it to be). In light of these decisions, the Bureau of Prisons has decided to apply the foreign and domestic good behavior credits to the release date set by the Commission. The change in the Bureau of Prisons policy prompted the Commission to amend its regulations.

On December 14, 1993, the Commission published an interim rule with request for public comment (58 FR 65547) that amended the Commission's regulation and suspended the requirement for a downward adjustment of 15% from the release date determined by the Commission. The regulation also removed the Commission's authority to reopen a decision if the prisoner is denied good time credit. The amendment reflected the new policy of the Bureau of Prisons which went into effect on December 15, 1993, to deduct foreign and domestic good time credits from the release date set by the Commission (if not CTE).

The Commission received comment from the Federal Public Defender for the Western District of Texas which supports the Commission's proposed rule. Federal Public Defender, Texas, Lucien B. Campbell, and Assistant Federal Public Defender, Henry J. Bemporad, concluded as follows:

> [T]he Parole Commission's suspension of its regulation in order to complement the new Bureau of Prisons policy also accords with Congress' intent in enacting §§ 4105(c) and 4106A. The federal defenders support this step towards equal treatment of transferees and domestic defendants.

The Commission is gratified by this comment, but notes that "equal treatment" of transferees and domestic offenders is, in the long run, an objective that cannot be attained. Transferees from countries that grant work and remission credits will receive both U.S. good time at the rate provided by 18 U.S.C. 3624(a) *and* their foreign credits, and will thereby be treated more leniently than domestic offenders.

Finally, a technical conforming amendment was made to 28 CFR 2.62(i)(1) to change the reference to a "mandatory release date" to "full term date of the foreign sentence." This amendment was necessary to conform to the change made in § 2.62(a)(5).

Implementation

This rule applies to all transfer treaty hearings held after December 15, 1993. The rule is to be applied retroactively to prior determinations where the Commission adjusted the guideline release date by 15 percent and/or reopened a case under 28 CFR 2.62(k)(7). The rule will not apply to transferees who have already been released and it will not serve to modify or reduce any period of supervised release that a transferee is now serving.

Executive Order 12866 and Regulatory Flexibility Statement

The U.S. Parole Commission has determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866 and, accordingly, this rule has not been reviewed by the Office of Management and Budget. This rule will not have a significant economic impact upon a substantial number of small entities, within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Probation and parole, Prisoners.

Accordingly, the U.S. Parole Commission adopts the following amendment to 28 CFR part 2.

The Amendments

(1) The authority citation for 28 CFR part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

(2) 28 CFR part 2, § 2.62 is amended by removing the second sentence of paragraph (a)(5) and inserting, in its place, four sentences, to read as set forth below.

(3) 28 CFR part 2, § 2.62 is further amended by revising paragraphs (i)(1) and (i)(2) to read as set forth below.

(4) 28 CFR part 2, § 2.62 is further amended by removing paragraph (k)(7) and by redesignating paragraph (k)(8) as new paragraph (k)(7).

§ 2.62 Prisoners transferred pursuant to treaty.

(a) Applicability, jurisdiction and statutory interpretation.

* * * * *

(5) * * * However, the release date shall be treated by the Bureau of Prisons as if it were the full term date of a sentence for the purpose of establishing a release date pursuant to 18 U.S.C. 4105(c)(1). The Bureau of Prisons release date shall supersede the release date established by the Parole Commission under 18 U.S.C. 4106A and shall be the date upon which the transferee's period of supervised release commences. If the Commission has ordered "continue to expiration," the 4106A release date is the same as the full term date of the foreign sentence. It is the Commission's interpretation of 18 U.S.C. 4105(c)(1) that the deduction of service credits in either case does not operate to reduce the foreign sentence or otherwise limit the Parole Commission's authority to establish a period of supervised release extending from the date of actual release from prison to the full term date of the foreign sentence.

* * * * *

(i) *Final decision.* (1) The Commission shall render a decision as soon as practicable and without unnecessary delay. The decision shall set a release date and a period and conditions of supervised release. If the Commission determines that the appropriate release date under 18 U.S.C. 4106A is the full term date of the foreign sentence, the Commission will order the transferee to "continue to expiration."

(2) Whenever the Bureau of Prisons applies service credits under 18 U.S.C. 4105 to a release date established by the Commission, the release date used by the Bureau of Prisons shall be the date established by the Parole Commission pursuant to the sentencing guidelines and not a date that resulted from any adjustment made to achieve comparable punishment with a similarly-situated U.S. Code offender. The application of service credits under 18 U.S.C. 4105 shall supersede any previous release date set by the Commission. The Commission may, for the purpose of facilitating the application of service credits by the Bureau of Prisons, reopen any case on the record to clarify the correct release date to be used, and the period of supervised release to be served.

* * * * *

Date: May 6, 1994.

Edward F. Reilly, Jr.,

Chairman, U.S. Parole Commission.

[FR Doc. 94–12052 Filed 5–19–94; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD01 94–042]

Safety Zone: 54th Annual National Sweepstakes Regatta, Red Bank, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of Implementation.

SUMMARY: This notice puts into effect the permanent regulations, for the 54th Annual National Sweepstakes Regatta. The regulation will be effective from 8 a.m. Saturday, July 16, 1994 until 6 p.m. Sunday, July 17, 1994. This regulation is necessary to control vessel traffic due to the confined nature of the waterway and anticipated congestion at the time of the event. The purpose of this regulation is to provide for the safety of life and property during the event.

EFFECTIVE DATE: The regulations in 33 CFR 100.103 are effective from 8 a.m. on Saturday, July 16, 1994 to 6 p.m. on Sunday, July 17, 1994.

FOR FURTHER INFORMATION CONTACT: LTJG B. M. Algeo, Chief, Boating Safety Affairs Branch, First Coast Guard District, (617) 223–8311.

DRAFTING INFORMATION: The principal persons involved in drafting this document are LTJG B. M. Algeo, Project Manager, First Coast Guard District Boating Safety Division, and LCDR F. J. Kenney, Project Attorney, First Coast Guard District Legal Office.

SUPPLEMENTARY INFORMATION: This notice provides the effective period for the permanent regulation governing the 1994 running of the National Sweepstakes Regatta in Red Bank, New Jersey. A portion of the Navesink River will be closed during the effective period to all vessel traffic except participants, official regatta vessels, and patrol craft. The regulated area is that area between the New Jersey Route 35 bridge and a line running across the Navesink River connecting Guyon and Lewis Points. Additional public notification will be made via the First Coast Guard District Local Notice to Mariners and marine safety broadcasts. The full text of this regulation is found in 33 CFR 100.103.

Dated: April 21, 1994.

J.L. Linnon,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 94–12401 Filed 5–19–94; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 100

[CGD01–94–018]

Safety Zone: The Great Kennebec River Whatever Race, Augusta, ME

AGENCY: Coast Guard, DOT.

ACTION: Notice of Implementation.

SUMMARY: This notice puts into effect the permanent regulations, for the Great Kennebec River Whatever Race. This regulation will be effective from Sunday, July 3, 1994 from 6 a.m. until 6 p.m. This regulation is necessary to control vessel traffic due to the confined nature of the waterway and anticipated congestion at the time of the event. The purpose of this regulation is to provide for the safety of life and property during the event.

EFFECTIVE DATE: The regulations in 33 CFR 100.108 are effective from 6 a.m. to 6 p.m. on Sunday, July 3, 1994.

FOR FURTHER INFORMATION CONTACT: LTJG B.M. Algeo, Chief, Boating Safety Affairs Branch, First Coast Guard District, (617) 223–8311.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are LTJG B.M. Algeo, Project Manager, First Coast Guard District Boating Safety Division, and LCDR F.J. Kenney, Project Attorney, First Coast Guard District Legal Office.

This notice provides the effective period for the permanent regulation governing the 1994 running of the Great Kennebec River Whatever Race, Maine. A portion of the Kennebec River will be closed during the effective period to all vessel traffic except participants, official regatta vessels, and patrol craft. The regulated area is that portion of the Kennebec River, extending bank to bank, between the Maine Route 126 bridge to the U.S. Route 201–202 bridge. Additional public notification will be made via the First Coast Guard District Local Notice to Mariners and marine safety broadcasts. The full text of this regulation is found in 33 CFR 100.108.

Dated: May 5, 1994.

J.L. Linnon,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 94–12402 Filed 5–19–94; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 100

[CGD01–94–032]

Safety Zone; Harvard-Yale Regatta, Thames River, New London, CT

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The annual Harvard-Yale Regatta is a crew race event held on the Thames River in New London, Connecticut. This regulation temporarily amends the permanent regulation, by changing the time for this year's event. These regulations are necessary to control vessel traffic within the immediate vicinity of the event due to the confined nature of the waterway and anticipated congestion at the time of the event, thus providing for the safety of life and property on affected navigable waters.

EFFECTIVE DATES: This rule is effective from 4 p.m. to 8 p.m. on June 4, 1994. If the event is postponed for any reason, the regulations will be effective between the hours of 12:45 p.m. and 3:15 p.m. on June 5, 1994.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) Benjamin M. Algeo, Chief Boating Safety Affairs Branch, First Coast Guard District, (617) 223–8310.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are Lieutenant (Junior Grade) B. M. Algeo, project officer, Chief, Boating Safety Affairs Branch, First Coast Guard District and Lieutenant Commander F. J. Kenney, project attorney, First Coast Guard District Legal Office.

Regulatory History

Pursuant to 5 U.S.C. 553, a Notice of Proposed Rulemaking (NPRM) was not published for this regulation, and good cause exists for making it effective in less than 30 days after **Federal Register** publication. The Harvard-Yale Regatta is a long-standing and popular local event. The public is well aware of the general procedures followed to hold this annual event. This regulation simply changes the time of the event to allow the race committee to hold the event during hours correlating with certain tidal conditions. Little commercial traffic is known to transit the area. However, sufficient notice will be provided for any affected party to alter plans with minimal impact. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to respond to any potential hazards to the maritime public.

Background and Purpose

The circumstances requiring this regulation result from the desire to protect the boating public from possible dangers and hazards associated with this event. In accordance with the provisions of the permanent regulation governing the conduct of the Harvard-Yale Regatta, a portion of the Thames River will be closed during the effective period to all vessel traffic except participants, official regatta vessels, and patrol craft. The regulated area is that area of the Thames River between Bartlett's Cove and the Penn Central Draw Bridge in New London, Connecticut. This regulation changes the time of the event published in 100 CFR 100.101; race times will be published prior to the event in the Coast Guard Local Notice to Mariners. In order to provide for the safety of spectators and participants, the Coast Guard will restrict vessel movement in the race course area and establish spectator anchorages for what is expected to be a large spectator fleet.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT, is unnecessary. This rule constitutes a temporary revision of the permanent regulations governing the running of the Harvard-Yale Regatta published in 33 CFR 100.101, by changing the effective period of the regulations. The public is fully aware of the terms and conditions of this annual event. Commercial traffic on the affected portion of the Thames River is infrequent. The race is popular and of short duration. Local commercial entities and the U.S. Navy have been notified of the race schedule. Vessel traffic may be allowed to transit the regulated area at the discretion of the Patrol Commander.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. Small entities include independently owned and operated small businesses that are not dominant in their field, and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). For the reasons set forth in the above Regulatory Evaluation, the Coast Guard expects the impact of this regulation to be minimal, and certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612, and has determined that this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that under section 2.B.2.c. of Commandant Instruction M16475.1B it is an action to protect public safety and is categorically excluded from further environmental documentation. A Categorical Exclusion Determination will be made available in the docket.

List of Subjects in 33 CFR Part 100

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

Regulations

For the reasons set forth in the preamble, the Coast Guard amends Part 100 of Title 33, Code of Federal Regulations, as follows:

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Paragraph (b) of § 100.101, is temporarily revised to read as follows:

§ 100.101 Harvard-Yale Regatta, Thames River, New London, CT.

* * * * *

(b) Effective period. This section is effective between the hours of 4 p.m. and 8 p.m. on June 4, 1994. If the races scheduled for June 4, 1994 are postponed, this regulation will be effective between the hours or 12:45 p.m. and 3:15 p.m. on June 5, 1994.

* * * * *

Dated: May 12, 1994.

J.L. Linnon,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 94–12403 Filed 5–19–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD01–94–043]

RIN 2115–AA97

Safety Zone; South Street Seaport Memorial Day Fireworks, East River, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for a Memorial Day fireworks program located in the East River. This event is sponsored by South Street Seaport, Inc., and will take place on May 29, 1994, from 8 p.m. until 10 p.m. This safety zone is needed to protect the boating public from the hazards associated with fireworks exploding in the area.

EFFECTIVE DATE: This rule is effective from 8 p.m. until 10 p.m. on May 29, 1994.

FOR FURTHER INFORMATION CONTACT: LT R. Trabocchi, Project Manager, Captain of the Port, New York (212) 668–7933.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are LT R. Trabocchi, Project Manager, Captain of the Port, New York and CDR J. Astley, Project Attorney, First Coast Guard District, Legal Office.

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective less than 30 days after **Federal Register** publication. Due to the date this application was received, there was not sufficient time to publish a proposed rule in advance of the event. Publishing an NPRM and delaying the event would be contrary to public interest since the fireworks display is for public viewing.

Background and Purpose

On April 18, 1994, South Street Seaport, Inc. submitted an application to hold a fireworks program in the East River off of South Street Seaport, Manhattan, New York. This regulation establishes a temporary safety zone in all waters of the East River south of the Brooklyn Bridge and north of a line drawn from Pier 9, Manhattan to Pier 3, Brooklyn. This safety zone is being established to protect boaters from the hazards associated with fireworks exploding in the area. No vessel will be permitted to enter or move within this safety zone unless authorized to do so by the Coast Guard Captain of the Port, New York.

Regulatory Evaluation

This rule is not a significant regulatory action under Executive Order 12866 and is not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). No vessel traffic will be permitted to transit the East River between the Brooklyn Bridge and a line drawn from Pier 9, Manhattan to Pier 3 Brooklyn at any time the safety zone is in effect. Although there is a regular flow of traffic through this area, there is not likely to be a significant impact on recreational or commercial traffic for several reasons. Due to the limited duration of the event, the late hour of the event, the extensive, advance advisories that will be made to the affected maritime community to allow for the scheduling of transits before and after the event, and that pleasure craft and some commercial vessels can take an alternate route via the Hudson and Harlem Rivers, the Coast Guard expects the economic impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under Section 3 of the Small Business Act (15 U.S.C. 632).

For the reasons given in the Regulatory Evaluation, the Coast Guard expects the impact of this regulation to be minimal. The Coast Guard certifies under 5 U.S.C. 605(b) that this regulation will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of these regulations and concluded that under section 2.B.2.c. of Commandant Instruction M16475.1B, it is an action under the Coast Guard's statutory authority to promote maritime safety and protect the environment, and thus is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is included in the docket.

List of Subjects in 33 CFR Part 165

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

Regulations

For reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—[AMENDED]

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

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

2. A temporary section, 165.T01–043 is added to read as follows:

§ 165.T01–043 South Street Seaport Memorial Day Fireworks, East River, New York.

(a) *Location.* This temporary safety zone includes all waters of the East River south of the Brooklyn Bridge and north of a line drawn from Pier 9, Manhattan, to Pier 3, Brooklyn.

(b) *Effective period.* This section is effective from 8 p.m. until 10 p.m. on May 29, 1994.

(c) Regulations.

(1) The general regulations contained in 33 CFR 165.23 apply to this safety zone.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: May 5, 1994.

T.H. Gilmour,

Captain, U. S. Coast Guard, Captain of the Port, New York.

[FR Doc. 94–12405 Filed 5–19–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD01–94–022]

RIN 2115–AA97

Safety Zone; North Hempstead Memorial Day Fireworks, Hempstead Harbor, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the North Hempstead Memorial Day Fireworks in Hempstead Harbor. This event is sponsored by the Town of North Hempstead, and will take place from 8 p.m. until 10 p.m. on May 27, 1994, with a rain date of May 28, 1994, at the same times. This safety zone is needed to protect the boating public from the hazards associated with fireworks exploding in the area.

EFFECTIVE DATE: This rule is effective from 8 p.m. until 10 p.m. on May 27, 1994, with a rain date of May 28, 1994, at the same times.

FOR FURTHER INFORMATION CONTACT:

Lt R. Trabocchi, Project Manager, Captain of the Port, New York, (212) 668–7933.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are LT R. Trabocchi, Project Manager, Captain of the Port, New York and CDR J. Astley, Project Attorney, First Coast Guard District, Legal Office.

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective less than 30 days after **Federal Register** publication. Due to the date this application was received, there was not sufficient time to publish a proposed rule in advance of the event. Publishing a NPRM and delaying the event would be contrary to public interest since the fireworks display is for public viewing.

Background and Purpose

On March 10, 1994, the Town of North Hempstead submitted an application to hold a fireworks display in Hempstead Harbor north of Bar Beach. This regulation establishes a temporary safety zone in all waters of Hempstead Harbor within a 300 yard radius from the center of three fireworks barges anchored together north of Bar Beach, New York. This safety zone is being established to protect boaters from the hazards associated with fireworks exploding in the area. No vessel will be permitted to enter or move within this safety zone unless authorized to do so by the Coast Guard Captain of the Port, New York.

Regulatory Evaluation

This rule is not a significant regulatory action under Executive Order 12866 and is not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). No vessel traffic is permitted to transit within a 300 yard radius of three fireworks barges anchored together north of Bar Beach in Hempstead Harbor, New York. This safety zone will completely block the navigable waters in this area; however, due to the limited duration of the event, the extensive, advance advisories that will be made to allow recreational and commercial traffic to make necessary transits before or after the event, and the limited traffic routinely operating in the area at the time of the event, the Coast Guard expects the economic impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under Section 3 of the Small Business Act (15 U.S.C. 632).

For the reasons given in the Regulatory Evaluation, the Coast Guard expects the impact of this regulation to be minimal. The Coast Guard certifies under 5 U.S.C. 605(b) that this regulation will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of these regulations and concluded that under section 2.B.2.c. of Commandant Instruction M16475.1B, it is an action under the Coat Guard's statutory authority to promote maritime safety and protect the environment, and thus is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is included in the docket.

List of Subjects in 33 CFR Part 165

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

Regulations

For reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—[AMENDED]

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

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

2. A temporary section, 165.T01–022 is added to read as follows:

§ 165.T01–022 North Hempstead Memorial Day Fireworks, Hempstead Harbor, New York.

(a) *Location.* This temporary safety zone includes all waters of Hempstead Harbor within a 300 yard radius from the center of three fireworks barges anchored together north of Bar Beach, New York, at or near 40°49′50″ N latitude and 73°39′10″ W longitude.

(b) *Effective period.* This section is effective from 8 p.m. until 10 p.m. on May 27, 1994, with a rain date of May 28 1994, at the same times.

(c) *Regulations.*

(1) The general regulations contained in 33 CFR 165.23 apply to this safety zone.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officer of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: May 5, 1994.

T. H. Gilmour,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 94–12404 Filed 5–19–94; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 63

[FRL–4881–9]

RIN 2060–AE00

Hazardous Air Pollutants: Regulations Governing Equivalent Emission Limitations by Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is promulgating regulations governing the establishment of equivalent emission limitations by permit, pursuant to section 112(j) of the Clean Air Act (Act), as amended. This rule establishes requirements and procedures for owners or operators of major sources of hazardous air pollutant(s) (HAP), and permitting authorities, to follow in order to comply with section 112(j). After the effective date of a title V permit program in a State, each owner or operator of a major

source in a source category for which the EPA was scheduled to, but failed to promulgate a maximum achievable control technology (MACT) standard will be required to submit a permit application 18 months after the EPA's missed promulgation date. This rule establishes requirements for the contents of these applications. In addition, the rule contains provisions governing the establishment of MACT-equivalent emission limitations by the permitting authority.

EFFECTIVE DATE: The rule and guidance announced herein take effect on June 20, 1994.

ADDRESSES: *Docket.* Supporting information used in developing the proposed and final rules contained in Docket Number A–93–32. The docket is available for public inspection and copying from 8:30 a.m.–12 p.m. and 1:30 p.m.–3:30 p.m., Monday through Friday, at the EPA's Air Docket Section, Waterside Mall, room M1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information on today's final rule, please contact Ms. Katherine Kaufman, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711, telephone (919) 541–0102. For information about the guidance document "MACT Determinations under Section 112(j)" (EPA 450/3–92–007a), please contact Ms. Lynn Hutchinson, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711, telephone (919) 541–5624.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. Summary of Final Rule
II. Background Discussion
  A. Clean Air Act Amendments: Section 112
  B. Clean Air Act Amendments: Provisions for Equivalent Emission Limitation by Permit.
  C. Implementation Principles
III. Significant Comments and Changes to the Proposed Rule
  A. § 6.50—Applicability
  B. § 6.51—Definitions
  C. § 6.52—Approval Process for New and Existing Emission Units
  D. § 6.53—Application Content for a Case-by-Case MACT Determination
  E. § 6.54—Preconstruction Procedures for New Emission Units
  F. § 6.55—Maximum Achievable Control Technology (MACT) Determinations for Emission Units Subject to Case-by-Case Determination of Equivalent Emission Limitations
  G. § 6.56—Requirements for Case-by-Case Determination of Equivalent Emission Limitations After Promulgation of a Subsequent MACT Standard
IV. Discussion of the Relationship of the Proposed Requirements to Other Requirements of the Act
  A. Section 112(g) Requirements for Constructed, Reconstructed, and Modified Major Sources; and Subsequent Standards under Section 112(d) or Section 112(h).
  B. Section 112(l) Delegation Process
  C. Section 112(i)(5) Early Reductions Program
V. Administrative Requirements
  A. Docket
  B. Executive Order 12866
  C. Regulatory Flexibility Act
  D. Paperwork Reduction Act

This preamble provides an overview of the rule implementing the requirements of the section 112(j) program, and a detailed discussion of the changes made to the proposed regulation.

The first section provides an overview of the requirements of the regulation being promulgated today.

The second section provides background information on section 112(j) in the context of the 1990 amendments to the Act.

The third section provides a detailed discussion of the requirements of the rule, including significant comments as well as significant changes made since the proposal.

The fourth section of this preamble discusses the relationship of the requirements of section 112(j) to other requirements of the Act under other subsections of section 112 of the Act.

The fifth section of this preamble demonstrates that the rulemaking is consistent with a number of federal administrative requirements.

This preamble makes use of the term "State," usually meaning the State air pollution control agency which will be the permitting authority implementing the section 112(j) program. The reader should assume that use of the word "State" also applies, as defined in section 302(d) of the Act, to the District of Columbia and territories of the United States, and may also include reference to a local air pollution control agency. These agencies can either be the permitting authority for the area of their jurisdiction or assist the State or the EPA in implementing the section 112(j) program. In some cases, the term "permitting authority" is used and can refer to both State agencies and to local agencies (when the local agency directly makes the determinations or assists the State in making the determinations). The term "permitting authority" may also apply to the EPA, in rare cases where the EPA is the title V permitting authority responsible for the program.

This preamble makes a number of references to a regulation which has not yet been promulgated. That is the rule governing constructed, reconstructed, or modified major sources under section 112(g) of the Act, which EPA has proposed on April 1, 1994, in the **Federal Register** at 59 FR 15504.

I. Summary of Final Rule

Today's rule implements the requirements of section 112(j) of the Clean Air Act, as amended in 1990. Section 112(j) establishes requirements for regulation of major sources of hazardous air pollutants in the event that EPA lags more than 18 months behind schedule in issuing a control technology standard for an industry.

Section 112 requires EPA to set MACT standards for all categories of major sources of hazardous air pollutants. Specifically, the Act has required EPA to issue a schedule for regulating all source categories within 2, 4, 7, or 10 years of enactment. The source category schedule for standards was published on December 3, 1993 (58 FR 63941).

Section 112(j) is triggered on the date 18 months after the deadline listed in the final schedule for a source category, if the EPA has failed to promulgate a MACT standard for that source category by that date. These deadlines are displayed in Table 1. Upon this 18-month deadline, the owner or operator of each major source with emission units in that category must apply for a case-by-case MACT determination by the title V permitting authority. There are four possible section 112(j) deadlines, as displayed in Table 1 below.

TABLE 1.—SECTION 112(J) DEADLINES

MACT standard deadline	Section 112(j) deadline	Comments
2-year standards: November 15, 1992	May 15, 1994 [but not before effective date of Title V permit program].	The EPA has promulgated the 2-year standards. This deadline will not be triggered.
4-year standards: November 15, 1994	May 15, 1996	This is the earliest that section 112(j) could be triggered.
7-year standards: November 15, 1997	May 15, 1999	
10-year standards: November 15, 2000	May 15, 2002	

The EPA has fulfilled its requirements with respect to the 2-year MACT standards, so there are essentially three possible dates upon which section 112(j) requirements could take effect: (1) May 15, 1996, (2) May 15, 1999, and (3) May 15, 2002. Section 112(j) cannot take effect before the effective date of a title V permit program in a State; the EPA expects that permit programs will be operative in all States by May 15, 1996.

If the deadline for a particular category passes, section 112(j) requires that any source associated with that category, that is part of a major source, must obtain an "equivalent emission limitation by permit." "By permit" means that the emission limitation is recorded in the title V operating permit. "Equivalent emission limitation" means a limitation, determined on a case-by-case basis by the permitting authority, that is judged to be equivalent to the limit the EPA would have established had the federal MACT standard been published.

The rule uses the term "emission unit" rather than the term "source" which appears in section 112(j). The term "source" is used to describe the extent of coverage of standards issued pursuant to section 112(d) and section 112(h). The EPA is concerned that if the term "source" is used in reference to section 112(j), there may be potential misperceptions that section 112(j) determinations could constrain the EPA's definition of "source" in a subsequent rulemaking.

A. Requirements for Existing Emission Units

For emission units in existence at major source plant sites as of the section 112(j) deadline, today's rule contains some important clarifications of the Act. The statute is clear that applicants must submit an application by the section 112(j) deadline, and that the title V permitting process must be followed in establishing permit conditions within an 18-month time frame thereafter. Within this overall framework, the statute is less prescriptive regarding: (1) The contents of the permit application, (2) the process that is used within the 18-month permit issuance time frame to establish equivalent emission limitations, and (3) the nature of the terms and conditions that must be established in the permit.

Section 6.52 is intended to provide further clarity to the permit review process. The requirements for permit application content are listed in § 6.53. Principles governing the establishment of MACT emission limitations, including the nature of the terms and conditions, are outlined in § 6.55, and in a more detailed guidance document titled: "MACT Determinations under Section 112(j)" (EPA 450/3–92–007a), which EPA is making available today.

B. Requirements for New Emission Units

For new emission units subject to the requirements of section 112(j), today's rule provides a number of important statutory interpretations, and provides a clarification of the minimum administrative requirements of the Act.

When newly constructed emission points are added to an existing major source plant site, those emission points could be considered as either: (1) An addition to an existing "emission unit" for which an existing source level of control would be required, or (2) an entirely new "emission unit" for which new source MACT would be required. Today's rule contains a definition of "emission unit" which gives broad discretion to the permitting authority to determine whether a given emission point or points should be treated as "new."

Another important clarification in the rule is the date which triggers new source requirements. Today's rule defines as "new" an emission unit for which construction commences after the section 112(j) deadline or after proposal of a section 112 (d) or (h) MACT standard, whichever comes first.

Section 112(j) of the statute does not mandate a preconstruction review for new emission units subject to section 112(j). However, the EPA recognizes that there are important reasons for permitting authorities and affected source owners and operators to follow a preconstruction or pre-operation review process. The rule contains, as § 6.54, an optional preconstruction or pre-operation review process that can be used for this purpose.

C. Relationship to Subsequently Promulgated MACT Standards

The Act provides for a compliance extension when an emission unit covered by a case-by-case MACT emission limitation under section 112(j) is later affected by a subsequent federal MACT standard promulgated pursuant to section 112(d) or section 112(h) of the Act. This provision is addressed in § 6.56 of today's rule.

II. Background Discussion

A. Clean Air Act Amendments: Section 112

The Clean Air Act Amendments of 1990 [Pub. L. 101–549] contain major changes to section 112 of the Act pertaining to the control of HAP emissions. Section 112(b) includes a HAP list that is composed of 189 chemicals, including 172 specific chemicals and 17 compound classes. Section 112(c) requires publication of a list of source categories and subcategories of major sources emitting these HAPs, and also requires the listing of area sources that the EPA determines warrant regulation. Section 112(d) requires promulgation of emission standards for each listed source category or subcategory according to a schedule set forth in section 112(e).

B. Clean Air Act Amendments: Provisions for Equivalent Emission Limitation by Permit

1. General Requirements of Section 112(j)

The amendments to section 112 include new section 112(j). This section is entitled "Equivalent Emission Limitation by Permit." Subsection 112(j)(2) of the Act provides that section 112(j) applies if EPA misses a deadline for promulgation of a standard under section 112(d) established

in the source category schedule for standards: In the event that the Administrator fails to promulgate a standard for a category or subcategory of major sources by the date established pursuant to subsection (e) (1) and (3), and beginning 18 months after such date (but not prior to the effective date of a permit

program under title V), the owner or operator of any major source in such category or subcategory shall submit a permit application.

Subsection 112(j)(3) requires the owner or operator to submit a permit application 18 months after the missed promulgation deadline:

By the date established by paragraph (2), the owner or operator of a major source subject to this subsection shall file an application for a permit.

Subsection 112(j)(3) also requires EPA to establish requirements for permit applications, including content and criteria for the reviewing agency to determine completeness. In addition, subsection 112(j)(3) provides that if the reviewing agency deems the application incomplete, or disapproves the application, then the applicant has up to 6 months to revise and resubmit the application.

Subsection 112(j)(5) establishes a requirement for case-by-case MACT determinations:

The permit shall be issued pursuant to title V and shall contain emission limitations for the hazardous air pollutants subject to regulation under this section and emitted by the source that the Administrator (or the State) determines, on a case-by-case basis, to be equivalent to the limitation that would apply to such source if an emission standard had been promulgated in a timely manner under subsection (d).

Subsection 112(j)(5) also establishes compliance dates:

No such pollutant may be emitted in amounts exceeding an emission limitation contained in a permit immediately for new sources and, as expeditiously as practicable, but not later than the date 3 years after the permit is issued for existing sources or such other compliance date as would apply under subsection(i).

Finally, subsection 112(j)(5) specifies that if the applicable criteria for voluntary early reductions, established under section 112(i)(5), are met, then this alternative emission limit satisfies the requirements of section 112(j), provided that the emission reductions are achieved by the missed promulgation date.

In the event that EPA promulgates a given MACT standard for the applicable source category before the permit application is approved, the permit must reflect this promulgated standard, rather than the case-by-case MACT determination. The source is required to comply with this standard by the date provided under subsection(i). In this case, the owner or operator of an existing source has no more than 3 years to comply, and the owner or operator of a new source must comply immediately upon startup, except that a new source that commenced construction or reconstruction between proposal and promulgation of the MACT standard may elect to comply with the proposed standard for 3 years in lieu of the promulgated MACT standard, if the promulgated MACT standard is more stringent than the proposal.

In the event that EPA promulgates a given MACT standard after the permit containing case-by-case emission limits is issued, section 112(j)(6) allows a longer compliance period:

If the Administrator promulgates a standard under subsection (d) * * * after the date on which the permit has been issued, the Administrator (or the State) shall revise such permit upon the next renewal to reflect the standard promulgated by the Administrator providing such source a reasonable time to comply, but no longer than 8 years after such standard is promulgated or 8 years after the date on which the source is first required to comply with the emissions limitation established by paragraph (5), whichever is earlier.

C. Implementation Principles

In designing guidance for case-by-case MACT determinations, the EPA's thinking is guided primarily by the need for section 112(j) standards to be substantively equivalent to section 112(d) MACT standards. Subsection 112(j)(5) requires that a case-by-case MACT determination be "equivalent to the limitation that would apply to such source if an emission standard had been promulgated in a timely manner under subsection (d)," and subsection 112(j)(6) requires eventual compliance with subsequently promulgated section 112(d) standards. Consistency in standard-setting will smooth a major source's eventual transition from compliance with section 112(j) to compliance with section 112(d), making implementation of toxics control easier on both States and industry.

The EPA's other major goal in establishing section 112(j) requirements is to achieve and maintain consistency across section 112 programs. The EPA intends for administrative and operational requirements under section 112(j) to be consistent with the requirements of section 112(g) rules for construction, reconstruction, and modification of major sources (proposed at 59 FR 15504 on April 1, 1994, as § 63.40 through 63.49 of subpart B) and with the general provisions for section 112 (published at 59 FR 12408 on March 16, 1994, as subpart A of this part). Section IV. A. of this preamble discusses likely overlapping requirements and major substantive differences across these programs.

III. Significant Comments and Changes to the Proposed Rule

This section of the preamble is organized by each topic area in subpart B, and contains a detailed discussion of the principal regulatory issues and changes made in the final rule, particularly in response to public comments. It also discusses some comments that did not result in regulatory changes.

A. Section 63.50—Applicability

1. Section 63.50(a)—Applicability

Paragraph 63.50(a) of today's rule indicates that the intent of the rule is to implement section 112(j) of the Act. This paragraph indicates that section 112(j) applies to the owner or operator of a major source of HAPs after the "effective date of a Title V program" in each State, but not before May 15, 1994.

(a) *Effective date of title V.* The meaning of "effective date of a Title V program" is indicated in the final regulations for implementation of title V of the Act. Under these regulations, States were required to submit a permit program for review by the EPA on or before November 15, 1993. The EPA is required to approve or disapprove the permit program within one year after receiving the submittal. The EPA's program approval date is termed the "effective date."

The effective date of title V permit programs is defined in section 502(h) of the Act, which says "The effective date of a permit program, or partial or interim program, approved under * * * [Title V] * * * shall be the date of promulgation." This language refers to two types of title V programs: One type where the EPA "approves" the title V program under 40 CFR part 70 and another type where the EPA "promulgates" a program. Programs "approved" by the EPA under part 70 will be developed by the State or local area and submitted to the EPA for approval. The language in section 502(h) of the Act makes these programs immediately effective upon EPA approval. Programs "promulgated" by the EPA are anticipated to be rare, and they occur only where a State failed to submit a program, submitted a program that EPA could not approve, or has failed to adequately administer an approved program. For example, the EPA is required by section 502(d)(3) of the Act to promulgate and administer a title V program if, by November 1995, the EPA has not approved the State program. The language in section 112(j), because it refers to the effective date of a title V program in any State (and not by any State), means that the program

will apply to both the EPA "approved" and "promulgated" programs.

The title V regulations provide for approval of "interim" and "partial" programs in certain limited circumstances. The EPA believes that, because partial programs must ensure compliance with "all requirements established under section 112 applicable to 'major sources' and 'new sources'," and interim programs must "substantially meet the requirements of [title V]," an interim or partial program would trigger the requirements of section 112(j) for those sources covered by the interim program.

(b) *Major source.* Section 112(j) applies only to an owner or operator of a major source. Section 112(a)(1) of the Clean Air Act defines 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 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. The requirements of section 112(j) apply to all sources that comprise a major source, but do not apply to nonmajor sources—i.e. "area sources."

The determination of whether a source is major is based on the source's "potential to emit", which is defined in subpart A of this part. A source's potential to emit is based on its capacity to emit hazardous air pollutants considering federally enforceable limits on that capacity. If a source's potential to emit is equal to or greater than 10 tons/yr of a single HAP, or 25 tons/yr of any combination of HAPs, the source is a major source. The EPA is currently developing a rule to further define a source's potential to emit for section 112 standards. This rule will also provide ways for an owner or operator of a source to establish voluntary, federally-enforceable restrictions to limit the source's potential to emit below the major source threshold. This rule will also address the requirements for major sources that subsequently reduce their emissions to less than major amounts. If a source meets conditions in subpart A of this part for limiting its potential to emit to below the major source threshold within the timeframe established in the potential to emit rule, then it will not be subject to the provisions of section 112(j) as long as the source maintains its emission status.

2. Section 63.50(b)—Relationship to State and Local Requirements

Many State and local regulatory agencies maintain regulatory programs that involve toxic air pollutant reviews for stationary sources. This paragraph clarifies that the requirements of section 112(j) do not pre-empt any requirements of these programs that are at least as stringent as today's rule.

3. Section 63.50(c)—Retention of State Permit Program Approval

Some States may not currently have specific legislative or administrative authority sufficient to establish the case-by-case emission limitations required by section 112(j). Paragraph 63.50(c) requires that States obtain such statutory authority as a condition of retaining their part 70 permit program approval.

B. Section 6.51—Definitions

1. Terms Defined in the General Provisions

A number of terms used in the proposed rule are defined for all of 40 CFR Part 63 in subpart A of this Part. The terms defined in subpart A include:

* * * Administrator
* * * Area source
* * * Effective date
* * * Federally enforceable
* * * Hazardous air pollutant
* * * Major source
* * * Permit program
* * * Potential to emit
* * * Relevant standard
* * * Title V permit

The Subpart A General Provisions include a definition of "federally enforceable" which lists the types of limitations and conditions that are considered federally enforceable. The preamble to Subpart A outlines a set of principles that States and sources should follow in order to ensure practicable enforceability. The EPA believes that Subpart B should ensure that the case-by-case determinations are practicably enforceable in the same way that Subpart A does for section 112(d) and section 112(h) MACT standards. Therefore, the EPA refers the reader to the discussion of "practicable enforceability" in the preamble to Subpart A for a discussion of the kinds of requirements that the EPA would consider sufficient to ensure practicable enforceability for case-by-case MACT determinations. In addition, a more detailed discussion of the elements necessary to ensure federal enforceability is contained in section III.E. of this preamble.

2. Terms Related to Maximum Achievable Control Technology

Definitions for the following terms related to levels of control technology are included in § 63.51 of today's rule:

* * * Maximum Achievable Control Technology
* * * Control Technology
* * * Maximum Achievable Control Technology (MACT) Floor
* * * Maximum Achievable Control Technology (MACT) Emission Limitation for Existing Sources
* * * Maximum Achievable Control Technology (MACT) Emission Limitation for New Sources

The basis for all of these definitions is statutory language contained in section 112(d) of the Act. The term "maximum achievable control technology" appears only in section 112(g) of the Act, and does not appear elsewhere in section 112. There is, however, considerable legislative history indicating that this term refers to the level of control required by section 112(d) emission standards. This term was used in this context in the House Bill, H.R. 3030. For purposes of the definitions in today's rule, the EPA assumes that "maximum achievable control technology" is a reference to the "maximum degree of reduction in emissions" language contained in section 112(d)(3). The minimum control technology requirements of section 112(d), often referred to as the "MACT floor" are cited a number of times in today's rule. To avoid repeating these requirements each time, the regulation includes a definition of "MACT floor."

3. Terms Affecting the Extent of Coverage by Maximum Achievable Control Technology

The following terms are used to describe equipment subject to a MACT determination:

* * * Emission point
* * * Emission unit
* * * Emission limitation
* * * New emission unit

An "emission point," in this regulation, is defined narrowly to refer to any individual point of release to the atmosphere. However, an individual MACT determination will often be made at once for a number of emission points. The term "emission unit" is used to refer to the collection of all emission points considered when a MACT determination is made. The term "emission limitation" retains the meaning given to it in section 302(k) of the Act.

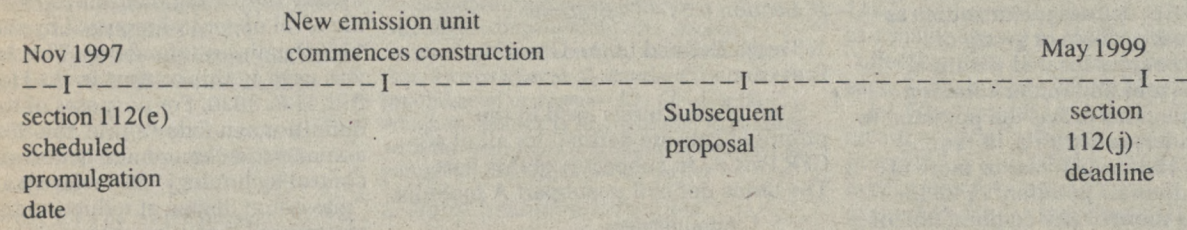
New emission unit. The term *new emission unit* refers to an emission unit for which construction or reconstruction is commenced after the section 112(j) deadline for a relevant standard, or after proposal of a relevant standard under section 112(d) or section 112(h) of the Act, whichever comes first. For the purposes of section 112(j), new emission

units are those emission units that trigger new source MACT requirements (see discussion of the definition of "emission unit" below). *New source* is defined in Clean Air Act section 112(a)(4) as follows:

> "* * * a stationary source the construction or reconstruction of which is commenced after the Administrator first proposes regulations under this section establishing an emission standard applicable to such source."

Section 112(j) requires States to establish case-by-case MACT limitations where EPA has failed to promulgate a relevant standard, and there may be instances when a section 112(j) MACT limitation is required for a source category for which a standard has not yet been proposed under section 112(d). Since section 112(j)(5) refers explicitly to case-by-case standards for new sources, the EPA has determined that the Act did not intend that the EPA's failure to propose a standard implies that no sources in that source category, no matter what the date of construction, could ever be considered "new." At proposal the EPA had selected the section 112(e) scheduled deadline as the date, under a section 112(j) case-by-case MACT determination, most closely equivalent to the section 112(d) proposal date for the purposes of defining "new emission unit," because had EPA met the schedule in setting a standard under section 112(d) the proposal could not have been any later than the date in the schedule. The EPA requested comment on this definition. Three commenters supported the proposed definition. However, upon consideration of the practical concerns raised by this definition, the EPA has determined that the section 112(j) deadline would be a more reasonable date beyond which commencing construction of an emission unit would be considered "new."

The following timeline illustrates the EPA's reasoning:



Under the proposed rule, a source would have needed to know, up to 2 years or more in advance of the section 112(j) deadline, that the EPA was going to miss its scheduled promulgation deadline by 18 months. If "new source" requirements were triggered by the section 112(e) deadline, owners and operators would need to know this in order to plan what control to build in to their new emission units, and perhaps in order to apply for preconstruction review. In addition, if an owner or operator plans to construct between the scheduled promulgation date and the section 112(j) deadline, and there is a subsequent proposal (as illustrated in the timeline), then whether the emission unit will be considered new would depend upon a later event—whether the section 112(j) deadline will pass with no federal MACT standard. The EPA believes that it is not reasonable to expect owners and operators to be able to predict the likelihood of EPA missing a promulgation deadline by 18 months; nor is it reasonable to expect them to make such a prediction as much as 2 years before its occurrence.

Thus, if EPA proposes a MACT standard before the section 112(j) deadline, any emission unit for which construction commences after that proposal will be considered new. If the section 112(j) deadline is reached without EPA having proposed a standard, then an emission unit for which construction commences after the section 112(j) deadline will be considered new. This approach removes the uncertainty raised by the possibility of EPA proposing a MACT standard during the 18 months between the section 112(e) schedule deadline and the section 112(j) deadline. The EPA believes this to be the most reasonable and equitable way to define which emission units are new for purposes of section 112(j).

Emission unit definition; applicability to new source MACT. MACT determinations must be made on a wide variety of emitting equipment at major sources in different source categories. Today's rule defines *emission unit* in a way designed to allow permitting authorities broad flexibility in designing case-by-case MACT emission limitations. This flexibility is essential because of the variety of source categories, diverse in size and complexity, that may be subject to section 112(j). A narrower definition of *emission unit* would make it difficult for permitting authorities to tailor MACT determinations to the equipment specific to a particular source category. *Emission unit* as defined in this rule is intended to be synonymous with the term "source" as used in section 112(d). Thus, the State permitting authorities implementing section 112(j) will have as much flexibility in defining *emission unit* as EPA has in defining "source." The definition of source used in section 112 originated in section 111 a number of years ago. That definition—any building, structure, facility, or installation which emits or may emit any (hazardous) air pollutant—has been interpreted over the years to encompass a broad range of things including individual process units, production lines and entire plants.

The EPA requested comment both on the desirability of requiring or not requiring new source MACT on all new emission units, and on the question of whether new source MACT should be required only on those emission units that are in and of themselves "major" at a major source.

An approach the EPA considered, but rejected, would be to require new source MACT only on those emission units that are in and of themselves "major" at a major source—i.e. those emission units at a major source which themselves emit at least 10 tons per year or more of a single HAP, or 25 tons per year or more of a combination of HAPs. This approach generated significant comment. Some commenters disagree with this approach and support the approach taken in the rule. Many commenters support the alternative approach.

The EPA agrees with the commenters who support application of new source MACT to all constructed and reconstructed emission units. Section 112(j) is intended to stand in place of section 112(d) where EPA has missed the section 112(e) scheduled date for a category of major sources. Under section 112(d), when a MACT standard is

written for a major source category it will apply to all sources within that category. Depending on how the category is defined many of the covered sources will be a less than 10 ton portion of a major source. These are not area sources.

Many major sources will be covered by multiple MACT standards, and the portion of a major source covered by any one MACT standard may well be less than major by itself. In addition, a major source could contain several emission units that are all covered by the same MACT standard, but are separate sources that in combination exceed 10 or 25 tons but do not exceed the major source threshold individually. In contrast, area sources in the same category will not be subsets of major sources. Section 112(j) does not apply to categories of area sources.

Other commenters assert that EPA's interpretation runs counter to either the Clean Air Act itself, or to the Congressional intent behind the language in the Act. For the reasons discussed below and in the preamble to the proposed rule (58 FR 37778), the EPA disagrees with these commenters.

Prior to a missed promulgation deadline, through section 112(g) the statute clearly requires new source MACT only on constructed or reconstructed major sources. Any other equipment added to an existing major source would be a modification (unless specifically exempted from regulation by section 112(g)), and would be subject to existing source MACT levels of control. However, the language of section 112(j) is somewhat different from that of section 112(g). Section 112(j), while applying only to major sources, does not limit the application of new source MACT to new major-emitting equipment, as section 112(g) does.

The EPA believes that the standards developed through section 112(j) must anticipate and reflect the likely requirements of section 112(d) and section 112(h). The basis for the applicability of new source MACT selected is the section 112(j)(5) requirement that case-by-case MACT standards must be:

> Emission limitations for the hazardous air pollutants * * * emitted by the source that the Administrator (or the State) determines, on a case-by-case basis, to be equivalent to the limitation that would apply to such source if an emission standard had been promulgated in a timely manner under subsection (d).

It is the judgment of EPA that section 112(j) case-by-case MACT standards must require new source MACT to be applied to those same sources, within a covered major source, to which a standard promulgated under section 112(d) would apply new source MACT. Therefore, it is necessary to determine what entity is considered a new source under section 112(d) for the purpose of implementing MACT standards.

Section 112(a) provides that *new source* shall mean a "stationary source the construction or reconstruction of which is commenced after the Administrator first proposes regulations under this section establishing an emission standard applicable to such source." Section 112(a)(3) gives "stationary source" the same meaning as under section 111(a), i.e. any new "building, structure, facility, or installation"; thus the term stationary source clearly is not limited to major sources under section 112(a)(3). Section 112(d) requires MACT standards to be set for "sources," and "sources" can be major, area, or portions of a major source. Once there is a section 112(d) standard in place, any new source will be required to meet new source MACT emission limitations, as defined by the standard. Thus, under section 112(j), any new emission unit that is either part, or all, of a major source will be required to meet new source MACT.

If, however, the language of section 112(g) were interpreted as dispositive of whether new or existing source MACT must be applied to any given increase in emissions, new sources within the definition in section 112(a)(4) would escape having to comply with new source MACT under section 112(j). If a MACT standard under section 112(d) may establish a definition of source that would apply to a portion of a "major source," then section 112(j) case-by-case MACT determinations would not satisfy the requirement that they be "equivalent to the limitation that would apply to such source * * *"

In addition, under this reading, major sources adding new sources that are not major by themselves could avoid new source MACT on those new sources. But if MACT is then set under section 112(d) for area sources in that category, any new area source would have to meet new source MACT, while new parts of a major source would not. This would be an anomalous result. Therefore today's rule requires new source MACT on all emission units that are constructed or reconstructed at a major source plant site.

C. Section 6.52—Approval Process for New and Existing Emission Units

Existing emission units. Section 6.52 of the rule requires that case-by-case MACT determinations for existing emission units be established through the title V permit process. The owner or operator of an existing major source must submit a permit application for all emission units in a source category not later than 18 months after the missed promulgation date for that source category. The State must then review and approve or disapprove the permit in accordance with the procedures and principles set out in Part 70 and in § 63.55 of today's rule. Section 63.52(b)(1) of today's rule implements the requirement in section 112(j)(4) of the Act that if an owner or operator's permit application is deemed incomplete or disapproved by the permitting authority, the owner or operator has up to 6 months to resubmit and meet the requirements of the permitting authority. The final rule clarifies the intent of the Act that the owner or operator provide complete information within 6 months of the date the permitting authority "first" identifies its objections. The addition of the word "first" is intended to clarify that the applicant may not prolong the process by resubmitting an incomplete application. In order to ensure that the application indeed satisfies this 6-month deadline, applicants will probably wish to respond sooner than 6 months.

For existing emission units, the permitting authority at its discretion may require compliance as expeditiously as practicable, but no later than 3 years from permit issuance. In addition, the permitting authority may allow an extra year, on a case by case basis, when necessary for the installation of controls. This approach is consistent with section 112(j)(5), which requires the case-by-case MACT standards to ensure compliance "* * * immediately for new sources and, as expeditiously as practicable, but not later than the date three years after the permit is issued for existing sources or such other compliance date as would apply under subsection (i)."

New emission units. Section 63.52 describes the relationship of the MACT review process for new emission units to the operating program requirements pursuant to Title V of the Act Amendments. The requirements for title V permits, contained in 40 CFR part 70, were published on July 21, 1992 (57 FR 32250). For existing emission units, the approach to establishing an administrative process for determinations under section 112(j) of the Act is to rely on the title V review process as the mechanism for establishing MACT requirements. For new emission units, however, the EPA believes that reliance on the title V permit process may not be sufficient.

First, the title V requirements clearly do not require a new "greenfield" plant to apply for an operating permit until 1 year after the plant begins operation. Because the title V permit must be issued within 18 months of the application, it could be up to 30 months after commencement of operation before section 112(j) requirements would be incorporated into the permit. Second, the title V requirements do not ensure that a MACT determination will be conducted before construction. While in some cases permitting authorities with title V programs may require preconstruction reviews as part of the operating permit process, this will not always be the case.

Therefore, while for existing emission units the title V permit process is sufficiently comprehensive to handle section 112(j) reviews, the EPA believes, based upon the above considerations, that when the title V process does not occur until after construction has begun, new emission units should be subject to preconstruction or at least pre-operation review. However, the statutory language of section 112(j) does not authorize EPA to mandate either process.

While many commenters also challenged the legality of requiring preconstruction review, several others agreed with EPA's reasons, as stated in the proposed rule, in support of a preconstruction review. Commenters noted that without preconstruction review, owners and operators will not know their requirements before startup, making it more difficult for them to design equipment with controls that the permitting authority is guaranteed to approve. In addition, some permitting authorities will be deprived of the authority they need to make appropriate new source MACT determinations. In addition, it was noted that some permitting authorities will be prohibited from adopting preconstruction review programs unless they are federally mandated.

The EPA believes that most new equipment covered by section 112(j) will require some type of State preconstruction permit, for criteria pollutants if not for HAP. Although the Act does not mandate the communication of section 112(j) requirements until the eventual operating permit process, the EPA believes that it would be in the best interests of both the owner or operator and the permitting authority to resolve section 112(j) issues as part of its upfront review.

Regardless of the timing for incorporation of section 112(j) new source MACT determinations into the operating permit, there are certain requirements that apply. The title V permit must be revised or issued according to procedures set forth in § 70.7 and 70.8, or issued as a general permit. In addition, the permit must incorporate the compliance provisions of § 70.6. If, during the EPA's review of the section 112(j) determination, it becomes apparent that the determination is not in compliance with the Act, then EPA must object to the issuance or revision of that permit.

These requirements are obviously satisfied either when part 70 requires revision to an existing title V permit before construction, or when the permitting authority otherwise requires incorporation of conditions into a title V permit as a step in the section 112(j) new source case-by-case MACT determination process. However, even when there is no formal incorporation of conditions into a title V permit before operation, subsequent additional title V review may effectively be avoided if the State's section 112(g) or optional section 112(j) process is "enhanced" to include the important title V procedures, thereby allowing for later incorporation into the title V permit by administrative amendment. (The optional procedures contained in § 63.54 of the rule are intended to provide an example of such an "enhanced" process).

Section 70.7(d) of the operating permits rule defines an "administrative amendment" to include a revision that "[i]ncorporates into the part 70 permit the requirements from preconstruction review permits authorized under an EPA-approved program, provided that such a program meets procedural requirements substantially equivalent to those contained in § 70.7 and 70.8 of this Part . . . and compliance requirements substantially equivalent to those contained in § 70.6 of this part." This process of "enhancement" of preconstruction procedures was discussed in the preamble to the operating permits rule in the context of existing State new source review programs (see 57 Fed. Reg., at 32289), but was not discussed in relation to section 112(j) because the procedures associated with section 112(j) determinations had not yet been articulated. However, the language of § 70.7(d)(v) would allow for use of administrative amendments for an enhanced preconstruction review process, and the EPA believes such use is clearly within the intent of that provision.

Enhancement of the preconstruction review process may be partial only, incorporating some elements of the required part 70 review or compliance provisions in the preconstruction review process itself, with the remaining elements occurring during the title V process. For instance, public review of the MACT determination that meets the requirements of § 70.7(h) need not be repeated at the time of incorporation into the title V permit. However, for the administrative amendment procedures to be available for determinations that have been through an enhanced process, the public, EPA and affected States must have had the opportunity to review all aspects of the MACT determination, including any compliance provisions required under § 70.6. Thus, public review during the preconstruction review process would not suffice for purposes of title V if the process did not specify the application of compliance provisions substantially equivalent to those in § 70.6, including monitoring, reporting, recordkeeping, and compliance certification.

Finally, § 6.52(d) of today's rule establishes that new emission units must comply with case-by-case MACT determinations at permit issuance. This requirement is unchanged from proposal. At proposal the EPA solicited comment on the implementation consequences for sections section 112(j) and section 112(d) when preconstruction review is not required, and on the likely consequences of the lack of an adequate enforcement mechanism at the federal level for compliance earlier than permit issuance. Commenters noted the need to prevent situations in which some sources might have to retrofit in response to subsequent rulemaking under section 112(d). Commenters also pointed out the likely negative effect on the public of the compliance delays inherent in section 112(j) for new emission units, as well as the inability of some permitting agencies to adopt requirements more stringent than mandated by the federal government.

In addition, precedent across the board in federal air regulation requires new sources to comply with control requirements upon startup. The EPA believes that new emission units should undergo preconstruction or pre-operation review. However, the EPA believes that the language of section 112(j)(5), which specifies that "[n]o such pollutant may be emitted in amounts exceeding an emission limitation contained in a permit immediately for new sources," does not give the Agency authority to require compliance with case-by-case MACT by new emission units until a permit is issued.

The EPA believes that, especially when project lead time is sufficient, that

the best approach would be for a permitting authority to provide for an "enhanced" preconstruction review process that would assure the source that it would be in compliance with section 112(j). Because the "enhanced" review would yield terms and conditions that could be incorporated into the title V permit by administrative amendment, "permit issuance" would thus be accomplished upon startup rather than 12–30 months later. In this case, the source would be in compliance with federally enforceable case-by-case MACT at the time of administrative amendment to its title V permit.

Subsequent changes to a major source. The EPA believes that section 112(j) emission limitations apply to subsequent changes made at major sources already complying with case-by-case MACT limitations under section 112(j), when EPA has not promulgated a final standard for the source category under section 112(d). The EPA requires, in subpart A of this Part, that subsequent changes to a major source already complying with a section 112(d) or (h) standard shall comply with established MACT emission limitations for the source to which changes are made. Therefore requiring subsequent changes to portions of major sources already meeting case-by-case MACT emission limitations under section 112(j) satisfies the section 112(j)(5) statutory requirement that case-by-case MACT determinations under section 112(j) be "equivalent to the limitation that would apply to such source if an emission standard had been promulgated in a timely manner under subsection(d)." Emission limitations governing those changes would be incorporated into a source's title V permit according to procedures established pursuant to title V.

The EPA requested comment on this approach, as well as on the alternative approach of treating section 112(j) as a one time permitting requirement applicable 18 months after EPA fails to set a relevant MACT standard. This would require subsequent changes at major sources with section 112(j) permits to comply only with section 112(g). The EPA received a few comments on this issue, most of which agree with EPA's approach, and one which asserts that prior determinations under section 112(g) should be deemed to satisfy section 112(j). The EPA believes that determinations made under section 112(g) that require MACT control should be considered by the permitting agency to be sufficient to satisfy the control requirements of section 112(j). Therefore the EPA retains the interpretation contained in the proposed rule. (See also the discussion of potential differences in section 112(g) and section 112(j) requirements in section IV. A. of this preamble).

General permits. The EPA recognizes that there are cases for which sources would prefer to minimize delays in the process, particularly for operations which change relatively frequently, and when the owner or operator is willing to control emissions from those changes with technologies that could be recognized as best available controls (i.e. those controls which achieve "the emission control that is achieved in practice by the best controlled similar source" (section 112(d)(3) of the Act)). General permit procedures, outlined in 40 CFR 70.6(d), could be available for such situations.

The general permit would have application for section 112(j) determinations when the permitting authority is able to make a presumptive determination of MACT for a given type of source. The general permit would have to set forth the controls required by Part 70. Once the general permit is issued, application of the MACT determination to a particular emission unit would involve merely a determination that the emission unit falls within the source category covered by the general permit. In this way, a single permitting process could be used to address the section 112(j) requirements for a number of facilities, rather than conducting a separate process for each facility. Such a general permit process would not relieve the owner or operator from the obligation of submitting an "application" by the section 112(j) deadline. The EPA envisions, however, that permitting authorities could provide guidance to the affected facilities, before the section 112(j) deadline, of its intention to use the general permit process such that the burdens of the application are minimized.

As discussed in the preamble to the operating permit regulation, general permits may be issued to cover discrete emissions units at permitted facilities. 57 Fed. Reg., at 32279. While a general permit cannot be used to modify the terms of an existing title V permit, it may be issued to cover a change at an existing plant, such as addition of a new emission unit, that would otherwise be eligible to apply for a new individual permit. In that case, the requirements of the general permit could be incorporated into the permit for the facility at permit renewal.

Several commenters agree that using the general permit procedures is a good idea, in order to streamline MACT determinations under section 112(j). The EPA agrees that general permits could be used both for existing and new emission units.

Area sources that become major sources. Today's rule states that section 112(j) requirements apply to all major sources in a source category for which EPA has missed its scheduled promulgation deadline. Implicit in that requirement is the assumption that the requirements of section 112(j) apply to area sources that increase their emissions or their potential to emit such that they become major sources after the section 112(j) deadline.

Subpart A of this part, recently promulgated, explicitly establishes, for MACT standards under section 112(d) or (h), that area sources which increase their emissions, or their potential to emit, such that they become major sources after the applicable date of a relevant standard, are subject to the requirements of that standard. Therefore EPA has added § 63.52(f)(1) to today's rule to clarify that the requirements of section 112(j) likewise apply to area sources that increase their emissions or their potential to emit such that they become major sources after the section 112(j) deadline.

One commenter requests clarification on the status of area sources which, after the section 112(j) deadline, become major sources when EPA determines that a "lesser quantity" of emissions defines "major source" for that source category (see section 112(a)(1)). Therefore EPA has added § 63.52(f)(2) to today's rule to clarify that the requirements of section 112(j) apply to *all* major sources at the point at which they are determined to be "major sources" under section 112(a). These sources are required to submit permit applications within 6 months of becoming major sources. Given the relative siginificance of the regulation these sources, the EPA believes that requiring permit applications within 6 months is reasonable.

As discussed previously, the rule generally treats emission units as "new" if constructed after the section 112(j) deadline. However, in the case where that area source becomes major because the EPA has set a lesser quantity emission rate after the section 112(j) deadline for the relevant source category, the EPA recognizes that it would be inequitable to require new source MACT for such an emission unit at an existing area source plant site. It would be difficult for any source constructed at an earlier date to immediately meet new source MACT upon permit issuance. Such a position would require sources to retrofit to a new source MACT level of control,

despite the fact that, at the time of a MACT proposal or the section 112(j) deadline, those sources would not have any reason to anticipate that section 112(j) would appply. Therefore today's rule has been clarified to provide that, where a source is not subject to section 112(j) on the section 112(j) deadline, but becomes subject to section 112(j) at a later date by becoming a major source, new source MACT will be limited to those emission units for which construction or reconstruction has commenced after the date that the source becomes major. This avoids the inequitable outcome of requiring such sources to retrofit new source MACT.

The rule provides two exceptions to this approach. Consistent with subpart A (59 FR 12408), if the owner or operator wishes to construct or reconstruct an emission unit that would cause the plant site to now become a major source, that emission unit would be treated as "new." Or, if a source, which has been constructed or reconstructed after the section 112(j) deadline and which has been an area source by virtue of a limitation on its potential to emit, becomes a major source by virtue of a relaxation of its emission limitation, then the emission units whose emission limitations increase would be treated as "new." (This latter exception is intended to be consistent with subpart A of this part, and with provisions in § 52.21(r)(4) in the criteria pollutant program). For these reasons, the definition of new source says ". . . except as provided for in § 63.52(f)(1)," and § 63.52(f)(1) clarifies these exceptions.

D. Section 63.53—Application Content for a Case-by-Case MACT Determination

Section 63.53 of today's rule describes the information the owner or operator is required to provide with an application for a MACT determination. These information requirements are designed to identify the emission units to be controlled and to demonstrate that MACT will be met.

E. Section 63.54—Preconstruction Procedures for New Emission Units

Section 112(j), when read together with title V, presents certain ambiguities which must be resolved in this rulemaking. Section 112(j) requires case-by-case determinations of MACT for new as well as existing sources. Section 112(j)(5) directs that case-by-case MACT is to be "equivalent to the limitation that would apply to such source if an emission standard had been promulgated in a timely manner under subsection(d)." The timing for application for new sources subject to any standard promulgated under section 112(d) is in turn articulated in section 112(i)(1), which prohibits the construction of a new major source or reconstruction of an existing major source except when there has been a determination that the construction or reconstruction will meet the MACT standard.

However, the timing of this determination for new sources under section 112(j) is different than the timing required by the statute for section 112(d) standards. Section 112(j) requires that the permit containing the case-by-case determination of MACT be "reviewed and approved or disapproved according to the provisions of section 505" (section 112(j)(4)) and issued "pursuant to Title V," (section 112(j)(5)). This conflicts with a requirement for preconstruction or pre-operation review for new sources subject to only section 112(j), because title V does not give EPA discretion to require applications for sources newly subject to the title earlier than 12 months after commencing operation. (Section 503(c)). (States may, however, opt to do so). Because the Part 70 permit must be issued within 18 months of the application, it could be up to 30 months after operation before section 112(j) requirements would be incorporated into the title V permit.

While several commenters state that section 112(j) MACT determinations should be subject to preconstruction review, a number of others argued that section 112(j) contains no authority for preconstruction review. A number of commenters addressed the relationship of section 112(j) to section 112(g). Several of these commenters argued that both sections should be reviewed, and the more stringent requirement applied in each case. Other commenters stated that the two sections should be applied consistently.

The EPA agrees that section 112(j) determinations for new sources should be subject to preconstruction or pre-operation review. However, the Agency acknowledges, as pointed out by other commenters, that section 112(j) does not provide the EPA with independent authority to require such review. Therefore, in the final rule EPA is not changing its proposal that section 112(g) provide the mechanism for review for modifications to major sources and construction of new major sources. An optional preconstruction review process is provided in this rule for the benefit of new emission units not covered by section 112(g).

As noted above in Section III.C. of this preamble, the EPA believes that sources subject to case-by-case MACT determinations should undergo upfront review. While in some cases States may require review under the Part 70 program to occur in the preconstruction phase (or an "enhanced" preconstruction process deemed equivalent), the Act does not authorize EPA to mandate this result. It follows that, while title V is sufficiently comprehensive to handle the section 112(j) review process for existing emission units, it is not broad enough in its mandatory coverage to implement section 112(j) for new emission units. EPA believes that the preconstruction or pre-operation review requirements for control technology determinations under section 112(g) will be applicable to many new sources subject to section 112(j). For example, construction of all new major sources, and all new emission units constructed as part of a modification to an existing major source, would require preconstruction or pre-operation review under section 112(g). Permitting authorities also have the option of establishing an administrative process for preconstruction or pre-operation review of new emission units subject to section 112(j), to cover those emission units not subject to the requirements of section 112(g). In addition, section 112(j) requirements should be considered for new emission units requiring other preconstruction permits under a permit authority's overall air quality program.

As an alternative to relying on the upfront review procedures of section 112(g) for new major sources, EPA had considered relying on the language of section 112(i)(1) to require preconstruction review of new sources under section 112(j). However, section 112(i)(1) requires preconstruction review only for major-emitting sources. Such major-emitting sources would already be required to undergo preconstruction review under the requirements of section 112(g). Therefore adding a requirement for preconstruction review under section 112(j) based on section 112(i)(1) adds nothing to the process. For this reason EPA rejected reliance on section 112(i)(1) authority.

Section 63.54 of today's rule describes an optional preconstruction review process for new emission units not required to undergo upfront review under section 112(g). Permitting authorities need not provide this additional preconstruction review opportunity. Moreover, since the preconstruction review process set forth in § 63.54 is optional, permitting authorities may provide for a different process. The procedures set forth in § 63.54 contain the elements EPA

believes to be necessary for an "enhanced" review process that can be incorporated into the title V permit by administrative amendment. One important aspect of such "enhanced" procedures is to ensure Federal enforceability. In addition to the discussion in this preamble, the preamble to subpart A of this part discusses the kinds of requirements that the EPA would consider sufficient to ensure federal enforceability for MACT determinations under Clean Air Act sections section 112(d) and (h); the EPA believes that these same requirements would ensure federal enforceability for case-by-case MACT determinations under section 112(j), and refers the reader to that discussion.

The EPA believes that the majority of new emission units subject to section 112(j) will be subject to section 112(g) preconstruction or pre-operation review requirements prior to filing their permit applications under Part 70. The overall process for MACT determinations contained in § 63.54 of today's rule is shown in Figures 1 and 1a. For those sources not subject to review under section 112(g), the optional "enhanced" review process begins with a MACT application consistent with the principles described in § 63.55. The owner or operator provides an application for a MACT determination to the permitting authority. The contents of this application are outlined in § 63.53. This application for a MACT determination is then evaluated by the permitting authority according to procedures described in § 63.54(b). If approved, the permitting authority would issue a Notice of MACT Approval containing the basic elements described in § 63.52(c). Provisions dealing with compliance with the requirements of the Notice of Approval are described in § 63.54(c) through (g). Terms and conditions of this Notice could be incorporated into the operating permit by an administrative amendment.

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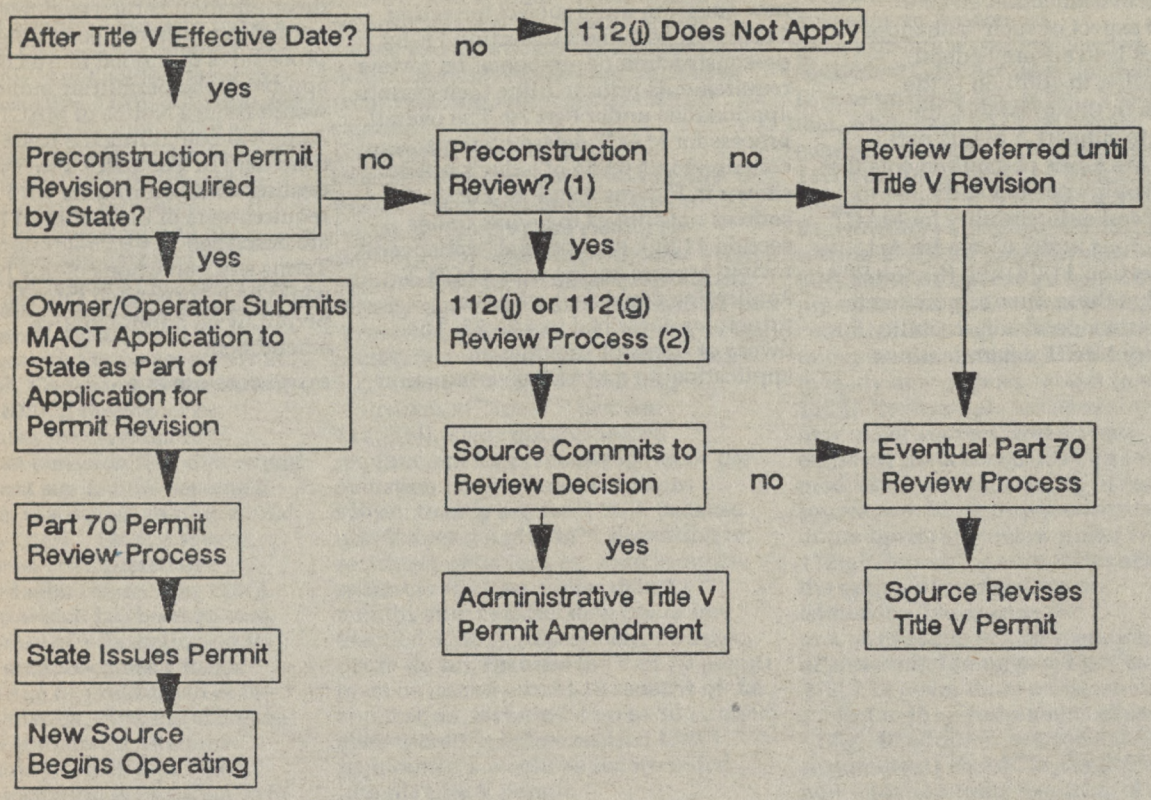
ADMINISTRATIVE PROCESS FOR NEW SOURCES



(1) Preconstruction Review May Be Required under 112(g) for Some Sources or May Occur at the Applicant's Request

(2) 112j Review Process Detailed in Figure 1a

Figure 1

OPTIONAL 112J REVIEW PROCESS FOR NEW SOURCES

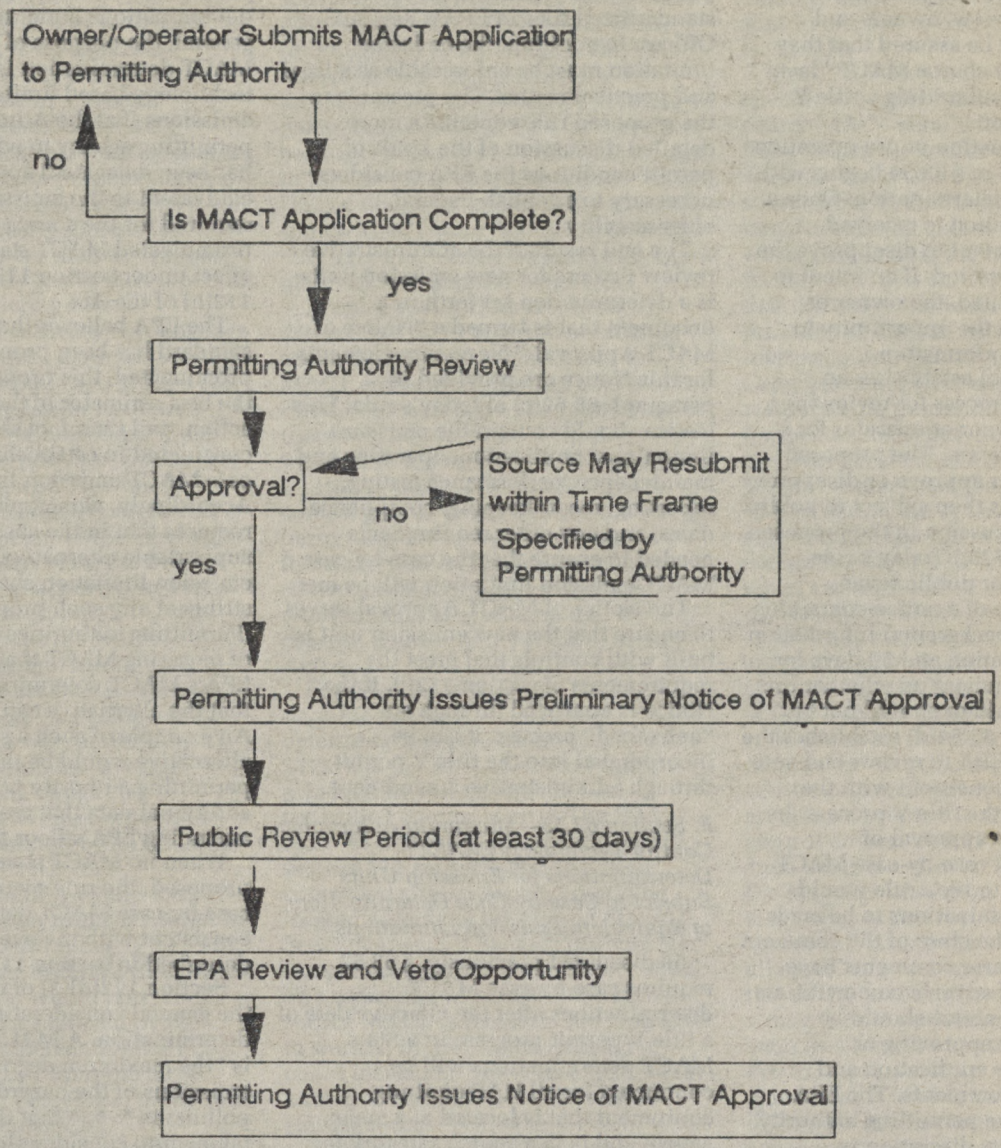


Figure 1a

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The EPA believes that there are substantial implementation advantages to upfront review for emission units subject to section 112(j), as noted above in section III.C. of this preamble. Without such review, owners and operators cannot be assured that they will meet a "new source MACT" level of control when submitting a title V permit application.

The preconstruction or pre-operation process outlined in § 63.54 begins with a completeness determination. Once a complete application is received, approval or an intent to disapprove the application is required. If an intent to disapprove is issued, the owner or operator is given the opportunity to provide further information.

Section 63.54(b) establishes an administrative process for reviewing a request by an owner or operator for a MACT determination. The proposed decision to either approve or disapprove the application is then subject to public review. (See discussion in the proposed rule at 58 FR 37778.) Today's rule would provide for public review through issuance of a notice containing all the relevant background information about the application and 30 days for the public to comment on whether the application should or should not be granted. Section 63.54(d) establishes the opportunity for EPA to review and veto the application consistent with the requirements of the title V process. In order to expedite approval of noncontroversial case-by-case MACT determinations, today's rule would allow such determinations to be made final following the close of the comment period if no adverse comments have been received. If adverse comments are received, a final notice should be published either approving or disapproving the application and addressing the comments. The EPA envisions that the permitting authority would exercise its discretion in determining, where warranted, that a public hearing should be held.

Emission limits that are federally enforceable include limits on the allowable capacity of the equipment; requirements for the installation, operation and maintenance of pollution control technologies; limits on hours of operation; and restrictions on amounts of materials combusted, stored, or produced. These limitations or conditions should be practicably enforceable and ensure adequate testing, monitoring, and recordkeeping to demonstrate compliance with the limitations and conditions. These conditions are based on the five criteria for Federal enforceability established in 40 CFR parts 51 and 52 (54 FR 27274). Part of the criteria for conferring Federal enforceability to a State or locally established emission limitation requires the emission limitation to undergo some public scrutiny and be kept in standardized files in EPA's Regional Offices. In addition, the emission limitation must be enforceable as a legal and practical matter. The preamble to the proposed rule contains a more detailed discussion of the kinds of permit conditions the EPA considers necessary to establish Federal enforceability.

The end result of the administrative review process for new emission units is a determination set forth in a document that is termed a "Notice of MACT Approval." Necessary elements for this Notice are provided in paragraph 63.52(c) of today's rule. This Notice should contain the emission limitations, notification, operating and maintenance, performance testing, reporting, recordkeeping, compliance dates, and any other requirements needed to ensure that the case-by-case MACT emission limitation will be met.

The Notice of MACT Approval serves to ensure that the new emission unit is built with controls that meet the requirements of section 112(j). If the Notice is approved through an "enhanced" process, it can be incorporated into the title V permit through administrative amendment.

F. Section 63.55—Maximum Achievable Control Technology (MACT) Determinations for Emission Units Subject to Case-by-Case Determination of Equivalent Emission Limitations

As discussed previously, § 63.52 requires case-by-case MACT determinations after the effective date of a title V permit program in a State. MACT determinations will be conducted for all HAP-emitting equipment that is located at a major source and is in a source category for which the Agency has failed to promulgate a relevant maximum achievable control technology (MACT) standard within 18 months of the scheduled promulgation date. This section of the preamble discusses principles and procedures for making these MACT determinations. These include procedures needed to establish a MACT emission limitation and a corresponding MACT control technology. In the rule, the overall process for MACT determinations is outlined in § 63.55.

The primary emphasis is on the procedures for case-by-case MACT determinations when no applicable MACT standard has been proposed by the EPA. The procedures for determinations after MACT standards have been proposed are more straightforward.

Section 63.55 contains general principles that would govern MACT determinations under today's rule. In general, the purpose of a case-by-case MACT determination is to develop technology-based limitations for HAP emissions that the Administrator (or a permitting agency to whom authority has been delegated) approves as equivalent to the emission limitations required for the source category if promulgated MACT standards were in effect under section 112(d) or section 112(h) of the Act.

The EPA believes that if a MACT standard has been proposed, but not yet promulgated, this proposed standard is the best estimator of the Agency's final action, and therefore should be considered in establishing a case-by-case MACT emission limitation. Accordingly, paragraph 63.55(a)(1) requires that in the absence of a supportable alternative, the equivalent emission limitation should be at least as stringent any such proposed standard. (Permitting authorities retain the option of requiring MACT that is different from EPA's MACT determination, provided that the alternative can be supported. An example of such a supportable alternative would be the case where a permitting authority possesses additional data that would support amending EPA's floor finding).

When no MACT standard has been proposed, the rule requires that the case-by-case MACT determination be consistent with the overall requirements described in section 112(d) of the Act.

Section 112(d)(3) of the Act describes the general considerations for a MACT determination. A MACT level of control is "the maximum degree of reduction in emissions of the hazardous air pollutants * * * 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 and existing sources in the category or subcategory * * *" This paragraph of the Act continues to describe a number of items that might be considered in designing MACT standards such as material substitutions, enclosure of processes, capture and control of emissions, design and work practice standards, and operational standards. This list of items is included in the definition of "control technology" in § 63.51 of today's rule.

Section 112(d) also imposes certain minimum requirements on the determination of "maximum achievable

control technology." Collectively, these minimum requirements are defined in the rule as the "MACT floor."

For existing emission units, the MACT floor for the case-by-case determination, consistent with section 112(d) of the Act, is an emission limitation equal to the average emission limitation achieved by the best performing 12 percent of existing sources in the category for categories or subcategories with 30 or more sources, or the average emission limitation achieved by the best 5 sources for categories with fewer than 30 sources.

In rules currently under development, the EPA is considering two interpretations of the statutory language concerning the MACT floor for existing sources. One interpretation groups the words "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).

The EPA has proposed to adopt the first interpretation and has solicited comment in other rulemakings on its interpretation of "the average emission limitation achieved by the best performing 12 percent of existing sources" (section 112(d)(3)(A) of the Act). The guidance document, MACT Determinations under Section 112(j) (EPA–450/3–92–007a), explains how a MACT floor might be determined using EPA's proposed interpretation. Should the EPA adopt a different methodology for determining the MACT floor, the guidance document will be amended to explain this approach.

The MACT floor for existing sources also takes into account sources achieving the "lowest achievable emission rate" (LAER) as defined for the criteria pollutant new source review program under section 171 of the Act, and excludes these limitations from the floor calculation for sources who have achieved LAER within 18 months before proposal or within 30 months before promulgation of a standard. The EPA interprets the "best performing 12 percent" to mean the best performing 12 percent of sources in the United States, because all sources in each category are in the United States. The phrase "in the United States" is added to the existing source MACT floor definition in order to clarify that territories and possessions of the United States are included.

When a MACT floor has been determined by EPA or the permitting authority, the rule requires that the MACT emission limitation achieve an equal or greater level of control than that MACT floor. In determining whether to require a MACT emission limitation that achieves a level of control greater than the MACT floor, the permitting authority should consider the costs, non-air quality health and environmental impacts and energy requirements of achieving that level of control. (See section 112(d)(2) of the Act).

For new emission units, the MACT floor for a case-by-case MACT determination, consistent with section 112(d), is the level of control that is achieved in practice by the best controlled similar source. The EPA believes that the legislative history of section 112 suggests that the "best controlled similar source" could be located outside of the United States. See, Statement of Senator Durenberger, Cong. Rec. S. 17239 (October 26, 1990). The definition of MACT floor for new source MACT is therefore not restricted to sources in the United States, but could instead be based on a technology known to be used in practice on a similar source located anywhere.

The Act states that "the maximum degree of reduction that is deemed achievable for new sources in a category or subcategory shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source, as defined by the Administrator." The Act does not specifically define the term "best controlled similar source." In addition, unlike for existing sources for which the Act states, " the average emission limitation achieved by the best performing 12 percent of the existing sources * * * in the category or subcategory for categories or subcategories with 30 or more sources," the Act does not specifically indicate that the determination of the best controlled similar source should be limited to sources within that same source category. The guidance document "MACT Determinations under Section 112(j)" provides a detailed discussion of the criteria that should be used to determine if a source is "similar."

The EPA believes that because the Act specifically indicates that existing source MACT should be determined from within the source category, and does not make this distinction for new source MACT, that Congress intends for transfer technologies to be considered when establishing the minimum criteria for new sources. The EPA also believes that the use of the word "similar" provides additional support for this interpretation. The EPA believes that Congress could have explicitly restricted the minimum level of control for new sources, but did not. The use of the term "best controlled similar source" rather than "best controlled source within the source category" suggests that the intent is to require a consideration of transfer technologies when appropriate.

The EPA believes that there will be cases when such technology transfers are entirely reasonable. For example, suppose that the best controlled tank within a source category did not have state-of-the-art controls. Yet, tanks from outside the source category storing similar organic liquids use state-of-the-art controls vented to an emission control device. The EPA believes that such tanks are clearly "similar" within the language of section 112(d). The EPA also believes that the Act does not compel all such technology transfers in all cases, and that emission types and the ability to install such controls are strong factors in determining when sources should be considered similar. For example, within source category X, spray booths tend to be uncontrolled due to gas streams with low concentrations and relatively high airflows. The EPA does not believe that controls from another category should be considered in determining the best controlled similar source when emissions from that category's spray booths are of high concentration and low airflow. The emissions from these sources are clearly not similar. However, if it is technologically feasible, these same controls could be considered in establishing the new source level of control if consideration is given to cost, non-air quality health and environmental impacts and energy requirements.

Subcategorization

When the notice of initial list of categories of sources under section

112(c)(1) of the Act was published in the **Federal Register** (57 FR 31579), the EPA listed broad categories of major and area sources rather than narrowly defined categories. The EPA chose to establish broad source categories at the time the source category list was developed because there was too little information to anticipate specific groupings of similar sources that are appropriate for defining MACT floors for the purposes of establishing emission standards. During the standard setting process, the EPA may find it appropriate to further divide categories to distinguish among classes, types and sizes of sources, as the Act provides.

The lack of subcategorization and broad nature of the source category may pose some difficulty in establishing a case-by-case emission limitation. The source category list contains categories that will regulate more than one process type. It may be appropriate to consider all process and emission units as one source when determining the MACT floor level of control; or, after gathering information on the source category, the EPA may find that, where there are basic technological differences between different types of processes or emission units, grouping all units into one source category is inappropriate and a more accurate and realistic MACT floor finding can be made by subcategorizing the industry. Criteria to consider include air pollution control differences, process operation (including differences between batch and continuous operation), emission characteristics, control device applicability and costs, safety, and opportunities for pollution prevention.

Several commenters encouraged EPA to further subcategorize the source category list for the purposes of case-by-case MACT determinations. While this option may provide for the greatest consistency in MACT determinations from all permitting authorities, the feasibility of this option is questionable. The EPA did not subcategorize source categories because there was insufficient information to properly characterize each source category at the time the source category list was developed under section 112(c)(1). Although additional information may be collected for a given category before the section 112(j) deadline, such information may not always be sufficient to support subcategorization.

Information burden/MACT floor finding. A significant issue for this rulemaking is how to avoid placing unmanageable information-gathering burdens on sources and permitting authorities while ensuring that emissions limitations under section 112(j) are equivalent to standards that the EPA would have issued. Commenters raised a variety of concerns about the resource burden, legality, and sensibility of requiring each individual source to provide its own MACT floor determination in its permit application.

Because all section 112(j) MACT determinations occur for a particular source category within a limited time frame, the EPA agrees that it would be duplicative and burdensome for each individual source to initiate a MACT floor finding, and that it would be more efficient and consistent for EPA or permitting agencies to determine the MACT floor.

In addition, consistent MACT determinations across sources are in the interests of both sources and permitting agencies. MACT determinations would be more likely to be at least as stringent as the eventual section 112(d) standard if either EPA or the permitting agency, as opposed to each individual source, provided the initial floor analysis. If the MACT floor is not determined consistently under section 112(j), then chances increase that some sources would install controls under section 112(j) that do not achieve an emission limitation equivalent to eventual section 112(d) requirements. These sources would then be required later to retrofit the emission unit with different controls when the section 112(d) MACT standard is eventually promulgated (once the compliance extension provided for in § 63.56 has expired).

If section 112(j) requirements are triggered, the EPA anticipates that a substantial amount of information on the source category will have been collected, allowing EPA to conduct a MACT floor analysis. When it appears that the section 112(j) requirements will take effect, the EPA intends to make the findings of this analysis available to the public. For example, the floor determination may be readily available in EPA-developed Background Information Document (BID). The EPA believes that for such cases it would be reasonable to expect that such a BID would be taken into consideration in establishing a case-by-case MACT emission limitation. Regardless of the format in which the MACT floor finding is presented, the EPA expects that its finding would include the EPA's view of the definition of source or emission unit, as well as a delineation of applicable subcategories. However, nothing in today's rule should be read to diminish the discretion of the permitting authority to use its own floor finding, if the permitting authority can present evidence for a MACT floor finding different from that which the EPA has determined. Such evidence could be, for example, data provided by affected owners or operators that supports a correction to the EPA's MACT floor finding.

Although the EPA believes that it holds the greatest responsibility for making MACT floor findings and MACT determinations available in cases where the requirements of section 112(j) are triggered, the EPA must still provide for those instances in which a MACT floor determination will not be available at the time of the section 112(j) deadline. The EPA agrees with commenters who argue, as outlined above, that in such cases the burden for making MACT floor findings should rest with the permitting agency, not the individual applicant. (In such cases, the EPA may still have collected a great deal of information on the industry, which the EPA anticipates sharing with permitting agencies).

Section 63.55(a)(3) provides that if neither the EPA nor the permitting authority makes a MACT floor finding by the section 112(j) deadline, then the source shall submit a permit application, by the section 112(j) deadline, that will be considered complete if it contains all relevant information on emissions and controls (as set out in § 63.53(b)(1)..(9)), but no MACT floor finding or MACT determination. Section 63.55(a)(3)(i) adds that the source may choose to include a recommended MACT determination in its permit application.

Section 63.55(b) provides that the source's final permit must contain a MACT determination which, based on information "available to or generated by" the permitting authority, is at least as stringent as the MACT floor. In cases where a floor has not been established by the section 112(j) deadline by the EPA, the EPA believes that the data collected in the permit application process, in combination with information already collected by the EPA, can be used to establish minimum requirements for permits. The EPA envisions that permitting agencies can share information received in these applications, and that such information will be reported to EPA's national database. In addition, information generated by industry trade groups and the public may be of assistance.

The proposed rule contained a requirement for permitting authorities to submit copies to the Administrator of all Notice of MACT Approvals or Title V permits within 60 days of issuance. The EPA received many comments affirming the need for a mandatory reporting requirement to a National database. Commenters believe this is necessary to assure that the information used to

determine the MACT floor is representative of the full range and frequency of controls achieved by sources in the category or subcategory. The EPA agrees that information should be submitted to the Administrator to facilitate information exchange between the permitting agencies making section 112(j) MACT determinations. However, the EPA believes that this information would be most useful if received before issuance of the permit or Notice of MACT Approval. Therefore, § 6.55(c) has been changed to require owners or operator to provide, to the Administrator, an additional copy of any Notice of MACT Approval or title V permit submitted to a permitting authority to comply with the requirements of this rule.

The EPA considered requiring that, in each permit application, the owner or operator would make a control technology recommendation evaluating the impacts of alternative control levels and evaluating whether, in its judgement, the recommended control technology achieves emission reductions equal to or greater than the MACT floor. The EPA is concerned that, while such a requirement would satisfy the requirements of the Act, it may be overly burdensome to require each affected owner to prepare a separate analysis of costs, environmental impacts, etc., needed for such a recommendation.

In today's rule, owners and operators are strongly encouraged to provide such recommendations at the time of the application, but are not required to do so. At a minimum, however, the owner or operator is required to submit information on HAP emissions and current controls for each emission point, as well as any additional information deemed necessary by the permitting authority to evaluate control alternatives.

The EPA wishes to clarify that the requirements in § 63.53 (b)(8) and (b)(9) to list emission rates is intended as background information to enable the permitting authority to identify the pollutants requiring MACT controls. The EPA recognizes that there is often a significant effort required to obtain precise estimates of HAP emission rates and speciation. The EPA does not intend in this paragraph to require a greater level of detail than is necessary for evaluating applicability and emission control issues.

The EPA envisions, in cases where a MACT determination has not been provided by the Administrator, that a multi-stage process will be involved before issuance of the final title V permit. For the first stage, affected owners and operators would submit an initial application identifying the current level of control and data pertinent to the evaluation of control alternatives. Permitting authorities would review the application and provide the owner or operator with feedback on any additional information required. The owner or operator would be required to supply complete information no later than 6 months from the date of the initial application. For the second stage, the permitting authority would, in tandem with other permitting authorities, determine an emission limitation for each application that represents a MACT emission limitation for each emission unit. In the last stage, the emission limitation would be formally incorporated into the permit through the normal title V processes (public review, etc.)

G. Section 63.56—Requirements After Promulgation of a Subsequent Standard Under Section 112(d).

Section 63.56 of today's rule sets out requirements for incorporating subsequent standards into an operating permit after the owner or operator has submitted a permit application for a section 112(j) case-by-case MACT determination, or after a case-by-case MACT determination has been made under section 112(j). Section 63.56 implements the specific requirements of subsection 112(j)(6) of the Act.

Section 63.56 provides, as required in the Act, that if the EPA promulgates a section 112(d) standard for a source category before approval of a section 112(j) permit application for a source in that source category, then the permit must reflect the section 112(d) standard. New sources must comply upon startup with the section 112(d) rule except that, if the MACT standard is more stringent than the proposal, sources commencing construction or reconstruction between proposal and promulgation may comply with the proposal for 3 years, then meet the final MACT standard.

If EPA promulgates a section 112(d) standard after issuance of a section 112(j) permit for a source in the relevant source category, then the permit must be revised upon renewal to reflect the section 112(d) standard. However, the compliance period must be no longer than a total of 8 years from the initial section 112(j) compliance date, or the section 112(d) promulgation date, whichever is earlier.

Paragraph 63.56(c) clarifies a permitting authority's responsibilities when a case-by-case MACT standard is more stringent than a subsequent section 112(d) standard, and a permit containing that case-by-case standard has been issued. In that instance, the permitting authority is not required to revise the permit to reflect the less stringent section 112(d) standard, but may presume that the more stringent case-by-case determination satisfies the requirements of both section 112(j) and section 112(d). The EPA believes that nothing in section 112 of the Clean Air Act requires pre-emption of these more stringent State standards. The initial responsibility for determining whether a case-by-case MACT determination is more stringent rests with the permitting authority. The permitting authority should expect that EPA, in reviewing the permit at permit renewal, would look to the criteria in subpart E for guidance in approving this determination.

IV. Discussion of the Relationship of Today's Rule to Other Requirements of the Act

A. Section 112(g) Requirements for Constructed, Reconstructed, and Modified Major Sources; and Subsequent Standards Under Section 112(d) or Section 112(h)

States and sources implementing the requirements of section 112 of the Clean Air Act need to understand the potentially complex relationships among several interlocking provisions. At proposal the EPA requested comment on different interpretations of the relationship among the requirements of sections 112 (d), (g) and (j).

Internal Consistency

As discussed in section II.C. of this preamble, EPA's primary goal is to create as much consistency as possible between case-by-case MACT determinations under section 112(j) and implementation of subsequent section 112(d) standards for those same source categories. In addition, the Agency desires to rationalize the section 112(j) provisions with the section 112(g) provisions requiring case-by-case MACT determinations for constructed, reconstructed, and modified major sources. While some of the specific substantive requirements of section 112(g) differ from the substantive requirements of section 112(j) and section 112(d), the EPA intends to ensure the greatest possible consistency among sections 112 (d), (g), and (j) provisions. This discussion outlines EPA's preferred approach in implementing section 112(g) and achieving a consistent relationship across sections 112(d), 112(g), and 112(j). EPA recently proposed a rule implementing section 112(g) and a final determination on the relationship

between these provisions will be made in that rulemaking.

One fundamental principal guiding the design of regulations under all three provisions is that case-by-case maximum achievable control technology requirements under section 112(g) are applicable only until the effective date of a section 112(j) or section 112(d) standard for a source category. After the effective date of a section 112(j) or a section 112(d) MACT standard, any more stringent emission limitations required under section 112(j) or section 112(d) supersede the specific emission limitations required under section 112(g).

The EPA considered an alternative approach, i.e. the finding that section 112(g) governs all changes and additions of new emission units at existing sources whether or not a section 112 (d) or (j) standard exists. This issue generated numerous comments. Some commenters argue that the requirements of section 112(g) should not be superseded when a MACT emission limitation is established under either section 112(j) or section 112(d) is promulgated. A few commenters argue that a control technology selected for a particular standard under section 112 (j) or (d) should not remain fixed, and that the way to continually require better controls is through section 112(g). Others argue that because section 112(j) does not contain the word "modification", that all modifications should be handled by section 112(g).

Many argue that EPA's approach to coordinating sections section 112 (j), (d), and (g) would result in unnecessary regulatory burdens, such as: (1) regulating sources that emit below "de minimis" amounts under section 112(g) as new sources, (2) stifling technological advance and delay needed process changes through over-regulation, and (3) subjecting some sources to repeated MACT determinations, and perhaps forcing sources to replace controls required under section 112(g) with controls required under section 112(j).

Other commenters endorsed EPA's approach to coordinating section 112(j), (g), and (d), by asserting that since section 112(j) standards will apply to an entire source category, it is important that they be established according to a philosophy compatible with section 112(d).

The EPA recognizes that changes to a source subject to a section 112(d) MACT standard will be subject to the same control requirements that already apply under section 112(d). The EPA believes that section 112(g) establishes case-by-case MACT to cover those major sources who make modifications before a promulgated MACT standard applies. Therefore consistency would suggest that similarly, changes to a source subject to a case-by-case MACT standard under section 112(j)—which acts in place of a section 112(d) standard—should be subject to the same control requirements that already apply under section 112(j). While under this approach section 112(g) continues to require assessment of whether a modification has occurred after a section 112(d) or section 112(j) standard is in effect, it will not dictate the level of control when the requirements of section 112(d) or section 112(j) are more stringent. The EPA believes that the internal consistency of this approach would yield a more consistent application of controls on major sources than would prolonging the use of case-by-case MACT under section 112(g).

Moreover the EPA does not intend that case-by-case controls applied under section 112(j) will result in subjecting sources to repeating and conflicting MACT determinations. The EPA expects that case-by-case MACT determinations under section 112(j) will require updates to those made under section 112(g) only in rare cases.

A further reason for rejecting the approach that section 112(g) control extends to sources covered by more stringent section 112(d) or section 112(j) standards is that it leads to the conclusion that many new sources within the section 112(a)(4) definition of new source would forever escape having to apply a new source MACT level of control.

Section 112(a)(4) defines a new source as "a stationary source the construction or reconstruction of which is commenced after the Administrator first proposes regulations under this section establishing an emission standard applicable to such source." Thus, once a standard has been set under section 112(d), any new source will be subject to new source MACT. The MACT standard will define the portion of a facility that is considered a "source" for the purposes of the particular standard. Such source may be either an entire major source, or one or more sources within the major source. (Of course a MACT standard can also be set for area sources, which are stationary sources that are not part of a major source; but as section 112(j) does not apply to area sources, that is not relevant here).

Section 112 (g) applies to construction, reconstruction, or modification of major sources, and in many cases will have an effect on sources earlier than section 112 (d) or (j) standards. However, section 112 (g) only requires new source MACT on "constructed" major sources, and considers any other new emission unit to be a modification of an existing major source. As a "modification," such a new emission unit will be required to apply for existing source case-by-case MACT determination under section 112(g). Therefore if section 112(g) were to constrain the application of a subsequent section 112(j) or section 112(d) standard, many new emission units under the section 112(a)(4) definition of "new source" would never be required to comply with new source MACT.

In addition, under section 112(g) a new emission unit might not even be required to meet an existing source MACT level of control. Section 112(g) allows for modifications to either: (1) comply with a case-by-case "existing source" MACT determination under section 112(g); (2) offset emissions increases in lieu of applying section 112(g) existing source MACT requirements; or (3) if its emissions were below section 112(g) de minimis levels, not be subject to any control requirements at all. The EPA believes that section 112(g) thus provides major sources with a great deal of needed flexibility before sections 112 (d) or (j) standards are set; but that once those standards are in place the Act intends that these sources must comply with the specific control technology requirements of those standards instead of those of section 112(g).

Finally, the interpretation that section 112(g) governs the control requirements on new emission units at major sources to which section 112 (d) or (j) standards already apply would have some anomalous implications. One example would be a new emission unit whose emissions are below section 112(g) de minimis levels for a particular hazardous air pollutant. If that emission unit were added to a major source, it would be exempt from the requirements of section 112(g), but would be required to apply new source MACT control under section 112(j). However, if that emission unit were not below section 112(g) de minimis levels, it would be required to comply with section 112(g). If section 112(g) requirements limit the application of section 112(j), then the source would be required to apply existing source MACT. In this instance, a smaller emission unit would be required to control more stringently than a larger emission unit.

Another example of anomalies resulting from this reading of the statute would be a section 112(d) standard that sets new source MACT for new area sources in a source category. Under this reading, major sources adding new

sources could avoid new source MACT, but any new area source would have to meet new source MACT. Again, a smaller unit would be required to control more stringently than a larger emission unit.

Several commenters argue that the requirements of section 112(j) should only apply to new and existing major sources once, at the time the hammer falls, and that subsequent construction of new major sources, or additions to existing major sources should not be subject to section 112(j) requirements. These commenters state that such subsequent changes should be governed by section 112(g) requirements.

The EPA does not believe that section 112(j) is only applicable at the time that the hammer falls. Section 112(j) is intended to take the place of section 112(d) standards, and thus should apply to all sources in the relevant category until the section 112(d) standard takes over. Thus, a new source constructed after the hammer date, but before a MACT standard is promulgated, should be subject to section 112(j) to the same extent as a source that is covered by section 112(j) on the date the hammer falls.

The EPA believes that under its preferred approach, the substantive control requirements of section 112(g) would be pre-empted by the more stringent requirements of a relevant section 112(j) or section 112(d) standard. Relying on section 112(g) to cover new emission units after the section 112(j) deadline is insufficient because it does not require application of the equivalent of section 112(d) standards to all sources in the relevant source category.

Similarly, some commenters argue that if a major source has complied with section 112(g), it should have to do no more under section 112(j). Under the EPA's preferred approach, in most cases compliance with section 112(g) will be sufficient under section 112(j), but there are some situations where section 112(j) may require more control. For example, an existing major source that has been modified and has met case-by-case MACT under section 112(g) may not have installed MACT on all emission units in a given source category, because some emission units may have offset out of control, and emission units below section 112(g) de minimis emission rates will not have applied control. Under the EPA's preferred approach, section 112(j) would require case-by-case MACT on all the emission units within the major source that are included in the category for which the section 112(j) deadline has passed. However in most cases where existing source MACT controls have been applied under section 112(g), those controls under section 112(g) will suffice for emission units required to install existing source MACT under section 112(j). (There may be rare cases where section 112(j) will require new source MACT on some emission units that only have to meet existing source MACT under section 112(g). For example, an emission unit constructed after proposal of a section 112(d) MACT standard, but before the section 112(j) deadline, would have to meet existing source MACT under section 112(g) and later new source MACT under section 112(j). This distinction will require more stringent control in cases where the permitting authority finds new source MACT to be more stringent than existing source MACT). Again, this discussion outlines the EPA's preferred approach in implementing section 112(g) and achieving a consistent relationship across sections 112(d), 112(g), and 112(j). The EPA recently proposed a rule implementing section 112(g) and a final determination on the relationship between these provisions will be made in that rulemaking.

Administrative consistency. Voluntary administrative procedures for new sources under section 112(j), as outlined in § 63.54 of today's rule, are intended to be analogous to administrative requirements that will be established for modified, constructed, and reconstructed sources under section 112(g) of the Act. These requirements were proposed in § 63.40 through 63.48 of this subpart, at 59 FR 15504 (April 1, 1994).

Figure 1 illustrates the link between the voluntary section 112(j) preconstruction review process and the proposed section 112(g) administrative requirements. Although the EPA believes that section 112(j) does not provide authority for an upfront review of all new sources, the EPA believes, as a matter of policy, that whether preconstruction or pre-operation review is done under the authority of section 112(g) or section 112(j), the MACT determination can be incorporated directly into the title V permit by administrative amendment if the review process contains the elements necessary to make it an "enhanced" process, as discussed in section III.C. of this preamble.

Before the section 112(j) deadline, such sources will be required to make a case-by-case MACT determination under section 112(g). After the section 112(j) deadline, these sources will be required to make a case-by-case MACT determination under section 112(j). Many of these sources may still be subject to preconstruction or pre-operation review under section 112(g). Sources applying for approval of a case-by-case MACT determination under section 112(g), but who will be subject to section 112(j) new source MACT, need to know this before they construct, in order to install the right equipment.

In addition there will be new sources that may not be covered by section 112(g), but who may be required to install new source MACT under section 112(j). For example, an owner/operator may intend to make an offset showing that would avoid a case-by-case MACT determination under section 112(g). Or a new unit's emissions may fall below a section 112(g) de minimis level for a specific pollutant. In both of these cases, the owner or operator should know in advance of the section 112(j) deadline that they may be required to install new source MACT under section 112(j).

Therefore, any owner or operator planning to construct a new major source, or any existing major source planning to install a new emission unit after a scheduled promulgation date for a source category, is encouraged to undergo "enhanced" preconstruction or pre-operation review under section 112(j). This is the only way to satisfy the requirements of title V to allow incorporation of section 112(j) MACT emission limits in the operating permit by administrative amendment.

B. Section 112(l) Delegation Process

Under section 112(l) of the Act, States have the option of developing and submitting to the Administrator a program for implementing the requirements of section 112, including section 112(j). The EPA rule implementing section 112(l) is contained in § 63.90 through § 63.96 of 40 CFR part 63.

The EPA believes that section 112(l) approvals do not have a great deal of overlap with the section 112(j) provision, because section 112(j) is designed to use the title V permit process as the primary vehicle for establishing requirements. There may be, however, some instances where section 112(l) approvals could streamline the process. For example, a State may have an existing rule for a source category for which it could be demonstrated that all sources are achieving a level of control no less stringent than required under the case-by-case MACT requirements of section 112(j). The EPA believes that there may be advantages in obtaining approval under subpart E for such instances.

C. Section 112(i)(5) Early Reductions Program

Section 112(i)(5) of the Act allows EPA to grant a source a 6 year compliance extension from a section 112(d) MACT standard if the source achieves "early reductions" of its emissions. An early reduction is defined as a 90 percent reduction in a source's hazardous air pollutant emissions (95 percent reduction in a source's particulate emissions) before the relevant MACT standard is proposed. The source's commitment to achieve early reductions must be federally enforceable, must be included in the title V permit, and must be submitted to EPA within 120 days of establishment of a title V permit program, or, if later, before the relevant section 112(d) standard for that source category is proposed. These commitments to reduce emissions early become classified as alternative emission limitations throughout the 6 year extension period. Alternative emission limitations are the "applicable emission requirements" for the early reduction source.

However, § 63.52(c) provides that an alternative emission limitation established for the purpose of early reduction credit can be included as a MACT emission limitation in the permit, so long as the reduction was achieved by the date established in the source category schedule for standards. This requirement is established pursuant to the specific provisions of section 112(j)(5).

V. Administrative Requirements

A. Docket

The docket for this regulatory action is A–93–32. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this rulemaking. The principal purposes of the docket are:

(1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the rulemaking process, and

(2) To serve as the record in case of judicial review. The docket is available for public inspection at the EPA's Air Docket, which is listed under the **ADDRESSES** section of this document.

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, 10/04/94), 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 lead to a rule that may:

(1) 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;

(2) Create a serous 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 obligation of recipients thereof;

(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, the EPA has determined that this action is a "significant regulatory action" within the meaning of the Executive Order, because it may materially affect the environment, public health, and State and local governments. For this reason, this action was submitted to the OMB for review. Changes made in response to the OMB's suggestions or recommendations will be documented in the public record.

Any written comments from OMB to the EPA and any written EPA response to any of those comments will be included in the docket listed at the beginning of today's notice under **ADDRESSES**. The docket is available for public inspection at the EPA Air Docket Section, (LE–131), ATTN: Docket No. A–93–32, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et. seq.) requires the EPA to consider potential impacts of proposed regulations on small entities. If a preliminary analysis indicates that a proposed regulation would have a significant economic impact on 20 percent or more of small entities, then a regulatory flexibility analysis must be prepared.

Present Regulatory Flexibility Act guidelines indicate that an economic impact should be considered significant if it meets one of the following criteria: (1) Compliance increases annual production costs by more than 5 percent, assuming costs are passed on to consumers; (2) compliance costs as a percentage of sales for small entities are at least 10 percent more than compliance costs as a percentage of sales for large entities; (3) capital costs of compliance represent a "significant" portion of capital available to small entities, considering internal cash flow plus external financial capabilities; or (4) regulatory requirements are likely to result in closures of small entities.

This regulation does not affect a significant number of small businesses, small governmental jurisdictions, or small institutions, because this regulation only affects major sources of hazardous air pollutants. Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that today's rule will not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., and has been assigned the OMB control no. 2060–0266. An Information Collection Request (ICR) document has been prepared by the EPA (ICR No. 1648.01), and a copy may be obtained from Sandy Farmer, Information Policy Branch (PM–2136), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, or by calling (202) 260–2740.

This collection of information is estimated to have an average annual public reporting burden of approximately 200 hours per respondent. This includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch (PM–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 EPA."

List of Subjects

40 CFR Part 9

Reporting and recordkeeping requirements.

40 CFR Part 63

Environmental protection, Administrative practices and procedures, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: April 29, 1994.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 9—[AMENDED]

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1321, 1326, 1330, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. Section 9.1 is amended by adding a new entry to the table under the indicated heading to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
National Emission Standards for Hazardous Air Pollutants for Source Categories:	
63.52–63.56	2060–0266
* * * * *	

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Part 63 is amended by adding a new subpart B, consisting of §§ 63.40 through 63.56 to read as follows:

Subpart B—Requirements for Control Technology Determinations for Major Sources in Accordance With Clean Air Act Sections, Sections 112(g) and 112(j)

Sec.

63.40–63.49 [Reserved]
63.50 Applicability.
63.51 Definitions.
63.52 Approval process for new and existing emission units.
63.53 Application content for case-by-case MACT determinations.
63.54 Preconstruction review procedures for new emission units.
63.55 Maximum achievable control technology (MACT) determinations for emission units subject to case-by-case determination of equivalent emission limitations.
63.56 Requirements for case-by-case determination of equivalent emission limitations after promulgation of a subsequent MACT standard.

Subpart B—Requirements for Control Technology Determinations for Major Sources in Accordance With Clean Air Act Sections, Sections 112(g) and 112(j)

§§ 63.40–63.49 [Reserved]

§ 63.50 Applicability.

(a) *General applicability.* The requirements of §§ 63.50 through 63.56 implement section 112(j) of the Clean Air Act (as amended in 1990). The requirements of §§ 63.50 through 63.56 apply in each State beginning on the effective date of an approved title V permit program in such State. These requirements apply to the owner or operator of a major source of hazardous air pollutants which includes one or more stationary sources included in a source category or subcategory for which the Administrator has failed to promulgate an emission standard under this part by the section 112(j) deadline.

(b) *Relationship to State and local requirements.* Nothing in §§ 63.50 through 63.56 shall prevent a State or local regulatory agency from imposing more stringent requirements than those contained in these subsections.

(c) *Retention of State permit program approval.* In order to retain State permit program approval, a State must, by the section 112(j) deadline for a source category, obtain sufficient legal authority to establish equivalent emission limitations, to incorporate those requirements into a title V permit, and to incorporate and enforce other requirements of section 112(j).

§ 63.51 Definitions.

Terms used in §§ 63.50 through 63.56 of this subpart that are not defined below have the meaning given to them in the Act, in subpart A of this part.

Available information means, for purposes of conducting a MACT floor finding and identifying control technology options for emission units subject to the provisions of this subpart, information contained in the following information sources as of the section 112(j) deadline:

(1) A relevant proposed regulation, including all supporting information;

(2) Background information documents for a draft or proposed regulation;

(3) Any regulation, information or guidance collected by the Administrator establishing a MACT floor finding and/or MACT determination;

(4) Data and information available from the Control Technology Center developed pursuant to section 112(l)(3) of the Act, and

(5) Data and information contained in the Aerometric Informational Retrieval System (AIRS) including information in the MACT database, and

(6) Any additional information that can be expeditiously provided by the Administrator, and

(7) Any information provided by applicants in an application for a permit, permit modification, administrative amendment, or Notice of MACT Approval pursuant to the requirements of this subpart.

(8) Any additional relevant information provided by the applicant.

Control technology means measures, processes, methods, systems, or techniques to limit the emission of hazardous air pollutants including, but not limited to, measures which:

(1) Reduce the quantity, or eliminate emissions, of such pollutants through process changes, substitution of materials or other modifications;

(2) Enclose systems or processes to eliminate emissions;

(3) Collect, capture, or treat such pollutants when released from a process, stack, storage or fugitive emissions point;

(4) Are design, equipment, work practice, or operational standards (including requirements for operator training or certification) as provided in 42 USC 7412(h); or

(5) Are a combination of paragraphs (1) through (4) of this definition.

Emission point means any part or activity of a major source that emits or has the potential to emit, under current operational design, any hazardous air pollutant.

Emission unit means any building, structure, facility, or installation. This could include an emission point or collection of emission points, within a major source, which the permitting authority determines is the appropriate entity for making a MACT determination under section 112(j), i.e., any of the following:

(1) An emission point that can be individually controlled.

(2) The smallest grouping of emission points, that, when collected together, can be commonly controlled by a single control device or work practice.

(3) Any grouping of emission points, that, when collected together, can be commonly controlled by a single control device or work practice.

(4) A grouping of emission points that are functionally related. Equipment is functionally related if the operation or action for which the equipment was specifically designed could not occur without being connected with or without relying on the operation of another piece of equipment.

(5) The entire geographical entity comprising a major source in a source category subject to a MACT determination under section 112(j).

Enhanced review means a review process containing all administrative steps needed to ensure that the terms and conditions resulting from the review process can be incorporated into the title V permit by an administrative amendment.

Equivalent emission limitation means an emission limitation, established under section 112(j) of the Act, which is at least as stringent as the MACT standard that EPA would have promulgated under section 112(d) or section 112(h) of the Act.

Existing major source means a major source, construction or reconstruction of which is commenced before EPA proposed a standard, applicable to the major source, under section 112 (d) or (h), or if no proposal was published, then on or before the section 112(j) deadline.

Maximum achievable control technology (MACT) emission limitation for existing sources means the emission limitation reflecting the maximum degree of reduction in emissions of hazardous air pollutants (including a prohibition on such emissions, where achievable) that the Administrator, taking into consideration the cost of achieving such emission reductions, and any non-air quality health and environmental impacts and energy requirements, determines is achievable by sources in the category or subcategory to which such emission standard applies. This limitation shall not be less stringent than the MACT floor.

Maximum achievable control technology (MACT) emission limitation for new sources means the emission limitation which is not less stringent than the emission limitation achieved in practice by the best controlled similar source, and which reflects the maximum degree of reduction in emissions of hazardous air pollutants (including a prohibition on such emissions, where achievable) 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 by sources in the category or subcategory to which such emission standard applies.

Maximum Achievable Control Technology (MACT) floor means:

(1) For existing sources:

(i) The average emission limitation achieved by the best performing 12 percent of the existing sources in the United States (for which the Administrator has emissions information), excluding those sources that have, within 18 months before the emission standard is proposed or within 30 months before such standard is promulgated, whichever is later, first achieved a level of emission rate or emission reduction which complies, or would comply if the source is not subject to such standard, with the lowest achievable emission rate (as defined in section 171 of the Act) applicable to the source category and prevailing at the time, in the category or subcategory, for categories and subcategories of stationary sources with 30 or more sources; or

(ii) The average emission limitation achieved by the best performing five sources in the United States (for which the Administrator has or could reasonably obtain emissions information) in the category or subcategory, for a category or subcategory of stationary sources with fewer than 30 sources;

(2) For new sources, the emission limitation achieved in practice by the best controlled similar source.

New emission unit means an emission unit for which construction or reconstruction is commenced after the section 112(j) deadline, or after proposal of a relevant standard under section 112(d) or section 112(h) of the Clean Air Act (as amended in 1990), whichever comes first, except that, as provided by § 63.52(f)(1), an emission unit, at a major source, for which construction or reconstruction is commenced before the date upon which the area source becomes a major source, shall not be considered a new emission unit if, after the addition of such emission unit, the source is still an area source.

New major source means a major source for which construction or reconstruction is commenced after the section 112(j) deadline, or after proposal of a relevant standard under section 112(d) or section 112(h) of the Clean Air Act (as amended in 1990), whichever comes first.

Permitting authority means the permitting authority as defined in part 70 of this chapter.

Section 112(j) deadline means the date 18 months after the date for which a relevant standard is scheduled to be promulgated under this part. The applicable date for categories of major sources is contained in the source category schedule for standards.

Similar source means an emission unit that has comparable emissions and is structurally similar in design and capacity to other emission units such that the emission units could be controlled using the same control technology.

Source category schedule for standards means the schedule for promulgating MACT standards issued pursuant to section 112(e) of the Act.

United States means the United States, its possessions and territories.

§ 63.52 Approval process for new and existing emission units.

(a) *Application.* (1) Except as provided in § 63.52(a)(3), if the Administrator fails to promulgate an emission standard under this part on or before an applicable section 112(j) deadline for a source category or subcategory, the owner or operator of an existing major source that includes one or more stationary sources in such category or subcategory, shall submit an application for a title V permit or application for a significant permit modification, whichever is applicable, by the section 112(j) deadline.

(2) If the Administrator fails to promulgate an emission standard under this part on or before an applicable section 112(j) deadline for a source category or subcategory, the owner or operator of a new emission unit in such source category or subcategory shall submit an application for a title V permit or application for a significant permit modification or administrative amendment, whichever is applicable, in accordance with procedures established under title V.

(3) (i) The owner or operator of an existing major source that already has a title V permit requiring compliance with a limit that would meet the requirements of section 112(j) of the Act, shall submit an application for an administrative permit amendment, by the section 112(j) deadline, in accordance with procedures established under title V.

(ii) The owner or operator of a new emission unit that currently complies with a federally enforceable alternative emission limitation, or has a title V permit that already contains emission limitations substantively meeting the requirements of section 112(j), shall submit an application for an administrative permit amendment confirming compliance with the requirements of section 112(j), in accordance with procedures established under title V, and not later than the date

30 days after the date construction or reconstruction is commenced.

(4) In addition to meeting the requirements of § 63.52(a)(2), the owner or operator of a new emission unit may submit an application for a Notice of MACT Approval before construction, pursuant to § 63.54.

(b) *Permit review.* (1) Permit applications submitted under this paragraph will be reviewed and approved or disapproved according to procedures established under title V, and any other regulations approved under title V in the jurisdiction in which the emission unit is located. In the event that the permitting authority disapproves a permit application submitted under this paragraph or determines that the application is incomplete, the owner or operator shall revise and resubmit the application to meet the objections of the permitting authority not later than six months after first being notified that the application was disapproved or is incomplete.

(2) If the owner or operator has submitted a timely and complete application for a title V permit, significant permit modification, or administrative amendment required by this paragraph, any failure to have this permit will not be a violation of the requirements of this paragraph, unless the delay in final action is due to the failure of the applicant to submit, in a timely manner, information required or requested to process the application.

(c) *Emission limitation.* The permit or Notice of MACT Approval, whichever is applicable, shall contain an equivalent emission limitation (or limitations) for that category or subcategory determined on a case-by-case basis by the permitting authority, or, if the applicable criteria in subpart D of this part are met, the permit or Notice of MACT Approval may contain an alternative emission limitation. For the purposes of the preceding sentence, early reductions made pursuant to section 112(i)(5)(A) of the Act shall be achieved not later than the date on which the relevant standard should have been promulgated according to the source category schedule for standards.

(1) The permit or Notice will contain an emission standard or emission limitation to control the emissions of hazardous air pollutants. The MACT emission limitation will be determined by the permitting authority and will be based on the degree of emission reductions that can be achieved, if the control technologies or work practices are installed, maintained, and operated properly. Such emission limitation will be established consistent with the principles contained in § 63.55.

(2) The permit or Notice will specify any notification, operation and maintenance, performance testing, monitoring, reporting and recordkeeping requirements. The permit or Notice will include the following information:

(i) In addition to the MACT emission limitation required by paragraph (c)(1) of this section, additional emission limits, production limits, operational limits or other terms and conditions necessary to ensure federal enforceability of the MACT emission limitation;

(ii) Compliance certifications, testing, monitoring, reporting and recordkeeping requirements that are consistent with requirements established pursuant to title V, § 63.52(e), and, at the discretion of the permitting authority, to subpart A of this part;

(iii) A statement requiring the owner or operator to comply with all requirements contained in subpart A of this part deemed by the permitting authority to be applicable;

(iv) A compliance date(s) by which the owner or operator shall be in compliance with the MACT emission limitation, and all other applicable terms and conditions of the Notice.

(d)(1) *Compliance date.* The owner or operator of an existing major source subject to the requirements of this paragraph shall comply with the emission limitation(s) established in the source's title V permit. In no case will such compliance date exceed 3 years after the issuance of the permit for that source, except where the permitting authority issues a permit that grants an additional year to comply in accordance with section 112(i)(3)(B), or unless otherwise specified in section 112(i), or in subpart D of this part.

(2) The owner or operator of a new emission unit subject to the requirements of this paragraph shall comply with a new source MACT level of control immediately upon issuance of the title V permit for the emission unit.

(e) *Enhanced monitoring.* In accordance with section 114(a)(3) of the Act, monitoring shall be capable of detecting deviations from each applicable emission limitation or other standard with sufficient reliability and timeliness to determine continuous compliance over the applicable reporting period. Such monitoring data may be used as a basis for enforcing emission limitations established under this subpart.

(f) *Area sources that become major sources.* (1) After the effective date of this subpart, the owner or operator of a new or existing area source that increases its emissions of, or its potential to emit, hazardous air pollutants such that the source becomes a major source that is subject to this subpart shall submit an application for a title V permit or application for a significant permit modification, or administrative amendment, whichever is applicable, by the date that such source becomes a major source.

(i) If an existing area source becomes a major source by the addition of an emission unit or as a result of reconstructing, that added emission unit or reconstructed emission unit shall comply with all requirements of this subpart that affect new emission units, including the compliance date for new emission units established in § 63.52(d).

(ii) If an area source, constructed after the section 112(j) deadline, becomes a major source solely by virtue of a relaxation in any federally enforceable emission limitation, established after the section 112(j) deadline, on the capacity of an emission unit or units to emit a hazardous air pollutant, such as a restriction on hours of operation, then that emission unit or units shall comply with all requirements of this subpart that affect new emission units, on or before the date of such relaxation.

(2) After the effective date of this subpart, if the Administrator establishes a lesser quantity emission rate under section 112(a)(1) of the Act that results in an area source becoming a major source, then the owner or operator of such major source shall submit an application for a title V permit or application for a significant permit modification, or administrative amendment, whichever is applicable, on or before the date 6 months from the date that such source becomes a major source. If an existing area source becomes a major source as a result of the Administrator establishing a lesser quantity emission rate, then any emission unit, at that source, for which construction or reconstruction is commenced before the date upon which the source becomes major shall not be considered a new emission unit.

§ 63.53 Application content for case-by-case MACT determinations.

(a) *MACT Demonstration.* Except as provided by § 63.55(a)(3), an application for a MACT determination shall demonstrate how an emission unit will obtain the degree of emission reduction that the Administrator or the State has determined is at least as stringent as the emission reduction that would have been obtained had the relevant emission standard been promulgated according to the source category schedule for

standards for the source category of which the emission unit is a member.

(b) *MACT Application.* The application for a MACT determination shall contain the following information:

(1) The name and address (physical location) of the major source;

(2) A brief description of the major source, its source category or categories, a description of the emission unit(s) requiring a MACT determination pursuant to other requirements in this subpart, and a description of whether the emission unit(s) require new source MACT or existing source MACT based on the definitions established in § 63.51;

(3) For a new emission unit, the expected date of commencement of construction;

(4) For a new emission unit, the expected date of completion of construction;

(5) For a new emission unit, the anticipated date of startup of operation;

(6) The hazardous air pollutants emitted by each emission point, and an estimated emission rate for each hazardous air pollutant.

(7) Any existing federally enforceable emission limitations applicable to the emission point.

(8) The maximum and expected utilization of capacity of each emission point, and the associated uncontrolled emission rates for each emission point;

(9) The controlled emissions for each emission point in tons/year at expected and maximum utilization of capacity, and identification of control technology in place;

(10) Except as provided in § 63.55(a)(3), the MACT floor as specified by the Administrator or the permitting authority.

(11) Except as provided in § 63.55(a)(3), recommended emission limitations for the emission unit(s), and supporting information, consistent with § 63.52(c) and § 63.55(a).

(12) Except as provided in § 63.55(a)(3), a description of the control technologies that will apply to meet the emission limitations including technical information on the design, operation, size, estimated control efficiency, and any other information deemed appropriate by the permitting authority, and identification of the emission points to which the control technologies will be applied;

(13) Except as provided in § 63.55(a)(3), parameters to be monitored and frequency of monitoring to demonstrate continuous compliance with the MACT emission limitation over the applicable reporting period.

(14) Any other information required by the permitting authority including, at the discretion of the permitting authority, information required pursuant to subpart A of this part.

§ 63.54 Preconstruction review procedures for new emission units.

(a) *Review process for new emission units.* (1) If the permitting authority requires an owner or operator to obtain or revise a title V permit before construction of the new emission unit, or when the owner or operator chooses to obtain or revise a title V permit before construction, the owner or operator shall follow the administrative procedures established under title V before construction of the new emission unit.

(2) If an owner or operator is not required to obtain or revise a title V permit before construction of the new emission unit (and has not elected to do so), but the new emission unit is covered by any preconstruction or pre-operation review requirements established pursuant to section 112(g) of the Act, then the owner or operator shall comply with those requirements, in order to ensure that the requirements of section 112(j) and section 112(g) are satisfied. If the new emission unit is not covered by section 112(g), the permitting authority, in its discretion, may issue a Notice of MACT Approval, or the equivalent, in accordance with the procedures set forth in paragraphs (b) through (h) of this section, or an equivalent permit review process, before construction or operation of the new emission unit.

(3) Regardless of the review process, the MACT determination shall be consistent with the principles established in § 63.55. The application for a Notice of MACT Approval or a title V permit, permit modification, or administrative amendment, whichever is applicable, shall include the documentation required by § 63.53.

(b) *Optional administrative procedures for preconstruction or pre-operation review for new emission units.* The permitting authority may provide for an enhanced review of section 112(j) MACT determinations that provides for review procedures and compliance requirements equivalent to those set forth in paragraphs (b) through (h) of this section.

(1) The permitting authority will notify the owner or operator in writing as to whether the application for a MACT determination is complete or whether additional information is required.

(2) The permitting authority will approve an applicant's proposed control technology, or the permitting authority will notify the owner or operator in writing of its intention to disapprove a control technology.

(3) The owner or operator may present in writing, within a time frame specified by the permitting authority, additional information, considerations, or amendments to the application before the permitting authority's issuance of a final disapproval.

(4) The permitting authority will issue a preliminary approval or issue a disapproval of the application, taking into account additional information received from the owner or operator.

(5) A determination to disapprove any application will be in writing and will specify the grounds on which the disapproval is based.

(6) Approval of an applicant's proposed control technology will be set forth in a Notice of MACT Approval (or the equivalent) as described in § 63.52(c).

(c) *Opportunity for public comment on Notice of MACT Approval.* The permitting authority will provide opportunity for public comment on the preliminary Notice of MACT Approval prior to issuance, including, at a minimum,

(1) Availability for public inspection in at least one location in the area affected of the information submitted by the owner or operator and of the permitting authority's tentative determination;

(2) A period for submittal of public comment of at least 30 days; and

(3) A notice by prominent advertisement in the area affected of the location of the source information and analysis specified in § 63.52(c). The form and content of the notice will be substantially equivalent to that found in § 70.7 of this chapter.

(4) An opportunity for a public hearing, if one is requested. The permitting authority will give at least 30 days notice in advance of any hearing.

(d) *Review by the EPA and Affected States.* The permitting authority will send copies of the preliminary notice (in time for comment) and final notice required by paragraph (c) of this section to the Administrator through the appropriate Regional Office, and to all other State and local air pollution control agencies having jurisdiction in the region in which the new source would be located. The permitting authority will provide EPA with a review period for the final notice of at least 45 days, and will not issue a final Notice of MACT approval unless EPA objections are satisfied.

(e) *Effective date.* The effective date for new sources under this subsection shall be the date a Notice of MACT

Approval is issued to the owner or operator of a new emission unit.

(f) *Compliance date.* New emission units shall comply with case-by-case MACT upon issuance of a title V permit for the emission unit.

(g) *Compliance with MACT Determinations.* An owner or operator of a major source that is subject to a MACT determination shall comply with notification, operation and maintenance, performance testing, monitoring, reporting, and recordkeeping requirements established under § 63.52(e), under title V, and at the discretion of the permitting authority, under subpart A of this part. The permitting authority will provide the EPA with the opportunity to review compliance requirements for consistency with requirements established pursuant to title V during the review period under paragraph (d) of this section.

(h) *Equivalency under Section 112(l).* If a permitting authority requires preconstruction review for new source MACT determinations under this subpart, such requirement shall not necessitate a determination under subpart E of this part.

§ 63.55 Maximum achievable control technology (MACT) determinations for emission units subject to case-by-case determination of equivalent emission limitations.

(a) *Requirements for emission units subject to case-by-case determination of equivalent emission limitations.* The owner or operator of a major source submitting an application pursuant to § 63.52 or § 63.54 shall include elements specified in § 63.53, taking into consideration the following requirements:

(1) When the Administrator has proposed a relevant emission standard for the source category pursuant to section 112(d) or section 112(h) of the Act, then the control technologies recommended by the owner or operator under § 63.53(b)(12), when applied to the emission points recommended by the applicant for control, shall be capable of achieving all emission limitations and requirements of the proposed standard unless the application contains information adequate to support a contention that:

(i) different emissions limitations represent the maximum achievable control technology emission limitations for the source category, or

(ii) requirements different from those proposed by EPA will be effective in ensuring that MACT emissions limitations are achieved.

(2) When the Administrator or the permitting authority has issued guidance or distributed information establishing a MACT floor finding for the source category or subcategory by the section 112(j) deadline, then the recommended MACT emission limitations required by § 63.53(b)(11) must be at least as stringent as the MACT floor, unless the application contains information adequately supporting an amendment to such MACT floor.

(3)(i) When neither the Administrator nor the permitting authority has issued guidance or distributed information establishing a MACT floor finding and MACT determination for a source category or subcategory by the section 112(j) deadline, then the owner or operator shall submit an application for a permit or application for a Notice of MACT Approval, whichever is applicable, containing the elements required by § 63.53(b) (1) through (9) and (14), by the section 112(j) deadline.

(ii) The owner or operator may recommend a control technology that either achieves a level of control at least as stringent as the emission control that is achieved in practice by the best controlled similar source, or obtains at least the maximum reduction in emissions of hazardous air pollutants that is achievable considering costs, non air quality health and environmental impacts, and energy requirements.

(4) The owner or operator may select a specific design, equipment, work practice, or operational standard, or combination thereof, when it is not feasible to prescribe or enforce an equivalent emission limitation due to the nature of the process or pollutant. It is not feasible to prescribe or enforce a limitation when the Administrator determines that a hazardous air pollutant (HAP) or HAPs cannot be emitted through a conveyance designed and constructed to capture such pollutant, or that any requirement for, or use of, such a conveyance would be inconsistent with any Federal, State, or local law, or the application of measurement methodology to a particular class of sources is not practicable due to technological and economic limitations.

(b) *Requirements for permitting authorities.* The permitting authority will determine whether the permit application or application for a Notice of MACT Approval is approvable. If approvable, the permitting authority will establish hazardous air pollutant emissions limitations equivalent to the limitation that would apply if an emission standard had been issued in a timely manner under subsection 112 (d) or (h) of the Act. The permitting authority will establish these emissions limitations consistent with the following requirements and principles:

(1) Emission limitations will be established for all emission units within a source category or subcategory for which the section 112(j) deadline has passed.

(2) Each emission limitation for an existing emission unit will reflect the maximum degree of reduction in emissions of hazardous air pollutants (including a prohibition on such emission, where achievable) that the permitting authority, 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 by emission units in the category or subcategory for which the section 112(j) deadline has passed. This limitation will not be less stringent than the MACT floor, and will be based upon available information and information generated by the permitting authority before or during the application review process, including information provided in public comments.

(3) Each emission limitation for a new emission unit will not be less stringent than the emission limitation achieved in practice by the best controlled similar source, and must reflect the maximum degree of reduction in emissions of hazardous air pollutants (including a prohibition on such emissions, where achievable) that the permitting authority, 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. This limitation will be based at a minimum upon available information and information provided in public comments.

(4) When the Administrator has proposed a relevant emissions standard for the source category pursuant to section 112(d) or section 112(h) of the Act, then the equivalent emission limitation established by the permitting authority shall ensure that all emission limitations and requirements of the proposed standard are achieved, unless the permitting authority determines based on additional information that:

(i) Different emissions limitations represent the maximum achievable control technology emission limitations for the source category; or

(ii) Requirements different from those proposed by EPA will be effective in ensuring that MACT emissions limitations are achieved.

(5) When the Administrator or the permitting authority has issued guidance or collected information

establishing a MACT floor finding for the source category or subcategory, the equivalent emission limitation for an emission unit must be at least as stringent as that MACT floor finding unless, based on additional information, the permitting authority determines that the additional information adequately supports an amendment to the MACT floor. In that case, the equivalent emission limitation must be at least as stringent as the amended MACT floor.

(6) The permitting authority will select a specific design, equipment, work practice, or operational standard, or combination thereof, when it is not feasible to prescribe or enforce an equivalent emission limitation due to the nature of the process or pollutant. It is not feasible to prescribe or enforce a limitation when the Administrator determines that a hazardous air pollutant (HAP) or HAPs cannot be emitted through a conveyance designed and constructed to capture such pollutant, or that any requirement for, or use of, such a conveyance would be inconsistent with any Federal, State, or local law, or the application of measurement methodology to a particular class of sources is not practicable due to technological and economic limitations.

(7) Nothing in this subpart will prevent a State or local permitting authority from establishing an emission limitation more stringent than required by Federal regulations.

(c) *Reporting to National Data Base.* The owner or operator shall submit additional copies of its application for a permit, permit modification, administrative amendment, or Notice of MACT Approval, whichever is applicable, to the EPA by the section 112(j) deadline for existing emission units, or by the date of the application for a permit or Notice of MACT Approval for new emission units.

§ 63.56 Requirements for case-by-case determination of equivalent emission limitations after promulgation of a subsequent MACT standard.

(a) If the Administrator promulgates an emission standard that is applicable to one or more emission units within a major source before the date a permit application under this paragraph is approved, the permit shall contain the promulgated standard rather than the emission limitation determined under § 63.52, and the owner or operator shall comply with the promulgated standard by the compliance date in the promulgated standard.

(b) If the Administrator promulgates an emission standard under section 112 (d) or (h) of the Act that is applicable to a source after the date a permit is issued pursuant to § 63.52 or § 63.54, the permitting authority shall revise the permit upon its next renewal to reflect the promulgated standard. The permitting authority will establish a compliance date in the revised permit that assures that the owner or operator shall comply with the promulgated standard within a reasonable time, but not longer than 8 years after such standard is promulgated or 8 years after the date by which the owner or operator was first required to comply with the emission limitation established by permit, whichever is earlier.

(c) Notwithstanding the requirements of paragraph (a) or (b) of this section, if the Administrator promulgates an emission standard that is applicable to a source after the date a permit application is approved under § 63.52 or § 63.54, the permitting authority is not required to change the emission limitation in the permit to reflect the promulgated standard if the level of control required by the emission limitation in the permit is at least as stringent as that required by the promulgated standard.

[FR Doc. 94–10971 Filed 5–19–94; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 649

[Docket No. 940366–4143; I.D. 051094A]

RIN 0648–AF39

American Lobster Fishery

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement one of the conservation and management measures in Amendment 5 to the Fishery Management Plan for the American Lobster Fishery (FMP). This final rule maintains the current 3¼-inch (8.26-cm) minimum carapace length, thus rescinding the scheduled increases in the minimum size limit. The intent of this rule is to relieve a regulatory burden.

EFFECTIVE DATE: May 17, 1994.

ADDRESSES: Copies of Amendment 5, its regulatory impact review (RIR), initial regulatory flexibility analysis (IRFA), and the final supplemental environmental impact statement (FSEIS) are available from Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (U.S. Rte. 1), Saugus, MA 01906, telephone 617–565–8937.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 508–281–9273.

SUPPLEMENTARY INFORMATION: Amendment 5, with some exceptions, was approved by NMFS on May 11, 1994. Background to the amendment was discussed in the proposed rule (59 FR 11029, March 9, 1994), and is not repeated here. The following measures were disapproved on May 11, 1994: (1) The division of the fleet into vessel permit categories, (2) the limits on lobster landings according to a vessel's permit category and the quota for vessels that operate gear other than lobster pots, and (3) mandatory reporting.

NMFS is implementing the approved measures of Amendment 5 by two separate final rules. This final rule implements one of the measures that was approved, which is to maintain the minimum carapace length for lobsters at the current size of 3¼ inches (8.26 cm). Thus, this rule prevents the incremental increases in the minimum carapace length that are currently in the regulations and scheduled to go into effect on May 18, 1994, and subsequent dates. The second rule, which is scheduled to be published within the next 3 weeks, will implement the remaining approved provisions of Amendment 5. The second rule will discuss the comments and responses on the measures contained in that rule, and will explain the reasons for disapproving three provisions of Amendment 5. Publication of the first rule will not affect the purpose or impact of the other approved Amendment 5 measures.

Comments and Responses

Comment: One industry association and one individual stated that the American lobster carapace length increases required in Amendment 2 proved to be effective in protecting small, immature lobsters and egg-bearing females and are preferable to the new management measures, which they oppose.

Response: The minimum carapace length requirement remains a primary management measure for American lobster. However, the lobster resource has been determined to be overfished and the remaining 2 carapace length increases required under the existing regulations would not alone have

prevented overfishing. Therefore, measures to reduce effort in the fishery are required. These new measures will be developed in detail by the effort management teams (EMTs) whose mandate is to make recommendations to the Council on management measures to achieve the objectives of the FMP. The EMTs have been given 6 months from the effective date of the second final rule to submit recommendations to the Council. The Council will have one year from the effective date of the second rule to submit management measures that will achieve the FMP's objective to reduce fishing mortality. NMFS has informed the Council that if the EMTs do not meet the schedule for making recommendations to the Council for measures to reduce fishing effort that will effect a reduction in fishing mortality, NMFS intends to initiate a process to withdraw the FMP.

Changes From the Proposed Rule

The proposed rule published a proposed revision of 50 CFR part 649 in its entirety, as it would have appeared if all of Amendment 5 were approved. Because this final rule implements only one measure of Amendment 5, it amends only the current language in § 649.20(b). When the remaining measures in Amendment 5 are implemented, the entire part, as amended, will appear in that final rule in the **Federal Register**.

Classification

The Council prepared an FSEIS for Amendment 5 that was filed by the Environmental Protection Agency with the Office of the Federal Register. The Assistant Administrator for Fisheries, NOAA, (AA), has determined, upon review of the FSEIS and public comments, that the preferred alternative of Amendment 5 versus the status quo is environmentally preferable. The FSEIS demonstrates that the preferred alternative contains management measures to rebuild the American lobster stock, provides positive economic and social benefits to the fishing industry in the long term, and provides balance in the ecosystem in terms of the American lobster resource.

The General Counsel of the Department of Commerce certified to the Small Business Administration when this rule was proposed that it would not have a significant impact on a substantial number of small entities. The measures in Amendment 5 will not result in a reduction of annual gross revenues of more than 5 percent. Annual compliance costs are not expected to increase total costs by more than 5 percent and are not expected to be substantially higher for small, as compared to large, business entities. They will not force more than 2 percent of small business entities to cease business operations.

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

Because this rule relieves a restriction, the AA finds that under section 553(d) of the Administrative Procedure Act, there is no need to delay the rule's effective date for 30 days.

List of Subjects in 50 CFR Part 649

Fisheries.

Dated: May 16, 1994.

Charles Karnella,

Acting Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 649 is amended as follows:

PART 649—AMERICAN LOBSTER FISHERY

1. The authority citation for part 649 continues to read as follows:

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

2. In § 649.20, paragraph (b) is revised to read as follows:

§ 649.20 Harvesting and landing requirements.

* * * * *

(b) *Carapace length.* (1) The minimum carapace length for all American lobsters harvested in or from the EEZ is 3¼ inches (8.26 cm).

(2) The minimum carapace length for all American lobsters landed, harvested, or possessed at or after landing by vessels issued a Federal American lobster permit, is 3¼ inches (8.26 cm).

* * * * *

[FR Doc. 94–12360 Filed 5–17–94; 2:34 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 59, No. 97
Friday, May 20, 1994

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

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 94–08]

RIN 1557–AB14

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Docket No. R–0837]

Risk-Based Capital Standards; Bilateral Netting Requirements

AGENCIES: Office of the Comptroller of the Currency (OCC), Department of the Treasury; and Board of Governors of the Federal Reserve System (Board).

ACTION: Notice of proposed rulemaking.

SUMMARY: The OCC and the Board (the banking agencies) are proposing to amend their risk-based capital standards to recognize the risk reducing benefits of netting arrangements. Under the proposal, institutions regulated by the OCC and the Federal Reserve would be permitted to net, for risk-based capital purposes, interest and exchange rate contracts (rate contracts) subject to legally enforceable bilateral netting contracts that meet certain criteria. The OCC and the Board are proposing these amendments on the basis of proposed revisions to the Basle Accord which would permit the recognition of such netting arrangements. The effect of the proposed amendments would be to allow banks and bank holding companies regulated by the OCC and the Federal Reserve (banking organizations, institutions) to net positive and negative mark-to-market values of rate contracts in determining the current exposure portion of the credit equivalent amount of such contracts to be included in risk-weighted assets.

DATES: Comments must be received within 30 days of May 20, 1994.

ADDRESSES: Interested parties are invited to submit written comments to either or both of the banking agencies. All comments will be shared by the banking agencies.

OCC: Written comments should be submitted to Docket No. 94–08, Communications Division, Ninth Floor, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219. Attention: Karen Carter. Comments will be available for inspection and photocopying at that address.

Board of Governors: Comments, which should refer to Docket No. R–0837, may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551; or delivered to room B–2223, Eccles Building, between 8:45 a.m. and 5:15 p.m. weekdays. Comments may be inspected in room MP–500 between 9 a.m. and 5 p.m. weekdays, except as provided in § 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8.

FOR FURTHER INFORMATION CONTACT: OCC: For issues relating to netting and the calculation of risk-based capital ratios, Roger Tufts, Senior Economic Advisor (202/874–5070), Office of the Chief National Bank Examiner. For legal issues, Eugene Cantor, Senior Attorney, Securities, Investments, and Fiduciary Practices (202/874–5210), or Ronald Shimabukuro, Senior Attorney, Bank Operations and Asset Division (202/874–4460), Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board of Governors: Roger Cole, Deputy Associate Director (202/452–2618), Norah Barger, Manager (202/452–2402), Robert Motyka, Supervisory Financial Analyst (202/452–3621), Barbara Bouchard, Senior Financial Analyst (202/452–3072), Division of Banking Supervision and Regulation; or 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:

A. Background

The international risk-based capital standards (Basle Accord)[1] include a framework for calculating risk-weighted assets by assigning assets and off-balance sheet items, including interest and exchange rate contracts, to broad risk categories based primarily on credit risk. The OCC and the Federal Reserve both adopted in 1989 similar frameworks to assess the capital adequacy of the banking organizations under their supervision. Banking organizations must hold capital against their overall credit risk, that is, generally, against the risk that a loss will be incurred if a counterparty defaults on a transaction.

Under the risk-based capital framework, off-balance sheet items are incorporated into risk-weighted assets by first determining the on-balance sheet credit equivalent amounts for the items and then assigning the credit equivalent amounts to the appropriate risk category according to the obligor, or if relevant, the guarantor or the nature of the collateral. For many types of off-balance sheet transactions, the on-balance sheet credit equivalent amount is determined by multiplying the face amount of the item by a credit conversion factor. For interest and exchange rate contracts however, credit equivalent amounts are determined by summing two amounts: The current exposure and the estimated potential future exposure.[2]

The current exposure (sometimes referred to as replacement cost) of a contract is derived from its market value. In most instances the initial market value of a contract is zero.[3] A

[1] The Basle Accord is a risk-based framework that was proposed by the Basle Committee on Banking Supervision (Basle Supervisors' Committee) and endorsed by the central bank governors of the Group of Ten (G–10) countries in July 1988. The Basle Supervisors' Committee is comprised of representatives of the central banks and supervisory authorities from the G–10 countries (Belgium, Canada, France, Germany, Italy, Japan, Netherlands, Sweden, Switzerland, the United Kingdom, and the United States) and Luxembourg.

[2] Exchange rate contracts with an original maturity of 14 calendar days or less and instruments traded on exchanges that require daily payment of variation margin are excluded from the risk-based ratio calculations.

[3] An options contract has a positive value at inception, which reflects the premium paid by the purchaser. The value of the option may be reduced due to market movements but it cannot become

banking organization should mark-to-market all of its rate contracts to reflect the current market value of the contracts in light of changes in the market price of the contracts or in the underlying interest or exchange rates. Unless the market value of a contract is zero, one party will always have a positive mark-to-market value for the contract, while the other party (counterparty) will have a negative mark-to-market value.

An institution holding a contract with a positive mark-to-market value is "in-the-money," that is, it would have the right to receive payment from the counterparty if the contract were terminated. Thus, an institution that is in-the-money on a contract is exposed to counterparty credit risk, since the counterparty could fail to make the expected payment. The potential loss is equal to the cost of replacing the terminated contract with a new contract that would generate the same expected cash flows under the existing market conditions. Therefore, the in-the-money institution's current exposure on the contract is equal to the market value of the contract.

An institution holding a contract with a negative mark-to-market value, on the other hand, is "out-of-the-money" on that contract, that is, if the contract were terminated, the institution would have an obligation to pay the counterparty. The institution with the negative mark-to-market value has no counterparty credit exposure because it is not entitled to any payment from the counterparty in the case of counterparty default. Consequently, a contract with a negative market value is assigned a current exposure of zero. A current exposure of zero is also assigned to a contract with a market value of zero, since neither party would suffer a loss in the event of contract termination. In summary, the current exposure of a rate contract equals either the positive market value of the contract or zero.

The second part of the credit equivalent amount for rate contracts, the estimated potential future exposure (often referred to as the add-on), is an amount that represents the potential future credit exposure of a contract over its remaining life. This exposure is calculated by multiplying the notional principal amount of the underlying contract by a credit conversion factor that is determined by the remaining maturity of the contract and the type of contract.[4] The potential future credit exposure is calculated for all contracts, regardless of whether the mark-to-market value is zero, positive, or negative.

The potential future exposure is added to the current exposure to arrive at a credit equivalent amount.[5] Each credit equivalent amount is then assigned to the appropriate risk category, according to the counterparty or, if relevant, the guarantor or the nature of the collateral. The maximum risk weight applied to such rate contracts is 50 percent.

B. Netting and Current Risk-Based Capital Treatment

The OCC, the Board, and the Basle Supervisors' Committee have long recognized the importance and encouraged the use of netting contracts as a means of improving interbank efficiency and reducing counterparty credit exposure. Netting contracts are increasingly being used by institutions engaging in rate contracts. Often referred to as master netting contracts, these arrangements typically provide for both payment and close-out netting. Payment netting provisions permit an institution to make payments to a counterparty on a net basis by offsetting payments it is obligated to make with payments it is entitled to receive and, thus, to reduce its costs arising out of payment settlements.

Close-out netting provisions permit the netting of credit exposures if a counterparty defaults or upon the occurrence of another event such as insolvency or bankruptcy. If such an event occurs, all outstanding contracts subject to the close-out provisions are terminated and accelerated, and their market values are determined. The positive and negative market values are then netted, or set off, against each other to arrive at a single net exposure to be paid by one party to the other upon final resolution of the default or other event.

The potential for close-out netting provisions to reduce counterparty credit risk, by limiting an institution's obligation to the net credit exposure, depends upon the legal enforceability of the netting contract, particularly in insolvency or bankruptcy.[6] In this regard, the Basle Accord noted that while close-out netting could reduce credit risk exposure associated with rate contracts, the legal status of close-out netting in many of the G–10 countries was uncertain and insufficiently developed to support a reduced capital charge for such contracts.[7] There was particular concern that a bank's credit exposure to a counterparty was not reduced if liquidators of a failed counterparty might assert the right to "cherry-pick," that is, demand performance on those contracts that are favorable and reject contracts that are unfavorable to the defaulting party.

Concern over "cherry-picking" led the Basle Supervisors' Committee to limit the recognition of netting in the Basle Accord. The only type of netting that was considered to genuinely reduce counterparty credit risk at the time the Accord was endorsed was netting accomplished by novation.[8] Under legally enforceable netting by novation "cherry-picking" cannot occur and, thus, counterparty risk is genuinely reduced. The Accord stated that the Basle Supervisors' Committee would continue to monitor and assess the

negative. Therefore, unless an option has zero value, the purchaser of the option contract will always have some credit exposure, which may be greater than or less than the original purchase price, and the seller of the option contract will never have credit exposure.

[4] For interest rate contracts with a remaining maturity of one year or less, the factor is 0% and for those with a remaining maturity of over one year, the factor is .5%. For exchange rate contracts with a remaining maturity of one year or less, the factor is 1% and for those with a remaining maturity of over one year, the factor is 5%.

Because exchange rate contracts involve an exchange of principal upon maturity and are generally more volatile, they carry a higher conversion factor. No potential future credit exposure is calculated for single-currency interest-rate swaps in which payments are made based on two floating indices (basis swaps).

[5] This method of determining credit equivalent amounts for rate contracts is known as the current exposure method, which is used by most international banks. The Basle Accord permits, subject to each country's discretion, an alternative method for determining the credit equivalent amount known as the original exposure method. Under this method, the capital charge is derived by multiplying the notional principal amount of the contract by a credit conversion factor, which varies according to the original maturity of the contract and whether it is an interest or exchange rate contract. The conversion factors, which are greater than those used under the current exposure method, make no distinction between current exposure and potential future exposure.

[6] The primary criterion for determining whether a particular netting contract should be recognized in the risk-based capital framework is the enforceability of that netting contract in insolvency or bankruptcy. In addition, the netting contract as well as the individual contracts subject to the netting contract must be legally valid and enforceable under non-insolvency or non-bankruptcy law, as is the case with all contracts.

[7] While payment netting provisions can reduce costs and the credit risk arising out of daily settlements with a counterparty, such provisions are not relevant to the risk-based capital framework since they do not in any way affect the counterparty's gross obligations.

[8] Netting by novation is accomplished under a written bilateral contract providing that any obligation to deliver a given currency on a given date is automatically amalgamated with all other obligations for the same currency and value date. The previously existing contracts are extinguished and a new contract, for the single net amount, is legally substituted for the amalgamated gross obligations. Parties to the novation contract, in effect, offset their obligations to make payments on individual transactions subject to the novation contract with their right to receive payments on other transactions subject to the contract.

effectiveness of other forms of netting to determine if close-out netting provisions could be recognized for risk-based capital purposes.

The OCC and the Board's risk-based capital standards provide for the same treatment of rate contracts as the Basle Accord, but require that banking organizations use the current exposure method. The banking agencies, in adopting their standards, generally stated they would work with the Basle Supervisors' Committee in its continuing efforts with regard to the recognition of netting provisions for capital purposes.

C. Basle Supervisors' Committee Proposal

Since the Basle Accord was adopted, a number of studies have confirmed that close-out netting provisions can serve to reduce counterparty risk. In response to the conclusions of these studies, as well as to industry support for greater acceptance of netting contracts under the risk-based capital framework, the Basle Supervisors' Committee issued a consultative paper on April 30, 1993, proposing an expanded recognition of netting arrangements in the Basle Accord.[9] Under the proposal, for purposes of determining the current exposure of rate contracts subject to legally enforceable bilateral close-out netting provisions (that is, close-out netting provisions with a single counterparty), an institution could net the contracts' positive and negative mark-to-market values.

Specifically, the Basle proposal states that a banking organization would be able to net rate contracts subject to a legally valid bilateral netting contract for risk-based capital purposes if it satisfied the appropriate national supervisor(s) that:

(1) In the event of a counterparty's failure to perform due to default, bankruptcy or liquidation, the banking organization's claim (or obligation) would be to receive (or pay) only the net value of the sum of unrealized gains and losses on included transactions;

(2) It has obtained written and reasoned legal opinions stating that in the event of legal challenge, the netting would be upheld in all relevant jurisdictions; and

(3) It has procedures in place to ensure that the netting arrangements are kept under review in light of changes in relevant law.

The Basle Supervisors' Committee agreed that if a national supervisor is satisfied that a bilateral netting contract meets these minimum criteria, the netting contract may be recognized for risk-based capital purposes without raising safety and soundness concerns. The Basle Supervisors' Committee's proposal includes a footnote stating that if any of the relevant supervisors is dissatisfied with the status of the enforceability of a netting contract under its laws, the netting contract would not be recognized for risk-based capital purposes by either counterparty.

In addition, the Basle Supervisors' Committee is proposing that any netting contract that includes a walkaway clause be disqualified as an acceptable netting contract for risk-based capital purposes. A walkaway clause is a provision in a netting contract that permits the non-defaulting counterparty to make only limited payments, or no payments at all, to the defaulter or the estate of the defaulter even if the defaulter is a net creditor under the contract.

Under the proposal, a banking organization would calculate one current exposure under each qualifying bilateral netting contract. The current exposure would be determined by adding together (netting) the positive and negative market values for all individual interest rate and exchange rate contracts subject to the netting contract. If the net market value is positive, that value would equal the current exposure. If the net market value is negative or zero, the current exposure would be zero. The add-on for potential future credit exposure would be determined by calculating individual potential future exposures for each underlying contract subject to the netting contract in accordance with the procedure already in place in the Basle Accord.[10] A banking organization would then add together the potential future credit exposure (always a positive value) of each individual contract subject to the netting contract to arrive at the total potential future exposure it has under those contracts with the counterparty. The total potential future exposure would be added to the net current exposure to arrive at one credit equivalent amount that would be assigned to the appropriate risk category.

D. The Banking Agencies' Proposal

The OCC and the Board concur with the Basle Supervisors' Committee's determination that the legal status of close-out netting provisions has developed sufficiently to support the expanded recognition of such provisions for risk-based capital purposes. Therefore, the banking agencies are proposing to amend their respective risk-based capital standards in a manner consistent with the Basle Supervisors' Committee's proposed revision to the Basle Accord. The banking agencies' proposed amendments would allow banking organizations regulated by the OCC and the Federal Reserve to net the positive and negative market values of interest and exchange rate contracts subject to a qualifying, legally enforceable bilateral netting contract to calculate one current exposure for that netting contract.

The banking agencies' proposed amendments would add provisions to their standards setting forth criteria for a qualifying bilateral netting contract and an explanation of how the credit equivalent amount should be calculated for such contracts. The risk-based capital treatment of an individual contract that is not subject to a qualifying bilateral netting contract would remain unchanged.

For interest and exchange rate contracts that are subject to a qualifying bilateral netting contract under the proposed standards, the credit equivalent amount would equal the sum of: (i) The current exposure of the netting contract and (ii) the total of the add-ons for all individual contracts subject to the netting contract. (As with all contracts, mark-to-market values for netted contracts would be measured in dollars, regardless of the currency specified in the contract.) The current exposure of the bilateral netting contract would be determined by adding together all positive and negative mark-to-market values of the individual contracts subject to the bilateral netting contract.[11] The current exposure would

[9] The paper is entitled "The Prudential Supervision of Netting, Market Risks and Interest Rate Risk." The section applicable to netting is subtitled "The Supervisory Recognition of Netting for Capital Adequacy Purposes." This paper is available for review through the banking agencies' Freedom of Information Offices (FOIA) or through public information offices at the Federal Reserve Banks or OCC District Offices.

[10] Under the proposal, a banking organization could net in this manner for risk-based capital purposes if it uses, as all U.S. banking organizations are required to use, the current exposure method for calculating credit equivalent amounts of rate contracts. Organizations using the original exposure method would use revised conversion factors until market risk-related capital requirements are implemented, at which time the original exposure method will no longer be available for netted transactions.

[11] For regulatory capital purposes, the agencies would expect that institutions would normally calculate the current exposure of a bilateral netting contract by consistently including *all* contracts covered by that netting contract. In the event a netting contract covers transactions that are normally excluded from the risk-based ratio calculation—for example, exchange rate contracts with an original maturity of fourteen calendar days or less or instruments traded on exchanges that require daily payment of variation margin—institutions may elect to consistently either include

equal the sum of the market values if that sum is positive, or zero if the sum of the market values is zero or negative. The potential future exposure (add-on) for each individual contract subject to the bilateral netting contract would be calculated in the same manner as for non-netted contracts. These individual potential future exposures would then be added together to arrive at one total add-on amount.

The proposed amendments provide that a banking organization may net, for risk-based capital purposes, interest and exchange rate contracts only under a written bilateral netting contract that creates a single legal obligation covering all included individual rate contracts and that does not contain a walkaway clause. In addition, if a counterparty fails to perform due to default, insolvency, bankruptcy, liquidation or similar circumstances, the banking organization must have a claim to receive a payment, or an obligation to make a payment, for only the net amount of the sum of the positive and negative market values on included individual contracts.

The banking agencies' proposal requires that a banking organization obtain a written and reasoned legal opinion(s), representing that an organization's claim or obligation, in the event of a legal challenge, including one resulting from default, insolvency, bankruptcy, or similar circumstances, would be found by the relevant court and administrative authorities to be the net sum of all positive and negative market values of contracts included in the bilateral netting contract.[12] The legal opinion normally would cover: (i) The law of the jurisdiction in which the counterparty is chartered or the equivalent location in the case of noncorporate entities, and if a branch of the counterparty is involved, the law of the jurisdiction in which the branch is located; (ii) the law that governs the individual contracts covered by the bilateral netting contract; and (iii) the law that governs the netting contract. The multiple jurisdiction requirement is designed to ensure that the netting contract would be upheld in any jurisdiction where the contract would likely be enforced or whose law would likely be applied in an enforcement action, as well as the jurisdiction where the counterparty's assets reside.

A legal opinion could be prepared by either an outside law firm or in-house counsel. If a banking organization obtained an opinion on the enforceability of a bilateral netting contract that covered a variety of underlying contracts, it generally would not need a legal opinion for each individual underlying contract that is subject to the netting contract, so long as the individual underlying contracts were of the type contemplated by the legal opinion covering the netting contract.

The complexity of the legal opinions will vary according to the extent and nature of the organization's involvement in rate contracts. For instance, a banking organization that is active in the international financial markets may need opinions covering multiple foreign jurisdictions as well as domestic law. The banking agencies expect that in many cases a legal opinion will focus on whether a contractual choice of law would be recognized in the event of default, insolvency, bankruptcy or similar circumstances in a particular jurisdiction rather than whether the jurisdiction recognizes netting. For example, a U.S. institution might engage in interest rate swaps with a non-U.S. institution under a netting contract that includes a provision that the contract will be governed by U.S. law. In this case the U.S. institution should obtain a legal opinion as to whether the netting would be upheld in the U.S. and whether the foreign courts would honor the choice of U.S. law in default or in an insolvency, bankruptcy, or similar proceeding.

For a banking organization that engages solely in domestic rate contracts, the process of obtaining a legal opinion may be much simpler. For example, for an institution that is an end-user of a relatively small volume of domestic rate contracts, the standard contracts used by the dealer bank may already have been subject to the mandated legal review. In this case the end-user institution may obtain a copy of the opinion covering the standard dealer contracts, supported by the bank's own legal opinion.

The proposed amendments require a banking organization to establish procedures to ensure that the legal characteristics of netting contracts are kept under review in the light of possible changes in relevant law. This review would apply to any conditions that, according to the required legal opinions, are a prerequisite for the enforceability of the netting contract, as well as to any adverse changes in the law.

As with all of the provisions of the risk-based capital standards, a banking organization must maintain in its files documentation adequate to support any particular risk-based capital treatment. In the case of a bilateral netting contract, a banking organization must maintain in its files documentation adequate to support the bilateral netting contract. In particular, this documentation should demonstrate that the bilateral netting contract would be honored in all relevant jurisdictions as set forth in this rule. Typically, these documents would include a copy of the bilateral netting contract, legal opinions and any related English translations.

The banking agencies would have the discretion to disqualify any or all contracts from netting treatment for risk-based capital purposes if the bilateral netting contract, individual contracts, or associated legal opinions do not meet the requirements set out in the applicable standards. In the event of such a disqualification, the affected individual contracts subject to the bilateral netting contract would be treated as individual non-netted contracts under the standards.

As a general matter, relevant legal provisions for banking organizations in the U.S. make it clear that netting contracts with close-out provisions enable such organizations to setoff included individual transactions and reduce the obligations to a single net amount in the event of default, insolvency, bankruptcy, liquidation or similar circumstances.

The banking agencies' proposal provides that netting by novation arrangements would *not* be grandfathered under the standards if such arrangements do not meet all of the requirements proposed for qualifying bilateral netting contracts. Although netting by novation would continue to be recognized under the proposed standards, institutions may not have the legal opinions or procedures in place that would be required by the proposed amendments. The banking agencies believe that holding all bilateral netting contracts to the same standards will promote certainty as to the legal enforceability of the contracts and decrease the risks faced by counterparties in the event of a default.

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or exclude all mark-to-market values of such transactions when determining net current exposures.

[12] The Financial Accounting Standards Board (FASB) has issued Interpretation No. 39 (FIN 39) relating to the "Offsetting of Amounts Related to Certain Contracts." FIN 39 generally provides that assets and liabilities meeting specified criteria may be netted under generally accepted accounting principles (GAAP). However, FIN 39 does not specifically require a written and reasoned legal opinion regarding the enforceability of the netting contract in bankruptcy and other circumstances. Therefore, under this proposal a banking organization might be able to net certain contracts in accordance with FIN 39 for GAAP reporting purposes, but not be able to net those contracts for risk-based capital purposes.

E. Request for Comment

The banking agencies are seeking comment on all aspects of their proposed amendments to the risk-based capital standards. In addition, the agencies note that under current risk-based capital standards for individual contracts, the degree to which collateral is recognized in assigning the appropriate risk weight is based on the market value of the collateral in relation to the credit equivalent amount of the rate contract. The agencies are seeking comment on the nature of collateral arrangements and the extent to which collateral might be recognized in bilateral netting contracts, particularly taking into account legal implications of collateral arrangements (e.g., whether the collateral pledged for an individual transaction would be available to cover the net counterparty exposure in the event of legal challenge) and procedural difficulties in monitoring collateral levels.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the banking agencies hereby certify that this proposed rule will not have a significant impact on a substantial number of small business entities. Accordingly, a regulatory flexibility analysis is not required.

The banking agencies believe that a small institution is more likely than a large institution to enter into relatively uncomplicated transactions under standard bilateral netting contracts and may need only to review a legal opinion that has already been obtained by its counterparties.

Executive Order 12866

It has been determined that this proposal is not a significant regulatory action as defined in Executive Order 12866.

Paperwork Reduction Act

The Federal Reserve has determined that its proposed amendments, if adopted, would not increase the regulatory paperwork burden of banking organizations pursuant to the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The OCC has determined that there are no reporting or recordkeeping requirements in its proposed amendments; accordingly, the provisions of the Paperwork Reduction Act do not apply.

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Capital, National banks, Reporting and recordkeeping requirements, Risk.

12 CFR Part 208

Accounting, Agriculture, Banks, Banking, Branches, Capital adequacy, Confidential business information, Currency, Reporting and recordkeeping requirements, Securities, State member banks.

12 CFR Part 225

Administrative practice and procedure, Banks, Banking, Capital adequacy, Holding companies, Reporting and recordkeeping requirements, Securities.

Comptroller of the Currency

Authority and Issuance

For the reasons set out in the preamble, appendix A to part 3 of title 12, chapter I of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

1. The authority citation for part 3 is revised to read as follows:

Authority: 12 U.S.C. 93a, 161, 1818, 1828(n), 1828 note, 1831n note, 3907 and 3909.

2. In appendix A, paragraph (c)(15) of section 1 is removed, paragraphs (c)(16) through (c)(28) are redesignated as paragraphs (c)(15) through (c)(27), and a new paragraph (c)(28) is added to read as follows:

Appendix A—Risk-Based Capital Guidelines

* * * * *

Section 1. Purpose, Applicability of Guidelines, and Definitions

* * * * *

(c) * * *

(28) *Walkaway clause* means a provision in a bilateral netting contract that permits a nondefaulting counterparty to make a lower payment than it would make otherwise under the bilateral netting contract, or no payment at all, to a defaulter or the estate of a defaulter, even if a defaulter or the estate of a defaulter is a net creditor under the bilateral netting contract.

3. In appendix A, paragraph (b)(5) of section 3 is revised to read as follows:

Section 3. Risk Categories/Weights for On-Balance Sheet Assets and Off-Balance Sheet Items

* * * * *

(b) * * *

(5) *Off-Balance Sheet Contracts—Interest Rate and Foreign Exchange Rate Contracts.*

(i) *Calculation of credit equivalent amounts.* The credit equivalent amount of an off-balance sheet interest rate or foreign exchange rate contract is equal to the sum of the current credit exposure (also referred to as the replacement cost) and the potential future credit exposure of the off-balance sheet rate contract. The calculation of credit equivalent amounts must be measured in U.S. dollars, regardless of the currency or currencies specified in the off-balance sheet rate contract.

(A) *Current credit exposure.* The current credit exposure for a single off-balance sheet rate contract is determined by the mark-to-market value of the off-balance sheet rate contract. If the mark-to-market value is positive, then the current exposure is equal to that mark-to-market value. If the mark-to-market value is zero or negative, then the current exposure is zero. However, in determining its current credit exposure for multiple off-balance sheet rate contracts executed with a single counterparty, a bank may net positive and negative mark-to-market values of off-balance sheet rate contracts if subject to a bilateral netting contract as provided by section 3(b)(5)(ii) of this appendix A. If the net mark-to-market value is positive, then the current credit exposure is equal to that net mark-to-market value. If the net mark-to-market value is zero or negative, then the current exposure is zero.

(B) *Potential future credit exposure.* The potential future credit exposure on an off-balance sheet rate contract, including contracts with negative mark-to-market values, is estimated by multiplying the notional principal [18a] by one of the following credit conversion factors, as appropriate: [19]

Remaining maturity	Interest rate contracts (percents)	Foreign exchange rate contracts (percents)
One year or less	0	1.0
Over one year	0.5	5.0

(ii) *Off-balance sheet rate contracts subject to bilateral netting contracts.* In determining its current credit exposure for multiple off-balance sheet rate contracts executed with a single counterparty, a bank may net off-balance sheet rate contracts subject to a bilateral netting contract by offsetting positive and negative mark-to-market values, provided that:

(A) The bilateral netting contract is in writing;

(B) The bilateral netting contract creates a single legal obligation for all individual off-balance sheet rate contracts covered by the bilateral netting contract, and provides, in

[18a] For purposes of calculating potential future credit exposure for foreign exchange contracts and other similar contracts, in which notional principal is equivalent to cash flows, total notional principal is defined as the net receipts to each party falling due on each value date in each currency.

[19] No potential future credit exposure is calculated for single currency interest rate swaps in which payments are made based upon two floating rate indices, so-called floating/floating or basis swaps; the credit equivalent amount is measured solely on the basis of the current credit exposure.

effect, that the bank would have a single claim or obligation either to receive or pay only the net amount of the sum of the positive and negative mark-to-market values on the individual off-balance sheet contracts covered by the bilateral netting contract in the event that a counterparty, or a counterparty to whom the bilateral netting contract has been validly assigned, fails to perform due to any of the following events: default, insolvency, bankruptcy, or other similar circumstances.

(C) The bank obtains a written and reasoned legal opinion(s) that represents that in the event of a legal challenge, including one resulting from default, insolvency, bankruptcy, or similar circumstances, the relevant court and administrative authorities would find the bank's exposure to be the net amount under:

(I) The law of the jurisdiction in which the counterparty is chartered or the equivalent location in the case of noncorporate entities, and if a branch of the counterparty is involved, then also under the law of the jurisdiction in which the branch is located;

(II) The law that governs the individual off-balance sheet rate contracts covered by the bilateral netting contract; and

(III) The law that governs the bilateral netting contract;

(D) The bank establishes and maintains procedures to monitor possible changes in relevant law and to ensure that the bilateral netting contract continues to satisfy the requirements of this section; and

(E) The bank maintains in its files documentation adequate to support the netting of an off-balance sheet rate contract.[19a]

(F) The bilateral netting contract is not subject to a walkaway clause.

(iii) *Risk weighting.* Once the bank determines the credit equivalent amount for an off-balance sheet rate contract, that amount is assigned to the risk weight category appropriate to the counterparty, or, if relevant, the nature of any collateral or guarantee. However, the maximum weight that will be applied to the credit equivalent amount of such off-balance sheet rate contracts is 50 percent.

(iv) *Exceptions.* The following off-balance sheet rate contracts are not subject to the above calculation, and therefore, are not considered part of the denominator of a national bank's risk-based capital ratio:

(A) A foreign exchange rate contract with an original maturity of 14 calendar days or less; and

(B) Any interest rate or foreign exchange rate contract that is traded on an exchange requiring the daily payment of any variations in the market value of the contract.

* * * * *

3. The table title and the introductory text to Table 3 are revised to read as follows:

Table 3—Treatment of Interest Rate and Foreign Exchange Rate Contracts

The current exposure method is used to calculate the credit equivalent amounts of these off-balance sheet rate contracts. These amounts are assigned a risk weight appropriate to the obligor or any collateral or guarantee. However, the maximum risk weight is limited to 50 percent. Multiple off-balance sheet rate contracts with a single counterparty may be netted if those contracts are subject to a qualifying bilateral netting contract.

* * * * *

Dated: April 29, 1994.

Office of the Comptroller of the Currency.

Eugene A. Ludwig,

Comptroller of the Currency.

Federal Reserve System

Authority and Issuance

For the reasons set out in the preamble, parts 208 and 225 of chapter II of title 12 of the Code of Federal Regulations are proposed to be amended as set forth below.

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for part 208 continues to read as follows:

Authority: 12 U.S.C. 36, 248(a) and (c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1823(j), 1828(o), 1831o, 1831p–1, 3105, 3310, 3331–3351 and 3906–3909; 15 U.S.C. 78b, 781(b), 781(g), 781(i), 78o–4(c)(5), 78q, 78q–1 and 78w; 31 U.S.C. 5318.

2. Appendix A to part 208 is amended by revising section III.E.2.; section III.E.3.; section III.E.5.; the last sentence of Attachment IV; and Attachment V to read as follows:

Appendix A to Part 208—Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure

* * * * *

III. Procedures for Computing Weighted Risk Assets and Off-Balance Sheet Items

* * * * *

E. Interest Rate and Foreign Exchange Rate Contracts

* * * * *

2. *Calculation of credit equivalent amounts.* (a) The credit equivalent amount of an off-balance sheet rate contract that is not subject to a qualifying bilateral netting contract in accordance with section III.E.5. of this appendix A is equal to the sum of (i) the current exposure (sometimes referred to as the replacement cost) of the contract and (ii) an estimate of the potential future credit exposure over the remaining life of the contract.

(b) The current exposure is determined by the mark-to-market value of the contract. If the mark-to-market value is positive, then the current exposure is equal to that mark-to-market value. If the mark-to-market value is zero or negative, then the current exposure is zero. Mark-to-market values are measured in dollars, regardless of the currency or currencies specified in the contract and should reflect changes in both interest rates and counterparty credit quality.

(c) The potential future credit exposure on a contract, including contracts with negative mark-to-market values, is estimated by multiplying the notional principal amount of the contract by one of the following credit conversion factors, as appropriate:

[In percent]

Remaining maturity	Interest rate contracts	Exchange rate contracts
One year or less	0	1.0
Over one year	0.5	5.0

(d) Examples of the calculation of credit equivalent amounts for these instruments are contained in Attachment V of this appendix A.

(e) Because exchange rate contracts involve an exchange of principal upon maturity, and exchange rates are generally more volatile than interest rates, higher conversion factors have been established for foreign exchange rate contracts than for interest rate contracts.

(f) No potential future credit exposure is calculated for single currency interest rate swaps in which payments are made based upon two floating rate indices, so-called floating/floating or basis swaps; the credit exposure on these contracts is evaluated solely on the basis of their mark-to-market values.

3. *Risk weights.* Once the credit equivalent amount for interest rate and exchange rate instruments has been determined, that amount is assigned to the risk weight category appropriate to the counterparty, or, if relevant, the guarantor or the nature of any collateral.[49] However, the maximum weight that will be applied to the credit equivalent amount of such instruments is 50 percent.

* * * * *

5. *Netting.* For purposes of this appendix A, netting refers to the offsetting of positive and negative mark-to-market values when determining a current exposure to be used in the calculation of a credit equivalent amount. Any legally enforceable form of bilateral netting (that is, netting with a single counterparty) of rate contracts is recognized

[19a] By netting individual off-balance sheet rate contracts for the purpose of calculating its credit equivalent amount, a bank represents that documentation adequate to support the netting of an off-balance sheet rate contract is in the bank's files and available for inspection by the OCC. Upon determination by the OCC that a bank's files are inadequate or that a bilateral netting contract may not be legally enforceable under any one of the bodies of law described in section 3(b)(5)(ii)(C)(I) through (III) of this appendix A, the underlying individual off-balance sheet rate contracts may not be netted for the purposes of this section.

[49] For interest and exchange rate contracts, sufficiency of collateral or guaranties is determined by the market value of the collateral or the amount of the guarantee in relation to the credit equivalent amount. Collateral and guarantees are subject to the same provisions noted under section III.B. of this appendix A.

for purposes of calculating the credit equivalent amount provided that:

(a) The netting is accomplished under a written netting contract that creates a single legal obligation, covering all included individual contracts, with the effect that the bank would have a claim or obligation to receive or pay, respectively, only the net amount of the sum of the positive and negative mark-to-market values on included individual contracts in the event that a counterparty, or a counterparty to whom the contract has been validly assigned, fails to perform due to any of the following events: default, insolvency, bankruptcy, or similar circumstances.

(b) The bank obtains a written and reasoned legal opinion(s) representing that in the event of a legal challenge, including one resulting from default, insolvency, liquidation or similar circumstances, the relevant court and administrative authorities would find the bank's exposure to be such a net amount under:

(i) The law of the jurisdiction in which the counterparty is chartered or the equivalent location in the case of noncorporate entities, and if a branch of the counterparty is involved, then also under the law of the jurisdiction in which the branch is located;

(ii) The law that governs the individual contracts covered by the netting contract; and

(iii) The law that governs the netting contract.

(c) The bank establishes and maintains procedures to ensure that the legal characteristics of netting contracts are kept under review in the light of possible changes in relevant law.

(d) The bank maintains in its files documentation adequate to support the netting of rate contracts, including a copy of the bilateral netting contract and necessary legal opinions.

(i) A contract containing a walkaway clause is not eligible for netting for purposes of calculating the credit equivalent amount.[50]

(ii) By netting individual contracts for the purpose of calculating its credit equivalent amount, a bank represents that it has met the requirements of this appendix A and all the appropriate documents are in the bank's files and available for inspection by the Federal Reserve. Upon determination by the Federal Reserve that a bank's files are inadequate or that a netting contract may not be legally enforceable under any one of the bodies of law described in (b)(i) through (iii) above, underlying individual contracts may be treated as though they were not subject to the netting contract.

(iii) The credit equivalent amount of rate contracts that are subject to a qualifying bilateral netting contract is calculated by adding (A) the current exposure of the netting contract and (B) the sum of the estimates of the potential future credit exposure on all individual contracts subject to the netting contract.

(iv) The current exposure of the netting contract is determined by summing all positive and negative mark-to-market values of the individual contracts included in the netting contract. If the net sum of the mark-to-market values is positive, then the current exposure of the netting contract is equal to that sum. If the net sum of the mark-to-market values is zero or negative, then the current exposure of the netting contract is zero.

(v)For each individual contract included in the netting contract, the potential future credit exposure is estimated in accordance with section E.2. of this appendix A.[51]

(vi) Examples of the calculation of credit equivalent amounts for these types of contracts are contained in Attachment V of this appendix A.

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Attachment IV—Credit Conversion Factors for Off-Balance Sheet Items for State Member Banks

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* * * Qualifying netting by novation contracts and other qualifying bilateral netting contracts may be recognized.

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ATTACHMENT V.—CALCULATION OF CREDIT EQUIVALENT AMOUNTS FOR INTEREST RATE AND FOREIGN EXCHANGE RATE RELATED TRANSACTIONS FOR STATE MEMBER BANKS

Type of contract (remaining maturity)	Potential exposure			=	+	Current exposure		Credit equivalent amount
	Notional principal (dollars)	×	Potential exposure conversion		Potential exposure (dollars)	Mark-to-market value [1]	Current exposure (dollars) [2]	
(1) 120-day forward foreign exchange	5,000,000		.01		50,000	100,000	100,000	150,000
(2) 120-day forward foreign exchange	6,000,000		.01		60,000	−120,000	0	60,000
(3) 3-year single currency fixed/floating interest rate swap	10,000,000		.005		50,000	200,000	200,000	250,000
(4) 3-year single currency fixed/floating interest rate swap	10,000,000		.005		50,000	−250,000	0	50,000
(5) 7-year cross-currency floating/floating interest rate swap	20,000,000		.05		1,000,000	−1,300,000	0	1,000,000
Total					1,210,000		300,000	1,510,000

If contracts (1) through (5) above are subject to a qualifying bilateral netting contract, then the following applies:

	Potential exposure (dollars) (from above)	Mark-to-market value (from above)	Current exposure (dollars)	Credit equivalent amount
(1)	50,000	100,000		
(2)	60,000	−120,000		
(3)	50,000	200,000		
(4)	50,000	−250,000		

[50] For purposes of this section, a walkaway clause means a provision in a netting contract that permits a non-defaulting counterparty to make lower payments than it would make otherwise under the contract, or no payment at all, to a defaulter or to the estate of a defaulter, even if a defaulter or the estate of a defaulter is a net creditor under the contract.

[51] For purposes of calculating potential future credit exposure for foreign exchange contracts and other similar contracts in which notional principal is equivalent to cash flows, total notional principal is defined as the net receipts to each party falling due on each value date in each currency.

	Potential exposure (dollars) (from above)		Mark-to-market value (from above)	Current exposure (dollars)	Credit equivalent amount
(5)	1,000,000		−1,300,000		
Total	1,210,000	+	−1,370,000	0	1,210,000

[1] These numbers are purely for illustration.
[2] The larger of zero or a positive mark-to-market value.

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818(b), 1828(o), 1831i, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3907, and 3909.

2. Appendix A to part 225 is amended by revising section III.E.2., section III.E.3.; section III.E.5.; the last sentence of Attachment IV; and Attachment V to read as follows:

Appendix A to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Risk-Based Measure

* * * * *

III. Procedures for Computing Weighted Risk Assets and Off-Balance Sheet Items

* * * * *

E. Interest Rate and Foreign Exchange Rate Contracts

* * * * *

2. *Calculation of credit equivalent amounts.* (a) The credit equivalent amount of an off-balance sheet rate contract that is not subject to a qualifying bilateral netting contract in accordance with section III.E.5. of this appendix A is equal to the sum of (i) the current exposure (sometimes referred to as the replacement cost) of the contract and (ii) an estimate of the potential future credit exposure over the remaining life of the contract.

(b) The current exposure is determined by the mark-to-market value of the contract. If the mark-to-market value is positive, then the current exposure is equal to that mark-to-market value. If the mark-to-market value is zero or negative, then the current exposure is zero. Mark-to-market values are measured in dollars, regardless of the currency or currencies specified in the contract and should reflect changes in both interest rates and counterparty credit quality.

(c) The potential future credit exposure on a contract, including contracts with negative mark-to-market values, is estimated by multiplying the notional principal amount of the contract by one of the following credit conversion factors, as appropriate:

[In percent]

Remaining maturity	Interest rate contracts	Exchange rate contracts
One year or less	0	1.0
Over one year	0.5	5.0

(d) Examples of the calculation of credit equivalent amounts for these instruments are contained in Attachment V of this appendix A.

(e) Because exchange rate contracts involve an exchange of principal upon maturity, and exchange rates are generally more volatile than interest rates, higher conversion factors have been established for foreign exchange contracts than for interest rate contracts.

(f) No potential future credit exposure is calculated for single currency interest rate swaps in which payments are made based upon two floating rate indices, so-called floating/floating or basis swaps; the credit exposure on these contracts is evaluated solely on the basis of their mark-to-market values.

3. *Risk weights.* Once the credit equivalent amount for interest rate and exchange rate instruments has been determined, that amount is assigned to the risk weight category appropriate to the counterparty, or, if relevant, the guarantor or the nature of any collateral.[53] However, the maximum weight that will be applied to the credit equivalent amount of such instruments is 50 percent.

* * * * *

5. *Netting.* (a) For purposes of this appendix A, netting refers to the offsetting of positive and negative mark-to-market values when determining a current exposure to be used in the calculation of a credit equivalent amount. Any legally enforceable form of bilateral netting (that is, netting with a single counterparty) of rate contracts is recognized for purposes of calculating the credit equivalent amount provided that:

(i) The netting is accomplished under a written netting contract that creates a single legal obligation, covering all included individual contracts, with the effect that the organization would have a claim or obligation to receive or pay, respectively, only the net amount of the sum of the positive and negative mark-to-market values on included individual contracts in the event that a counterparty, or a counterparty to whom the contract has been validly assigned, fails to perform due to any of the following events: default, insolvency, bankruptcy, or similar circumstances.

(ii) The banking organization obtains a written and reasoned legal opinion(s) representing that, in the event of a legal challenge, including one resulting from default, insolvency, bankruptcy, or similar circumstances, the relevant court and administrative authorities would find the organization's exposure to be such a net amount under:

(A) the law of the jurisdiction in which the counterparty is chartered or the equivalent location in the case of noncorporate entities and, if a branch of the counterparty is involved, then also under the law of the jurisdiction in which the branch is located;

(B) the law that governs the individual contracts covered by the netting contract; and

(C) the law that governs the netting contract.

(iii) The banking organization establishes and maintains procedures to ensure that the legal characteristics of netting contracts are kept under review in the light of possible changes in relevant law.

(iv) The banking organization maintains in its files documentation adequate to support the netting of rate contracts, including a copy of the bilateral netting contract and necessary legal opinions.

(b) A contract containing a walkaway clause is not eligible for netting for

[53] For interest and exchange rate contracts, sufficiency of collateral or guaranties is determined by the market value of the collateral or the amount of the guarantee in relation to the credit equivalent amount. Collateral and guarantees are subject to the same provisions noted under section III.B. of this appendix A.

purposes of calculating the credit equivalent amount.[54]

(c) By netting individual contracts for the purpose of calculating its credit equivalent amount, a banking organization represents that it has met the requirements of this appendix A and all the appropriate documents are in the organization's files and available for inspection by the Federal Reserve. Upon determination by the Federal Reserve that a banking organization's files are inadequate or that a netting contract may not be legally enforceable under any one of the bodies of law described in (a)(ii) (A) through (C) above, underlying individual contracts may be treated as though they were not subject to the netting contract.

(d) The credit equivalent amount of rate contracts that are subject to a qualifying bilateral netting contract is calculated by adding (i) the current exposure of the netting contract and (ii) the sum of the estimates of the potential future credit exposure on all individual contracts subject to the netting contract.

(e) The current exposure of the netting contract is determined by summing all positive and negative mark-to-market values of the individual transactions included in the netting contract. If the net sum of the mark-to-market values is positive, then the current exposure of the netting contract is equal to that sum. If the net sum of the mark-to-market values is zero or negative, then the current exposure of the netting contract is zero.

(f) For each individual contract included in the netting contract, the potential future credit exposure is estimated in accordance with section E.2. of this appendix A.[55]

(g) Examples of the calculation of credit equivalent amounts for these types of contracts are contained in Attachment V of this appendix A.

* * * * *

Attachment IV—Credit Conversion Factors for Off-Balance Sheet Items for Bank Holding Companies

* * * * *

* * * Qualifying netting by novation contracts and other qualifying bilateral netting contracts may be recognized.

* * * * *

ATTACHMENT V.—CALCULATION OF CREDIT EQUIVALENT AMOUNTS FOR INTEREST RATE AND FOREIGN EXCHANGE RATE RELATED TRANSACTIONS FOR BANK HOLDING COMPANIES

Type of contract (remaining maturity)	Potential exposure			+	Current exposure			Credit equivalent amount
	Notional principal (dollars)	× Potential exposure conversion	= Potential exposure (dollars)	+	Mark-to-market value [1]	Current exposure (dollars) [2]	=	
(1) 120-day forward foreign exchange	5,000,000	.01	50,000		100,000	100,000		150,000
(2) 120-day forward foreign exchange	6,000,000	.01	60,000		−120,000	0		60,000
(3) 3-year single currency fixed/floating interest rate swap	10,000,000	.005	50,000		200,000	200,000		250,000
(4) 3-year single currency fixed/floating interest rate swap	10,000,000	.005	50,000		−250,000	0		50,000
(5) 7-year cross-currency floating/floating interest rate swap	20,000,000	.05	1,000,000		−1,300,000	0		1,000,000
Total			1,210,000			300,000		1,510,000

If contracts (1) through (5) above are subject to a qualifying bilateral netting contract, then the following applies:

	Potential exposure (dollars) (from above)		Mark-to-market value (from above)	Current exposure (dollars)	Credit equivalent amount
(1)	50,000		100,000		
(2)	60,000		−120,000		
(3)	50,000		200,000		
(4)	50,000		−250,000		
(5)	1,000,000		1,300,000		
Total	1,210,000	+	−1,370,000	0	1,210,000

[1] These numbers are purely for illustration.
[2] The larger of zero or a positive mark-to-market value.

[54] For purposes of this section, a walkaway clause means a provision in a netting contract that permits a non-defaulting counterparty to make lower payments than it would make otherwise under the contract, or no payment at all, to a defaulter or the estate of a defaulter, even if a defaulter or the estate of a defaulter is a net creditor under the contract.

[55] For purposes of calculating potential future credit exposure for foreign exchange contracts and other similar contracts in which notional principal is equivalent to cash flows, total notional principal is defined as the net receipts to each party falling due on each value date in each currency.

Board of Governors of the Federal Reserve System.

May 17, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–12409 Filed 5–19–94; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 94–ASW–1]

Proposed Alteration of VOR Federal Airway V–234

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would realign Federal Airway V–234 between Dalhart, TX, and Anton Chico, NM. Currently, V–234 has a dogleg between those two points and this action would realign that segment as a direct route. V–234, when originally established as a nonradar route, required the dogleg to provide lateral separation from other aircraft on adjacent airways. Radar coverage has been established to cover this segment of the airway, and the necessity for the dogleg no longer exists. This action would be beneficial to the users of the air traffic control (ATC) system.

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

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASW–500, Docket No. 94–ASW–1, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX 76193–0500.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

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:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94–ASW–1." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket 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, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3485. 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 realign Federal Airway V–234 between Dalhart, TX, and Anton Chico, NM. Currently, V–234 has a dogleg between those two points and this action would realign that segment as a direct route. V–234 was originally established as a nonradar route, and required the dogleg to provide lateral separation from other aircraft on adjacent airways. Since this area is now covered by radar, the dogleg is no longer necessary. This action would be beneficial to the users of the ATC system. Domestic VOR Federal airways are published in paragraph 6010(a) 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 airway listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

1. The authority citation for 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 6010(a)—Domestic VOR Federal Airways

* * * * *

V–234 [Revised]

From St. Johns, AZ, via INT St. Johns 085° and Albuquerque, NM, 229° radials; Albuquerque; INT Albuquerque 103° and Anton Chico, NM, 249° radials; Anton Chico; Dalhart, TX; Liberal, KS; 32 miles, 74 miles, 65 MSL, Hutchinson, KS; Emporia, KS; Butler, MO; Vichy, MO; INT Vichy 091° and Centralia, IL, 253° radials; Centralia. The airspace at and above 8,000 feet MSL between Vichy and the INT of Vichy 091° and St. Louis, MO, 171° radials is excluded during the time that the Meramec MOA is activated by NOTAM.

* * * * *

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

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 94–12383 Filed 5–19–94; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[IA–023–93]

RIN 1545–AR80

Deductibility of Expenses Attributable to Business Use of a Dwelling Unit Used as a Residence

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Partial withdrawal of a notice of proposed rulemaking.

SUMMARY: This document withdraws a portion of the notice of proposed rulemaking under section 280A of the Internal Revenue Code that was published in the **Federal Register** on July 21, 1983. That notice concerns the requirements for deductibility of expenses in connection with the business use, or the rental to others, of a dwelling unit that the taxpayer is deemed to have used for personal purposes during the taxable year.

DATES: This notice is effective on May 20, 1994.

FOR FURTHER INFORMATION CONTACT: Marilyn E. Brookens, (202) 622–1585 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On August 7, 1980, the IRS published in the **Federal Register** (45 FR 52399) a notice of proposed rulemaking under Internal Revenue Code (Code) section 280A relating to the deductibility of expenses in connection with the business use, or the rental to others, of a dwelling unit that the taxpayer is deemed to have used for personal purposes during the taxable year. On July 21, 1983, the IRS published in the **Federal Register** (48 FR 33320) a notice of proposed rulemaking containing amendments to those proposed rules.

Section 280A(c)(1)(A) of the Code permits the deduction of certain expenses relating to the business use of the home if part of the home is exclusively used on a regular basis as the principal place of business for any trade or business of the taxpayer. Proposed § 1.280A–2(b)(2), as amended, provides that a taxpayer is deemed to have a principal place of business for each trade or business in which the taxpayer engages. In *Commissioner* v. *Soliman*, 113 S. Ct. 701 (1993), the United States Supreme Court noted that, in some cases, there may be no principal place of business. Thus, the Service is hereby withdrawing proposed § 1.280A–2(b)(2), as amended.

Proposed § 1.280A–2(b)(3), as amended, sets forth three factors to be taken into account in determining the location of a taxpayer's principal place of business when the taxpayer engages in a single trade or business at more than one location. The Supreme Court in *Soliman* identified two primary factors for determining whether a taxpayer's home is the principal place of business in circumstances where the taxpayer engages in the activities of a business at more than one location. Because the two factors identified by the Supreme Court differ from the three factors set forth in proposed § 1.280A–2(b)(3), as amended, the IRS is hereby withdrawing proposed § 1.280A–2(b)(3), as amended.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Withdrawal of Portion of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, proposed §§ 1.280A–2(b)(2) and (b)(3), that were published in the **Federal Register** (48 FR 33320, at 33324) on July 21, 1983, are withdrawn.

Michael P. Dolan,

Commissioner of Internal Revenue.

[FR Doc. 94–12293 Filed 5–19–94; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Sex Offenses Against Minors Age 12 and Older

AGENCY: Parole Commission, Justice.

ACTION: Proposed rule.

SUMMARY: The U.S. Parole Commission is proposing to add to its guidelines covering offenses of "Carnal Knowledge or Sodomy Involving Minors" a provision increasing the offense severity rating for any offense involving an adult offender who has abused a position of trust (*e.g.*, teacher, counselor, or physician), or involving multiple episodes of predatory sexual behavior. The purpose of this proposed rule is to clarify the aggravated nature of such crimes in relation to all other offenses that involve non-forcible sexual relations with a minor age 12 or older. For the aggravated offense behaviors described in the proposed rule, the offense severity rating would be increased from Category Four to Category Seven on the guidelines at 28 CFR. 2.20.

DATES: Comments must be received by July 19, 1994.

ADDRESSES: Send comments to Office of the General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815.

FOR FURTHER INFORMATION CONTACT: Richard K. Preston, Office of the General Counsel, Telephone (301) 492–5959.

SUPPLEMENTARY INFORMATION: The U.S. Parole Commission Paroling Policy Guidelines for "Carnal Knowledge or Sodomy Involving Minors" are to be found at 28 CFR 2.20, Chapter Two, Subchapter D, Para. 232 (a) through (c). When these guideline provisions were adopted by the Commission, offenses involving non-forcible sex with a minor age 12 or older were given a Category Four offense severity rating. With limited federal jurisdiction, such offenses most frequently came before the Parole Commission from military and Indian reservations, and did not involve aggravating factors.

Recently, however, the Commission has had to deal with cases of a different nature, in which the offender has abused a significant position of trust or has behaved in a calculating, predatory manner toward multiple victims. Commission practice has not been consistent as to whether these cases must be given parole dates within the

guidelines, or whether the circumstances should be treated as "good cause" to exceed the guidelines under 18 U.S.C. 4206(c). Accordingly, this issue was referred to the Commission for resolution by a majority vote.

The policy adopted by the Commission is reflected in the proposed rule. The proposed rule deals with such cases as that of a child psychiatrist who engages in sodomy with youthful patients under his care, a religious counselor who has sex with his teenage followers, a high school teacher who seduces a student in his classroom, and comparable offense behaviors.

Implementation

This proposed rule, if adopted, would be applied at all initial and revocation hearings held on or after the effective date. It would not constitute grounds for the reopening of a case in which a parole date has already been granted.

Executive Order 12866 and Regulatory Flexibility Statement

The U.S. Parole Commission has determined that this proposed rule is not a significant regulatory action for the purposes of Executive Order 12866, and the rule has therefore not been reviewed by the Office of Management and Budget. The rule will not have a significant economic impact upon a substantial number of small entities, within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, probation and parole, prisoners.

The Proposed Rule

(1) The authority citation for 28 CFR Part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

(2) 28 CFR part 2, § 2.20, Chapter 2, Subchapter D, section 232, of the U.S. Parole Commission Offense Behavior Severity Index is proposed to be amended by adding the following new paragraph 232(d), to read as follows:

§ 2.20 Paroling policy guidelines: Statement of general policy.

* * * * *

CHAPTER TWO—OFFENSES INVOLVING THE PERSON

* * * * *

U.S. Parole Commission Offense Behavior Severity Index

* * * * *

SUBCHAPTER D—SEXUAL OFFENSES

* * * * *

232 Carnal Knowledge or Sodomy Involving Minors

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(d) If the offender is an adult who has abused a position of trust (*e.g.*, teacher, counselor, or physician), or the offense involved multiple instances of predatory sexual behavior, grade as Category Seven. Sexual behavior is deemed predatory when the offender repeatedly uses any trick or other device to attract, lure, or bribe victims into the initial contact that results in the offense.

* * * * *

Dated: May 6, 1994.

Edward F. Reilly, Jr.,

Chairman, U.S. Parole Commission.

[FR Doc. 94–12051 Filed 5–19–94; 8:45 am]

BILLING CODE 4410–01–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2609

RIN 1212–AA64

Debt Collection by Administrative Offset

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed rule.

SUMMARY: The Pension Benefit Guaranty Corporation ("PBGC") is proposing to provide for debt collection by administrative offset. The PBGC believes that adoption of this proposed rule would enhance its debt collection ability. The procedures in this proposed rule implement administrative offset, as authorized by the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982, and in accordance with standards prescribed by the Comptroller General of the United States and the Attorney General of the United States.

DATES: Comments must be received on or before July 19, 1994.

ADDRESSES: Comments may be mailed to the Office of the General Counsel (Suite 340), Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026, or hand-delivered to the above address between 9 a.m. and 5 p.m., Monday through Friday. Comments will be available for public inspection at the PBGC's Communications and Public Affairs Department, suite 240, at the above address between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Attorney, Office of the General Counsel (Suite 340), Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026, 202–316–4125 (202–326–4179 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation ("PBGC") administers the pension plan termination insurance program under title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") (29 FHWA 1301 *et seq.*). In conjunction with the pension plan termination insurance program, persons (including organizations and entities) incur various types of debts to the PBGC, and the PBGC incurs various types of liabilities (including contractual obligations).

The PBGC uses various methods to collect its debts; however, it currently does not use administrative offset. The PBGC anticipates that the ability to use administrative offset, particularly against payments to be made by other agencies in connection with government contracts, would enhance its debt collection ability. Therefore, the PBGC is proposing to add part 2609, Debt Collection—Administrative Offset, to its regulations (29 CFR part 2609). (Other debt collection tools currently available to the PBGC include the use of collection agencies and salary offset. Tax refund offset potentially is available to the PBGC.)

The Debt Collection Act of 1982, which amended the Federal Claims Collection Act of 1966 (31 U.S.C. 3701 *et seq.*), authorizes the collection of debts owed to the United States by administrative offset (31 U.S.C. 3716). Administrative offset is defined as "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" (31 U.S.C. 3701(a)(1)).

Before collecting a claim by administrative offset under the Federal Claims Collection Act, the head of an agency must prescribe regulations on administrative offset based on the best interests of the United States Government, the likelihood of collecting a claim by administrative offset, and, for collecting a claim by administrative offset after the six-year period for bringing a civil action on a claim under 28 U.S.C. 2415 has expired, the cost-effectiveness of leaving a claim unresolved for more than six years (31 U.S.C. 3716(b)).

The Comptroller General of the United States and the Attorney General of the United States jointly issued

amendments to the Federal Claims Collections Standards ("FCCS") (4 CFR parts 101 through 105) to implement the Debt Collection Act of 1982. Part 102 of those regulations prescribes standards for the administrative collection of claims, including, in § 102.3, collection by administrative offset. The FCCS do not cover offset of debts against salaries of federal employees (48 FR 23249, May 24, 1983). (See PBGC Notice No. 89–28 (Nov. 13, 1989) for the agency's salary offset procedures.) (See § 101.3 for other limitations on the applicability of the FCCS.)

The FCCS use the terms "claim" and "debt" synonymously and interchangeably to "refer to an amount of money or property which has been determined by an appropriate agency official to be owed to the United States from any person, organization, or entity, except another federal agency" (§ 101.2(a)). They provided that collection by administrative offset is to be undertaken, in accordance with an agency's implementing regulations, on claims that are liquidated or certain in amount when such collection is determined to be feasible and not otherwise prohibited (§ 102.3(a)). The creditor agency is to determine whether collection by administrative offset is feasible on a case-by-case basis, in the exercise of sound discretion, based on various factors; agencies are not required to use offset in every instance in which there is an available source of funds (§ 102.3(a)(2)).

Except as otherwise required by law, the procedures to be established by agency regulations must provide the debtor with written notice of the nature and amount of the debt and the agency's intention to collect by offset, opportunity to inspect and copy agency records pertaining to the debt, opportunity to obtain review within the agency of the agency's determination of indebtedness, and opportunity to enter into a written agreement with the agency to repay the debt ("repayment agreement"). An agency's regulations also must establish procedures for making requests for offset to other agencies holding funds payable to the debtor and procedures for processing requests for offset that are received from other agencies (§ 102.3(b)).

The FCCS provide that agencies may not initiate administrative offset to collect a debt under 31 U.S.C. 3716 more than 10 years after the government's right to collect the debt first accrued unless facts material to its right to collect the debt were not known and could not reasonably have been known by the official(s) charged with the responsibility to discover and collect such debts (§ 102.3(b)(3)). Nor may agencies use administrative offset under 31 U.S.C. 3716 with respect to debts owed by state or local governments or arising under the Social Security Act, the Internal Revenue Code, or United States tariff laws or in cases in which collection of the type of debt involved is "explicitly provided for or prohibited by another statute" (§ 102.3(b)(4)). (Administrative offset is not "explicitly provided for or prohibited" by Title IV of ERISA.) However, unless otherwise provided by contract or law, such debts may be collected by administrative offset under the common law or other applicable statutory authority. Collection by offset against a judgment obtained by a debtor against the United States must be accomplished in accordance with 28 U.S.C. 3728 (which provides that the Comptroller General shall withhold paying that part of a judgment against the United States that is equal to a debt the plaintiff owes the United States) (§ 102.3(e)).

The PBGC's Financial Operations Department ("FOD") would have primary responsibility for the new debt collection procedures in this proposed rule, including applying amounts recovered by administrative offset to multiple debts (§ 2609.3(c)), requesting offset by other agencies (§ 2609.5), and processing requests for offset from other agencies (§ 2609.6). However, ascertaining the indebtedness and providing notice to the debtor and administrative review would continue to be handled by the organizational unit with functional responsibility for the type of claim involved, including, where applicable, review by the Appeals Board (see § 2606.1(b) (5) through (9)). For example, the Premium Operations Division of FOD would continue to have responsibility for premiums, interest, and late payment penalties, including issuing initial determinations and reconsideration in accordance with part 2606 (see § 2606.1(b)(4)). (Applicable assignments of responsibilities are set forth in the mission and functions statements issued by the Executive Director and included (along with organization charts) in the PBGC Directives Manual as section 30–1 of Part GA (General Administration).)

Proposed § 2609.1 sets out the purpose and scope of part 2609. The PBGC will apply these procedures only when it determines that collection by administrative offset of a claim that is liquidated or certain in amount is feasible and not otherwise prohibited. As stated in proposed § 2609.3(a), the PBGC will determine whether collection by administrative offset is feasible on a case-by-case basis, in the exercise of sound discretion, as provided in the FCCS (§ 102.3(a)(2)). (The PBGC generally will not offset against plan benefits.)

Proposed § 2609.3 also reiterates FCCS provisions regarding the acceptance of a repayment agreement in lieu of offset and how to apply amounts collected by administrative offset on multiple debts (§ 102.3(b)(2) (i) and (g)). Proposed § 2609.2 defines various terms (*e.g.*, "repayment agreement") used in this part of the regulations.

Proposed § 2609.4 addresses the procedures that the PBGC generally must complete before effecting administrative offset against a payment owed to a debtor. The FCCS do not require, however, that an agency duplicate procedures provided in connection with the same debt under other statutory or regulatory authority. (§ 102.3(b)(2)(ii)). Accordingly, the PBGC would not do so (proposed § 2609.4(a)). Thus, for example, if the PBGC were to use administrative offset to collect a debt for premiums, interest, and late payment penalties, it would not duplicate any procedural protection previously provided under part 2606.

The FCCS provide that whenever an agency is required to afford a debtor with a hearing or review within the agency, the agency must provide a reasonable opportunity for an oral hearing when: (1) An applicable statute authorizes or requires the agency to consider waiver of the indebtedness involved, the debtor requests such waiver, and the waiver determination turns on an issue of credibility or veracity, or (2) the debtor requests reconsideration of the debt and the agency determines that the question of the indebtedness cannot be resolved by a review of the documentary evidence (§ 102.3(c)(1)). However, an agency need not provide oral hearings with respect to debt collection systems in which determinations of indebtedness or waiver rarely involve issues of credibility or veracity and the agency has determined that review of the written record ordinarily is an adequate means to correct prior mistakes. In administering such a system, the agency is not required to sift through all requests received in order to accord oral hearings in those few cases which may involve issues of credibility or veracity. (Section 102.3(c)(2).)

Based on its experience, the PBGC has determined that with respect to its debt collection system, review of the written record ordinarily is adequate, and, therefore, part 2609 does not provide for oral hearings. (When reviewing determinations described in § 2606.1(b)

(5) through (9), the Appeals Board may, at its discretion, permit an opportunity to appear or to present witnesses (§ 2606.56).)

If the debtor does not submit a timely request for administrative review (see proposed § 2609.4(c)(1)), or if upon review the PBGC has notified the debtor of its decision that a debt is owed (see proposed § 2609.(c)(3)), then the PBGC may pursue administrative offset without further notice to the debtor (see also proposed § 2609.4(e)).

Proposed § 2609.4(d) provides that the PBGC will not consider entering a repayment agreement in lieu of offset unless a debtor submits information regarding the debtor's financial condition, including specified financial statement information (paragraph (d)(1)). The PBGC may require appropriate security as a condition of accepting a repayment agreement in lieu of offset (paragraph (d)(2)).

Proposed § 2609.4(e), as authorized by the FCCS (§ 102.3(b)(5)), provides that the PBGC may effect administrative offset prior to completion of the procedures specified in paragraphs (b) and (c) under certain circumstances (in particular, to avoid prejudicing the Government's ability to collect the debt). Under the special rule in § 2622.9(c) of this chapter, the PBGC need not follow certain procedures when it believes that its ability to assert or obtain payment of liability incurred upon termination of a single-employer plan is in jeopardy. The PBGC views any case in which it applies § 2622.9(c) as one that would meet the criteria in proposed § 2609.4(e)(1) and therefore a case in which it could effect administrative offset prior to the completion of the specified procedures. Proposed § 2609.4(e)(2) reflects this view.

Proposed §§ 2609.5 and 2609.6 prescribe procedures for making requests for offset to other agencies and for processing requests for offset from other agencies, respectively. Any PBGC requests for administrative offset against amounts due and payable from the Civil Service Retirement and Disability Fund would be made in accordance with applicable Office of Personnel Management ("OPM") regulations (Agency Requests to OPM for Recovery of a Debt from the Civil Service Retirement and Disability Fund, 5 CFR part 831, subpart R), as well as applicable provisions of the FCCS. As provided in the FCCS, (§ 102.3(d)), the PBGC generally will comply with requests from other agencies to initiate administrative offset unless the requesting agency has not complied with the applicable provisions of the FCCS or the offset would be otherwise contrary to law (proposed § 2609.6(a)).

E.O. 12866 and the Regulatory Flexibility Act

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866 because the rule would not have an annual effect on the economy of $100 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. The purpose of the rule is to enhance the PBGC's debt collection ability. The procedures will be triggered only by a failure to pay a debt already owed.

For the same reason, the PBGC certifies that, if adopted, this proposed rule will not have a significant economic effect on a substantial number of small entities. Accordingly, as provided in section 605 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), sections 603 and 604 do not apply.

List of Subjects in 29 CFR Part 2609

Administrative, Practice and procedure, Claims.

For the reasons set forth above, the PBGC proposes to amend subchapter A, chapter XXVI of 29 CFR by adding a new part 2609 to read as follows:

PART 2609—DEBT COLLECTION—ADMINISTRATIVE OFFSET

Sec.

2609.1 Purpose and scope.
2609.2 Definitions.
2609.3 Application of Federal Claims Collection Standards.
2609.4 Administrative offset procedures.
2609.5 PBGC requests for offset to other agencies.
2609.6 Requests for offset from other agencies.

Authority: 29 U.S.C. 1302(b); 31 U.S.C. 3701, 3716; 4 CFR part 102.

§ 2609.1 Purpose and scope.

(a) *Purpose.* This part prescribes procedures for debt collection by administrative offset, as authorized by the Federal Claims Collection Act (31 U.S.C. 3716), and consistent with applicable provisions of the Federal Claims Collection Standards.

(b) *Scope.* The procedures in this part apply when the PBGC determines that collection by administrative offset of a claim that is liquidated or certain in amount is feasible and not otherwise prohibited or when another agency seeks administrative offset against a payment to be made by the PBGC.

§ 2609.2 Definitions.

For purposes of this part:

Administrative offset has the meaning set forth in 31 U.S.C. 3701(a)(1).

Agency means an executive or legislative agency (within the meaning of 31 U.S.C. 3701(a)(4)).

Claim and *debt*, as defined in the Federal Claims Collection Standards (4 CFR 101.2(a)), are used synonymously and interchangeably to refer to an amount of money or property which has been determined by an appropriate agency official to be owed to the United States from any person, organization, or entity, except another Federal agency.

Federal Claims Collection Act means the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3701 *et. seq.*).

Federal Claims Collection Standards means 4 CFR parts 101 through 105, which are regulations issued jointly by the Comptroller General of the United States and the Attorney General of the United States that implement the Federal Claims Collection Act.

PBGC means the Pension Benefit Guaranty Corporation.

Repayment agreement means a written agreement by a debtor to repay a debt to the PBGC.

§ 2609.3 Application of Federal Claims Collection Standards.

The PBGC will determine the feasibility of collection by administrative offset, whether to accept a repayment agreement in lieu of offset, and how to apply amounts collected by administrative offset on multiple debts as provided in the Federal Claims Collection Standards (4 CFR 102.3).

(a) *Feasibility.* The PBGC will determine whether collection by administrative offset is feasible on a case-by-case basis in the exercise of sound discretion. In making such determinations, the PBGC will consider:

(1) Whether administrative offset can be accomplished, both practically and legally;

(2) Whether administrative offset is best suited to further and protect all governmental interests;

(3) In appropriate circumstances, the debtor's financial condition; and

(4) Whether offset would tend to interfere substantially with or defeat the purposes of the program authorizing the payments against which offset is contemplated.

(b) *Repayment agreements.* The PBGC will exercise its discretion in determining whether to accept a repayment agreement in lieu of offset, balancing the Government's interest in collecting the debt against fairness to the debtor. If the debt is delinquent (within the meaning of 4 CFR 101.2(b)) and the debtor has not disputed its existence or amount, the PBGC will accept a repayment agreement in lieu of offset only if the debtor is able to establish that offset would result in undue financial hardship or would be against equity and good conscience.

(c) *Multiple debts.* When the PBGC collects multiple debts by administrative offset, it will apply the recovered amounts to those debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, paying special attention to applicable statutes of limitations.

§ 2609.4 Administrative offset procedures.

(a) *General.* Except as otherwise required by law or as provided in paragraph (e) of this section, the PBGC will not effect administrative offset against a payment to be made to a debtor prior to the completion of the procedures specified in paragraphs (b) and (c) of this section. However, the PBGC will not duplicate any notice or other procedural protection it previously provided in connection with the same debt under some other statutory or regulatory authority, such as part 2606 of this subchapter.

(b) *Notice.* The PBGC will provide written notice informing the debtor of the following:

(1) The nature and amount of the debt, and the PBGC's intention to collect by offset;

(2) That the debtor may inspect and copy PBGC records pertaining to the debt in accordance with part 2603 or part 2607 of this subchapter, as applicable (access under the Freedom of Information Act (5 U.S.C. 552) or the Privacy Act (5 U.S.C. 552a), respectively);

(3) How and from whom the debtor may obtain administrative review of a determination of indebtedness;

(4) The facts and circumstances that the PBGC will consider in determining whether to accept a repayment agreement in lieu of offset; and

(5) If the PBGC has not previously demanded payment of the debt, the date by which payment must be made to avoid further collection action.

(c) *Administrative review.* (1) A debtor may obtain review within the PBGC of a determination of indebtedness by submitting a written request for review, designated as such, to the PBGC official specified in the notice of indebtedness. Unless another regulation in this chapter specifies a different period of time, such a request must be submitted within 30 days after the date of a PBGC notice under paragraph (b) of this section.

(2) A request for review must:

(i) State the ground(s) on which the debtor disputes the debt; and

(ii) Reference all pertinent information already in the possession of the PBGC and include any additional information believed to be relevant.

(3) The PBGC will review a determination of indebtedness, when requested to do so in a timely manner. The PBGC will issue a written decision, based on the written record, and will notify the debtor of its decision.

(i) The review will be conducted by an official of at least the same level of authority as the person who made the determination of indebtedness; and

(ii) The notice of the PBGC's decision on review will include a brief statement of the reason(s) why the determination of indebtedness has or has not been changed.

(4) Upon receipt of a request for administrative review, the PBGC may, in its discretion, temporarily suspend transactions in any of the debtor's accounts maintained by the PBGC. If the PBGC resolves the dispute in the debtor's favor, it will lift the suspension immediately.

(d) *Repayment agreement in lieu of offset.* (1) The PBGC will not consider entering a repayment agreement in lieu of offset unless a debtor submits a copy of the debtor's most recent audited (or if not available, unaudited) financial statement (with balance sheets, income statements, and statements of changes in financial position), to the extent such documents have been prepared, and other information regarding the debtor's financial condition (*e.g.*, the types of information on assets, liabilities, earnings, and other factors specified in in paragraphs (b)(3) through (b)(7) of § 2622.6 of this chapter).

(2) The PBGC may require appropriate security as a condition of accepting a repayment agreement in lieu of offset.

(e) *Exception.* (1) The PBGC may effect administrative offset against a payment to be made to the debtor prior to completing the procedures specified in paragraphs (b) and (c) of this section if:

(i) Failure to take the offset would substantially prejudice the government's ability to collect the debt; and

(ii) The time before the payment is to be made does not reasonably permit the completion of those procedures.

(2) The PBGC has determined that a case in which it applies the special rule in § 2622.9(c) of this chapter meets the criteria in paragraph (e)(1) of this section.

(3) If the PBGC effects administrative offset against a payment to be made to debtor prior to completing the procedures specified in paragraphs (b) and (c) of this section, the PBGC—

(i) Will promptly complete those procedures; and

(ii) Will promptly refund any amounts recovered by offset but later found not to be owed to the Government.

§ 2609.5 PBGC Requests for offset by other agencies.

(a) *General.* The PBGC may request that funds payable to its debtor by another agency be administratively offset to collect a debt owed to the PBGC by the debtor. A PBGC request for administrative offset against amounts due and payable from the Civil Service Retirement and Disability Fund will be made in accordance with 5 CFR part 831, supbart R (Agency Requests to OPM for Recovery of a Debt from the Civil Service Retirement and Disability Fund).

(b) *Certification.* In requesting administrative offset, the Director of the Financial Operations Department (or a department official designated by the Director) will certify in writing to the agency holding funds of the debtor—

(1) That the debtor owes the debt (including the amount) and that the PBGC has fully complied with the provisions of 4 CFR 102.3; and

(2) In a request for administrative offset against amounts due and payable from the Civil Service Retirement and Disability Fund, that the PBGC has complied with applicable statutes and the regulations and procedures of the Office of Personnel Management.

§ 2609.6 Requests for offset from other agencies.

(a) *General.* As provided in the Federal Claims Collections Standards (4 CFR 102.3(d)), the PBGC generally will comply with requests from other agencies to initiate administrative offset to collect debts owed the United States unless the requesting agency has not complied with the applicable provisions of the Federal Claims Collection Standards or the offset would be otherwise contrary to law.

(b) *Submission of requests.* (1) Any agency may request that funds payable

to its debtor by the PBGC be administratively offset to collect a debt owed to such agency by the debtor by submitting the certification described in paragraph (c) of this section.

(2) All such requests should be directed to the Director, Financial Operations Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026.

(c) *Certification required.* The PBGC will not initiate administrative offset in response to a request from another agency until it receives written certification from the requesting agency, signed by an appropriate agency official, that the debtor owes the debt (including the amount) and that the requesting agency has fully complied with the provisions of 4 CFR 102.3 (with a citation to the agency's own administrative offset regulations).

Issued in Washington, D.C. this 17th day of May, 1994.

Martin Slate,

Executive Director Pension Benefit Guaranty Corporation.

[FR Doc. 94–12426 Filed 5–19–94; 8:45 am]

BILLING CODE 7708–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Kentucky 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 receipt of a proposed amendment to the Kentucky regulatory program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to Kentucky Administrative Rules (KAR) pertaining to small operator assistance. The amendment is intended to revise the Kentucky program to be consistent with changes in SMCRA enacted by Congress as part of the Energy Policy Act of 1992.

DATES: Written comments must be received on or before 4 p.m. [e.d.t] on June 20, 1994. If requested, a public hearing on the proposed amendment will be held at 10 a.m. [e.d.t] on June 14, 1994. Requests to speak at the hearing must be received on or before 4 p.m. [e.d.t] on June 6, 1994. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to: William J. Kovacic, Director, Lexington Field Office, at the address listed below.

Copies of the Kentucky program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below, during normal business hours, Monday through Friday excluding holidays. Each requestor may receive one free copy of the proposed amendment by contacting OSM's Lexington Field Office.

William J. Kovacic, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503, Telephone: (606) 233–2896.

Department of Surface Mining Reclamation and Enforcement, No. 2 Hudson Hollow Complex, Frankfort, Kentucky 40601, Telephone: (502) 564–6940.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Director, Lexington Field Office, Telephone: (606) 233–2896.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program

On May 18, 1982, the Secretary of the Interior conditionally approved the Kentucky program. Background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the May 18, 1982, **Federal Register** (47 FR 21404). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 917.11, 917.15, 917.16 and 917.17.

II. Description of the Proposed Amendment

By letter dated April 26, 1994 (Administrative Record No. KY–1278), Kentucky submitted a proposed amendment to 405 KAR 7:080. The amendment was submitted in response to amendments to SMCRA enacted by Congress as part of the Energy Policy Act of 1992.

Kentucky proposes to revise the services provided under the Small Operator Assistance Program (SOAP) to include:

A. Engineering analyses and designs necessary for the determination of probable hydrologic consequences of mining and reclamation operations;
B. Performance of geologic drilling;
C. Collection of cultural, historic and archaeological resources information and preparation of necessary reports;
D. Performance of preblasting surveys;
E. Collection of environmental resource information and the preparation of plans for the protection of fish and wildlife; and
F. Development of certain cross sections, maps and plans required in permit applications.

The proposed rule also revises the eligibility criteria for assistance by applying coal production limitations to the twelve months immediately following the date the permit is issued instead of the term of the permit or the first five years of the issuance, whichever is shorter.

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 Kentucky program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commentor's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Lexington Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m. [e.d.t] on June 6, 1994. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to speak 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 speak have been heard.

Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Public Meeting

If only one person requests an opportunity to speak 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

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).

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, to the extent allowed by law, 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 1255) and 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.

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)).

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.*).

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.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 16, 1994.

Ronald C. Recker,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 94–12361 Filed 5–19–94; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 917

Kentucky 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 receipt of a proposed amendment to the Kentucky regulatory program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of five bills amending Kentucky Revised Statutes (KRS) Chapter 350 that were enacted by the 1994 Regular Session of the Kentucky General Assembly and signed into law by the Governor. The amendment is intended to implement the remining provisions of the Federal Energy Policy Act of 1992, to improve the operational efficiency of the Kentucky program, and to revise the Kentucky program to be consistent with the corresponding Federal rules and SMCRA.

DATES: Written comments must be received on or before 4 p.m. [e.d.t] on June 20, 1994. If requested, a public hearing on the proposed amendment will be held at 10 a.m. [e.d.t] on June 14, 1994. Requests to speak at the hearing must be received on or before 4 p.m. [e.d.t] on June 6, 1994. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to: William J. Kovacic, Director, Lexington Field Office, at the address listed below.

Copies of the Kentucky program, the proposed amendment, listing of any scheduled public hearings, and all written comments received in response to this document will be available for review at the addresses listed below, Monday through Friday, 9 a.m. to 4 p.m., excluding holidays.

Each requestor may receive one free copy of the proposed amendment by contacting OSM's Lexington Field Office.

William J. Kovacic, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503, Telephone: (606) 233–2896.

Department of Surface Mining Reclamation and Enforcement, No. 2 Hudson Hollow Complex, Frankfort, Kentucky 40601, Telephone: (502) 564–6940.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Director, Lexington Field Office, Telephone: (606) 233–2896.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program

On May 18, 1982, the Secretary of the Interior conditionally approved the Kentucky program. Background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the May 18, 1982, **Federal Register** (47 FR 21404). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 917.11, 917.15, 917.16 and 917.17.

II. Description of the Proposed Amendment

By letter dated April 29, 1994 (Administrative Record No. KY–1279), Kentucky submitted a proposed amendment containing five bills amending KRS Chapter 350 that were enacted by the 1994 Regular Session of the Kentucky General Assembly and signed into law by the Governor. The contents of the five bills are as follows:

Senate Bill 208

S.B. 208 implements in Kentucky law, the remining provisions of the Federal Energy Policy Act of 1992:

It eliminates blocking of future permits to an applicant with an unabated violation, if the unabated violation results from an unanticipated event or condition at an operation under a remining permit held by the applicant on lands eligible for remining. It also defines the terms "unanticipated event or condition" and "lands eligible for remining." This authority terminates on September 30, 2004.

It reduces the period of responsibility for revegetation success from five years to two years for remaining operations. This authority terminates on September 30, 2004.

It makes remined areas again eligible for expenditure of Abandoned Mine Land funds after release or forfeiture of the performance bond.

Sentate Bill 214

S.B. 214 requires the Natural Resources and Environmental Protection Cabinet (NREPC) to notify the secretary of the Transforation Cabinet every six months of permits issued for mine openings, and mine closing under the authority of the NREPC.

Senate Bill 249

S.B. 249 is a "housekeeping" bill that also addresses some issues previously raised by OSM:

It expands the definition of the term "surface coal mining operations" to expressly include extraction of coal from coal refuse piles.

It expands the definition of the term "person" to expressly include instrumentalities of government, including any publicly-owned utility or publicly-owned corporation.

It deletes an exception that currently allows a hearing officer to close an administrative hearing to the public. Under the bill, all hearings conducted pursuant to KRS Chapter 350 would be open to the public.

It moves language from KRS 350.0305 to 350.0301 granting the right to a public hearing on NREPC determinations and certain procedures thereof. With this change, KRS 350.0301 relates to administrative hearings, whereas 350.0305 relates to appeals to Franklin Circuit Court from final cabinet orders resulting from administrative hearings.

It provides that a person aggrieved by a final order resulting from an administrative hearing on a notice of noncompliance, an order for cessation and immediate compliance, an assessment of civil penalties, or a bond forfeiture, may appeal in accordance with KRS 350.032 which provides, among other things, that the order may be appealed either to Franklin Circuit Court or the Circuit Court in the county where the mine is located.

It deletes old language from KRS 350.255 that has been replaced by new language in 350.0301, so that 350.255 now relates only to petitions requesting that the cabinet promulgate administrative regulations.

House Bill 338

H.B. 338 places upon underground coal mines the same obligation to replace damaged water supplies that currently exist only for surface coal mines.

House Bill 707

H.B. 707 allows extensions of the underground mining area that are not incidental boundary revisions and do not include planned subsidence or other new proposed surface disturbances, to be made by application for a major revision to the permit rather than by application for an amendment to the permit.

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 Kentucky program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commentor's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Lexington Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m. [e.d.t] on June 6, 1994. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to speak 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 speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Public Meeting

If only one person requests an opportunity to speak 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

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).

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, to the extent allowed by law, 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 1255) and 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.

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)).

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.*).

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.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 16, 1994.

Ronald C. Recker,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 94–12362 Filed 5–19–94; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD05–94–023]

RIN 2115–AE47

Drawbridge Operation Regulations; Pamunkey River, West Point, VA

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard is issuing a revised proposed rule for the operation of the drawbridge; SR 33, across Pamunkey River, mile 1.0, located in West Point, Virginia. The original Notice of Proposed Rulemaking eliminated bridge openings to all vessels between the hours of 7 a.m. to 9 a.m., 12 noon to 1 p.m. and 4 p.m. to 6 p.m. Monday through Friday, except Federal holidays. The revised supplemental proposed rule restricts only commercial fishing and crabbing vessels and recreational vessels from opening the bridge between the hours of 7 a.m. to 9 a.m., 12 noon to 1 p.m. and 4 p.m. to 6 p.m. The remaining times those vessels are restricted to opening the bridge on the hour, Monday through Friday, except Federal holidays. The proposed changes to these regulations are, to the extent practical and feasible, intended to provide for regularly scheduled drawbridge openings to help reduce motor vehicle traffic delays and congestion on the roads and highways linked by this drawbridge, while still providing for the reasonable needs of navigation.

DATES: Comments must be received on or before July 19, 1994.

ADDRESSES: Comments may be mailed to Commander (ob), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, or may be delivered to room 109 at the same address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (804) 398–6222. Comments will become part of this docket and will be available for inspection or copying at room 109, Fifth Coast Guard District.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, (804) 398–6222.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD05–94–023) and the specific section of this proposal to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound material is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Commander (ob) at the address under **ADDRESSES**. The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and placed announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are bill H. Brazier, Project Officer, and LT Monica L. Lombardi, Project Attorney, Fifth Coast Guard District.

Background and Purpose

The original proposal was published on November 26, 1993, in the **Federal Register** (58 FR 62303). Public Notice 5–818 was distributed for comment November 8, 1993. Both Notices announced that a proposal was being considered to restrict openings of the Eltham Bridge to all vessels during morning, noon, and evening rush hours, between the hours of 7 a.m. to 9 a.m., 12 noon to 1 p.m. and 4 p.m. to 6 p.m., Monday through Friday, except Federal holidays. The bridge would continue to open on signal at all other times.

As a result of the proposed rule and the public notice, comments were received from the maritime community and the motoring public. The motorists all were in favor of the proposed restrictions during peak traffic hours to reduce traffic disruption, delays, congestion and minor accidents. The commercial marine industry was opposed to restricting the openings, based on economic impact concerns, safety and tidal navigational requirements.

Following further investigation by the Coast Guard, it was determined that the

major cause of traffic congestion due to bridge lifts for the Eltham Bridge was contributed to by commercial fisherman, crabbers and recreational boaters requesting frequent bridge lifts during rush hour traffic periods. These mariners, for the most part, could pass through without a bridge lift, by lowering their antennae. The remainder of the maritime industry, consisting of piloted vessels and large tugs and barges, passing through this bridge is very sporadic. The bridge tender's logs only reflected 4 or 5 bridge lifts per month for these vessels.

The Virginia Department of Transportation, in an effort to improve this situation, has requested these revised proposed regulations. It agreed to changing the original request by excluding larger classes of maritime vessels from the restrictions, and to placing new restrictions on commercial fishing and crabbing vessels and recreational vessels which create most of the problems.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under the order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the fact that most commercial marine interest are exempt from the restrictions. The new small fishing boats that will be affected will not be unduly restricted from using the bridge since hourly openings will be provided and the majority of these vessels can pass beneath the bridge by lowering their antennas.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Even though commercial crabbers and small fishing vessel operators would be restricted under the proposed regulations, the Coast Guard believes the proposed opening schedule for these operators is not unduly restrictive. These vessel operators can still crab and fish, but they will have to time their requests for openings of the bridge to coincide with the proposed new schedule. This should not cause any economic hardship. Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612, and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under section 2.B.2.g.(5) of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of Title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05.1(g).

2. Section 117.1023 is added to read as follows:

§ 117.1023 Pamunkey River.

(a) The draw of the Eltham Bridge (SR33/30), mile 1.0, located in West Point, Virginia, shall open on signal; except that, the bridge need not open for commercial crabbing and fishing vessels and recreational vessels on Mondays through Fridays, except Federal Holidays, from 7 a.m. to 9 a.m., 12 noon to 1 p.m. and 4 p.m. to 6 p.m.; at all other times, the bridge will open for these vessels only on the hour, Monday through Friday, except Federal holidays.

(b) Public vessels of the United States and vessels in an emergency involving danger to life or property shall be passed at any time.

Dated: May 2, 1994.

W.T. LeLand,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 94–12406 Filed 5–19–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD01–94–026]

RIN 2115–AA97

Safety Zone; Bristol Fourth of July Fireworks, Bristol Harbor, Bristol, RI

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a safety zone for the Bristol Fourth of July Fireworks celebration. The event, sponsored by the Bristol's Fourth of July Committee, will take place on Monday, July 4, 1994 from 9:30 p.m. until 10 p.m. This safety zone in the Bristol Harbor is needed to protect the boating public from the hazards associated with the exploding of pyrotechnics in the area.

DATES: Comments must be received on or before June 20, 1994.

ADDRESSES: Comments should be mailed to Supervisor, United States Coast Guard Marine Safety Field Office, New Bedford, 918 Rodney French Blvd. New Bedford, MA 02744–1223 or may be delivered between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant J.C. Wong, Supervisor, Coast Guard Marine Safety Field Office New Bedford (508) 999–0072.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this notice (CGD01–94–026), the specific section of the proposal to which their comments apply, and give reason for each

comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Project Manager at the address under **ADDRESSES**. If it is determined that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The drafters of this notice are LT J.C. Wong, Project Manager, Coast Guard Marine Safety Field Office New Bedford and LCDR J. Stieb, Project Attorney, First Coast Guard District, Legal Office.

Background and Purpose

The Bristol Fourth of July Committee submitted a request to hold a fireworks program in the Bristol Harbor on July 4, 1994. The proposed regulations would establish a safety zone in Bristol Harbor in order to protect boaters from the hazards associated with the exploding of pyrotechnics in the area. No vessel would be permitted to enter or move within this area unless permitted to do so by Captain of the Port, Providence. Due to the approaching date of the event, good cause exists for allowing a comment period of only 30 days. Delaying the event to allow for a longer comment period would be contrary to the public's interest since the event is for the purpose of celebrating the Fourth of July Holiday.

Discussion of Proposed Amendments

The Coast Guard proposes to establish a safety zone in Bristol Harbor, Bristol, Rhode Island. This safety zone will be in effect from 9:30 p.m. until 10 p.m. on July 4, 1994.This closure is needed to protect boaters from the hazards associated with the exploding of pyrotechnics in the area. This safety zone will temporarily close the primary and secondary channel leading into Bristol Harbor, in the vicinity of the Bristol Harbor Middle Ground Buoy (light list no. 18175).

Regulatory Evaluation

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

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 eg seq.), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under Section 3 of the Small Business Act (15 U.S.C. 632).

For reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this regulation and concluded that under section 2.B.2.c. of Commandant Instruction M16475.1B, it is an action under the Coast Guard's statutory authority to protect public safety, and thus is categorically excluded from further environmental documentation. A categorical exclusion determination is available in the docket.

List of Subjects in 33 CFR Part 165

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

Proposed Regulations

For reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—[AMENDED]

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

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

2. A temporary section, 165.T01–026 is added to read as follows:

§ 165.T01–026 Bristol's Fourth of July Fireworks, Bristol Harbor, Bristol Rhode Island.

(a) *Location.* The safety zone includes all waters within a 350 yard radius around the fireworks barge. The barge will be anchored 200 yards north of the Bristol Harbor Middle Ground Bouy (light list no. 18175).

(b) *Effective period.* This section will be effective from 9:30 p.m. until 10 p.m. on July 4, 1994.

(c) *Regulations.* (1) No person or vessel may enter, transit, or remain in this safety zone during the effective period of regulation unless participating in the event as authorized by the sponsor or the Coast Guard Captain of the Port, Providence.

(2) All persons and vessels shall comply with the instructions of the COTP or the designated on scene personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon hearing five or more blasts from a U.S. Coast Guard Vessel, the operator of a vessel shall proceed as directed.

Dated: May 5, 1994.

H.D. Robinson,

Captain, U.S. Coast Guard, Captain of the Port, Providence.

[FR Doc. 94–12407 Filed 5–19–94; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding and Commencement of Status Review for a Petition To List the Alexander Archipelago Wolf

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding and status review.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day finding for a petition to add the Alexander Archipelago wolf (*Canis lupus ligoni*) to the List of Endangered and Threatened Wildlife. The Service

finds that the petition presents substantial information indicating the requested action may be warranted. Through issuance of this notice, the Service is commencing a formal review of the status of this species. Information regarding this species is requested.

DATES: The finding announced in this notice was made May 13, 1994. Comments and materials related to this petition finding may be submitted to the Field Supervisor at the address below and must be received by July 19, 1994.

ADDRESSES: Data, information, comments or questions concerning the status of the petitioned species described below should be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, Ecological Services, 3000 Vintage Blvd., suite 201, Juneau, Alaska 99801. The petition, findings, and supporting data are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: John Lindell, Endangered Species Biologist (see **ADDRESSES** above) (907/586–7240).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1544) (Act), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If the Service finds that a petition presents substantial information indicating that the requested action may be warranted, then the Service initiates a status review on that species. Section 4(b)(3)(B) of the Act requires the Service to make a finding as to whether or not the petitioned action is warranted within one year of receipt of a petition that presents substantial information.

On December 13, 1993, the Biodiversity Legal Foundation, Eric Holle and Martin J. Bergoffen submitted a petition to the U.S. Fish and Wildlife Service to list the Alexander Archipelago wolf as threatened pursuant to the Endangered Species Act. The petition was received on December 17, 1993.

This finding is based on various documents, including published and unpublished studies and reports, agency files, field survey records, and consultations with Service, other Federal agencies, and State personnel. All documents are on file in the Fish and Wildlife Service, Ecological Services Office in Juneau, Alaska.

The petitioners contend that the Alexander Archipelago wolf should be listed as threatened under the Endangered Species Act (16 U.S.C. 1553(a)(1)) because of the following factors:

1. Present and threatened destruction, modification, and curtailment of habitat because of the reduction, and long-term degradation of habitat for Sitka black-tailed deer, the wolf's primary prey, by clearcut logging;

2. Inadequacy of existing regulatory mechanisms because of increased human access through an extensive road system that will facilitate increased shooting and trapping of wolves;

3. Other factors, including inbreeding within insular populations that may reduce genetic fitness, adaptability, and long-term viability.

With this notice, the Service announces a positive 90-day finding on the petition to list the Alexander Archipelago wolf (*Canis lupus ligoni*) as threatened and hereby initiates a review of the species' status.

As a part of the status review, the Service will further evaluate the taxonomic status of the Alexander Archipelago wolf as a subspecies or population segment, the issue of genetic differentiation of groups within the Alexander Archipelago, and determine if listing is warranted for either the subspecies rangewide or certain distinct population segments.

The Service would appreciate any additional data, comments and suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other parties concerning the status of the Alexander Archipelago wolf, *Canis lupus ligoni*.

The following issues are of particular interest to the Service:

1. The genetic, morphologic, and ecological differences of the wolves occupying southeast Alaska from those found in adjacent areas; variation within and between groups of wolves occupying southeast Alaska; and the occurrence or effects of genetic isolation and small breeding groups on long-term persistence of wolves.

2. The occurrence or extent of genetic exchange between wolves within southeast Alaska and wolves from adjacent areas.

3. Additional historic and current population data which may assist in determining long-term population trends.

4. The interrelationship between the wolf and prey base populations, particularly during periods of reduced primary prey abundance.

5. The effects of long-term habitat conversion and fragmentation of mature forest habitat on Sitka black-tailed deer and wolf populations in southeast Alaska.

6. The effects of increased road construction on wolf populations in southeast Alaska.

References Cited

A complete list of all references cited in the 90-day finding is available upon request (see Addresses section).

Authors

The authors of this notice are John Lindell and Ed Grossman, of the Juneau, Alaska, Ecological Services Office. (see Addresses section).

List of Subjects in 50 CFR Part 17

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

Authority: The authority for this action is the Endangered Species Act of 1973, as amended; 16 U.S.C. 1531–1544; unless otherwise noted.

Dated: May 13, 1994.

Mollie H. Beattie,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 94–12280 Filed 5–19–94; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 59, No. 97
Friday, May 20, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Fish Bate Timber Sale; Clearwater National Forest, Clearwater County, ID

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare an environmental impact statement (EIS) to disclose the environmental effects of timber harvest, reforestation and prescribed burning in the vicinity of the Sneak Creek, Sheep Creek, Fish Creek, Owl Creek, Martin Creek and Bates Creek drainages. The area is located south and east of the Canyon Work Center, North Fork Ranger District, Clearwater National Forest, Clearwater County, Idaho. None of the proposed project's activities are within a roadless area. The proposal's actions are being considered together because they represent either connected or cumulative actions as defined by the Council on Environmental Quality (40 CFR 1508.25).

The purposes of the project are to implement the Clearwater Forest Plan; provide conditions that insure positive timber growth; sustain the diversity and productivity of all ecosystems within the analysis area including the aquatic ecosystems, sensitive plant communities and old growth forest ecosystems; reduce the risk of large fires within the Fish Bate analysis area; develop a permanent transportation plan for the area that uses ecologically-sensitive road design methods for new roads, utilizes timber yarding systems that minimize the need for additional new roads and analyzes each existing road for the appropriate type of use, need for maintenance and possibility of obliteration.

This project-level EIS will tier to the Clearwater National Forest Land and Resource Management Plan (Forest Plan) and Final EIS (September, 1987), which provides overall guidance of all land management activities on the Clearwater National Forest.

DATES: Written comments and suggestions should be received by July 5, 1994, to receive timely consideration in the preparation of the Draft EIS. The Draft EIS will be filed with the Environmental Protection Agency in September 1994. The Final EIS and Record of Decision are expected to be issued in March 1995.

ADDRESSES: Submit written comments and suggestions on the proposed action or requests to be placed on the project mailing list to Arthur S. Bourassa, District Ranger, North Fork Ranger District, Clearwater National Forest, P.O. Box 2139, Orofino, ID, 83544. FAX: 208–476–5441.

FOR FURTHER INFORMATION CONTACT: Jennefer Sundberg, Team Leader, North Fork Ranger District, Clearwater National Forest, P.O. Box 2139, Orofino, ID, 83544. Phone: (208) 476–3775.

SUPPLEMENTARY INFORMATION: The planning area consists of approximately 11,500 acres of National Forest land located in all or part of sections 1, 2, 3, 9–16, 21, 22, 23, and 24 of T40N, R7E; and sections 7, 8, 16–21, 29, and 30 of T40N, R8E, Boise Meridian. All management activities would be administered by the North Fork Ranger District, Clearwater National Forest, Clearwater County, Idaho.

The proposed action includes activities covering approximately 600 acres of the 11,500-acre analysis area. Silvicultural prescriptions would include 203 acres of sanitation/salvage, 59 acres of seed tree, 52 acres of clearcuts with reserve trees, and 287 acres of group selection harvests. These harvest units are expected to yield approximately 4.5 MMBF of timber product. The majority of this volume (63%) would be yarded with a skyline system. The remaining volume (37%) would be helicopter yarded. Approximately .31 miles of new road construction would be required to access landing sites and .35 miles of road reconstruction would be required.

The Clearwater Forest Plan provides guidance for management activities within the potentially affected area through its goals, objectives, standards, guidelines and management area direction. The areas of proposed timber harvest and reforestation would occur within Management Areas E1, C4, A4 and M2. Timber harvest would occur only on suitable timber land. Below is a brief description of the applicable management direction.

Management Area E1—Timber Management—Provide optimum, sustained production of timber products in a cost-effective manner while protecting soil and water quality.

Management Area C4—Elk Winter Ranger/Timber—Provide sufficient winter forage and thermal cover for existing and projected big game populations while achieving timber production outputs.

Management Area A4—Visual Travel Corridor—Maintain or enhance an aesthetically pleasing, natural appearing Forest setting surrounding designated roads, trails, and other areas considered important for recreational travel and use.

Management Area M2—Riparian Lands—Meet watershed and riparian dependant resource objectives and compatible timber production.

The Forest Service will consider a range of alternatives to the proposed action. One of these will be the "no action" alternative, in which none of the proposed activities would be implemented. Additional alternatives will examined varying levels and locations for the proposed activities to achieve the proposal's purposes, as well as to respond to the issues and other resource values.

The EIS will analyze the direct, indirect, and cumulative environmental effects of the alternatives. Past, present, and projected activities on both private and National Forest lands will be considered. The EIS will disclose the analysis of site-specific mitigation measures and their effectiveness.

Public participation is an important part of the project, commencing with the initial scoping process (40 CFR 1501.7), which starts with publication of this notice and continues for the next 45 days. In addition, the public is encouraged to visit with Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments, and assistance from Federal, State and local agencies, as well as other individuals or organizations who may be interested in or affected by the proposed action. No meetings are scheduled, but letters, phone calls or personal visits are invited for the purpose of providing information related to this proposal. Interested individuals and organizations are

encouraged to contact the North Fork District Ranger to be added to the project mailing list to receive future information related to this project.

Comments from the public and other agencies will be used in preparation of the Draft EIS. The scoping process will be used to:

1. Identify potential issues.
2. Identify major issues to be analyzed in depth.
3. Eliminate minor issues or those which have been covered by a relevant previous environmental analysis, such as the Clearwater Forest Plan EIS.
4. identify alternatives to the proposed action.
5. Identify potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects).
6. Determine potential cooperating agencies and task assignments.

Preliminary issues identified as a result of internal scoping include: effects of the proposal on old growth habitat, cumulative effects of the past harvest that has occurred in the area, fragmentation, opening size (existing and proposed), water quality, impacts to biodiversity of the area, watershed rehabilitation, effects of the proposal on riparian areas, impacts to fish species, snag management, visual quality of the area, travel corridors/linkages and effects on threatened, endangered, and sensitive species. This list will be verified, expanded, and/or modified based on the public scoping for this proposal .

The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in September of 1994. At that time, the EPA will publish a Notice of Availability of the Draft EIS in the **Federal Register**. The comment period on the Draft EIS will be 45 days from the date of Environmental Protection Agency publishes the notice of availability in the **Federal Register**. It is very important that those interested in management of the Fish Bate area participate at that time. To be most helpful, comments on the Draft EIS should be as site-specific as possible. The Final EIS is scheduled to be completed by March, 1995.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is helpful if comments refer to specific pages or chapters of the draft statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

I am the responsible official for this environmental impact statement. My address is Clearwater National Forest, 12730 Highway 12, Orofino, ID 83544.

Dated: May 6, 1994.

James L. Caswell,

Forest Supervisor.

[FR Doc. 94–12395 Filed 5–19–94; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

Central Richland Watershed, Richland Parish, LA

AGENCY: Soil Conservation Service.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Central Richland Watershed, Richland Parish, Louisiana.

FOR FURTHER INFORMATION CONTACT: Donald W. Gohmert, State Conservationist, Soil Conservation Service, 3737 Government Street, Alexandria, Louisiana 71302, telephone (318) 473–7751.

SUPPLEMENTARY INFORMATION: The environmental assessment of the federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Donald W. Gohmert, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The purpose of the project is to alleviate problems caused by water quality impairment through the installation of land treatment systems. The planned works of improvement include grade stabilization structures, filter strips and precision land smoothing.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Donald W. Gohmert.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

May 9, 1994.

Donald W. Gohmert,

State Conservationist.

[FR Doc. 94–12394 Filed 5–19–94; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.: 051394B]

Proposed Scientific Review Groups for the Marine Mammal Program

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

ACTION: Notice of request for nominations.

SUMMARY: The 1994 amendments to the Marine Mammal Protection Act, enacted April 30, 1994, require the Secretary of Commerce to establish three independent scientific review groups to advise the Secretary regarding marine mammal population assessments and conservation. Review groups will be

established for Alaska waters, the Pacific Coast (including Hawaii), and the Atlantic Coast (including the Gulf of Mexico). This document seeks nominations of qualified individuals from outside NMFS for membership in these scientific review groups.

DATES: Nominations for the scientific review groups must be received by June 3, 1994.

ADDRESSES: Nominations should be sent to Dr. William W. Fox, Jr., Director, Office of Protected Resources, 1335 East-West Highway, Silver Spring, MD 20910, Facsimile: (301) 713–0376.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas C. Eagle, Fishery Biologist, Office of Protected Resources, (301) 713–2319.

SUPPLEMENTARY INFORMATION: The President enacted amendments to the Marine Mammal Protection Act on April 30, 1994, as Public Law 103–238. Among other things, these amendments establish a new regime to govern the incidental taking of marine mammals in the course of commercial fishing operations and establish requirements for the preparation of stock assessments for marine mammal stocks that occur in U.S. waters. Under the new requirements, NMFS must establish three independent regional scientific review groups representing Alaska, the Pacific Coast (including Hawaii) and the Atlantic Coast (including the Gulf of Mexico). In establishing these scientific review groups, NMFS must consult with the Secretary of the Interior (with respect to marine mammals under his jurisdiction), the Marine Mammal Commission, the Governors of affected adjacent coastal states, regional fishery and wildlife management authorities, Alaska Native organizations and Indian tribes, and environmental and fishery groups.

Members of the review groups must have demonstrated expertise in marine mammal biology and ecology, population dynamics and modeling, commercial fishing technology and practice, or stocks taken for subsistence purposes. Members of the review groups serve without compensation, but may be reimbursed for reasonable travel costs and expenses incurred in performing their obligations. They provide advice to NMFS on the following:

(a) Population estimates and the population status and trends of marine mammal stocks;

(b) Uncertainties and research needed regarding stock separation, abundance, or trends, and factors affecting the distribution, size or productivity of the stock;

(c) Uncertainties and research needed regarding the species, number, ages, gender, and reproductive status of marine mammals;

(d) Research needed to identify modifications in fishing gear and practices likely to reduce the incidental mortality and serious injury of marine mammals in commercial fishing operations; and

(e) The actual, expected or potential impacts of habitat destruction, including marine pollution and natural environmental change, on specific marine mammal species and stocks, and appropriate conservation and management measures to alleviate any such impacts.

NMFS solicits nominations of qualified individuals for membership in these review groups. Please identify the review group for which the nomination is made, i.e., Alaska, the Pacific Coast or the Atlantic Coast, the name of the nominee, and include a one-page résumé describing their qualifications to the person in **ADDRESSES**, above.

Résumés must clearly identify the nominee's current position, appropriate training and experience, expertise in one or more of the areas described above, and other information pertaining to the nominee's ability to fulfill the responsibilities of the review groups. NMFS will make selections for the scientific review groups by June 30, 1994.

Dated: May 13, 1994.

Herbert W. Kaufman,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–12296 Filed 5–19–94; 8:45 am]

BILLING CODE 3510–22–P

[I.D. 050694L]

Gulf of Mexico Fishery Management Council; Meeting

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

ACTION: Notice of public hearings; request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene six public hearings on a draft generic trap amendment. The draft amendment would modify the construction specifications of spiny lobster traps used in the exclusive economic zone (EEZ), establish construction specifications for stone crab traps used in the EEZ, prohibit the use of blue crab traps in the EEZ off Florida, and establish geographic and reef fish bycatch restrictions in the stressed area off Florida north of 27° for traps other than reef fish traps. The amendment also contains alternatives to allow traps in minor or potential trap fisheries such as octopus, shrimp, and deep-water crab and lobster.

DATES: Written comments on the draft amendment must be received by June 27, 1994. Hearings will be held on June 7–9 and June 13–15, 1994. See **SUPPLEMENTARY INFORMATION** for dates and times of hearings.

ADDRESSES: Comments should be addressed to Steven M. Atran, Populations Dynamics Statistician, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 331, Tampa, FL 33609; fax: 813–225–7015. Hearings are being held in Florida in various locations listed in the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Steven M. Atran, 813–228–2815.

SUPPLEMENTARY INFORMATION: The hearings are scheduled from 7 p.m. to 10 p.m. as follows:

1. June 7, 1994: Plantation Inn and Golf Resort, West Fort Island Trail (Cross Road 44W), Crystal River, FL.
2. June 8, 1994: Steinhatchee Community Center, State Highway 51, Steinhatchee, FL.
3. June 9, 1994: Ramada Inn Tallahassee, 2900 North Monroe Street, Tallahassee, FL.
4. June 13, 1994: Holiday Inn Beachside, 3841 North Roosevelt Boulevard, Key West, FL.
5. June 14, 1994: Naples Depot Civic-Cultural Center, 1051 5th Avenue South, Naples, FL.
6. June 15, 1994: City of Madeira Beach Municipal Auditorium, 300 Municipal Drive, Madeira Beach, FL.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Julie Krebs (see **ADDRESSES**) 5 working days prior to the applicable meeting.

Dated: May 16, 1994.

David S. Crestin,

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

[FR Doc. 94–12319 Filed 5–19–94; 8:45 am]

BILLING CODE 3510–22–P

[I.D. 050494B]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of Third Modification to Scientific Research Permit 726 (P45I).

On March 22, 1991 (56 FR 13309), Dr. Boyd Kynard was issued Permit 726 to take shortnose sturgeon (*Acipenser brevirostrum*) for scientific research activities, subject to certain conditions set forth therein, as authorized under the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–227). On May 7, 1993, NMFS issued Modification 1 to Permit 726. On December 16, 1993 (58 FR 65702), NMFS extended Permit 726 through December 31, 1994, and acknowledged the receipt of another modification request. On February 3, 1994 (59 FR 6242), NMFS issued Modification 2 to Permit 726.

Notice is hereby given that Boyd Kynard, of the Northeast Anadromous Fish Research Center of the U.S. Fish and Wildlife Service has applied in due form for a third modification to Permit 726 to take listed species. The applicant requests authorization to take blood samples from the sturgeon to conduct a toxicant analysis, to develop a sex-determination procedure, and add a new research location for the duration of the permit, through December 31, 1994.

Written data or views, or requests for a public hearing on this application for a modification should be submitted to the Director, Office of Protected Resources, NMFS, 1335 East-West Hwy., Silver Spring, MD 20910–3226, within 30 days of the publication of this notice. Those individuals requesting a hearing should set out the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in this application summary are those of the Applicant and do not necessarily reflect the views of NMFS.

Documents submitted in connection with the above application are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, NMFS, 1335 East-West Hwy., Silver Spring, MD 20910–3226 (301–713–2322); and

Director, Northeast Region, NMFS, NOAA, One Blackburn Drive, Gloucester, MA 01930 (508–281–9250).

Dated: May 11, 1994.

Herbert W. Kaufman,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–12387 Filed 5–19–94; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

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 20, 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: On November 19, 1993, January 3, March 18, 25, April 1, 1994, The Committee for Purchase From People Who Are Blind or Severely Disabled published notices (58 F.R. 61072, 59 FR 74, 12895, 14155, 15385) 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

Cabinet, Tool, Mobile
- 5140–01–010–4775
- 5140–01–010–4776
- 5140–00–030–6617
- 5140–00–870–4796

Tool Box, Portable
- 5140–00–319–5079
- 5140–00–494–2015

Floss, Dental
- 6520–00–935–1007
- 6520–01–063–7477
- 6520–01–063–7478
- 6520–01–063–6875

Pellet, Hydrazine, Detector
- 6665–01–089–4443

Enamel, Aerosol, Waterbase
- 8010–01–350–5254
- 8010–01–350–5255
- 8010–01–350–4746
- 8010–01–350–4747
- 8010–01–350–5259
- 8010–01–350–5256
- 8010–01–350–6258
- 8010–01–350–4757
- 8010–01–350–4749
- 8010–01–350–5261
- 8010–01–350–5253

Services

Janitorial/Custodial, U.S. Army Engineer District, Rock Island, Motor Shop, Mississippi River Project & Radio Shop, LeClair Base Complex, Pleasant Valley, Iowa

Toner Cartridge Remanufacturing, Veterans Administration Medical Center, Seattle, Washington.

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 94–12386 Filed 5–19–94; 8:45 am]

BILLING CODE 6820–33–P

Additions to the Procurement List; Proposed Additions to the Procurement List; Correction

The documents appearing on pages 22594, 22595 and 22596, FR Doc. 94–10430, 94–10431 and 94–10432 in the issue of May 2, 1994, the "effective date" and "comments must be received

on or before" date should be June 1, 1994.

Beverly L. Milkman,

Executive Director.

[FR Doc. 94–12384 Filed 5–19–94; 8:45 am]

BILLING CODE 6820–33–P

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 20, 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

Folder, File
7530–01–356–4295
7530–01–356–4296
7530–01–347–5227
NPA: Lions Club Industries for the Blind, Inc., Durham, North Carolina.

Organizer, Day Planner, Travel Size 7530–01–D08–7294, (Requirements for the Defense Supply Service, Washington, DC).
NPA: Easter Seal Society of Allegheny County Pittsburgh, Pennsylvania.

Services

Janitorial/Custodial, Eldorado National Forest, Supervisors Office, Placerville, California,
NPA: PRIDE Industries, Roseville, California.

Janitorial/Custodial, Schuylkill Haven USARC, 101 Route 61 South, Schuylkill Haven, Pennsylvania,
NPA: UCP of Schuylkill County - Habilitation, Inc., Pottsville, Pennsylvania.

Beverly L. Milkman,

Executive Director.

[FR Doc. 94–12385 Filed 5–19–94; 8:45 am]

BILLING CODE 6820–33–P

DEPARTMENT OF DEFENSE

Department of the Army

Alternative Disputes Resolution Procedure

AGENCY: Military Traffic Command, DOD.

ACTION: Notice.

SUMMARY: The Military Traffic Management Command (MTMC) proposes to increase use of alternative disputes resolution procedures to resolve disputes in lieu of resolving disputes through litigation or adjudication and has drafted a proposed MTMC regulation titled Alternative Disputes Resolution (ADR) Program. The proposed MTMC regulation 715–XX, is consistent with Public Law 101–552, the Administrative Dispute Resolution Act (ADR Act), codified in Title 5, U.S. 571–583. It addresses the use of alternative means of dispute resolution with regard to the transportation and other acquisition programs administered and managed by MTMC. A copy of this proposed regulation may be obtained by writing a MTMC. In the meantime the following advanced guidance contained in this Notice is provided for your information and comment.

DATES: Comments on this guidance must be received on or before June 20, 1994.

ADDRESSES: Mail comments on this guidance or request a copy of MTMC draft regulation 755–XX to Headquarters, Military Traffic Management Command, ATTN: MTJA, 5611 Columbia Pike, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: Daniel Rothlisberger (703) 756–1580.

SUPPLEMENTARY INFORMATION: The ADR Act authorizes the use of alternative means of dispute resolution in lieu of adjudication to resolve issues in controversy. These means include settlement negotiation, facilitation, mediation, fact finding, minitrials and arbitration.

The Report of the National Performance Review, "Creating a Government that Works Better and Costs Less", observes that it is often cheaper and more timely to resolve disputes through alternative dispute resolution and recommends that agencies "expand their use of alternative dispute resolution techniques."

MTMC's use of alternative means of dispute resolution pre-dates the ADR Act. For example, negotiation has been frequently used in resolving potential or actual controversies arising from rules interpretation, rate acquisition and application, qualification criteria and other issues. It is MTMC's intention to publish and use this proposed ADR guidance in order to promote greater use of an appropriate alternative means of dispute resolution.

Department of the Army Headquarters, Military Traffic Management Command, 5611 Columbia Pike, Falls Church, VA 22041–5050

MTMC Guidance 715–XX

Procurement

1. Purpose

This guidance prescribes policies and procedures applicable to the use of alternative dispute resolution (ADR) procedures in resolving disputes in which the Military Traffic Management Command (MTMC) is a party.

2. Applicability

a. This guidance applies to all MTMC acquisition activities as well as to matters that arise as a result of rulemaking, or issuing or revoking permits. When applied to disputes arising under contracts executed under the Federal Acquisition Regulation (FAR), this guidance applies after the Contracting Officer has rendered or has been asked to render a final decision on a specific issue or claim.

b. This guidance does not apply to disputes arising from personal injury, workmen's compensation claims, contractor-subcontractor relations, labor disputes, performance related issues normally handled by Carrier Review Boards convened under the authority of MTMC Regulation 15–1 or to suspension and debarment activities conducted under FAR 9.406.

3. References

a. Contract Disputes Act, 41 U.S.C. 601–613.

b. Administrative Dispute Resolution Act, Pubic Law 101–552.

c. Alternative Means of Dispute resolution in the Administrative Process, 5 USC § 571, et seq.

d. Arbitration Statute, 9 USC, Chapter 1.

e. FAR Part 33, Protests, Disputes and Appeals, and its supplements.

f. Civil Justice Reform, Executive Order (E.O.) 12778, October 23, 1991.

4. Definitions

a. *Acquisition.* Acquisition is the acquiring of supplies or services by and for the use of the Federal Government through purchase or lease. The term acquisition is used in this guidance specifically includes contracting for goods and services as governed by the Federal Acquisition Regulation (FAR) and procurement of transportation and related services excepted by Part 47 of the FAR through the use of 49 U.S.C. section 10721 rate tenders and bills of lading; transportation requests; transportation warrants; and similar transportation forms customarily used by HQMTMC and its subordinate activities.

b. *Alternative dispute resolution.* Any procedure or combination of procedures voluntarily used to resolve issues in controversy without the need to resort to litigation.

c. *Arbitration.* Arbitration involves the use of a neutral arbitrator(s) who decides the submitted issues after reviewing evidence and hearing argument from the parties. The arbitrator's decision may or may not be binding. While the arbitrator's decision in nonbinding arbitration is only advisory, it may be highly persuasive. Binding arbitration, on the other hand, results in a final award which ordinarily is not subject to challenge. As used in this guidance, "arbitration" means non-ending arbitration.

d. *Dispute.* As used in this guidance, the term "dispute" refers to an issue in controversy, protest or claim submitted to MTMC by an interested party.

e. *Dispute resolution panel.* A MTMC ad hoc panel with authority and applicable technical expertise to resovle disputes.

f. *Facilitation.* Facilitation involves the use of a facilitator who helps the parties reach a decision or satisfactory resolution by conducting meetings and coordinating discussions, but does not become as invovled in the substantive issues as does a mediator. The facilitator does not render a decision; any decision must be reached by the parties themselves.

g. *Fact-Finding.* Fact-finding is the investigation of specified issues by a neutral individual who has subject-matter expertise. Fact-finding uses informal investigatory procedures designed to narrow factual or technical issues in dispute. The process usually results in a report, testimony, or advisory opinion.

h. *Interested Party.* The term "interested party" includes carriers, contractors, or any other entity which may have a dispute with MTMC. Federal Government employees, unions or installations are not considered interested parties for purposes of preventing a dispute under this guidance.

i. *Mediation.* Mediation involves the use of a neutral third party to assist the parties in negotiating an agreement. The mediator has no independent authority and does not render a decision; any decision must be reached by the parties themselves.

j. *Minitrial.* A minitrial is a structured settlement process in which each side presents an abbreviated summary of its case before senior officials of each party authorized to settle the case. A neutral advisor sometimes presides over the proceeding and will render an advisory opinion if asked to do so. Following the presentations, the officials seek to negotiate a settlement.

k. *Negotiation.* Negotiation is communication among people or parties in an effort to reach an agreement.

l. *Neutral.* A neutral is an impartial third party or parties who serves as mediator, facilitator, fact-finder, or arbitrator, or otherwise assists the parties in resolving disputes.

5. Policy

It is MTMC policy to try to resolve all acquisition issues disputes by mutual agreement and without litigation. Disputes presented for resolution under this guidance may include a "protest to the agency" within the meaning of FAR 33.103 and a "claim" within the meaning of the Contracts Disputes Act.

6. Responsibilities

a. Contracting officer/transportation manager. The MTMC official responsible for the acquisition or program activity giving rise to the dispute will be responsible for receiving such disputes filed pursuant to this guidance and assisting in the resolution of such disputes by procedures as deemed appropriate.

b. Office of the Staff Judge Advocate. The supporting Staff Judge Advocate office will be responsible for providing legal support to MTMC personnel involved in resolving disputes presented under this guidance and assisting in the resolution of such disputes by appropriate Dispute Resolution Panels or other selected ADR procedure. The attorneys assigned to the Offices of the Staff Judge Advocate of MTMC area commands will advise and assist acquisition officials and other MTMC personnel assigned to activities within their areas of responsibility participating in dispute resolution procedures. The legal adviser for MTMC Eastern Area-Europe (MTEA-Europe) will coordinate directly with the MTEA SJA Office.

The supporting office of the Staff Judge Advocate will receive and forward disputes at the applicable address listed in paragraph 8 below.

c. Office of Public Affairs, HQMTMC and Area Commands. The Offices of Public Affairs will assist the Dispute Resolution Panels in publicizing every successful use of ADR procedures by any MTMC activity.

7. Requests for Use of Ad Procedures

a. Interested parties desiring to submit their disputes for resolution under AD procedures established by this guidance may submit a written request referencing this guidance, to the head of the MTMC office involved in the acquisition or activity or to the appropriate MTMC legal office listed below:

(1) For disputes involving the activities at HQMTMC, the request should be mailed to: Office of the Staff Judge Advocate, HQMTMC (ATTN: MTJA), 5611 Columbia Pike, Falls Church, VA 22041–5050.

(2) For disputes involving activities of MTMC Eastern Area, including MTEA-

Europe, the request should be mailed to: Office of the Staff Judge Advocate, MTMC Eastern Area (ATTN: MTEA–JA), Building 42, Room 726, Bayonne, NJ 07002–5302.

(3) For disputes involving activities of MTMC Western Area, (including MTWA-Pacific), the request should be mailed to: Office of the Staff Judge Advocate, MTMC Western Area (ATTN: MTWA–JA), Building 1, Wing 4, Room 2403, Oakland Army Base, Oakland, CA 94626–5000.

b. Presentation of dispute. Request for use of AD procedure shall include the interested party's name, address and telephone number, including FAX number; the event or action involved including the identity of the contracting or transportation office; a detailed statement of all legal and factual grounds for the dispute, including copies of relevant documents; a request for a ruling; and a request for relief. All requests must be signed by an authorized representative of the interested party.

c. Time for presenting dispute. "Protests to the agency" within the meaning of FAR 33.1.3 shall be filed within the time periods set out in FAR 33.103(b)(2). Other complaints must be filed within 30 calendar days of the action giving rise to the dispute.

d. Upon receiving a request for using AD procedures, the responsible Contracting Officer/Transportation manager will coordinate with the supporting Staff Judge Advocate Office to determine whether AD is appropriate for resolution of the issues in controversy. If it is determined that AD is not appropriate for the controversy, the interested party will be promptly informed of the reasons for not using AD. Reasons for not using an AD procedure include: (1) Requirement for a definitive or authoritative resolution of the matter for precedential value and the AD proceeding is not likely to be accepted as an authoritative precedent.

(2) The matter involves a significant question of Government policy that requires additional procedures before a final resolution can be made.

(3) Maintaining established policies is of special importance and an individual AD decision would not likely reach results consistent with policy.

(4) The matter significantly affects persons or organizations who are not parties to the proceeding.

(5) A full public record is important and an AD proceeding cannot provide such a record.

(6) AD procedures would interfere with MTMC's need to maintain jurisdiction over the matter with authority to alter the disposition of the matter in light of changed circumstances.

e. Processing of the dispute. Within 10 working days of receipt of the complaint, the responsible Contracting Officer/Transportation Manager will notify the interested party of his/her choice of AD procedure to be used in resolving the dispute. Once an AD procedure has been agreed to by MTMC and the interested party, every effort will be made to resolve the issue within 30 calendar days from the date of that agreement.

f. Costs of AD procedure. Each party to the dispute will normally be responsible for the costs they incur in using AD procedures. This includes the cost of witness travel, affidavits, telephone calls, copying and similar administrative costs. The parties, however, may agree to share certain costs such as for an independent expert evaluation having mutual benefit.

g. Statute of limitations. Use of AD procedures under this guidance does not toll statute of limitations applicable to contract claims, protests and requests for review. When AD procedures are used subsequent to the issuance of a Contracting Officer's final decision, its use does not alter any of the time limitations or procedural requirements, See FAR 33.214(b).

h. Termination of AD procedure. MTMC or the interested party may terminate use of the AD procedure at any time upon giving written notice to the other party.

8. Dispute Resolution Panel

a. The Dispute Resolution Panel at HQMTMC will be composed of not less than three members and not more than five members selected as follows:

(1) If the dispute involves a carrier or an acquisition of transportation services processed under the Defense Traffic Management Regulation (DTMR) AR 55,355, or the Personal Property Traffic Management Regulation (PPTMR), DOD Directive 4500.34–R, the Assistant Deputy Chief of Staff for Operations (ADCSOPS), Transportation Services, or designee at Branch Chief level or above, will serve as the chairperson of the panel.

(2) If the dispute involves a FAR acquisition, the Principal Assistant Responsible for Contracting, or designee at Branch Chief level, will serve as the chairperson of the panel.

(3) If desired, the interested party may designate one member of the panel.

(4) To the extent possible, the other member(s) of the panel will be selected from other activities not directly involved in the dispute, and their technical background will be related to the issues in controversy.

b. The Dispute Resolution Panels at MTMC Eastern Area and at MTMC Western Area will be composed of not less than three members nor more than five members selected as follows: (1) If the dispute involves a carrier or an acquisition of transportation services, processed under the Defense Traffic Management Regulation (DTMR) or the Personal Property Traffic Management Regulation (PPTMR), AR 55–355, the G–3—Assistant Chief of Staff for Operations, or designee at Branch Chief level or above, will serve as the chairperson of the panel.

(2) If the dispute involves a FAR acquisition, the Chief of the Contracting Division, G4—Assistant Chief of Staff for Logistics, or designee at Branch Chief level, will serve as the chairperson of the panel.

(3) If desired, the interested party may designate one member of the panel.

(4) To the extent possible, the other member(s) of the panel will be selected by the chairperson from other activities not directly involved in the dispute and their technical background will be related to the issues in controversy.

9. Functions of the Dispute Resolution Panel

a. The Dispute Resolution Panel will have the authority, in coordination with the responsible Office of the Staff Judge Advocate, to select which dispute resolution method or procedure is best suited for the issues in controversy and reach a decision on the merits of those issues presented for resolution.

b. The Dispute Resolution Panel will be responsible for:

(1) Identifying the facts leading up to the issues in dispute.

(2) Meeting with representatives of the interested party as often as it is necessary to negotiate a mutually satisfactory resolution of the dispute.

(3) Obtaining the assistance of neutral subject matter experts when necessary to resolve the issues in dispute. The subject matter experts may be obtained from within MTMC, from other federal agencies, or the private sector.

(4) Considering the use of mediators, facilitators or nonbinding arbitration in appropriate cases when, after reasonable efforts, the dispute has not been resolved through negotiation.

(5) When agreement is reached, drafting an administratively final settlement agreement which will be signed by all the Panel members and authorized representatives of the interested parties.

(6) Drafting a decision document when, after exhausting all reasonable

efforts, the dispute was not resolved through informal dispute resolution procedures. The decision document will be signed by all Panel members and, if necessary, will serve as a basis for litigating the dispute. In the case of disputes under FAR contracts, the Dispute Resolution Panel decision document will constitute an advisory opinion and will not constitute a consideration of a final decision if one has been rendered. In case of disputes not arising under the FAR, the final decision document will be signed by the appropriate Transportation Manager.

(7) Preparing a report discussing the lessons learned by the Dispute Resolution Panel in the case, and recommending any appropriate improvements or modifications to the process. Copies will be provided, as appropriate, to the supporting MTMC legal office and to other interested staff activities.

10. Notification to Interested Parties of MTMC's Policy on the Use of Ad Procedures

All solicitations, contracts and transportation arrangements issued or awarded by MTMC acquisition activities shall contain a notice substantially as follows:

In furtherance of Federal policy and the Administrative Dispute Resolution Act of 1990 (AD Act, Pub. L. 101–552, the Military Traffic Management Command will try to resolve all acquisition issues in controversy by mutual agreement of the parties.

Interested parties are encouraged to use alternative dispute resolution procedures to the maximum extent practicable in accordance with the authority and the requirements of the AD Act and MTMC Guidance 715–XX. A copy of MTMC Guidance 715–XX can be obtained by making a request to the address listed below.

Interested parties may request the use of alternative dispute resolution procedures by submitting a written request (referencing MTMC Guidance 715–XX), to: (Insert the address of the responsible HQMTMC, MTEA or MTWA acquisition activity or legal office).

For the Commander:

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–12225 Filed 5–19–94; 8:45 am]

BILLING CODE 3710–08–M

Department of the Army

Corps of Engineers

Meeting: Environmental Advisory Board

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, (Public Law 92–463), this notice sets forth the schedule and proposed agenda of the forthcoming meeting of the Chief of Engineers Environmental Advisory Board (EAB). The meeting is open to the public.

DATES: The meeting will be held from 9 a.m., Tuesday, June 7, 1994 to 10:30 a.m., Friday, June 10, 1994.

ADDRESSES: The meeting will be held at the Holiday Inn—Northwest in Omaha, Nebraska 68154.

FOR FURTHER INFORMATION CONTACT: Dr. William L. Klesch, Chief, Office of Environmental Policy, Office of the Chief of Engineers, Washington, DC. 20814–1000, (202) 272–0166.

SUPPLEMENTARY INFORMATION: The schedule and proposed agenda of the 52nd Meeting of the EAB, "Hazardous, Toxic and Radioactive Waste (HTRW) Materials Management" is:

Tuesday, June 7, 1994

0900 Workshops I–IV (Topics: Executive Orders 12873 and 12856; Coalition Building; and Institutional Barriers to HTRW Innovation and Effective Implementation)
1600 Plenary Session for Workshops
1700 Adjourn

Wednesday, June 8, 1994

0800 Welcome, Charge to the Board, Old and New Business
0945 Panel Discussion I: Background Overview of Corps HTRW Activities
1300 Panel Discussion II: Improving Relationships—Partnering for Innovative Technology Development
1540 Panel Discussion III: Improving Relationships—Applications of Remediation and Waste Management
1740 Adjourn

Thursday, June 9, 1994

0800 Panel Discussion IV: HTRW Management
1030 Adjourn

Friday, June 10, 1994

0800 Report to Chief of Engineers and Response
1030 Comments from Public and Adjourn

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–12367 Filed 5–19–94; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11351–000 Tennessee]

Debra Whitehead; Availability of Final Environmental Assessment

May 16, 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 minor license for the proposed Old Columbia Dam Project located on the Duck River in Muray County, near Columbia, Tennessee, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 3308, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 94–12356 Filed 5–19–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP89–161–030]

ANR Pipeline Company; Reconciliation Report

May 16, 1994.

Take notice that on April 29, 1994, ANR Pipeline Company (ANR) tendered for filing a Reconciliation Report of activity under ANR's Gas Inventory Charge (GIC) which was in effect from November 1, 1992 to October 31, 1993.

Consistent with the requirements of Section 23, within six months after the period commencing on November 1, 1992 and ending upon the termination of Rate Schedule ISP on October 31, 1993 (Interim Period), ANR states that it has prepared the instant Reconciliation Report. ANR further states that the Reconciliation Report compares: (a) Total Collections by ANR consisting of (1) GIC charges under Rate Schedule ISP and SGS and (2) revenues attributable to the gas cost component of ANR's commodity rate under Rate Schedules

ISP, SGS, and ISS; with (b) ANR's total Gas Purchase Costs.

ANR states that a copy of this report will be made available upon request by all parties that have paid GIC charges, and to interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before May 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. Copies of this filing are on a file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–12358 Filed 5–19–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–230–000]

Florida Gas Transmission Company; Refund Report

May 16, 1994.

Take notice that on April 29, 1994 Florida Gas Transmission Company (FGT) tendered for filing a refund report pursuant to section 26 of the General Terms and Conditions of its FERC Gas Tariff, Third Revised Volume No. 1.

FGT states that by this filing, FGT is reporting a refund of the credit balance in its Account 191 attributable to gas purchases made prior to implementing its restructured transportation services pursuant to Order No. 636 on November 1, 1993. FGT states that it is refunding to its former sales customers a total of $6,320,050 reflecting its Account 191 balance as of March 31, 1994 adjusted to eliminate unpaid accruals and to add interest for the month of April.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 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. 94–12353 Filed 5–19–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–230–001]

Florida Gas Transmission Company; Compliance Filing

May 16, 1994.

Take notice that on May 10, 1994 Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with an effective date of April 29, 1994:

Second Revised Sheet No. 1
Original Sheet No. 8C

On April 29, 1994 FGT filed its Initial PGA Termination Report (Report) as required by section 26 of the General Terms and Conditions of FGT's FERC Gas Tariff, Third Revised Volume No. 1. The Report includes, among other things, a schedule titled Distribution of Refunds. Specifically, this schedule which is identified as Schedule D1, Text ID 08, Workpaper 6 in the Report, contains the name, sales volume, sales volume percent and refund amount for each former sales customer receiving a refund.

FGT states that Original Sheet No. 8C contains the same information as shown on page 1 of the Distribution of Refunds. FGT further states that the purpose of the instant filing is to make this page a part of FGT's FERC Gas Tariff. The instant filing does not alter any other aspect of the April 29, 1994 filing and in no way impacts refunds previously distributed.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before May 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary

[FR Doc. 94–12354 Filed 5–19–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–120–001]

Koch Gateway Pipeline Company; Proposed Changes in FERC Gas Tariff

May 16, 1994.

Take notice that on April 26, 1994, Koch Gateway Pipeline Company (Koch Gateway) requested deletion of the following incorrectly numbered tariff sheets in its FERC Gas Tariff, Fifth Revised Volume No. 1:

First Revised Sheet No. 1104, issued January 31, 1994
First Revised Sheet No. 2700, issued January 31, 1994

Koch Gateway states that the above referenced tariff sheets were filed on January 31, 1994 in Docket No. RP94–120–000, to be effective March 1, 1994. Koch Gateway states that the sheet numbering error was corrected with the filing of revised tariff sheets under this docket on March 31, 1994.

Koch Gateway also states that this filing is being mailed to all parties on the official service list created by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's regulations. All such protests should be filed on or before May 23, 1994. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–12352 Filed 5–19–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP93–172–005 and RP94–238–000]

Panhandle Eastern Pipe Line Company; Proposed Changes in FERC Gas Tariff

May 16, 1994.

Take notice that on May 10, 1994, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, with a proposed effective date of July 1, 1994.

Panhandle states that this filing is made in compliance with the Commission's March 24, 1994 Order on Technical Conference and Accepting Compliance Filing which required

certain changes to Panhandle's filings and to the tariff mechanisms governing the close-out of Panhandle's Account No. 191. Panhandle also states that it has included in this filing the true-up for prior period adjustments received within nine months of the termination of its PGA.

Panhandle also states that it is proposing a Reservation Surcharge applicable to Rate Schedules FT and EFT and a Commodity Surcharge applicable to Rate Schedules SCT, IT, and EIT to provide for the recovery of costs the Commission has excluded from former sales customers' direct bills in connection with the close out of Panhandle's Account No. 191.

Panhandle states that copies of its filing have been served on all jurisdictional customers, all parties to this proceeding, and applicable state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 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 in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–12350 Filed 5–19–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–1053–000]

Puget Sound Power & Light Company; Filing

May 16, 1994.

Take notice that on April 22, 1994, Puget Sound Power & Light Company tendered for filing an amendment in the above-referenced docket.

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 27, 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. 94–12355 Filed 5–19–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–186–002]

Questar Pipeline Company; Proposed Changes in FERC Gas Tariff

May 16, 1994.

Take notice that on May 9, 1994, Quester Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, with an effective date of May 9, 1994:

Second Substitute First Revised Sheet No. 5A.1
First Revised Sheet No. 40
First Revised Sheet No. 97

Quester states that this filing is being filed pursuant to 18 CFR 2.104 and 154.63(a)(1) and in compliance with the Commission's April 22, 1994, order in Docket Nos. RP–94–186–000, and 001.

Quester states further that copies of this filing were served upon Mountain Fuel Supply Company, Colorado Interstate Gas Company and the public service commissions of Utah and Wyoming.

Any person desiring to protest said filing should file a protest with the Federal Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before May 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. Copies of this filing are on a file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–12359 Filed 5–19–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–245–000]

South Georgia Natural Gas Company; Proposed Changes in FERC Gas Tariff

May 16, 1994.

Take notice that on May 12, 1994, South Georgia Natural Gas Company (South Georgia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to be effective May 1, 1994.

First Revised Sheet No. 82
First Revised Sheet No. 83
First Revised Sheet No. 13
First Revised Sheet No. 32

South Georgia states that the purpose of this filing is to revise its fuel retention procedures to implement a fuel tracker to address its shippers' concerns over the current pro rata fuel retention procedures. South Georgia has requested all waivers necessary to make these sheets effective May 1, 1994.

South Georgia states that copies of the filing will be served upon its shippers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before May 23, 1994. Protests will not be considered by the Commission in determining the 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. 94–12351 Filed 5–19–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–66–005]

Texas Eastern Transmission Corporation; Proposed Changes in FERC Gas Tariff

May 16, 1994.

Take notice that pursuant to the Commission's January 19, 1994 order in Docket Nos. RP93–192–002 and RP93–192–004, and for purposes of supplementing the January 14, 1994 filing in Docket No. RP94–66–002, Texas Eastern Transmission Corporation (Texas Eastern), on May 11, 1994, tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheet to reflect in

§ 15.2(C)(4) of its General Terms and Conditions that separate revenue and cost of service comparisons are performed for both Rate Schedules LLIT and VKIT:

Sub First Revised Sheet No. 627A

The proposed effective date of the tariff sheet is January 1, 1994.

Texas Eastern states that copies of its filing have been served on all firm customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before May 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. Copies of this filing are on a file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–12357 Filed 5–19–94; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Cases Filed During the Week of April 8 Through April 15, 1994

During the Week of April 8 through April 15, 1994, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: May 11, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[During the Week of April 8 through April 15, 1994]

Date	Name and location of applicant	Case No.	Type of submission
4/11/94	Gulf/Danny R. Holton, Lubbock, TX	RR300–257	Request for Modification/Rescission in the Gulf Refund Proceeding. If granted: The April 3, 1992 Dismissal Letter (Case No. RF 300–19558) issued to Danny R. Holton would be modified regarding the firm's Application for Refund submitted in the Gulf refund proceeding.
4/12/94	Consolidated Oil & Gas, Inc., Denver, Co	LEE–0109	Exception to the Reporting Requirements. If granted: Consolidated Oil & Gas, Inc. would not be required to file Form EIA–23, "Annual Survey of Domestic Oil and Gas Reserves."
4/13/94	William Valentine & Sons, Inc. et al. Washington, DC.	LEE–0123	Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 C.F.R. Part 205, Subpart V, in connection with January 24, 1990 Settlement Agreement entered into with the U.S. District Court for the District of Wyoming.
4/15/94	Morrison & Foerster, San Francisco, CA	LFA–0366	Appeal of an Information Request Denial. If granted: The March 12, 1994 Freedom of Information Request Denial issued by the Office of the FOI and Privacy Acts Branch would be rescinded, and Morrison & Foerster would receive access to a report entitled "American Nuclear Guinea Pigs: Three Decades of Radiation Experiments on U.S. Citizens."

REFUND APPLICATIONS RECEIVED

[Week of April 8 to April 15, 1994]

Date received	Name of firm	Case No.
4/8/94 thru 4/15/94	Crude Oil Refund Application Received	RF272–95220 thru RF272–95227
4/14/94	Richmond Steel & Welding, Inc	RF321–20970
4/14/94	Hartsfield Texaco	RF321–20971
4/14/94	Harry's Texaco	RF321–20972

[FR Doc. 94–12421 Filed 5–19–94; 8:45 am]

BILLING CODE 6450–01–P

Cases Filed During the Week of April 1 Through April 8, 1994

During the week of April 1 through April 8, 1994, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: May 11, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Apr. 1 through Apr. 8, 1994]

Date	Name and location of applicant	Case No.	Type of submission
Apr. 5, 1994	R & R Oil, Inc., Gillette, WY	LEE–0107	Exception to the reporting requirements. If granted: R & R Oil, Inc. would not be required to file Form EIA–782B, "Resellers'/Retailers' Monthly Petroleum Product Sales Report."
Do	Calaveras Cement Company, Los Angeles, CA.	RR272–128	Request for modification/rescission in the crude oil refund proceeding. If granted: The May 21, 1993 Dismissal Letter (Case No. RF272–25984) issued to Calaveras Cement Company would be modified regarding the firm's Application for Refund submitted in the Crude Oil refund proceeding.
Do	Wells Oil Company, Tucson, AZ	LEE–0108	Exception to the reporting requirements. If granted: Wells Oil Company would not be required to file Form EIA–782B, "Resellers'/Retailers' Monthly Petroleum Product Sales Report."
Apr. 6, 1995	Utilities, Transporters & Manufacturers, Gladwyne, PA.	LRR–0017	Request for modification/rescission. If granted: The February 9, 1994 Dismissal Letter (Case No. LRR–0014) issued to a group of Utilities, Transporters & Manufacturers would be modified regarding the grant of an evidentiary hearing to provide OXY the opportunity to present testimony.
Do	The National Security Archive, Washington, DC.	LFA–0365	Appeal of an information request denial. If granted: The March 18, 1994 Freedom of Information Request Denial issued by the Office of Resource Management would be rescinded, and The National Security Archive would receive access to information on the export of heavy water from the United States to Israel in 1983.
Apr. 8, 1994	Dane Energy Company, Washington, DC.	LEF–0122	Implementation of special refund proceeding. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 C.F.R. Part 205, Subpart V, in connection with December 16, 1993 Consent Order that the firm entered into with the Department of Energy.

REFUND APPLICATIONS RECEIVED

[Week of April 1 to April 8, 1994]

Date	Name of Firm	Case No.
4/4/94	D & W Gulf	RF300–21786
4/4/94	State Escrow Distribution	RF302–12
4/1/94 thru 4/8/94	Crude Oil Refund Applications Received	RF272–95298 thru RF272–95219

[FR Doc. 94–12418 Filed 5–19–94; 8:45 am]

BILLING CODE 6450–01–P

Issuance of Proposed Decision and Order During the Week of April 11 Through April 15, 1994

During the week of April 11 through April 15, 1994, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR part 205, subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within 10 days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays.

Dated: May 11, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

Noltgas Propane Fuel & Supply, New Holland, PA, LEE–0098 Reporting Requirements

Noltgas Propane Fuel & Supply filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA–782B, the "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In considering the request, the DOE found that the firm was not suffering a gross inequity or serious hardship. Accordingly, on April 15, 1994, the DOE issued a Proposed Decision and Order

determining that the exception request should be denied.

[FR Doc. 94–12419 Filed 5–19–94; 8:45 am]
BILLING CODE 6450–01–P

Issuance of Decisions and Orders During the Week of March 21 Through March 25, 1994

During the week of March 21 through March 25, 1994, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

OXY USA, Inc., 3/23/94, LFA–0359

OXY USA, Inc. (OXY) filed an Appeal from a determination issued by the Economic Regulatory Administration (ERA) of the Department of Energy in response to a request from OXY under the Freedom of Information Act (FOIA). OXY sought an ERA audit report of Cities Service Company. The only issue was whether the ERA properly considered a memorandum from Janet Reno, the Attorney General (Reno Memorandum) as part of the public interest analysis in its decision not to make a discretionary release of the report. In considering the Appeal, the DOE found that ERA properly considered the Reno Memorandum in its finding that release of the report would cause a reasonably foreseeable harm to the ongoing litigation involving OXY. Accordingly, the Appeal was denied.

Refund Applications

Texaco Inc./Arriola Texaco, et al., 3/24/94, RF321–767 et al.

The DOE issued a Decision and Order in the Texaco Inc. refund proceeding concerning four Applications for Refund filed by retail outlets that purchased some of their Texaco products indirectly through Texaco jobbers. The DOE found that the applicants' estimates of the amount of product that they purchased from the jobbers were flawed. The applicants, however, had records of their annual gross revenues during the refund period. The DOE estimated their annual purchases using these revenue figures by first estimating for each year the amount of their revenues that was from gasoline sales. The DOE then divided this amount by an estimated average retail branded selling price that it calculated for each year of the refund period. The applicants were granted refunds based upon the purchase volume so calculated. The total refund granted was $5,826, including interest of $1,625.

Texaco Inc./Art's Texaco, 3/22/94, RF321–18636

The DOE issued a Decision and Order denying an Application for Refund filed by Arthur A. Balczarek on behalf of Art's Texaco in the Texaco Inc. Subpart V special refund proceeding. Mr. Balczarek was unable to satisfactorily document gallonage information for the period during which he operated the outlet. He did attempt to support his claim through the use of the National Petroleum News (NPN) Factbook. The DOE determined that this was not satisfactory evidence with which to document gallonage claim and therefore there was no basis on which the DOE could grant a refund to Mr. Balczarek.

Texaco Inc./ Diamond Point Texaco, 3/22/94, RF321–12125

The DOE issued a Decision and Order in the Texaco Inc. refund proceeding concerning an Application for Refund filed by Diamond Point Texaco, a retail outlet that purchased Texaco products from Poweram Oil Company, a Texaco jobber. Poweram had previously demonstrated that it had absorbed all of Texaco's alleged overcharges during the period for which Diamond Point sought a refund. Accordingly, Diamond Point could not have been injured by Texaco's alleged overcharges, and the application for refund was denied.

Texaco Inc. M&H Texaco, 3/24/94, RR321–17

Vernon Horne, the owner of two Texaco service stations, filed a Motion for Reconsideration of a Decision and Order that denied duplicate refund applications that he had filed for each station in the Texaco refund proceeding. Mr. Horne stated that he had signed both applications at the request of Federal Refunds, Inc. (FRI), the firm that had prepared the forms and submitted them to the Office of Hearings and Appeals. In considering the Motion, the DOE found that Mr. Horne erroneously filed the second applications because he was confused by FRI's sending him another form, and not for the purpose of obtaining duplicate refunds. Mr. Horne's refund claim for one of his stations was approved for the period in which it was directly supplied by Texaco. However, the DOE rejected Mr. Horne's claim for this station for the period January 1980 through January 1981, when it was supplied by Poweram Oil Co., a Texaco jobber. Poweram has previously established that during the period it absorbed Texaco's alleged overcharges and did not pass them through to its customers. The DOE also rejected Mr. Horne's refund claim for his second station since he submitted neither evidence to show that he operated it during the refund period nor the volume of motor gasoline that it purchased. The total amount of the refund granted by the DOE in this case was $978.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/Elliott Sav-on Gas, Inc. et al	RF304–14483	03/21/94
Clark Oil & Refining Corp./James Machowiak	RF342–289 ...	03/24/94
Washington Clark	RF342–290 ...	.....
Clark Oil & Refining Corp./Kim's Super 100	RF342–185 ...	03/24/94
Congoleum Corporation	RF272–56224	03/21/94
Congoleum Corporation	RD272–56224	.....
Enron Corp./Litchfield Gas Company	RF340–128 ...	03/23/94
P&H Gas Company	RF340–138 ...	.....
Bert Schrank LP-Gas Company	RF340–140 ...	.....
Fiore Trucking & Contracting Company	RF272–75925	03/24/94
Permit Haulers, Inc. D/B/Ablakeman Corporation	RF272–75974	.....
Gulf Oil Corp./Texas Sand & Gravel Co., Inc. et al	RF300–13151	03/21/94
Gulf Oil Corp./W.G. Ingram Oil Co.	RF300–20921	03/21/94
Gulf Oil Corp./Wholesale LP Gas Co., Inc. et al	RF300–20522	03/23/94
Oil Center Research, Inc. et al	RF272–92523	03/24/94

Texaco Inc./Bob Moorman Texaco	RF321–847	03/21/94
Howard's Texaco	RF321–1060	
Larry's Texaco	RF321–8476	
Texaco Inc./Country Club Texaco et al	RF321–151	03/24/94
Texaco Inc./Drayton Hall Trust et al	RF321–7119	03/21/94
Texaco Inc./Ken's Texaco et al	RF321–19161	03/24/94
Texaco Inc./Loveland Texaco et al	RF321–18081	03/24/94
Texaco Inc./Russell's Texaco et al	RF321–7133	03/24/94
Texaco Inc./The B.F. Goodrich Company et al	RF321–19017	03/21/94
The Olympic Homecare Products Co	RF272–57183	03/21/94
The Olympic Homecare Products Co	RD272–57183	
Wheels, Inc	RF272–54666	03/21/94

Dismissals

The following submissions were dismissed:

Name	Case No.
Acorn Products	RF272–93399
Al Tech Specialty Steel Corp	RF272–95124
Andy's Brake & Alignment	RF321–17183
AT&T Technologies, Inc	RF272–67238
Bluffton Utilities	RF272–93654
Borough of Derry	RF272–88625
Borough of Englewood Cliffs	RF272–88602
Carsalve Servicenter	RF321–20318
Chris Hansen Texaco	RF321–20319
City of Davis	RF272–88635
City of De Witt	RF272–88622
City of Deming	RF272–88640
City of Denville	RF272–88641
City of Fairbanks	RF272–88603
City of Farmington	RF272–88606
City of Festus	RF272–88607
Corcoran Joint Unified School District	RF272–81724
Country Club Texaco	RF321–20334
Crowley-Sheppard Asphalt Co	RF272–93495
Dewey Township Schools	RF272–88626
Dodgeville Central School	RF272–88629
Harley Davidson, Inc	RF272–95118
Herman H. Howard Sons	RF272–93018
Lakeside Texaco	RF321–20383
Lollis Texaco	RF321–15960
Marsellis Warner Corp	RF272–93062
Matthew's Texaco/VPA Auto Repair	RF321–20577
Parkway Texaco	RF321–20404
Parkway View S/C	RF321–20303
Pat & Mike's Texaco	RF321–20384
Phillips County	RF272–88653
Schuylkill Metals Corp	RF272–93013
Terrell Farms Farm Acct	RF272–93157
Town of Babylon	RF272–88216
Township of Fairview	RF272–88605
Travelers Texaco	RF321–20164
Village of Dupo	RF272–88613
Wayne County	RF272–87911
Wayne Dunagan	RF272–92962
Yorktowne Texaco	RF321–20403

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: May 11, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 94–12420 Filed 5–19–94; 8:45 am]

BILLING CODE 6450–01–P

Issuance of Proposed Decisions and Orders During the Week of April 4 Through April 8, 1994

During the week of April 4 through April 8, 1994, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR part 205, subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays.

Dated: May 11, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

May-Slade Oil Co., Klamath Falls, OR, LEE–0091, Reporting Requirements

May-Slade Oil Co. filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA–782B, the "Reseller/Retailers' Monthly Petroleum Product Sales Report." In considering this request, the DOE found that the firm was not suffering gross inequity or serious hardship. Accordingly, on April 4, 1994, the DOE issued a Proposed Decision and Order determining that the exception request should be denied.

Pledger Oil Co., Kentwood, LA, LEE–0080, Reporting Requirements

Pledger Oil Co. filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA–782B, the "Reseller/Retailers' Monthly Petroleum Product Sales Report." In considering the request, the DOE found that the firm was not suffering gross inequity or serious hardship. Accordingly, on April 8, 1994, the DOE issued a Proposed Decision and Order determining that the exception request should be denied.

[FR Doc. 94–12422 Filed 5–19–94; 8:45 am]

BILLING CODE 6450–01–P

Proposed Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals Department of Energy.

ACTION: Notice of proposed implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed procedures for disbursement of $18,853.02, plus accrued interest, in alleged crude oil overcharges obtained by the DOE under the terms of a Remedial Order entered into with Petroleum Carrier Company, Inc., Max B. Penn, and Rodney Siegfried, Case No. LEF–0119. The OHA has tentatively determined that the funds obtained through this Remedial Order, plus accrued interest, will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges.

DATES AND ADDRESSES: Comments must be filed in duplicate within 30 days of publication of this notice in the **Federal Register**, and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should display a reference to case number LEF–0119.

FOR FURTHER INFORMATION CONTACT: Richard T. Tedrow, Deputy Director Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, DC 20585 (202) 586–8018.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute to eligible claimants $18,853.02, plus accrued interest, obtained by the DOE under the terms of a Remedial Order entered into with Petroleum Carrier Company, Inc., Max B. Penn, and Rodney Siegfried on June 26, 1987. The funds were paid towards the settlement of alleged violations of the DOE price and allocation regulations involving the sale of crude oil during the period June 1974 through December 1977.

The OHA has proposed to distribute the Remedial Order funds in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986) (the MSRP). Under the MSRP, crude oil overcharge monies are divided between the federal government, the states, and injured purchasers of refined petroleum products. Refunds to the states would be distributed in proportion to each state's consumption of petroleum products during the price control period. Refunds to eligible purchasers would be based on the number of gallons of petroleum products which they purchased and the degree to which they can demonstrate injury.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to provide two copies of their submissions. Comments must be submitted within 30 days of publication of this notice in the **Federal Register** and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, SW., Washington, DC 20585.

Date: May 13, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

Implementation of Special Refund Procedures

Names of Firms: Petroleum Carrier Company, Inc., Max B. Penn, Rodney Siegfried
Date of Filing: December 7, 1993
Case Number: LEF–0119

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. 10 CFR 205.281. These procedures are used to refund monies to those injured by actual or alleged violations of the DOE price regulations.

In this Decision and Order, we consider a Petition for Implementation of Special Refund Procedures filed by the ERA on December 7, 1993, for crude oil overcharge funds. The funds at issue in this petition were obtained from Petroleum Carrier Company, Inc., Max B. Penn, and Rodney Siegfried

(hereinafter collectively referred to as "PCCI"). This Office issued a Remedial Order to PCCI finding violations of the crude oil pricing regulations during the period from June 1974 through December 1977. *Petroleum Carrier Company, Inc.*, 16 DOE ¶ 83,009 (1987). That Order required PCCI to remit $2,569,093 ($1,163,865.17 resulting from crude oil violations, plus $1,405,227.83 in interest accrued through March 31, 1984) to the DOE. The DOE received $18,853.02 on December 6, 1993.* This Decision and Order establishes the OHA's procedures to distribute those funds, as well as the remainder of the settlement when it is remitted.

The general guidelines which the OHA may use to formulate and implement a plan to distribute refunds are set forth in 10 CFR part 205, subpart V. The subpart V process may be used in situations where the DOE cannot readily identify the persons who may have been injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981). We have considered the ERA's request to implement Subpart V procedures with respect to the monies received from PCCI and have determined that such procedures are appropriate.

I. Background

On July 28, 1986, the DOE issued a Statement of Modified Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986) (the SMRP). The SMRP, issued as a result of a court-approved Settlement Agreement *In re: The Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378 (D. Kan. 1986), *reprinted in* 6 Federal Energy Guidelines ¶ 90,501 (the Stripper Well Agreement), provides that crude oil overcharge funds will be divided among the states, the federal government, and injured purchasers of refined petroleum products. Eighty percent of the funds, and any monies remaining after all valid claims are paid, are to be disbursed equally to the states and federal government for indirect restitution.

Shortly after the issuance of the SMRP, the OHA issued an Order that announced its intention to apply the Modified Policy in all Subpart V proceedings involving alleged crude oil violations. Order Implementing the Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 29689 (August 20, 1986). In that Order, the OHA solicited comments concerning the appropriate procedures to follow in processing refund applications in crude oil refund proceedings. On April 6, 1987, the OHA issued a Notice analyzing the numerous comments and setting forth generalized procedures to assist claimants that file refund applications for crude oil monies under the Subpart V regulations. 52 Fed. Reg. 11737 (April 10, 1987) (the April 10 Notice).

The OHA has applied these procedures in numerous cases since the April 10 Notice, *e.g.*, *New York Petroleum, Inc.*, 18 DOE ¶ 85,435 (1988) (*New York Petroleum*); *Shell Oil Co.*, 17 DOE ¶ 85,204 (1988); *Ernest A. Allerkamp*, 17 DOE ¶ 85,079 (1988) (*Allerkamp*), and the procedures have been approved by the United States District Court for the District of Kansas as well as the Temporary Emergency Court of Appeals (TECA). Various States filed a Motion with the Kansas District Court, claiming that the OHA violated the Stripper Well Agreement by employing presumptions of injury for end-users and by improperly calculating the refund amount to be used in those proceedings. *In re: The Department of Energy Stripper Well Exemption Litigation*, 671 F. Supp. 1318 (D. Kan 1987), *aff'd*, 857 F. 2d 1481 (Temp. Emer. Ct. App. 1988). On August 17, 1987, Judge Theis issued an Opinion and Order denying the States' Motion in its entirety. The court concluded that the Stripper Well Agreement "does not bar [the] OHA from permitting claimants to employ reasonable presumptions in affirmatively demonstrating injury entitling them to a refund." *Id.* at 1323. The court also ruled that, as specified in the April 10 Notice, the OHA could calculate refunds based on a portion of the M.D.L. 378 overcharges. *Id.* at 1323–24.

II. The Proposed Refund Procedures

A. Refund Claims

We now propose to apply the procedures discussed in the April 10 Notice to the crude oil Subpart V proceeding that is the subject of the present determination. As noted above, $18,853.02 of an alleged crude oil violation, plus interest, is covered by this proposed Decision. We have decided to reserve the full twenty percent of the alleged crude oil violation amount, or $3,770.60, plus interest, for direct refunds to claimants, in order to ensure that sufficient funds will be available for refunds to injured parties.

The process which the OHA will use to evaluate claims based on alleged crude oil violations will be modeled after the process the OHA has used in Subpart V proceedings to evaluate claims based upon alleged overcharges involving refined products. *E.g.*, *Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 (1986) (*Mountain Fuel*). As in non-crude oil cases, applicants will be required to document their purchase volumes of covered products and prove that they were injured as a result of the alleged violations. Generally, a covered product is any product that was either covered by the Emergency Petroleum Allocation Act of 1973, 15 U.S.C. §§ 751–760, or if the product was purchased from a crude oil refinery or originated in a crude oil refinery. See *Great Salt Lake Minerals & Chem. Corp.*, 23 DOE ¶ 88,118, at 88,305 (1993). Applicants who were end-users or ultimate consumers of petroleum products, whose businesses are unrelated to the petroleum industry, and who were not subject to the DOE price regulations are presumed to have been injured by any alleged crude oil overcharges. In order to receive a refund, end-users need not submit any further evidence of injury beyond the volume of petroleum products purchased during the period of price controls. *E.g.*, *A. Tarricone, Inc.*, 15 DOE ¶ 85,495, at 88,893–96 (1987). However, the end-user presumption of injury can be rebutted by evidence which establishes that the specific end-user in question was not injured by the crude oil overcharges. *E.g.*, *Berry Holding Co.*, 16 DOE ¶ 85,405, at 88,797 (1987). If an interested party submits evidence that is sufficient to cast serious doubt on the end-user presumption, the applicant will be required to produce further evidence of injury. *E.g.*, *New York Petroleum*, 18 DOE at 88,701–03.

Reseller and retailer claimants must submit detailed evidence of injury and may not rely on the presumptions of injury utilized in refund cases involving refined petroleum products. They can, however, use econometric evidence of the type employed in the *Report by the Office of Hearings and Appeals to the United States District Court for the District of Kansas, In Re: The Department of Energy Stripper Well Exemption Litigation, reprinted in* 6 Fed. Energy Guidelines ¶ 90,507 (1986). Applicants who executed and submitted a valid waiver pursuant to one of the escrows established in the Stripper Well Agreement have waived their rights to apply for crude oil refunds under Subpart V. *Mid-America Dairyman, Inc*

* No additional monies are expected

v. *Herrington*, 878 F. 2d 1448 (Temp. Emer. Ct. App. 1989); *accord Boise Cascade Corp.*, 18 DOE ¶ 85,970 (1989).

Refunds to eligible claimants who purchased refined products will be calculated on the basis of a volumetric refund amount derived by dividing the alleged crude oil violation amounts involved in this determination ($18,853.02) by the total consumption of petroleum products in the United States during the period of price controls (2,020,997,335,000 gallons). *Mountain Fuel*, 14 DOE at 88,868 n.4.

As we stated in previous Decisions, a crude oil refund applicant will be required to submit only one application for crude oil overcharge funds. *E.g., Allerkamp*, 17 DOE at 88,176. Any party that has previously submitted a refund application in the crude oil refund proceedings need not file another application. That previously filed application will be deemed to be filed in all crude oil proceedings as the procedures are finalized. The DOE has established June 30, 1994, as the final deadline for filing an Application for Refund from the crude oil funds. See 58 F.R. 26,318 (May 3, 1993). It is the policy of the DOE to pay all crude oil refund claims filed within this deadline at the rate of $0.0008 per gallon. However, while we anticipate that applicants that filed their claims within the original June 30, 1988 deadline will receive a supplemental refund payment, we will decide in the future whether claimants that filed later Applications should receive additional refunds. *E.g., Seneca Oil Co.*, 21 DOE ¶ 85,327 (1991). Notice of any additional amounts available in the future will be published in the **Federal Register**.

B. Payments to the States and Federal Government

Under the terms of the SMRP, we propose that the remaining eighty percent of the alleged crude oil violation amounts subject to this Decision, or $15,082.42, plus interest, should be disbursed in equal shares to the states and federal government for indirect restitution. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Stripper Well Agreement. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Stripper Well Agreement.

It Is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Petroleum Carrier Company, Inc., Max B. Penn, and Rodney Siegfried pursuant to the Remedial Order executed on June 26, 1987 will be distributed in accordance with the foregoing Decision.

[FR Doc. 94–12423 Filed 5–19–94; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

(ER–FRL–4711–5)

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared May 2, 1994 Through May 6, 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 FR dated April 08, 1994 (59 FR 16807).

Draft EISs

ERP No. DA–COE–K32038–CA Rating EC2, Oakland Outer and Inner Harbors, Deep Draft Navigation Improvements, Updated Information, Alcatraz Dredge Material Disposal Site Changed Conditions, Implementation, Alameda County, CA.

SUMMARY: EPA had environmental concerns about possible water quality impacts at the Bay Farm Borrow site, and possible groundwater and social impacts at the Galbraith Golf Course site.

Final EISs

ERP No. F–AFS–L65198–OR, Ochoco National Forest and Crooked River National Grassland Revised Land and Resource Management Plan for Standards and Guidelines Regarding Oil and Gas Leasing, Implementation, Grant, Crook, Wheeler, Jefferson and Harney Counties, OR.

SUMMARY: EPA provided no formal written comments. Based on review of the final EIS. EPA had no objections to the preferred alternative as it is described in the EIS.

ERP No. F–COE–K34006–CA, Monterey Peninsula Water Supply Project, New Padres Dam and Reservoir Construction, COE Section 404 Permit, Carmel River, Monterey County, CA.

SUMMARY: EPA had environmental concerns about the Clean Air Act Conformity analysis. The FEIS satisfactorily responded to most of EPA's concerns raised on prior NEPA documents for the project.

ERP No. F–FTA–L40200–OR Hillsboro Corridor Transit Improvements, Implementation, Between S.W. 185th Avenue and downtown Hillsboro, Funding, Washington, Clackamas and Multnomah Counties, OR and Clark County, WA.

SUMMARY: EPA provided no formal written comments. Based on review of the final EIS. EPA had no objections to the preferred alternative as it is described in the EIS.

Dated: May 17, 1994.

Marshall Cain,

Senior Legal Advisor, Office of Federal Activities.

[FR Doc. 94–12425 Filed 5–19–94; 8:45 am]

BILLING CODE 6560–50–U

[FRL–4887–1]

Disclosure of Confidential Business Information Obtained Under the Comprehensive Environmental Response, Compensation and Liability Act to EPA Contractor Science Applications International Corporation (SAIC) and Subcontractor TechLaw Inc.

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for comment.

SUMMARY: EPA hereby complies with the requirements of 40 CFR 2.310(h) for authorization to disclose to its contractor, Science Applications Corporation (hereinafter "SAIC"), of Falls Church, Virginia and subcontractor TechLaw Inc. of San Francisco, California and Denver, Colorado, Superfund confidential business information ("CBI") which has been submitted to EPA Region 9, Hazardous Waste Management Division, Office of Superfund Programs.

FOR FURTHER INFORMATION CONTACT: Judith Walker, Office of Superfund Programs, Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–2334.

SUPPLEMENTARY INFORMATION:

Notice of Required Determinations, Contract Provisions and Opportunity to Comment

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") as amended, (commonly known as "Superfund") requires completion of enforcement activities at Superfund sites in concert with other site events. The Freedom of

Information Act (FOIA) requires that EPA provide requested information to other parties. EPA has entered into a contract, No. 68–W4–0021, with SAIC and its subcontractor TechLaw Inc. for enforcement and FOIA support services. EPA Region 9 has determined that disclosure of CBI to SAIC and its subcontractor TechLaw employees is necessary in order that they may carry out the work required by that contract with EPA. The contract complies with all requirements of 40 CFR 2.301(h)(2)(ii), incorporated by reference into 40 CFR 2.301(h)(2). EPA Region 9 will require that each SAIC and subcontractor TechLaw Inc. employee sign a written agreement that he or she: (1) Will use the information only for the purpose of carrying out the work required by the contract; (2) shall refrain from disclosing the information to anyone other than EPA without the prior written approval of each affected business or of an EPA legal office; and (3) shall return to EPA all copies of the information (and any abstracts or extracts therefrom) upon request from the EPA program office, whenever the information is no longer required by SAIC and TechLaw Inc., for performance of the work required by the contract. These non-disclosure statements shall be maintained on file with the Project Officer. SAIC and TechLaw Inc. employees will be trained on Superfund CBI requirements.

EPA hereby advises affected parties that they have ten working days to comment pursuant to 40 CFR 2.301(b)(2)(ii), incorporated by reference into 40 CFR 2.310(h)(2). Comments should be sent to: Environmental Protection Agency, Region 9, Judith Walker (H–8–2), 75 Hawthorne Street, San Francisco, CA 94105.

Dated: May 9, 1994.

Jeff Zelikson,

Director, Hazardous Waste Management Division, EPA Region 9.

[FR Doc. 94–12286 Filed 5–19–94; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–4711–4]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075. Weekly receipt of Environmental Impact Statements Filed May 09, 1994 Through May 13, 1994 Pursuant to 40 CFR 1506.9.

EIS No. 940174, DRAFT EIS, FHW, NY, I–26 Mohawks River Crossing connecting NYS Thruway Interchange 26, I–890, NYS–5S and NYS–5 Const., Funding, US Coast Guard Permit and COE Section 404 Permit, Towns of Rotterdam and Glenville, Schenectady County, NY, Due: July 05, 1994, Contact: H.J. Brown (518) 472–3616.

EIS No. 940175, FINAL EIS, COE, NC, Wilmington Harbor Channel Widening and Navigation Improvement, Cape Fear River, Port of Wilmington, New Hanover and Brunswick Counties, NC, Due: June 20, 1994, Contact: Hugh Heine (910) 251–4070.

EIS No. 940176, FINAL EIS, AFS, ID, Prichard Creek Analysis Area, Land and Resource Management Plan, Implementation, Idaho Panhandle National Forests, Wallace Ranger District, Coeur d'Alene River, ID, Due: June 20, 1994, Contact: Don Garringer (208) 752–1221.

EIS No. 940177, DRAFT SUPPLEMENT, BLM, NV, Stateline Resource Area, Land and Resource Management Plan, Additional Alternative, Nye and Clark Counties, NV, Due: August 19, 1994, Contact: Jerry Wickstrom (702) 647–5000.

EIS No. 940178, FINAL SUPPLEMENT, AFS, CA, Cottonwood and Golf Timber Sales, Timber Harvesting in the Breckenridge Compartment, Updated Information Concerning Withdrawal of the Golf Timber Sale and Impacts on the California Spotted Owl and Reforestation for the Cottonwood Timber Sale, Sequoia National Forest, Greenhorn Ranger District, Kern County, CA, Due: June 20, 1994, Contact: Linda Brett (805) 871–2223.

EIS No. 940179, FINAL SUPPLEMENT, AFS, CA, CASA Guard Timber Sale, Timber Harvesting, Updated Information concerning impacts on the California Spotted Owl and Fish Creek Watershed and Reforestation, Sequoia National Forest, Cannell Meadow Ranger District, Tulare County, CA, Due: June 20, 1994, Contact: Ray Huber (619) 376–3781.

EIS No. 940180, DRAFT EIS, COE, WA, Auburn Thoroughbred Horse Racing Facility, Construction and Operation, COE Section 404 Permit and NPDES Permit, City of Auburn, King County, WA, Due: July 05, 1994, Contact: Stephen Martin (206) 764–3495.

EIS No. 940181, FINAL EIS, SFW, OR, South Tongue Point Land Exchange and Marine Industrial Park Development Project, Control and Management, Land Acquisition and Possible COE Section 10 and 404 Permits, Lewis and Clark National Wildlife Refuge, Clatsop County, OR, Due: June 20, 1994, Contact: Ben Harrison (503) 231–2254.

EIS No. 940182, FINAL EIS, COE, WI, IL, Fox River and Chain O'Lakes Area Recreational Boating Project, Special Area Management Plan, Implementation, COE Section 10 and 404 Permits, Algonquin Dam, Lake County, IL and McHenry County, WI, Due: June 20, 1994, Contact: Barbara Williams (312) 353–6464.

EIS No. 940183, FINAL EIS, AFS, WY, Grand Targhee Ski Area Expansion Master Development Plan, Implementation, Targhee National Forest, Teton County, WY, Due: June 20, 1994, Contact: Lynn Ballard (208) 624–3151.

EIS No. 940184, DRAFT SUPPLEMENT, NOA, NC, VA, FL, Coral and Coral Reefs Fishery Management Plan, Updated Information, Amendment 2 of the Gulf of Mexico and South Atlantic, Due: July 05, 1994, Contact: Terrance Leary (813) 228–2815.

EIS No. 940185, DRAFT EIS, BLM, WY, Creston/Blue Gap Natural Gas and Oil Development Project, Construction and Operation, Special-Use-Permit, Right-of-Way and COE Section 404 Permit, Carbon and Sweetwater Counties, WY, Due: July 19, 1994, Contact: Bob Tigner (307) 324–7171.

Dated: May 17, 1994

Marshall Cain,

Senior Legal Advisor, Office of Federal Activities.

[FR Doc. 94–12424 Filed 5–19–94; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Privacy Act of 1974; System of Records

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Amend record system.

SUMMARY: The Federal Retirement thrift investment Board (Board) is deleting the routine use provision in systems notice, FRTIB–1, Thrift Savings Plan Records, allowing disclosure of records on a Thrift Savings Plan (TS) participant to the Department of Veterans Affairs (VA) the Federal Housing Administration (FHA), and private financial institutions at the written request of the participant, and the provision allowing disclosure to beneficiaries of deceased participants.

The provision allowing disclosure to the VA, the FHA, and financial institutions is not necessary because the Board has revised its Privacy Act regulations to allow for disclosure to any person or entity at the written request of the participant. The provision

allowing disclosure to beneficiaries of deceased participants is not necessary because death extinguishes a participant's right to privacy.

EFFECTIVE DATE: The amendments will be effective on June 20, 1994 unless comments are received that would result in a contrary determination. If comments received result in a different determination, the document would be republished with the change.

ADDRESSES: Comments may be mailed or delivered to John J. O'Meara, Assistant General Counsel for Administration, Federal Retirement Thrift Investment Board 1250 H Street , NW. Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: John J. O'Meara, Assistant General Counsel for administration, (202) 942–1662, FAX (202) 942–1676.

SUPPLEMENTARY INFORMATION: The Board, which was established by the Federal Employees' Retirement System Act of 1986, maintains records similar to records of other Federal agencies and a Government-wide system of records on current and former participants in the TSP. The Department of Agriculture, National Finance Center, Thrift Savings Plan Service Office is the recordkeeper for TSP records subject to the Privacy Act.

Because of the large volume of verifications of account balance requests submitted by financial institutions at the request of TSP participants seeking a mortgage loan, the Board revised its Privacy Act rules to relieve the TSP Service Office of the burden of contacting private financial institutions to request the submission of an originally signed authorization. As the result of that change to the Board's Privacy Act rules, the routine use provision in subsection (d) of FRTIB–1, Thrift Savings Plan Records, in the Board's Notice of Systems of Records published at 55 FR 18949–18959 is no longer necessary. The TSP Service Office may now disclose TSP account information at the written request of the participant to any person or entity.

The Board has also determined that since the right to privacy under the Privacy Act of 1974 is extinguished upon the death of the participant, there is no need for the provision in subsection (f)(i) of FRTIB–1 allowing disclosure to beneficiaries so that they may exercise their entitlement rights. The TSP Service Office may dislose TSP account information to beneficiaries to enable them to exercise their rights respecting the deceased participant's account.

In addition, a minor change has been made to update this system notice. Powers of attorney and tax notices have been added to the list of categories of records in the system.

Accordingly, the system notice for FRTIB–1, Thrift Savings Plan Records, is set forth below, as amended. The amendments are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which applies to the submission of a new or significantly altered systems of records.

Dated: May 13, 1994.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

FRTIB–1

SYSTEM NAME:

Thrift Savings Plan Records.

SYSTEM LOCATION:

These records are located at the Thrift Savings Plan (TSP) Service Office, National Finance Center, Department of Agriculture, 13800 Old Gentilly Road, New Orleans, Louisiana. The mailing address is: Head, Thrift Savings Plan Service Office, National Finance Center, P.O. Box 61500, New Orleans, LA 70161–1500. Subsets of these records are located at the System Manager's address. The subsets are: Waiver, power of attorney, and court order files (including matters involving bankruptcies, child support, alimony and TSP benefit divisions), participant correspondence, loan appeals, interfund transfer appeals, error corrections, and tax notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All participants in the Thrift Savings Plan. Participants in the TSP consist of present and former Members of Congress and Federal employees covered by the Federal Employees' Retirement System Act of 1986, as amended (FERSA) 5 U.S.C. chapter 84; all present and former Members of Congress and Federal employees covered by the Civil Service Retirement System who elect to contribute to the TSP; Supreme Court Justices, Federal judges and magistrates who elect to contribute; certain union officials and other persons described in 5 CFR part 1620.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain the following kinds of information: Thrift Savings Plan Account records of employee and employer contributions; records of participant's Social Security number, date of birth and home address, retirement code, account earnings and balances; records showing whether a participant is vested; records of participant-designated beneficiaries, withdrawal information, type of annuity requested, locator information on former spouses, spousal waivers, and powers of attorney; records of court orders concerning bankruptcies, division of retirement accounts between spouses and garnishment actions for child support of alimony payments against accounts; records of data on employing agency, servicing payroll office, and servicing personnel office of the participant; and records showing the participant's investment status by Fund, information on interfund transfers and participant loans, information on notification of taxes, and general correspondence with the TSP Service Office.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 8474.

PURPOSE:

The purpose of this system of records is to record activity concerning the TSP account of each Plan participant, to communicate with the participant concerning his or her account, and to make certain that he or she receives a correct payment at the time of withdrawal from the Plan.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose financial data to Federal, State, and local governmental tax enforcement agencies so that they may enforce applicable tax laws.

b. To disclose to the designated annuity vendor in order to provide TSP participants who have left Federal service with an annuity.

c. To disclose to sponsors of eligible retirement plans for purposes of transferring the funds in the participant's account to an Individual Retirement Account or into another eligible retirement plan.

d. To disclose to current and former spouses who have entitlement rights under the Act.

e. When a participant to whom a record pertains dies, to disclose to any potential beneficiary and anyone handling the decedent's estate, information in the participant's record which could have been properly disclosed to the individual when living, and the name and relationship of any other person who claims the benefits or who is entitled to share the benefits payable.

f. To disclose information to any person who is responsible for the care

of the participant to whom a record pertains and who is found by a court to be incompetent or under other legal disability, information necessary to manage the participant's account and to assure payment of benefits to which the participant is entitled.

g. To disclose information to a Congressional office from the record of a participant in order for that office to respond to a communication from that participant.

h. To disclose to agency payroll or personnel offices in order to calculate benefit projections for individual participants, to calculate error corrections, to reconcile payroll records and otherwise to assure the effective operation of the Thrift Savings Plan.

i. To disclose to the Department of the Treasury information necessary to issue checks from accounts of participants in accordance with withdrawal or loan procedures.

j. To disclose to the Department of Labor and to private sector audit firms so that they may perform audits as provided for in FERSA.

k. To disclose to the Parent Locator Service of the Department of Health and Human Services, upon its request, the present address of a participant, whether a current or former employee for the purpose of enforcing child support obligations against such individual.

l. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order.

m. To disclose information to the Office of Management and Budget at any stage of the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

n. To disclose to a Federal agency, in response to its request, the present address of a former employee and any other information the agency needs in order to contact the former employee concerning a possible threat to his or her health or safety.

o. To disclose information to the Department of Justice when:

(1) The Board or any component thereof, or

(2) Any employee of the Board in his or her official capacity, or

(3) Any employee of the Board in his or her individual capacity, where the Department of Justice has agreed to represent the employee; or

(4) The United States (where the Board 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 Board determines that use of such records is relevant and necessary to the litigation, provided, however, that in each such case, the Board determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

p. In response to a court subpoena or to appropriate parties engaged in litigation or in preparation of possible litigation such as potential witnesses for the purpose of securing their testimony to courts, magistrates or administrative tribunals, to parties and their attorneys in connection with litigation or settlement of disputes, to individuals seeking information through established discovery procedures in connection with civil, criminal or regulatory proceedings.

POLICIES AND PRACTICES OF STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained on magnetic media, microfiche and in folders.

RETRIEVABILITY:

These records are retrieved by name, Social Security number, and other personal identifiers of the individual to whom they pertain.

SAFEGUARDS:

Hardcopy records are kept in metal file cabinets in a secure facility with access limited to those whose official duties require access. Personnel screening is employed to prevent unauthorized disclosure. Automatic data processing software security mechanisms are used to prevent unauthorized access to the magnetic media.

RETENTION AND DISPOSAL:

All TSP forms are retained for 95 years. All other records are retained indefinitely. Disposal of manual records is by compacting and buying; data on magnetic media are obliterated by destruction or reuse or are returned to the employing agency.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Director, Federal Retirement Thrift Investment Board, 1250 H Street, NW., Washington, DC 20005.

NOTIFICATION PROCEDURE:

Any individual wishing to inquire if this system contains information about him or her must make inquiry in accordance with Chart A below:

CHART A

If you want:	If you are a former employee:	If you are a current employee:
To make inquiry as to whether you are a subject of this system of records.	Call or write TSP Service Office ...	Call or write your employing agency in accordance with agency system of records on personnel or payroll records.
Access	Call or write TSP Service Office ...	• Call or write your employing agency regarding personnel and payroll records (agency's and participant's contributions, earnings, loan repayments and adjustments to contributions). • Call or write to TSP Servcie Office regarding loan status and interfund transfers.
Disclosure history of your TSP account (disclosures to entities other than your employing agency or the Board or auditors).	Write TSP Service Office	Write TSP Service Office.

The individual must furnish the following information for records to be located and identified:

a. Name, including all former names;

b. Social Security number; and

c. Date of birth (only if writing).

A request to the employing Federal agency may be made in accordance with that agency's Privacy Act regulations or any other existing agency procedures.

RECORD ACCESS PROCEDURE:

Any participant wishing access to his or her records in this system may do so in accordance with Chart A above. A participant must furnish the following

information for his or her records to be located and identified:

a. Name, including all former names;
b. Social Security number;
c. Personal Identification Number (PIN) (only if telephoning);
d. Date of birth (only if writing); and
e. If when telephoning, a PIN is unavailable or has been lost, name and address of office in which currently or formerly employed in the Federal service and date of birth.

CONTESTING RECORDS PROCEDURE:

Any participant in the Thrift Savings Plan who wishes to request amendment of his or her records in this system must make such request in accordance with Chart B below. The employing agency or the Board (through the TSP Service Office, its recordkeeper), as the case may be, will follow the procedures set forth in 5 CFR part 1605, Error Correction Regulations, in deciding requests for amendment because of monetary errors.

CHART B

If you want to request amendment of a TSP record and		
The type of record is:	You are a former employee write to:	You are a current employee write to:
Personnel or personal records (e.g., age, address or Social Security number).	TSP Service Office	Your employing agency.
Agency's and participant's contributions, loan repayments and adjustments to contributions.	Your former employing agency	Your employing agency.
Earnings, interfund transfers and loan prepayments	TSP Service Office	TSP Service Office.

The participant must furnish the following information for his or her records to be located and identified:

a. Name, including all former names;
b. Social Security number; and
c. Date of birth.

RECORD SOURCE CATEGORIES:

The information in this system is obtained from the following sources:

a. The individual to whom the information pertains;
b. Agency pay and personnel records;
c. Court orders; or
d. Spouses, former spouses, other family members, beneficiaries, legal guardians, personal representatives (executors, administrators).

[FR Doc. 94–12321 Filed 5–19–04; 8:45 am]

BILLING CODE 6760–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[OPA–012–N]

Medicare Program; Meeting of the Practicing Physicians Advisory Council

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

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Practicing Physicians Advisory Council. This meeting is open to the public.

DATES: The meeting is scheduled for June 6, 1994, from 8 a.m. until 5 p.m. e.d.t. (Additional meetings are tentatively scheduled for September 12 and December 12, 1994.)

ADDRESSES: The meeting will be held in Room 800, 8th Floor of the Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Martha DiSario, Executive Director, Practicing Physicians Advisory Council, Room 425–H, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, (202) 690–7874.

SUPPLEMENTARY INFORMATION: The Secretary of the Department of Health and Human Services (the Secretary) is mandated by section 1868 of the Social Security Act, as added by section 4112 of the Omnibus Budget Reconciliation Act of 1990 (OBRA '90) (Pub. L. 101–508, enacted on November 5, 1990), to appoint a Practicing Physicians Advisory Council (the Council) based on nominations submitted by medical organizations representing physicians. The Council meets quarterly to discuss certain proposed changes in regulations and carrier manual instructions related to physicians' services, as identified by the Secretary. To the extent feasible and consistent with statutory deadlines, the consultation must occur before publication of the proposed changes. The Council submits an annual report on its recommendations to the Secretary and the Administrator of the Health Care Financing Administration not later than December 31 of each year.

The Council consists of 15 physicians, each of whom has submitted at least 250 claims for physicians' services under Medicare in the previous year. Members of the Council include both participating and nonparticipating physicians, and physicians practicing in rural and underserved urban areas. At least 11 members must be doctors of medicine or osteopathy authorized to practice medicine and surgery by the States in which they practice. Members have been invited to serve for overlapping 4-year terms.

The current members are: Gary C. Dennis, M.D.; Catalina E. Garcia, M.D.; Harvey P. Hanlen, O.D.; Kenneth D. Hansen, M.D.; Isabel V. Hoverman, M.D.; Sandral Hullett, M.D.; Jerilynn S. Kaibel, D.C.; William D. Kirsch, D.E., M.P.H.; Marie G. Kuffner, M.D.; Katherine L. Markette, M.D.; Kenton K. Moss, M.D.; Isadore Rosenfeld, M.D.; Richard B. Tompkins, M.D.; Kenneth M. Viste, Jr., M.D.; and James C. Waites, M.D. The chairperson is Richard B. Tompkins, M.D. The ninth meeting of the Council will be held on June 6, 1994. The following topics will be discussed at that meeting:

- The refinements to the physician fee schedule regulation, including proposed changes to the geographic practice cost indices, multiple surgery policies, and related issues.
- Implementation of the provision in OBRA '90 regarding physician ownership and self-referral.
- Physician "retainer" fees as the payments collected by physicians to guarantee access to services.
- Those individuals or organizations who wish to make 10-minute oral presentations on the above issues must contact the Executive Director to be scheduled. For the name, address, and telephone number of the Executive Director, see the **FOR FURTHER INFORMATION CONTACT** section at the beginning of this notice. Please submit a written copy of the oral remarks to the Executive Director by May 31, 1994. The number of oral presentations may be limited by the time available.

Anyone who is not scheduled to speak may submit written comments to

the Executive Director. The meeting is open to the public, but attendance is limited to the space available on a first-come basis.

Authority: Section 1868 of the Social Security Act (42 U.S.C. 1395ee) and section 10(a) of Public Law 92–463 (5 U.S.C. App. 2, section 10(a)); 45 CFR Part 11.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 12, 1994.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 94–12411 Filed 5–19–94; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL RESERVE SYSTEM

Creditanstalt-Bankverein, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than June 13, 1994.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. Creditanstalt-Bankverein, Vienna, Austria; to acquire Gulfstream Global Investors, Ltd., Dallas, Texas; and thereby engage in providing portfolio investment advice to any other person and serving as investment adviser to an investment company that is registered under the Investment Company Act of 1940, including sponsoring, organizing and managing a closed-end investment company and furnishing general economic information and advice, general economic statistical forecasting services and industry studies pursuant to § 225.25(b)(4)(ii), (iii) and (iv) of the Board's Regulation Y.

2. J.P. Morgan & Co. Incorporated, New York, New York; to acquire 18 percent of the New York Equity Fund 1993 Limited Partnership, a company engaged in making equity and debt investments in corporations or projects designed primarily to promote community welfare pursuant to § 225.25(b)(6) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 16, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–12370 Filed 5–19–94; 8:45 am]

BILLING CODE 6210–01–F

Shamrock Holding, Inc., et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 10, 1994.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Shamrock Holding, Inc., Evergreen, Alabama; to engage *de novo* through its proposed subsidiary, Shamrock Insurance, Inc., Evergreen, Alabama, in general insurance activities in a town of less than 5,000, pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y. These activities will be conducted in Evergreen, Alabama.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Garrett Bancshares, Ltd., Bloomfield, Iowa; to engage *de novo* in the making and servicing of loans, for the one time extension of credit to a principal of North Side of the Square, Inc., a wholly owned subsidiary of Garrett Bancshares' subsidiary bank, Davis County Savings Bank, Bloomfield, Iowa, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Riverway Holdings, Inc., Houston, Texas; to engage *de novo* through its subsidiary Riverway Financial Services, Inc., Houston, Texas, in advising and providing investment advice to company and providing portfolio investment advice to any other person,

pursuant to § 225.25(b)(4) of the Board's Regulation Y.

2. Riverway Holdings of Delaware, Inc., Wilmington, Delaware; to engage *de novo* through its subsidiary Riverway Financial Services, Inc., Houston, Texas, in advising and providing investment advice to company and providing portfolio investment advice to any other person, pursuant to § 225.25(b)(4) of the Board's Regulation Y.

D. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company and International Regulation) 101 Market Street, San Francisco, California 94105:

1. Cupertino National Bancorp, Cupertino, California; to engage *de novo* in purchasing loan participations from its sole subsidiary, Cupertino National Bank, Cupertino, California, for the purpose of providing the bank with overline (loans in excess of the Bank's legal lending limit) capabilities for its customers, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 16, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–12371 Filed 5–19–93; 8:45 am]

BILLING CODE 6210–01–F

SouthTrust Corporation; 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 13, 1994.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. SouthTrust Corporation, Birmingham, Alabama; to acquire the successor by merger to SouthTrust USB, Inc., Birmingham, Alabama, SouthTrust of Florida, Inc., Tampa, Florida, and University State Bank Corp., Tampa, Florida, and thereby indirectly acquire University State Bank, Tampa, Florida.

Board of Governors of the Federal Reserve System, May 16, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–12372 Filed 5–19–94; 8:45 am]

BILLING CODE 6210–01–F

SunTrust Banks, Inc.; Acquisition of Company Engaged in Nonbanking Activities

The organization listed in this notice has applied under §§ 225.23(a) or (f) of the Board's Regulation Y (12 CFR 225.23(a) 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. 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 Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. SunTrust Banks, Inc., Atlanta, Georgia; to engage *de novo* through a wholly owned subsidiary SunTrust Capital Markets, Inc., Atlanta, Georgia, in making, servicing, or acquiring loans or other extensions of credit, in acting as an investment or financial advisor, in leasing personal or real property, in arranging commercial real estate equity financing, in providing securities brokerage services, and in underwriting and dealing in government obligations and money market instruments, pursuant to §§ 225.25(b)(1), (4), (5), (14), (15), and (16) of the Board's Regulation Y, respectively.

In addition, Applicant proposes to engage, through Company, in certain nonbank activities that have been approved by Board Order, but have not yet been added to the laundry list of permissible nonbank activities. Applicant proposes to engage in the private placement of all types of debt and equity securities, see Bankers Trust New York Corporation, 75 Federal Reserve Bulletin 829 (1989) (Bankers Trust); J.P. Morgan & Company Incorporated, 76 Federal Reserve Bulletin 26 (1990) (J.P. Morgan); to buy and sell all types of debt and equity securities on the order of customers as a riskless principal, see Bankers Trust and J.P. Morgan; and to underwrite and deal in municipal revenue bonds, mortgage-related securities, consumer-receivable related securities and commercial paper, see Citicorp, J.P. Morgan & Company Incorporated and Bankers Trust New York Corporation, 73 Federal Reserve Bulletin 473 (1987); Chemical New York Corporation et al, 73 Federal Reserve Bulletin 731 (1987); as modified by Order Approving Modification to Section 20 Orders, 75 Federal Reserve Bulletin 751 (1989).

Board of Governors of the Federal Reserve System, May 16, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–12373 Filed 5–19–94; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

RIN 0905–ZA44

[CDC–434]

Announcement of Cooperative Agreement for Historically Black Colleges and Universities

Summary

The Centers for Disease Control and Prevention (CDC) announces the availability of funds for fiscal year (FY) 1994 for a cooperative agreement program with a Historically Black College or University (HBCU) to support the education and training of undergraduate minority students in biostatistics, epidemiology, and occupational health/safety. Approximately $109,000 is available in FY 1994 to fund one award. It is expected that the award will begin on or about September 1, 1994, and will be made for a 12-month budget period within a project period of up to 5 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.

The purpose of this cooperative agreement is to assist a HBCU in:

(1) Developing an undergraduate internship program for African-Americans and other under-served population groups;

(2) Increasing the knowledge and skills of undergraduate minority students in epidemiology, biostatistics, and occupational health/safety; (3) Expanding the educational and research skills development opportunities and experiences in epidemiology, biostatistics, and occupational health and safety for under-represented minority students who are interested in pursuing public health careers; (4) Developing and implementing a public health sciences curriculum; (5) Fostering the linkages and collaboration among students and faculty in developing epidemiological and analytical knowledge bases for the health status of minority and under-served populations in America; and (6) Increasing the number of African-Americans and other under-represented minority populations with advanced degrees in epidemiology, biostatistics, and occupational health and safety.

The CDC will: (1) Collaborate with the recipient in the selection of key project staff (i.e., the Project Director, the Education Coordinator, the Computer/Statistical Consultant, and the Occupational Safety and Health Consultant) by reviewing the qualifications; (2) Collaborate with the recipient on the criteria to select students for the summer internship program; (3) Participate in interviews and selection of prospective interns for the summer program; (4) Collaborate with the recipient institution to establish criteria for evaluating both short- and long-term success of this public health training program (including the summer internship program). For the Occupational Safety and Health interns, collaborate with the recipient to encourage the return of student interns for subsequent years based on recommendations of the Occupational Safety and Health Coordinator Associateship Research Program Committee; (5) Provide consultation and advice to the Program Director, Education Coordinator, Computer/Statistical Consultant, and the Occupational Safety and Health Coordinator regarding administrative planning and program evaluation for program development in future years; (6) Provide computer access for the Computer/Statistical Consultant, as necessary; (7) Provide access to data sets, CDC mainframe computer, word processor, research activities and other facilities that would be beneficial to program participants and instruct them in the analysis of data sets; (8) Provide meeting space and office space to the summer participants, the coordinators, and the statistical/computer consultant for activities to be carried out at CDC; (9) Provide staff to give seminars to students who are potential program participants; (10) Provide technical support to assist the recipient in curriculum development and implementation of public health-related courses; (11) Collaborate in program planning and consultation with participants in the summer research program; and, (12) Provide clerical support, necessary equipment, and other resources required for student recruitment and administration of the summer internship program by the Occupational Safety and Health Coordinator in Cincinnati, Ohio.

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 areas of Educational and Community-Based Programs, Clinical Preventive Services and Surveillance and Data. (For ordering a copy of "Healthy People 2000," see the Section WHERE TO OBTAIN ADDITIONAL INFORMATION.)

Authority

This program is authorized under Section 301(a) of the Public Health Service Act, 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 Applicants

Assistance will be provided only to historically black colleges or universities (HBCU) for this project. No other applications are solicited. The program announcement and application kits have been sent to all HBCUs.

The HBCU is the most appropriate and qualified institution to provide the services specified under this cooperative agreement because:

A. HBCUs traditionally have a black and other minority student enrollment of at least 51 percent and offer undergraduate courses in Community/Allied Health, Computer Sciences, Mathematics, and/or Biostatistics and Epidemiology in their curriculum.

B. In May of 1988, CDC entered into a five-year cooperative agreement with Morehouse College in Atlanta, Georgia, as a "pilot project" to develop and implement an educational support program to increase the knowledge and skills of African-American students in epidemiology and biostatistics. The pilot project attracted undergraduate students from several other HBCUs throughout the country. By all assessment, the program was a success—resulting in many former participants going on to obtain advanced degrees in epidemiology, biostatistics, and other public health disciplines. A number of the program graduates are currently employed at the CDC, in academia, in other Department of Health and Human Services (DHHS) and PHS agencies, as well as in the private sector.

C. HBCUs are more aware of the critical shortage of both minority students and minority professional disciplines which plan, monitor, and evaluate the public health policies and programs that target the heterogeneous minority population groups in the United States. "Healthy People 2000" objective 21.8 proposes to

"* * * increase the proportion of all degrees in the health professions and allied and associated health profession fields awarded to members of under-represented racial and ethnic minority groups."

D. HBCUs can more readily assist in achieving the Year 2000 target for African-Americans of 8 percent of all such degrees from a 1985–86 baseline of approximately 5 percent. The number and quality of African-American and other minority students and professionals in disciplines such as biostatistics, epidemiology, and occupational health/safety must be increased if adequate personnel are to be available to characterize and alleviate the disproportionate burden of illness, risk factors, disabilities, and death plaguing minority populations in this nation.

Executive Order 12372 Review

The application is not subject to review as governed by Executive Order 12372 review.

Public Health Systems Reporting Requirement

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 93.283.

Where to Obtain Additional Information

If you are interested in obtaining additional information regarding this project, please refer to Announcement 434 and contact Van Malone, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 320, Mailstop E–15, Atlanta, GA 30305, telephone (404) 842–6872.

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 16, 1994.

Ladene H. Newton,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–12366 Filed 5–19–94; 8:45 am]

BILLING CODE 4163–18–P

Food and Drug Administration

[Docket No. 93N–0391]

Central Georgia Plasma Labs, Inc.; Opportunity for Hearing on a Proposal to Revoke U.S. License No. 0649–001

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for hearing on a proposal to revoke the establishment license (U.S. License No. 0649–001) and the product license issued to Central Georgia Plasma Labs, Inc., for the manufacture of Source Plasma. The proposed revocation is based on significant noncompliance with certain provisions of the biologics regulations specified in this document.

DATES: The firm may submit a written request for a hearing to the Dockets Management Branch by June 20, 1994, and any data or information justifying a hearing by July 19, 1994. Other interested persons may submit written comments on the proposed revocation by July 19, 1994.

ADDRESSES: Submit written requests for a hearing, any data and information justifying a hearing, and any written comments on the proposed revocation to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Jean M. Olson, Center for Biologics Evaluation and Research (HFM–635), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–3074.

SUPPLEMENTARY INFORMATION:

FDA is proposing to revoke the establishment license (U.S. License No. 0649–001) and the product license issued to Central Georgia Plasma Labs, Inc., 652 Third St., Macon, GA 31201, for the manufacture of Source Plasma. The proposed revocation is based on the failure of Central Georgia Plasma Labs, Inc., and its responsible management to conform to the applicable standards and conditions established in its license and the requirements of 21 CFR parts 600, 601, 606, and 640.

FDA inspected Central Georgia Plasma Labs, Inc., on February 1 through 5, 8 through 12, and 17, 1993. During that inspection, FDA observed numerous significant deviations from the standards established in the license as well as the applicable Federal regulations. Such standards are designed to ensure the continued safety, purity, and potency of the product.

The inspection showed that Central Georgia Plasma Labs, Inc., failed to adequately determine donor suitability. These deviations included, but were not limited to, the following: (1) In violation of 21 CFR 640.63(c)(9), Central Georgia Plasma Labs, Inc., collected Source Plasma from a donor after the donor had tested repeatedly reactive for antibody to hepatitis C virus (HCV); (2) in violation of 21 CFR 640.65(b)(1)(i), Central Georgia Plasma Labs, Inc., failed to collect a four month sample for serum protein electrophoresis testing from a donor; and (3) in violation of 21 CFR 640.65(b)(5) for eight people during a 7-day period, Central Georgia Plasma Labs, Inc., removed whole blood in excess of acceptable amounts, in excess of 2,000 milliliters (mL) in donors weighing less than 175 pounds and in excess of 2,400 mL in donors weighing 175 pounds or more.

The inspection showed that Central Georgia Plasma Labs, Inc., failed to follow written standard operating procedures (SOP's) for the collection, processing, storage, and distribution of Source Plasma. In violation of 21 CFR 606.100, Central Georgia Plasma Labs, Inc., failed to follow its SOP's for identifying and recovering previous donations from three donors who tested repeatedly reactive for hepatitis B surface antigen. As a result, Central Georgia Plasma Labs, Inc., failed to find and cull one unit for one donor, three units for a second donor, and five units for a third donor. During November and December 1992, there were 81 overbleeds whereby Central Georgia Plasma Labs, Inc., removed, at one time, amounts of whole blood from a donor in excess of the volumes established in its SOP's in violation of 21 CFR 606.100 and 21 CFR 640.65(b)(6). The inspection showed that Central Georgia Plasma Labs, Inc., failed to maintain complete, accurate, and concurrent records that clearly traced the steps of each significant procedure in the collection, processing, and storage of the blood products so as to provide a complete history of work performed. Such deviations included, but were not limited to, the following: (1) In violation of 21 CFR 606.160(b)(3)(i), Central Georgia Plasma Labs, Inc., collected plasma from a donor testing repeatedly reactive for antibody to HCV, and recorded in the plasma shipping records that the unit was shipped; however, the Central Georgia Plasma Labs, Inc.'s, disposition records show that the same unit was destroyed; (2) in violation of 21 CFR 606.170(a), Central Georgia Plasma Labs, Inc., kept inadequate records of an investigation for a March 1991, incident

where a donor was infused with red blood cells from another donor; and (3) in violation of 21 CFR 606.160(a)(1), information concerning overbleeds was not recorded in the Whole Blood records concurrent with the performance of the work.

Central Georgia Plasma Labs, Inc., failed to adequately maintain its walk-in freezer used for the storage of Source Plasma in violation of 21 CFR 606.60(a). On a number of occasions in 1992, the temperature in the storage cabinet went above -20°C two or more times in a 72-hour period, but Source Plasma stored in the freezer during those periods was not relabeled as required by 21 CFR 640.70(b).

FDA's inspectional observations clearly show a persistent pattern of significant noncompliance, on the part of Central Georgia Plasma Labs, Inc., with the standards established in the license and the Federal regulations. FDA made similar observations of Central Georgia Plasma Labs, Inc.'s, significant deviations from compliance with established standards in September 1981, June 1982, June 1983, October 1986, July 1989, April 1990, and January 1992, inspections.

The seriousness of Central Georgia Plasma Labs, Inc.'s, noncompliance with established standards was brought to its attention in letters from FDA dated September 1981, June 1982, July 1983, November 1986, July 1988, November 1989, and notice of intent to revoke letters dated April 1992 and May 1993. On May 15, 1992, Central Georgia Plasma Labs, Inc., responded to the April 1992, letter by submitting a training plan. Among other things, the plan provided that certified employees would be reviewed semiannually, and employees who failed a final exam given at the end of a training module would repeat the course. However, inspections reveal that Central Georgia Plasma Labs, Inc., has not properly implemented the plan. Of the three individuals that have been certified since May 15, 1992, none have received a semiannual review. The one individual that failed a final exam for a module has not been required to repeat the course.

Although Central Georgia Plasma Labs, Inc., has repeatedly promised to take corrective actions concerning these and other observations, followup inspections have revealed that effective long term corrective actions have not been taken. FDA has no assurance that Central Georgia Plasma Labs, Inc.'s (the firm's), proposed corrective actions will be properly implemented and that the firm will not continue to engage in repeated noncompliance with established standards designed to ensure the continued safety, purity, and potency of the product. Consequently, FDA finds that Central Georgia Plasma Labs, Inc., has willfully not complied with the standards established in the license and the applicable regulations. Accordingly, FDA is not required to provide Central Georgia Plasma Labs, Inc., with an opportunity to correct its deficiencies and achieve compliance with the applicable standards (21 CFR 601.5(b)).

FDA is now issuing a notice of opportunity for hearing pursuant to 21 CFR 12.21(b) on a proposal to revoke the establishment license (U.S. License No. 0649–001) and the product license issued to Central Georgia Plasma Labs, Inc.

In a letter dated May 27, 1993, and issued pursuant to 21 CFR 601.5(b), FDA notified Central Georgia Plasma Labs, Inc., and its responsible head, of FDA's intent to revoke the product license and U.S. License No. 0649–001, and announced its intent to offer an opportunity for hearing. In a letter dated June 1, 1993, Central Georgia Plasma Labs, Inc., advised FDA that the firm did not wish to waive its opportunity for a hearing.

FDA has placed copies of documents supporting the proposed license revocation on file with the Dockets Management Branch (address above) under the docket number found in brackets in the heading of this notice. These documents include the following: List of Observations (Form FDA–483) from inspections of February 1 through 5, 8 through 12, and 17, 1993, and of January 22 through February 21, 1992; Central Georgia Plasma Labs, Inc., letters of February 26 and May 15, 1992, and February 22 and June 1, 1993; FDA letters of November 3, 1989, April 30, 1992, and May 27, 1993; and other relevant FDA letters. These documents are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Central Georgia Plasma Labs, Inc., may submit a written request for a hearing to the Dockets Management Branch by June 20, 1994, and any data and information justifying a hearing must be submitted by July 19, 1994. Other interested persons may submit comments on the proposed license revocation to the Dockets Management Branch by July 19, 1994. The failure of a licensee to file a timely written request for a hearing constitutes an election by the licensee not to avail itself of the opportunity for hearing concerning the proposed license revocation.

FDA procedures and requirements governing a notice of opportunity for hearing, notice of appearance, request for a hearing, grant or denial of a hearing, and submission of data and information to justify a hearing on a proposed revocation of a license are contained in 21 CFR parts 12 and 601. A request for a hearing may not rest upon mere allegations or denials but must set forth a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses submitted in support of the request for a hearing that there is no genuine and substantial issue of fact for resolution at a hearing, or if a request is not made within the specified time or in the required format or with the required analyses, the Commissioner of Food and Drugs will deny the hearing request, making findings and conclusions that justify the denial.

Two copies of any submissions are to be provided to FDA, except that individuals may submit one copy. Submissions are to be identified with the docket number found in brackets in the heading of this document. Such submissions, except for data and information prohibited from public disclosure under 21 CFR 10.20(j)(2)(i), 21 U.S.C. 331(j), or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Public Health Service Act (sec. 351 (42 U.S.C. 262)) and the Federal Food, Drug, and Cosmetic Act (secs. 201, 501, 502, 505, 701 (21 U.S.C. 321, 351, 352, 355, 371)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and the Director, Center for Biologics Evaluation and Research (21 CFR 5.67).

Dated: May 11, 1994.

Michael G. Beatrice,

Deputy Director, Center for Biologics Evaluation and Research.

[FR Doc. 94–12291 Filed 5–19–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94M–0127]

KC Pharmaceuticals, Inc.; Premarket Approval of K–C Sterile Preserved Saline Solution

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by KC Pharmaceuticals, Inc., Pomona, CA, for

premarket approval, under section 515 of the Federal Food, Drug, and Cosmetic Act (the act), of the K–C Sterile Preserved Saline Solution. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of February 28, 1994, of the approval of the application.

DATES: Petitions for administrative review by June 20, 1994.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: James F. Saviola, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–594–1744.

SUPPLEMENTARY INFORMATION: On May 14, 1993, KC Pharmaceuticals, Inc., Pomona, CA, 91768, submitted to CDRH an application for premarket approval of the K–C Sterile Preserved Saline Solution. The K–C Sterile Preserved Saline Solution is indicated for use in the rinsing, heat disinfection, and storage of soft (hydrophilic) contact lenses. The application includes authorization from Steridyne Laboratories, Inc., Hollywood, CA 90068, to incorporate information contained in its approved premarket approval application (PMA) and related supplements for Steridyne Sterile Preserved Saline Solution.

In accordance with the provisions of section 515(c)(2) of the act (21 U.S.C. 360e(c)(2)) as amended by the Safe Medical Devices Act of 1990, this PMA was not referred to the Ophthalmic Devices Panel, an FDA advisory panel, for review and recommendation because the information in the PMA substantially duplicates information previously reviewed by this panel. On February 28, 1994, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before June 20, 1994, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Devices and Radiological Health (21 CFR 5.53).

Dated: May 11, 1994.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 94–12428 Filed 5–19–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94M–0128]

OrthoLogic Corp.; Premarket Approval of OrthoLogic™ 1000

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by OrthoLogic Corp., Phoenix, AZ, for premarket approval, under section 515 of the Federal Food, Drug, and Cosmetic Act (the act), of the OrthoLogic™ 1000. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant by letter on March 4, 1994, of the approval of the application.

DATES: Petitions for administrative review by June 20, 1994.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Marie A. Schroeder, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–594–1230.

SUPPLEMENTARY INFORMATION: On November 18, 1991, OrthoLogic Corp., Phoenix, AZ 85034, submitted to CDRH an application for premarket approval of the OrthoLogic™ 1000. The device is a noninvasive osteogenesis therapy system and is indicated for the noninvasive treatment of an established nonunion acquired secondary to trauma, excluding vertebrae and all flat bones, where the width of the nonunion defect is less than one-half the width of the bone to be treated. A nonunion is considered to be established when a minimum of 9 months has elapsed since injury and the fracture site shows no visibly progressive signs of healing in a minimum of 3 months. The OrthoLogic™ 1000 is a portable, battery-powered, microcontrolled, noninvasive bone growth stimulator which produces very low energy combined static and dynamic magnetic fields. A Liquid Crystal Display (LCD) is utilized to display the status of the device. In accordance with the provisions of section 515(f)(2) of the act (21 U.S.C. 360e(f)(2)) as amended by the Safe Medical Devices Act of 1990, this PMA was not referred to the Orthopedic and Rehabilitation Devices Panel, an FDA advisory panel, for review and recommendation because the information in the PMA substantially duplicates information previously reviewed by this panel.

On March 4, 1994, CDRH approved the application by a letter to the

applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before June 20, 1994, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Devices and Radiological Health (21 CFR 5.53).

Dated: May 11, 1994.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 94–12374 Filed 5–19–94; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETINGS: The following advisory committee meetings are announced:

Peripheral and Central Nervous System Drugs Advisory Committee

Date, time, and place. June 6, 1994, 9 a.m., and June 7, 1994, 8:30 a.m., Potomac Inn, Ballrooms A, B, and C, Three Research Ct., Rockville, MD.

Type of meeting and contact person. Open committee discussion, June 6, 1994, 9 a.m. to 5 p.m.; open committee discussion, June 7, 1994, 8:30 a.m. to 1 p.m.; open public hearing, 1 p.m. to 2 p.m., unless public participation does not last that long; open committee discussion, 2 p.m. to 5 p.m.; Michael A. Bernstein, Center for Drug Evaluation and Research (HFD–120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2850.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in neurological disease.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before June 1, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss the intracerebroventricular (ICV) administration of drugs and biologics for the treatment of chronic neurologic illness.

Cardiovascular and Renal Drugs Advisory Committee

Date, time, and place. June 9 and 10, 1994, 9 a.m., National Institutes of Health, Clinical Center, Bldg. 10, Jack Masur Auditorium, 9000 Rockville Pike, Bethesda, MD. If you must drive, please use an outlying lot such as lot 41B. Free shuttle bus service is provided from lot 41B to the Clinical Center every 8 minutes during rush hour and every 15 minutes at other times.

Type of meeting and contact person. Open public hearing, June 9, 1994, 9 a.m to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; open committee discussion, June 10, 1994, 9 a.m. to 5 p.m.; Joan C. Standaert, Center for Drug Evaluation and Research (HFD–110), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 419–259–6211, or Valerie M. Mealy, Advisors and Consultants Staff, 301–443–4695.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in cardiovascular and renal disorders.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before May 23, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On June 9, 1994, the committee will discuss: (1) New drug application (NDA) 20–364, benazepril HC1/amlodipine besylate, Ciba-Geigy, to be indicated for hypertension and (2) product license application (PLA) 93–1057 (abciximab), CentoRx®, Centocor, for high risk angioplasty. On June 10, 1994, the committee will discuss PLA 1048, Supplement #93–0889 (alteplase recombinant), Activase®, Genentech, Inc., for new accelerated dose regimen.

Blood Products Advisory Committee

Date, time, and place. June 21 and 22, 1994, 8 a.m., Holiday Inn—Gaithersburg, Ballroom, Two Montgomery Village Ave., Gaithersburg, MD.

Type of meeting and contact person. Open committee discussion, June 21, 1994, 8 a.m. to 8:30 a.m.; open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5:30 p.m.; open committee discussion, June 22, 1994, 8 a.m. to 6 p.m.; Linda A. Smallwood, Center for Biologics Evaluation and Research (HFM–300), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–6700.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness, and appropriate use of blood products intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before June 13, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On June 21, 1994, the committee will discuss and provide recommendations on plasma collected by apheresis, particularly with regard to infrequent donations of different frequencies, and on autologous blood donation, and in the afternoon, will discuss and provide recommendations on red cell loss during source plasma collection and plateletpheresis, and will hear an informational summary of regulatory issues concerning stem cells. The agenda for June 22, 1994, has not been developed. An amendment to this notice will be published in the **Federal Register** at a later date.

Dental Products Panel Plaque Subcommittee (Nonprescription Drugs) of the Medical Devices Advisory Committee

Date, time, and place. June 28 and 29, 1994, 9 a.m., Parklawn Bldg., conference rm. E, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open committee discussion, June 28, 1994, 9 a.m. to 12 m.; open public hearing 12 m. to 3 p.m., unless public participation does not last that long; open committee discussion, 3 p.m. to 5 p.m.; open committee discussion, June 29, 1994, 9 a.m. to 11 a.m.; open public hearing, 11 a.m. to 2 p.m., unless public participation does not last that long; open committee discussion, 2 p.m. to 4 p.m.; Jeanne L. Rippere or Stephanie A. Mason, Center for Drug Evaluation and Research (HFD–813), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855, 301–594–1003.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

The Dental Products Panel of the Medical Devices Advisory Committee, functions at times as a nonprescription drug advisory panel. As such, the panel reviews and evaluates available data concerning the safety and effectiveness of active ingredients, and combinations thereof, of various currently marketed nonprescription drug products for human use, the adequacy of their labeling, and advises the Commissioner of Food and Drugs on the promulgation of monographs establishing conditions under which these drugs are generally recognized as safe and effective and not misbranded.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on the general issues pending before the subcommittee. Those desiring to make formal presentations should notify the contact person before June 17, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The subcommittee will begin a discussion of the possible relationship of alcohol-containing mouthwashes to the development of oral and pharyngeal cancers. It will also begin to discuss general guidelines for determining the safety and effectiveness of antiplaque and antiplaque-related drug products.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above)

beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: May 16, 1994.

Linda A. Suydam,

Interim Dupty Commissioner for Operations.

[FR Doc. 94–12375 Filed 5–19–94; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

[PN 2236]

RIN 0905–ZA49

Availability of Funds for the Nursing Education Loan Repayment Program for Service in Certain Health Facilities

AGENCY: Health Resources and Services Administration, PHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that approximately $2,025,000 will be available in fiscal year (FY) 1994 for awards under section 846 of the Public Health Service (PHS) Act to repay up to 85 percent of the nursing education loans of registered nurses who agree to serve for up to 3 years as nurse employees in certain health facilities with a critical shortage of nurses.

The HRSA, through this notice, invites applications for participation in this loan repayment program. With these funds, the HRSA estimates that approximately 218 loan repayment awards may be made.

The PHS is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting health priorities. These programs will contribute to the Healthy People 2000 objectives by improving access to primary health care services through coordinated systems of care for medically underserved populations in both rural and urban areas. Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–01) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–01) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (telephone number: 202 783–3238).

DATES: To receive consideration for funding, individuals must submit their applications by September 1, 1994. Applications shall be considered as meeting the deadline if they are either:

(1) Received on or before the deadline date; or

(2) Sent on or before the deadline and received in time for submission to the reviewing program official. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing).

Late applications will not be considered for funding.

ADDRESSES: Application materials with a list of counties (parishes) with the greatest shortage of nurses may be obtained by calling or writing to: Mr. Clarke Gordon, Chief, Loan Repayment Programs Branch, Division of Scholarships and Loan Repayments, Bureau of Primary Health Care, HRSA, 4350 East-West Highway, 10th floor, Bethesda, MD 20814, (301–594–4400). The 24-hour toll-free phone number is 1–800–435–6464 and the FAX number is (301) 594–4981. Completed applications should be mailed to the same address. The application form has been approved under Office of Management and Budget (OMB) Number 0915–0140.

FOR FURTHER INFORMATION CONTACT: For further program information and technical assistance, please contact Mr. Gordon at the above address, phone or FAX number.

SUPPLEMENTARY INFORMATION: Section 846 of the PHS Act provides that the Secretary will repay a portion of an individual's educational loans incurred for nursing education costs if that individual enters into an agreement with the Secretary to serve as a registered nurse for 2 or 3 years in a variety of eligible health facilities or in a health facility determined by the Secretary to have a critical shortage of nurses. For an individual who is selected to participate in this program, repayment shall be on the following basis:

(1) By the completion of the first year of agreed service, the Secretary will have paid 30 percent of the principal of, and interest on, the outstanding balance on each qualified loan as of the beginning date of service;

(2) By the completion of the second year of agreed service, the Secretary will have paid another 30 percent of the principal of, and interest on, the outstanding balance of each qualified loan as of the beginning date of service; and

(3) By the completion of a third year of agreed service, if any, the Secretary will have paid another 25 percent of the principal of, and interest on, the outstanding balance of each qualified loan as of the beginning date of service.

No more than 85 percent of the principal balance of any qualified loan which was unpaid as of the beginning date of service will be paid under this program.

Prior to entering an agreement for repayment of loans, other than Nursing Student Loans (authorized under Section 838 of the PHS Act), the Secretary will require that satisfactory evidence be provided of the existence and reasonableness of the educational loans.

These loan repayment amounts are unrelated to any salary paid to the nursing education loan repayment recipient by the health facility by which he or she has been employed.

To be eligible to participate in this program, an individual must:

(1) Have received, prior to the start of service, a baccalaureate or associate degree in nursing, a diploma in nursing, or a graduate degree in nursing;

(2) Have outstanding educational loans for the costs of his/her nursing education;

(3) Agree to be employed full-time for not less than 2 years in any of the following types of eligible health facilities: an Indian Health Service health center; a Native Hawaiian health center; a public hospital (operated by a State, county, or local government); a community or migrant health center [sections 330(a) and 329(a)(1) of the PHS Act]; (Federally Qualified Health Centers receiving sections 330 or 329 funding are also eligible); a rural health clinic (section 1861 (aa)(2) of the Social Security Act); or a public or nonprofit private health facility determined by the Secretary to have a critical shortage of nurses; and

(4) Plan to begin employment as a registered nurse no later than September 30, 1994.

Funding Preferences

As required under section 846, the Secretary will give preference to qualified applicants:

(1) Who have the greatest financial need; and

(2) Who agree to serve in the types of health facilities described in paragraph (3) above, that are located in geographic areas determined by the Secretary to have a shortage of and need for nurses.

Breach of Agreement

Participants in this program who fail to provide health services for the period

specified in their agreements with the Secretary, shall be liable to the Federal Government for payments made by the Secretary during the service period pursuant to such agreement, plus interest on this amount at the maximum legal prevailing rate, payable within 3 years from the date the agreement with the Secretary is breached.

Waiver of Suspension of Liability

A waiver or suspension of liability may be granted by the Secretary if compliance with the agreement with the Secretary by the individual participant is impossible, or would involve extreme hardship to the individual, and if enforcement of the agreement with respect to the individual would be unconscionable.

Other Award Information

This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, since payments to individuals are not covered. In addition, this program is not subject to the submission of a Public Health System Impact Statement.

The OMB Catalog of Federal Domestic Assistance number for this program is 93.908.

Dated: April 21, 1994.

John H. Kelso,

Acting Administrator.

[FR Doc. 94–12427 Filed 5–19–94; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the following Heart, Lung, and Blood Special Emphasis Panels.

These meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications, contract proposals, and/or cooperative agreements. These applications and/or proposals and the discussions could reveal confidential trade secrets of commercial property such as patentable material, and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Panel: NGLBI SEP on Clinical and Coordinating Centers for Physical Activity Intervention in Health Care Settings for High Risk Sedentary Adults
Dates of Meeting: June 6–7, 1994
Time of Meeting: 9 a.m.
Place of Meeting: Stouffer Concourse Hotel
Agenda: To evaluate and review contract proposals.
Contact Person: Louise P. Corman, Ph.D. 5333 Westbard Avenue, room 538 Bethesda, Maryland 20892 (301) 594–7452

Name of Panel: NHLBI SEP for Review of the Clinical Investigator Development Awards
Dates of Meeting: June 27–28, 1994
Time of Meeting: 12 p.m.
Place of Meeting: Hyatt Regency Bethesda, Maryland
Agenda: To evaluate and review grant applications.
Contact Person: Kathryn W. Ballard, Ph.D. 5333 Westbard Avenue, room 550 Bethesda, Maryland 20892 (301) 594–7450

Name of Panel: NHLBI SEP/NASA RFA on Simulated Microgravity and Cardiovascular, Pulmonary, and Hematologic Research
Dates of Meeting: June 28, 1994
Time of Meeting: 8 a.m.
Place of Meeting: Turf Valley Hotel, Ellicott City, Maryland
Agenda: To evaluate and review grant applications.
Contact Person: Jeffrey H. Hurst, Ph.D. 5333 Westbard Avenue, room 555 Bethesda, Maryland 20892 (301) 594–7418.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: May 16, 1994

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–12324 Filed 5–19–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Social and Group Processes Review Committee, National Institute of Mental Health, which was published in the **Federal Register** on May 12, 1994 (59 CFR 24707).

This committee was to have convened at 9 a.m. on June 2, but has been changed to 9 a.m. on June 1, 1994, Residence Inn by Marriott, 7335 Wisconsin Avenue, Bethesda, MD 20814.

The meeting will be open to the public from 9 a.m. to 10 a.m. and will be closed from 10 a.m. to adjournment for the review of individual grant applications.

Dated: May 13, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–12325 Filed 5–19–94; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings that are being held to review grant applications:

Study section/contact person	May–July 1995 meetings	Time	Location
Biobehavioral and Social Sciences Initial Review Group			
Behavioral Medicine, Ms. Carol Campbell, 301–594–7165	June 1–3	8:30 a.m.	St. James Hotel, Washington, DC.
Bio-Psychology, Dr. A. Keith Murray, 301–594–7145	May 31–June 2	9 a.m.	Omni Shoreham Hotel, Washington, DC.
Human Development & Aging-1, Dr. Teresa Levitin, 301–594–7141	June 20–22	9 a.m.	Holiday Inn, Bethesda, MD.
Human Development & Aging-2, Dr. Peggy McCardle, 301–594–7293	June 13–15	8:30 a.m.	Hyatt Regency Hotel, Bethesda, MD.
Human Development & Aging-3, Dr. Anita Miller Sostek, 301–594–7358	June 20–22	8:30 a.m.	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Social Sciences & Population, Dr. Robert Weller, 301–594–7340	June 16–18	8 a.m.	Hyatt Regency Hotel, Bethesda, MD.

Study section/contact person	May–July 1995 meetings	Time	Location
Neurological Sciences Initial Review Group			
Neurological Sciences-1, Dr. Anita Miller Sostek, 301–594–7358	June 8–10	8:30 a.m.	Holiday Inn, Georgetown, DC.
Neurological Sciences-2, Dr. Stephen Gobel, 301–594–7356	June 14–16	8 a.m.	Holiday Inn, Chevy Chase, MD.
Neurology A, Dr. Joe Marwah, 301–594–7158	June 9–11	8:30 a.m.	Windom Bristol Hotel, Washington, DC.
Neurology B–1, Dr. Lillian Pubols, 301–594–7325	June 7–9	8:30 a.m.	The Hotel Washington, Washington, DC.
Neurology B–2, Dr. Herman Teitelbaum, 301–594–7245	June 28–30	8:30 a.m.	Holiday Inn, Bethesda, MD.
Neurology C, Dr. Kenneth Newrock, 301–594–7123	June 22–24	8:30 a.m.	Omni Georgetown Hotel, Washington, DC.
Sensory Sciences Initial Review Group			
Hearing Research, Dr. Joseph Kimm, 301–594–7257	June 13–15	8:30 a.m.	Barcelo Washington Hotel, Washington, DC.
Sensory Disorders & Language, Dr. Jane Hu, 301–594–7269	June 15–17	9 a.m.	Holiday Inn Capitol Hill, Washington, DC.
Visual Sciences A, Dr. Luigi Giacometti, 301–594–7132	June 15–17	8:30 a.m.	Holiday Inn Crowne Plaza, Rockville, MD.
Visual Sciences B, Dr. Leonard Jakubczak, 301–594–7198	June 8–10	8:30 a.m.	The Latham Hotel, Georgetown, DC.
Visual Sciences C, Dr. Carole Jelsema, 301–594–7311	June 8–10	8 a.m.	The Georgetown Inn, Washington, DC.
Cell Development and Function Initial Review Group			
Biological Sciences-2, Dr. Camilla Day, 301–594–7389	June 27–29	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
Biological Sciences-3, Dr. Nancy Pearson, 301–594–9505	June 6–8	8:30 a.m.	St. James Hotel, Washington, DC.
Cellular Biology and Physiology-1, Dr. Gerald Greenhouse, 301–594–7385.	June 1–3	8 a.m.	American Inn, Bethesda, MD.
Cellular Biology and Physiology-2, Dr. Gerhard Ehrenspeck, 301–594–7387.	June 6–8	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
Human Embryology & Development-2, Dr. Arthur Hoversland, 301–594–7253.	June 9–10	8 a.m.	Holiday Inn, Chevy Chase, MD.
International & Cooperative Projects, Dr. G.B. Warren, 301–594–7289	June 21–22	8 a.m.	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Molecular Biology, Dr. Robert Su, 301–594–7320	June 23–25	8:30 a.m.	The Georgetown Inn, Washington, DC.
Molecular Cytology, Dr. Ramesh Nayak, 301–594–7169	June 2–3	8 a.m.	Holiday Inn, Chevy Chase, MD.
Endocrinology and Reproductive Sciences Initial Review Group			
Biochemical Endocrinology, Dr. Michael Knecht, 301–594–7247	June 8–10	8:30 a.m.	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Endocrinology, Dr. Syed Amir, 301–594–7229	June 6–8	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
Human Embryology & Development-1, Dr. Arthur Hoversland, 301–594–7253.	June 20–21	8 a.m.	Holiday Inn Crowne Plaza, Rockville, MD.
Reproductive Biology, Dr. Dennis Leszczynski, 301–594–7218	June 6–8	8:30 a.m.	Holiday Inn, Bethesda, MD.
Reproductive Endocrinology, Dr. Abubakar Shaikh, 301–594–7368	June 6–8	8:30 a.m.	Holiday Inn Crowne Plaza, Rockville, MD.
Genetic Sciences Initial Review Group			
Biological Sciences-1, Dr. Nancy Pearson, 301–594–9505	June 22–24	8:30 a.m.	Ramada Hotel, Rockville, MD.
Genetics, Dr. David Remondini, 301–594–7202	June 16–18	9 a.m.	Holiday Inn, Bethesda, MD.
Genome, Dr. Cheryl Corsaro, 301–594–7336	June 27–29	9 a.m.	Old Towne Holiday Inn, Alexandria, VA.
Mammalian Genetics, Dr. Jerry Roberts, 301–594–7051	June 8–10	9 a.m.	One Washington Circle Hotel, Washington, DC.
Pathophysiological Sciences Initial Review Group			
Lung Biology & Pathology, Dr. Anne Clark, 301–594–7115	June 11–13	7 p.m.	Asia Chinese Restaurant, Aspen, CO.
Physiological Sciences, Dr. Nicholas Mazarella, 301–594–7098	June 7–8	8 a.m.	Holiday Inn Crowne Plaza, Rockville, Md.
Physiology, Dr. Michael Lang, 301–594–7332	June 8–10	8:30 a.m.	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Respiratory & Applied Physiology, Dr. Everett Sinnett, 301–594–7220	June 8–10	8:30 a.m.	One Washington Circle Hotel, Washington, DC.
Biochemical Sciences Initial Review Group			
Biochemistry, Dr. Adolphus Toliver, 301–594–7263	June 15–17	8:30 a.m.	The Georgetown Inn, Washington, DC.
Biomedical Sciences, Dr. Charles Baker, 301–594–7170	June 27–29	8:30 a.m.	Holiday Inn Crowne Plaza, Rockville, MD.
Medical Biochemistry, Dr. Alexander Liacouras, 301–594–7264	June 13–15	8:30 a.m.	The Georgetown Inn, Washington, DC.
Pathobiochemistry, Dr. Zakir Bengali, 301–594–7317	June 9–11	8:30 a.m.	Ramada Inn, Rockville, MD.

Study section/contact person	May–July 1995 meetings	Time	Location
Physiological Chemistry, Dr. Jerry Critz, 301–594–7322	June 23–25	8:30 a.m.	The Marriott at Tysons Corner, Vienna, VA.
Biophysical and Chemical Sciences Initial Review Group			
Bio-Organic & Natural Products Chemistry, Dr. Harold Radtke, 301–594–7212.	June 23–25	9 a.m.	Holiday Inn, Georgetown, DC.
Biophysical Chemistry, Dr. John Beisler, 301–594–7149	June 9–11	8:30 a.m.	St. James Hotel, Washington, DC.
Medicinal Chemistry, Dr. Ronald Dubois, 301–594–7163	June 22–24	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
Metallobiochemistry, Dr. Edward Zapolski, 301–594–7302	June 23–25	8:30 a.m.	Holiday Inn, Governor's House, Washington, DC.
Molecular & Cellular Biophysics, Dr. Nancy Lamontagne, 301–594–7147.	June 9–11	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
Physical Biochemistry, Dr. Gopa Rakhit, 301–594–7166	June 20–22	8:30 a.m.	Holiday Inn Crowne Plaza, Rockville, MD.
Oncological Sciences Initial Review Group			
Chemical pathology, Dr. Edmund Copeland, 301–594–7154	June 21–24	8 a.m.	Holiday Inn, Bethesda, MD.
Experimental Therapeutics-1, Dr. Philip Perkins, 301–594–7324	June 15–17	8:30 a.m.	Hyatt at Key Bridge, Arlington, VA.
Experimental Therapeutics-2, Dr. Marcia Litwack, 301–594–7366	June 29–July 1	8:30 a.m.	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Metabolic Pathology, Dr. Marcelina Powers, 301–594–7120	June 28–30	8 a.m.	Residence Inn Marriott, Bethesda, MD.
Pathology A, Dr. Asher Hyatt, 301–594–7150	June 7–10	9 a.m.	Holiday Inn Crowne Plaza, Rockville, MD.
Pathology B, Dr. Martin Padarathsingh, 301–594–7192	June 7–10	7 a.m.	Holiday Inn, Georgetown, DC.
Radiation, Dr. Paul Strudler, 301–594–7152	June 6–8	8:30 a.m.	ANA Westin Hotel, Washington, DC.
Cardiovascular Sciences Initial Review Group			
Cardiovascular, Dr. Gordon Johnson, 301–594–7216	June 8–10	8 a.m.	Holiday Inn Crowne Plaza, Rockville, MD.
Cardiovascular & Renal, Dr. Anthony Chung, 301–594–7338	June 20–22	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
Experimental Cardiovascular Sciences, Dr. Richard Peabody, 301–594–7344.	June 8–10	8 a.m.	Holiday Inn, Bethesda, MD.
Hematology-1, Dr. Clark Lum, 301–594–7260	June 9–11	8 a.m.	Hyatt Regency Hotel, Bethesda, MD.
Hematology-2, Dr. Jerold Fried, 301–594–7261	June 22–24	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
Pharmacology, Dr. Joseph Kaiser, 301–594–7241	June 22–24	8:30 a.m.	American Inn, Bethesda, MD.
Health Promotion and Disease Prevention Initial Review Group			
Epidemiology & Disease Control-1, Dr. Scott Osborne, 301–594–7060	June 8–10	8:30 a.m.	Hyatt Regency Hotel, Bethesda, MD.
Epidemiology & Disease Control-2, Dr. H.M. Stiles, 301–594–7194	June 8–10	8:30 a.m.	Embassy Suites Hotel, Alexandria, VA.
Nursing Research, Dr. Gertrude McFarland, 301–594–7080	June 1–3	8:30 a.m.	Holiday Inn, Bethesda, MD.
Safety & Occupational Health, Dr. Gopal Sharma, 301–594–7130	June 15–17	8 a.m.	Holiday Inn, Chevy Chase, MD.
Toxicology-1, Dr. Alfred Marozzi, 301–594–7278	June 15–17	8 a.m.	American Inn, Bethesda, MD.
Toxicology-2, Dr. Alfred Marozzi, 301–594–7278	June 8–10	8 a.m.	American Inn, Bethesda, MD.
Musculoskeletal and Dental Sciences Initial Review Group			
General Medicine A-1, Dr. Harold Davidson, 301–594–7313	June 13–15	8:30 a.m.	Mariott Hotel, Pooks Hill, Bethesda, MD.
General Medicine B, Dr. Daniel McDonald, 301–594–7301	June 1–3	8 a.m.	Holiday Inn, Chevy Chase, MD.
Oral Biology & Medicine-1, Dr. Larry Pinkus, 301–594–7315	June 20–22	8:30 a.m.	River Inn Hotel, Washington, DC.
Oral Biology & Medicine-2, Dr. Priscilla Chen, 301–594–7287	June 13–15	8:30 a.m.	Old Towne Holiday Inn, Alexandria, VA.
Orthopedics & Musculoskeletal, Ms. Ileen Stewart, 301–594–7282	June 15–17	8:30 a.m.	Holiday Inn, Arlington, VA.
Nutritional and Metabolic Sciences Initial Review Group			
Clinical Sciences-1, Ms. Jo Pelham, 301–594–7254	June 23–24	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
Clinical Sciences-2, Ms. Jo Pelham, 301–594–7254	June 16–17	8 a.m.	Holiday Inn, Georgetown, DC.
General Medicine A-2, Dr. Mushtaq Khan, 301–594–7168	June 6–8	8:30 a.m.	The Georgetown Inn, Washington, DC.
Metabolism, Dr. Krish Krishnan, 301–594–7156	June 22–24	8 a.m.	Holiday Inn, Georgetown, DC.
Nutrition, Dr. Sooja Kim, 301–594–7174	June 8–10	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
AIDS and Related Research Initial Review Group			
AIDS & Related Research 1, Dr. Sami Mayyasi, 301–594–7073	July 11–12	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
AIDS & Related Research 2, Dr. Gilbert Meier, 301–594–7118	July 11–12	8 a.m.	Holiday Inn, Chevy Chase, MD.
AIDS & Related Research 3, Dr. Marcel Pons, 301–594–7210	June 26–28	8:30 a.m.	Holiday Inn, Governor's House, Washington, DC.
AIDS & Related Research 4, Dr. Mohindar Poonian, 301–594–7112	July 7–8	8:30 a.m.	Hyatt Regency Hotel, Bethesda, MD.
AIDS & Related Research 5, Dr. Mohindar Poonian, 301–594–7112	July 15	8:30 a.m.	Holiday Inn Crowne Plaza, Rockville, MD.

Study section/contact person	May–July 1995 meetings	Time	Location
AIDS & Related Research 6, Dr. Gilbert Meier, 301–594–7118	July 15	8 a.m.	Holiday Inn, Chevy Chase, MD.
AIDS & Related Research 7, Dr. Gilbert Meier, 301–594–7118	July 8	8 a.m.	Holiday Inn, Chevy Chase, MD.
Immunological Sciences Initial Review Group			
Allergy & Immunology, Mr. Howard Berman, 301–594–7234	June 13–15	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
Experimental Immunology, Dr. Calbert Laing, 301–594–7190	June 8–10	8:30 a.m.	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Immunobiology, Dr. Betty Hayden, 301–594–7310	June 1–3	8 a.m.	Holiday Inn, Chevy Chase, MD.
Immunological Sciences, Dr. Anita Corman Weinblatt, 301–594–7175	June 22–24	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
Immunology, Virology & Pathology, Dr. Lynwood Jones, 301–594–7262	June 15–17	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
Infectious Diseases and Microbiology Initial Review Group			
Bacteriology & Mycology-1, Dr. Timothy Henry, 301–594–7228	June 15–17	8:30 a.m.	Holiday Inn, Bethesda, MD.
Bacteriology & Mycology-2, Dr. William Branche, Jr., 301–594–7297	June 1–3	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
Experimental Virology, Dr. Garrett Keefer, 301–594–7099	June 13–15	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
Microbial Physiology & Genetics-1, Dr. Martin Slater, 301–594–7176	June 15–17	8:30 a.m.	Holiday Inn, Governor's House, Washington, DC.
Microbial Physiology & Genetics-2, Dr. Gerald Liddel, 301–594–7167	June 8–10	8 a.m.	The Inn at Foggy Bottom, Washington, DC.
Tropical Medicine & Parasitology, Dr. Jean Hickman, 301–594–7078	June 8–10	8 a.m.	Holiday Inn, Bethesda, MD.
Virology, Dr. Rita Anand, 301–594–7108	June 22–24	8:30 a.m.	Holiday Inn Crowne Plaza, Rockville, MD.
Surgery, Radiology and Bioengineering Initial Review Group			
Diagnostic Radiology, Dr. Catharine Wingate, 301–594–7295	June 22–24	8:30 a.m.	Marriott Hotel, Pooks Hill, Bethesda, MD.
Surgery & Bioengineering, Dr. Paul Parakkal, 301–594–7258	June 9–10	8 a.m.	Holiday Inn, Georgetown, DC.
Surgery, Anesthesiology & Trauma, Dr. Keith Kraner, 301–594–7308	June 22–24	2 p.m.	Holiday Inn, Bethesda, MD.

The meetings will be closed in accordance with the provisions set forth in section 552b(c) (4) and 552(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meetings due to the difficulty of coordinating the attendance of members because of conflicting schedules.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 16, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–12323 Filed 5–19–94; 8:45 am]

BILLING CODE 414–01–M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests 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 requests have been submitted to OMB since the list was last published on Friday, May 6, 1994.

(Call PHS Reports Clearance Officer on 202–690–7100 for copies of request)

1. Evaluation of the Health Diary Handbook—(New) The Health Diary, a maternal and child health handbook, was designed to contribute to infant mortality reduction efforts by encouraging women to become more involved in their pregnancies and in caring for their infants. To evaluate the health diary, information will be collected from executive directors, staff, providers, and clients at six Healthy Start sites. *Respondents:* Individuals or households, State or local governments, Non-profit institutions, Small businesses or organizations.

Title	Number of respondents	Number of responses per respondent	Average burden per response
Client interviews.	300	1	.45 hour.
Staff and provider interviews.	48	1	1.1 hours.

Estimated total annual burden—276

2. Shellfish Shippers Certification—0910–0021 (Reinstatement and consolidation with 0910–0022)—The information collected is used to compile, publish and distribute a listing of approved sources of state and international certified shellfish dealers/shippers. Food control officials and the food industry use the list to determine certified sources and shellfish. *Respondents:* State or local governments; *Number of Respondents:* 36; *Number of Responses per Respondent:* 66; *Average Burden per Response:* .10 hour; *Estimated Annual Burden:* 237 hours.

3. Health Hazard Evaluation/Technical Assistance and Emerging Problems—0925–0260 (Reinstatement)—The National Institute of Occupational Safety and Health conducts "short term" field investigations each year to identify potential chemical, biological or physical hazards in a given workplace. Often, a short turnaround time is required. This request supplies generic data collection instruments for specific health hazard evaluations. *Respondents:* Individuals or households; *Number of Respondents:* 15,655; *Number of Responses per Respondent:* 1; *Average Burden per Response:* .308 hour; *Estimated Annual Burden:* 4,827 hours.

4. Airways Disease in Miners—New—This is an investigation to determine environmental and constitutional risk

factors associated with pulmonary disease experience by dust-exposed workers who have participated in the National Study of Coal Worker's Pneumoconiosis. Information to be collected in telephone interviews will include work and health related information and information regarding the past non-work environment that may have affected lung function. *Respondents:* Individuals or households; *Number of Respondents:* 270; *Number of Responses per Respondent:* 1; *Average Burden per Response:* 1.16 hours; *Estimated Annual Burden:* 270 hours.

Written comments and recommendations concerning the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated below at the following address: Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, room 3002, Washington, DC 20503.

Dated: May 16, 1994.

James Scanlon,

Director, Division of Data Policy, Office of Health Planning and Evaluation.

[FR Doc. 94–12285 Filed 5–19–94; 8:45 am]

BILLING CODE 4160–17–M

Health Resources and Services Administration; Closure of Hospitals and Clinics; Delegation of Authority

Notice is hereby given that in furtherance of the delegations to the Administrator, Health Resources and Services Administration, on March 27, 1987, by the Assistant Secretary for Health, the Administrator, Health Resources and Services Administration, delegated to the Director, Division of Management Services, Office of Operations and Management, all the following authorities pertaining to the closure of hospitals and clinics:

1. The authority under title IX, subtitle J of Public Law 97–35, the "Omnibus Budget Reconciliation Act of 1981," (42 U.S.C. 248b, note *et seq.*) as amended, concerning the orderly closure, transfer, and financial self-sufficiency of Public Health Service hospitals and clinics.

2. The authority under section 911 of Public Law 97–99, the "Military Construction Authorization Act, 1982," (42 U.S.C. 248c) as amended, concerning the continued use of certain former Public Health Service facilities.

This delegation excluded the authority to (1) determine the feasibility of the proposals for transfer or achievement of financial self-sufficiency, and (2) execute and implement the transfer of HHS-owned real property and related personal property of the Public Health Service hospitals and clinics.

REDELEGATION: Provision was made for all authorities to be redelegated.

PRIOR DELEGATIONS: All previous delegations and redelegations were superseded.

EFFECTIVE DATE: This delegation was effective May 3, 1994.

Dated: May 3, 1994.

John H. Kelso,

Acting Administrator.

[FR Doc. 94–12282 Filed 5–19–94; 8:45 am]

BILLING CODE 4160–15–M

Health Resources and Services Administration; Part D, Title III of the Public Health Service Act, As Amended; Delegation of Authority

Notice is hereby given that in furtherance of the delegation to the Administrator, Health Resources and Services Administration, on February 13, 1991, by the Assistant Secretary for Health, the Administrator, Health Resources and Services Administration, delegated all the authorities under part D, title III of the Public Health Service Act (42 U.S.C. 254b *et seq.*), as amended, for Primary Health Care, excluding the authorities to issue regulations, to submit reports to Congress or a congressional committee, to establish advisory committees or councils, or to appoint members to advisory committees or councils, as indicated below:

1. To the Regional Health Administrators, Regions I–X, the following authorities under title III, part D, of the Public Health Service Act, as amended pertaining to the National Health Service Corps (NHSC):

a. Authority under section 331(c) (42 U.S.C. 254d(c)) pertaining to reimbursement for travel of a NHSC applicant to site:

b. Authority under section 334 (42 U.S.C. 254g) pertaining to the waiver of amounts owed by entities, excluding the waiver of loans approved under section 335(c);

c. Authority under section 335(c) (42 U.S.C. 254h(c)) to negotiate and award loans to entities;

d. Authority under section 338D(d) (42 U.S.C. 254n(d)) to pay travel expenses for an individual, his family, and his possessions to site of private practice;

e. Authority under section 338D(g) (42 U.S.C. 254n(g)) to provide technical assistance to an individual for assisting in fulfilling the written agreement.

2. To the Director, Bureau of Primary Health Care, the authorities under title III, part D, of the Public Health Service Act (42 U.S.C. 254 *et seq.*), as amended, for Primary Health Care, excluding the authorities delegated to the Regional Health Administrator (Regions I–X) and the Director, Office of Rural Health Policy.

3. To the Director, Office of Rural Health Policy, the authorities under part D, subpart III, section 338J of the Public Health Service Act (42 U.S.C. 254r), as amended, pertaining to Grants to States for Operation of Offices of Rural Health.

RATIFICATION: The Administrator ratified all actions exercised by the Regional Health Administrators, Regions I–X, from March 11, 1991, to the date of this delegation under title III, part D, subparts II and V, of the Public Health Service Act, as amended.

REDELEGATION: Provision was made for all authorities to be redelegated.

PRIOR DELEGATIONS: All previous delegations and redelegations under title III, part D, of the Public Health Service Act, as amended, were superseded.

EFFECTIVE DATE: This delegation was effective May 10, 1994.

Dated: May 10, 1994.

John H. Kelso,

Acting Administrator.

[FR Doc. 94–12281 Filed 5–19–94; 8:45 am]

BILLING CODE 4160–15–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–84]

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.

EFFECTIVE DATE: May 20, 1994.

ADDRESSES: For further information, contact Barbara Richards, Department of Housing and Urban Development, Room 7262, 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 the December 12, 1988

court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability of use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: May 6, 1994.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 94–12400 Filed 5–19–94; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–010–4210–04; NMNM 025208]

Termination of Recreation and Public Purposes Classification and Opening Order, New Mexico

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: This notice terminates Recreation and Public Purposes Classification NMNM 025208. The land will be opened to the public land laws generally, including the mining laws. The land has been and remains open to the mineral leasing laws.

EFFECTIVE DATE: Termination of the classification is effective May 20, 1994. The land will be open to entry at 8 a.m. on June 20, 1994.

FOR FURTHER INFORMATION CONTACT: Taos Resource Area Office, Plaza Montevideo Building, 224 Cruz Alta Road, Taos, NM 87571–5983, 505–758–8851.

SUPPLEMENTARY INFORMATION: In 1957, Recreation and Public Purposes Patent 1176422 issued to San Miguel County Board of Education for school grounds. The land was not being used for the purposes conveyed; therefore, San Miguel County Board of Education conveyed said land back to the United States.

Pursuant to the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869 *et seq.*), and the regulations contained in 43 CFR 2461.5 (c)(2), Recreation and Public Purposes Classification NMNM 025208 is hereby terminated in its entirety and the segregation for the following described land is hereby terminated:

New Mexico Principal Meridian

T. 13 N., R. 14 E.,
Sec. 10, lot 5.

Containing 22.15 acres.

The classification no longer serves a needed purpose as to the land described above, and is hereby terminated.

At 8 a.m. on June 20, 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 8 a.m. on June 20, 1994, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

At 8 a.m. on June 20, 1994, the land will be opened to location and entry under the United States mining 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 land 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 10, 1994.

Kathy Eaton,

Acting State Director.

[FR Doc. 94–12398 Filed 5–19–94; 8:45 am]

BILLING CODE 4310–FB–M

[CA–050–02–7123–55–6251; CACA 29583]

Realty Action; Termination of Classifications and Disposal of Public Land in Shasta, Butte, and Trinity Counties, CA

In notice document 93–30755 beginning on page 66011 in the issue of Friday, December 17, 1993, make the following addition:

On page 66011, under M.D.M., Trinity County, add:

T. 32N., R. 8 W.
Sec. 32: Lots 1–4

For a period of 45 days from publication, interested parties may submit comments specific to the above addition of public land to the Area Manager, Redding Resource Area, 355 Hemsted Drive, Redding, California 96002.

Francis Berg,

Acting Area Manager.

[FR Doc. 94–12397 Filed 5–19–94; 8:45 am]

BILLING CODE 4340–10–M

[OR–943–4210–06; GP4–050; OR–50376]

Proposed Withdrawal and Opportunity for Public Meeting; Oregon

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 160 acres of public land for protection of the Hunter Creek Area of Critical Environmental Concern near Gold Beach, Oregon. This notice closes the land for up to two years from surface entry and mining.

DATES: Comments and requests for a public meeting must be received by August 18, 1994.

ADDRESSES: Comments and meeting requests should be sent to the Oregon/Washington State Director, BLM, P.O. Box 2965, Portland, Oregon 97208–2965.

FOR FURTHER INFORMATION CONTACT: Donna Kauffman, BLM Oregon/Washington State Office, 503–280–7162.

SUPPLEMENTARY INFORMATION: On April 22, 1994, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1988)), but not the mineral leasing laws, subject to valid existing rights:

Willamette Meridian

T. 37 S., R. 14 W.,
Sec. 11, SE¼SE¼;
Sec. 12, NE¼SW¼ and S½SW¼.

The area described contains 160 acres in Curry County.

The purpose of the proposed withdrawal is to protect the unique mixture of geologic and geomorphologic features, natural and valuable wildlife habitat, threatened botanical species, known cultural resources, recreational values, and the health and safety of the public within the Hunter Creek Area of Critical Environmental Concern.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may

present their views in writing to the State Director at the address indicated above.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested parties who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the State Director at the address indicated above within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of two years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. Temporary land uses that may be permitted by the authorized officer during the period of temporary segregation include leases, licenses, permits, rights-of-way, and disposal of mineral or vegetative resources other than under the mining laws.

Dated: May 11, 1994.

Robert D. DeViney, Jr.,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 94–12412 Filed 5–19–94; 8:45 am]

BILLING CODE 4310–33–P

Fish and Wildlife Service

Availability of the Final Environmental Impact Statement (EIS) on the Proposed South Tongue Point Land Exchange and Marine Industrial Park Development Project

AGENCIES: Fish and Wildlife Service (lead agency), Interior; General Services Administration, Army Corps of Engineers, and Oregon Division of State Lands (cooperating agencies).

ACTION: Notice of availability.

SUMMARY: This notice advises the public that the Final Environmental Impact Statement on the proposed South Tongue Point Land Exchange and Marine Industrial Park Development Project is available. Preparation of the Record of Decision to implement the preferred alternative will begin no sooner than 30 days from this notice.

FOR FURTHER INFORMATION CONTACT: Benjamin Harrison, South Tongue Point EIS Team Leader, U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 NE. 11th Avenue, Portland, Oregon 97232–4181 or David Blum, South Tongue Point Project Coordinator, Oregon Division of State Lands, 775 Summer Street NE., Salem, Oregon 97310.

Individuals wishing copies of this Final EIS for review should immediately contact the U.S. Fish and Wildlife Service (Service) Portland Regional Office. Copies of the Final EIS have been sent to all agencies and individuals who previously received copies and to all others who have already requested copies.

SUPPLEMENTARY INFORMATION:

A. Background

In 1979, the U.S. Government declared the property known as South Tongue Point near Astoria, Oregon, to be excess to the Federal inventory. In 1981, the State of Oregon contacted the Federal Government regarding a possible exchange of property involving south Tongue Point and state-owned islands in the Columbia River.

In May 1989, the U.S. Navy contacted the Oregon Division of State Lands (Division) in regard to the possibility of homeporting mine hunter coastal vessels at South Tongue Point. At the time, the Division was studying the feasibility of acquiring South Tongue Point and developing the site as a marine industrial park in conjunction with the Federal Government's proposal to exchange property with the State of Oregon. The Navy's interest led to the development of a master plan for the marine industrial park at South Tongue Point, with the Navy as the first proposed tenant.

The General Services Administration is proposing to convey approximately 130 acres of land at South Tongue Point near Astoria, Oregon (section 12, T.8N., R.9W.), administered by the U.S. Army Corps of Engineers to the State of Oregon. In exchange for the Federal land, the Division is proposing to convey approximately 3,930 acres of State-owned land within the administrative boundary of Lewis and Clark National Wildlife Refuge (Refuge), to the General Services Administration which will in turn transfer those lands to the Service. An additional 950 acres of State-owned land within the Refuge is proposed for Service management under a long-term cooperative agreement.

The State is proposing to develop a multitenant shallow draft marine industrial park and moorage facility for a variety of water-dependent and general industrial uses. Water-dependent uses would have water access by means of pile-supported piers. General industrial uses would be located in upland areas without water access.

This development activity is intended to create real property assets and associated income for the Common School Fund of the State of Oregon, encourage new industrial employment within the area, and contribute to the economic stability and employment diversification of Clatsop County and the State of Oregon. Under the proposed action, the Service would gain fee title to lands within the administrative boundary of the Refuge. This would provide the Service with the needed management flexibility to control future expected incompatible uses and enhance wildlife populations and their habitats.

Scoping activities were undertaken preparatory to developing an EIS with a variety of Federal, State, and local entities. A Notice of Intent to prepare the EIS was published in the **Federal Register** on November 4, 1991. A Draft EIS was issued in June 1992. A notice of availability for the Draft EIS was published in **Federal Register** on July 2, 1993.

In January 1993, the U.S. Navy announced that Navy vessels would not be homeported at South Tongue Point as previously planned. Since the decision by the U.S. Navy, the South Tongue Point Master Plan has been revised with only minor changes. Proposed site developments are the same as described in the June 1992 Draft EIS except that now a Marine Environmental Research and Technology Station operated principally by Clatsop Community College is expected to be the first tenant rather than the U.S. Navy. A replacement tenant for the Navy is not known but will be a shallow draft water dependent tenant.

Project impacts are expected to be the same or less as described in the June 1992 Draft EIS since dredging will not be required to accommodate water dependent tenants.

B. Development of the Final EIS

This Final EIS has been developed cooperatively by the U.S. Fish and Wildlife Service, Pacific Division (lead agency); U.S. Army Corps of Engineers, Portland District; U.S. General Service Administration, San Francisco Office; and Oregon Division of State Lands.

In the development of this Final EIS, the Service has initiated action to assure compliance with the purpose and intent of the National Environmental Policy Act of 1969, as amended.

Key issues addressed in this Final EIS are identified as the effects that implementation of various alternatives would have upon: (1) Threatened and endangered species and their habitats, (2) other wildlife and their habitats, (3) physical environmental factors, and (4) local and regional economy.

C. Alternatives Analyzed in the Final EIS

More than 20 alternatives were considered before limiting the alternatives to be advanced for further study. Alternatives considered but not advanced for detailed analysis included alternative development concepts, alternative sites, and single versus multitenant developments. Alternatives advanced for detailed analysis include: (A) The proposed land exchange and development of a multitenant marine industrial development, (B) the proposed land exchange and multitenant marine industrial development with connecting road to North Tongue Point, and (C) a No Action Alternative. Alternative A is the Service's preferred alternative.

Implementation of Alternatives A and B would result in a beneficial situation in terms of meeting the project objectives. Both alternatives would result in some detrimental environmental affects, for the most part, to biological factors. Alternative B would result in greater impacts on biological factors than Alternative A. Impacts under Alternative A can be mitigated to a degree of less than significant whereas impacts under Alternative B cannot be mitigated to a degree of less than significant. Alternative C would have no impact on biological factors but would not meet the project objectives and would not have the beneficial economic impacts of either Alternative A or B.

Dated: May 10, 1994.

Don Weathers,

Acting Regional Director.

[FR Doc. 94–11910 Filed 5–19–94; 8:45 am]

BILLING CODE 4310–55–M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029–0061), Washington, DC 20503, telephone 202–395–7340.

Title: Small Operator Assistance Program, 30 CFR part 795.

OMB Approval Number: 1029–0061.

Abstract: This information collection requirement is needed to provide assistance to qualified small mine operators under section 507(c) of the Surface Mining Control and Reclamation Act of 1977. The information requested will provide the regulatory authority with data to determine the eligibility of the applicant for assistance under the Small Operator Assistance Program and the capability and expertise of laboratories to perform the required work.

Bureau Form Number: NS–6.

Frequency: On occasion.

Description of Respondents: Small coal mine operators.

Estimated Completion Time: 24.2 hours.

Annual Responses: 1.

Annual Burden Hours: 19,265 hours.

Bureau Clearance Officer: John A. Trelease (202) 343–1475.

Dated: May 12, 1994.

Andrew F. DeVito,

Chief, Branch of Environmental and Economic Analysis.

[FR Doc. 94–12363 Filed 5–19–94; 8:45 am]

BILLING CODE 4310–05–M

INFORMATION SECURITY OVERSIGHT OFFICE

National Industrial Security Program Policy Advisory Committee: Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. app. 2) and implementing regulation 41 CFR 101–6, announcement is made of the following committee meeting:

Name of Committee: National Industrial Security Program Policy Advisory Committee (NISPPAC).

Date of Meeting: June 7, 1994.

Time of Meeting: 2 p.m. to 4 p.m.

Place: Davis-Monthan Air Force Base, Operational Contracting Building, Contracting Conference Room, Tucson, Arizona.

Purpose: To discuss National Industrial Security Program (NISP) policy matters. The agenda will include a discussion on the status of the NISP and the scheduled June 30, 1994, issue date for the NISP Operating Manual.

This meeting will be open to the public. However, due to access procedures, the names and telephone numbers of individuals planning to attend must be submitted to the Information Security Oversight Office (ISOO) no later than June 1, 1994. Written statements from the public will be accepted in lieu of an opportunity for comment.

FOR FURTHER INFORMATION AND DIRECTIONS CONTACT: Steven Garfinkel, Director, ISOO, 750 17th Street, NW., suite 530, Washington, DC 20006, telephone (202) 634–6150.

Steven Garfinkel,

Director, Information Security Oversight Office.

[FR Doc. 94–12368 Filed 5–19–94; 8:45 am]

BILLING CODE 6820–AF–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–43 (Sub-No. 157X)]

Illinois Central Railroad Company—Abandonment Exemption—in St. Tammany Parish, LA

Illinois Central Railroad Company (IC) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its line of railroad extending from milepost 36.66, near Slidell, LA to milepost 54, near Talisheek, LA, a distance of 17.3 miles in St. Tammany Parish.

IC has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to government agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial

assistance (OFA) has been received, this exemption will be effective on June 20, 1994, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by May 31, 1994. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by June 9, 1994, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Myles L. Tobin, Illinois Central Railroad Company, 455 North Cityfront Plaza Dr., 20th Floor, Chicago, IL 60611–5504.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

IC has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by May 27, 1994. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: May 16, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–12388 Filed 5–19–94; 8:45 am]

BILLING CODE 7035–01–P

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of the exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Committee on Rules of Practice and Procedure

AGENCY: Judicial Conference of the United States Committee on Rules of Practice and Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Committee on Rules of Practice and Procedure will hold a three-day meeting. The meeting will be open to public observation but not participation and will commence each day at 8:30 a.m.

DATES: June 23–25, 1994.

ADDRESSES: Thurgood Marshall Federal Judiciary Building, Federal Judicial Center Education Center, One Columbus Circle, NE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 273–1820.

Dated: May 16, 1994.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 94–12283 Filed 5–19–94; 8:45 am]

BILLING CODE 2210–55–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–29,453]

Berenergy Corporation, Denver, Colorado; Revised Determination on Reconsideration

On May 6, 1994, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of the subject firm in Denver, Colorado. This notice will soon be published in the **Federal Register**.

Investigation findings show employment and sales declines in 1993 compared to 1992.

New findings on reconsideration show that Berenergy is a producer of crude oil and owns the crude oil it sells.

U.S. imports of crude oil increased absolutely and relative to domestic shipments in 1993 compared to 1992.

Other findings on reconsideration show that Berenergy's crude oil customers accounting for a major portion of its 1993 sales decline increased their imports of crude oil in the first nine months of 1993 compared to the same period in 1992.

Conclusion

After careful review of the additional facts obtained on reconsideration, it is concluded that increased imports of articles like or directly competitive with crude oil produced at the Berenergy Corporation in Denver, Colorado contributed importantly to the decline in sales or production and to the total or partial separation of workers at the Denver, Colorado facility of Berenergy Corporation. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All workers of Berenergy Corporation in Denver, Colorado who became totally or partially separated from employment on or after January 18, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 12th day of May 1994.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, Unemployment Insurance Service.

[FR Doc. 94–12414 Filed 5–19–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,453]

Berenergy Corporation; Denver, CO; Affirmative Determination Regarding Application for Reconsideration

On April 14, 1994, one of the petitioners requested administrative reconsideration of the Department's denial notice for workers at the subject firm. The Department's Negative Determination was issued on March 15, 1994 and was published in the **Federal Register** on March 30, 1994 (59 FR 14876).

The petitioner, with the support of the company, stated that the company is a producer and produces crude oil and natural gas.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 6th day of May 1994.

Robert O. Deslongchamps,

Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 94–12312 Filed 5–19–94; 8:45 am]

BILLING CODE 4510–30–M

[TA-W-29,408]

Cupples Paper Bag Company, Northwest Division Clackamas, OR; Negative Determination Regarding Application for Reconsideration

By a postmarked letter of April 8, 1994, one of the workers requested administrative reconsideration of the subject petition for trade adjustment assistance (TAA). The denial notice was signed on March 18, 1994 and was published in the **Federal Register** on March 30, 1994 (59 FR 14876).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The Clackamas facility produced paper grocery bags.

The worker stated that imported plastic bags adversely affected the workers at Cupples Paper Bag Company in Clackamas.

The Department's denial was based on the fact that the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met. This test is generally demonstrated through a survey of the workers' firm's customers. The Department's survey shows that none of the respondents imported paper or plastic grocery bags while decreasing their purchases from the subject firm during the relevant period.

A review of the findings shows that the Clackamas facility never produced plastic bags. Other findings show that the parent company imported some paper bags prior to the relevant period of the workers' petition.

Also, the closing of the Federal Forests to logging and subsequently the loss of wood chips which are used in paper bag manufacturing would not provide a basis for a worker group certification under the Trade Act.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 6th day of May 1994.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 94-12309 Filed 5-19-94; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-29,304]

Digital Equipment Corporation Roxbury, Massachusetts; Negative Determination Regarding Application for Reconsideration

By an application dated March 31, 1994, some of the workers requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on March 4, 1994 and published in the **Federal Register** on March 18, 1994 (59 FR 12983).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The investigation findings show that the Roxbury plant produced mainly the LK201 keyboard and cable assemblies which were used internally by other Digital facilities.

Its stated that Mexican keyboards adversely affected the workers.

The findings show that all production on the LK201 keyboards ceased in March, 1992 and the plant closed in December 1992. Cable assemblies were then produced but were discontinued in 1993 as an end-of-life item. All other production at Roxbury was either moved to other corporate domestic plants or discontinued. These events would not provide a basis a group certification.

The Department's denial was based on the fact that the "contributed importantly" test of the Worker Group Eligibility Requirements of the Trade Act was not met. The findings show that a corporate decision was made to cease operations at Roxbury and outsource production for a newer generation of keyboards to other domestic companies.

Neither a domestic transfer nor technological unemployment would form a basis for a worker group certification. Also, the allegation that a domestic vendor is currently importing keyboards for Digital would not provide a basis for certifying keyboard workers laid of in March, 1992. Section 223(b)(1) of the Trade Act does not permit the Department to certify workers laid off more than one year prior to the date of the petition, which in this case is November 15, 1993.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 11th day of May 1994.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service Unemployment Insurance Service.

[FR Doc. 94-12317 Filed 5-19-94; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-29,360]

Flint Ink Corporation Lodi, New Jersey; Negative Determination Regarding Application for Reconsideration

By an application dated April 26, 1994, Local #612M of the Graphic Communications International Union (GCIU) requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on April 20, 1994 and will soon be published in the **Federal Register**.

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union states that stiff foreign competition was responsible for closing the Lodi plant in May 1993.

Investigation findings show that the Department's denial was based on the fact that the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met. A corporate decision was made to consolidate Flint Ink's production by closing the Lodi, New Jersey plant and transferring its production to other domestic corporate plants, which had excess capacity.

Foreign competition, in itself, would not provide a basis for a worker group certification. The worker adjustment assistance program is based on increased imports of articles which are like or directly competitive with those produced by the petitioning workers' firm and which contributed importantly to worker separations and production or sales declines at the workers' firm. Corporate sales of printing ink by Flink Ink increased in 1993 compared to 1992.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 11th day of May 1994.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 94–12316 Filed 5–19–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,399]

Jefferson Smurfit Corporation, Lancaster, NY; Negative Determination Regarding Application for Reconsideration

By an application dated April 14, 1994, the United Paperworkers International Union (UPIU) requested administrative reconsideration of the subject petition for trade adjustment assistance (TAA). The denial notice was signed on March 22, 1994 and published in the **Federal Register** on April 26, 1994 (59 FR 21776).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The investigation findings show that the workers produced corrugated shipping containers. The shipping container industry is a local one which supplies master cartons for neighboring manufacturers, like cereal companies, to ship their boxes in. The plant closed in January, 1994.

The findings show that many companies which formerly used Jefferson Smurfit's shipping containers left the western New York area about four years ago. Also, Department of Commerce data shows that the economic downturn in the early 1990s slowed packaging demand in most consumer end-use categories.

The Department's denial was based on the fact that the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met. This test is generally demonstrated through a survey of the workers' firm's customers. The Department's customer survey showed that none of the respondents reported increasing their purchases of imported corrugated shipping containers while decreasing their purchases from Jefferson Smurfit in the relevant period.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 6th day of May 1994.

Robert O. Deslongchamps,

Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 94–12310 Filed 5–19–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,403]

Johnson Controls, Inc., Bennington, VT; Negative Determination on Reconsideration

By an application dated April 5, 1994, the workers with the support of their Congressman, requested administrative reconsideration of the subject petition for trade adjustment assistance (TAA). The denial notice was signed on March 15, 1994 and published in the **Federal Register** on March 30, 1994 (59 FR 14876).

Investigation findings show that the workers at Bennington produced vehicle batteries.

Its claimed that an appropriate subdivision at Johnson Controls in Bennington was adversely affected by increased imports because Johnson Controls moved a part of the production process (the filling, charging, decorating and installing) at Bennington to a plant in Mexico. Its alleged that the charged batteries will then reenter the U.S. as imports.

The Department's denial was based on the fact that the increased import criterion and the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act were not met. U.S. imports of lead acid batteries for vehicles declined absolutely in 1993 compared with 1992.

The "contributed importantly" test is generally demonstrated through a survey of the workers' firm's customers. The Department's survey of major declining customers showed that none of the respondents increased their purchases of imported batteries while decreasing their purchases from the subject firm during the period relevant to the petition.

Findings on reconsideration show that all battery production at Bennington was transferred to other domestic corporate locations. Other findings on reconsideration show that there is no Mexican facility currently involved in battery production, including filling, charging, decorating and installing, for Johnson Controls.

Johnson Controls made a corporate decision to consolidate its plants. The findings show that Bennington was selected for elimination for a number of reasons: its small size, it's a leased facility, a major portion of its production was already being produced at other domestic plants, and its sales territory was the easiest to be absorbed by the other domestic corporate plants.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance to workers and former workers of Johnson Controls, Inc., in Bennington, Vermont.

Signed at Washington, DC, this 6th day of May 1994.

Robert O. Deslongchamps,

Director, Office of Legislation & Actuarial Service Unemployment Insurance Service.

[FR Doc. 94–12311 Filed 5–19–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,269]

Mennen Medical Corporation, Clarence, New York; Revised Determination on Reconsideration

On April 6, 1994, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of the subject firm. The notice was published in the **Federal Register** on April 15, 1994 (59 FR 18162).

Investigation findings show that the subject firm produces patient-monitoring systems including medical monitors and catheters. The findings show that the subject firm was purchased in 1993 by Clal Electronics Industries Ltd., in Isreal.

The findings show that the production of catheters and telemetry units declined in the first three quarters of 1993 compared to the same period in 1992. New findings on reconsideration show that all production began to decline in the 4th quarter of 1993 compared to the same quarter in 1992 and that all production will be transferred to Israel by mid-1994. Employment also declined in 1993 compared to 1992.

Other findings on reconsideration show the first imports of patient-monitoring devices were delivered to Mennen Medical in April 1994.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that workers and former workers of Mennen Medical Corporation in Clarence, New York were adversely affected by increased imports of articles that are like or directly competitive with the patient-monitoring devices previously produced at the subject firm. In accordance with the provisions of the Act, I make the following revised determination for workers of Mennen Medical Corporation in Clarence, New York.

All workers of Mennen Medical Corporation in Clarence, New York who became totally or partially separated from employment on or after January 1, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 12th day of May 1994.

Robert O. Deslongchamps,

Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 94–12415 Filed 5–19–94; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 31, 1994.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 31, 1994.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 9th day of May, 1994.

Violet Thompson,

Deputy Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Moore Business Forms (Wkrs)	Lewisburg, PA	05/09/94	04/20/94	29,846	Business Forms.
Mosley Machinery Co/Service (Wkrs)	Waco, TX	05/09/94	04/22/94	29,847	Recycling Machinery.
Waynesboro Apparel, Inc (Wkrs)	Waynesboro, GA	05/09/94	04/27/94	29,848	Ladies & Men's Jeans & Shorts.
Nestle Beverage Co (IBT)	Freehold, NJ	05/09/94	04/09/94	29,849	Freeze Dry Instant Coffee.
Beaver Dam Products Corp. (UPWI)	Beaver Dam, WI	05/09/94	04/25/94	29,850	Marine Engines.
Britt Trucking, Inc (Co)	Lamesa, TX	05/09/94	04/26/94	29,851	Move & Install Oil Rigs.
Pope & Talbot (WCTW)	Poulsbo, WA	05/09/94	04/13/94	29,852	Lumber.
Crown Pacific Inland Lumber (IWA)	Superior, MT	05/09/94	04/12/94	29,853	Lumber.
Infotec Development, Inc (Wkrs)	Portland, OR	05/09/94	04/29/94	29,854	Geographic Info Services.
ICI Fiberite (Co)	Greeneville, TX	05/09/94	04/19/94	29,856	Graphite Tape.
Vought Aircraft Co. (Wkrs)	Dallas, TX	05/09/94	04/19/94	29,856	Aircraft Components.
Harwood Companies, Inc (Co)	Marion, VA	05/09/94	04/15/94	29,857	Underwear, Sleepwear & Activewear.
Wetterau/Supervalu (Wkrs)	Bloomington, IN	05/09/94	04/04/94	29,858	Canned Goods & Frozen Foods.
ITW Produx, Inc (Wkrs)	Warrensville Hgts, OH.	05/09/94	04/25/94	29,859	Air bag Sensor Canister.
Bull HN Information Systems (Wkrs)	Lawrence, MA	05/09/94	04/25/94	29,860	Computers.

[FR Doc. 94–12314 Filed 5–19–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,530]

Northwest Alloys, Inc. Addy, Washington; Affirmative Determination Regarding Application for Reconsideration

On April 18, 1994, the company requested administrative reconsideration of the Department's denial notice for workers at the subject firm. The Department's Negative Determination was issued on March 30, 1994 and was published in the **Federal Register** on April 13, 1994 (59 FR 17570).

The company submitted new information showing a decrease in production and employment in the 4th quarter of 1993 compared to the same quarter in 1992.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 11th day of May 1994.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 94–12315 Filed 5–19–94; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 31, 1994.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 31, 1994.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 2nd day of May, 1994.

Violet Thompson,

Deputy Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Rowe International, Inc (UAW)	Whippany, NY	05/02/94	04/22/94	29,809	Vending machines.
Maxus Energy Corp (Co)	Dallas, TX	05/02/94	04/12/94	29,810	Crude Oil, natural gas.
Maxus Energy Corp (Co)	Amarillo, TX	05/02/94	04/12/94	29,811	Crude oil and natural gas.
Maxus Energy Corp (Co)	Canadian, TX	05/02/94	04/12/94	29,812	Crude oil and natural gas.
Maxus Energy Corp (Co)	Dallas, TX	05/02/94	04/12/94	29,813	Crude oil and natural gas.
Maxus Energy Corp (Co)	Dumas, TX	05/02/94	04/12/94	29,814	Crude oil and natural gas.
Fisher Price (Wkrs)	Brownsville, TX	05/02/94	04/25/94	29,815	Toys.
KTS Industries (USWA)	Kalamazoo, MI	05/02/94	04/23/94	29,816	Cutting band saws and circular saws.
Maxus Energy Corp (Co)	Jeanerette, LA	05/02/94	04/12/94	29,817	Crude oil and natural gas.
Maxus Energy Corp (Co)	Kearny, NJ	05/02/94	04/12/94	29,818	Crude oil and natural gas.
Maxus Energy Corp (Co)	Pampa, TX	05/02/94	04/12/94	29,819	Crude Oil and natural gas.
Maxus Energy Corp (Co)	Perryton, TX	05/02/94	04/12/94	29,820	Crude oil and natural gas.
Maxus Energy Corp (Co)	Leedey, OK	05/02/94	04/12/94	29,821	Crude oil and natural gas.
Maxus Energy Corp (Co)	Spearman, TX	05/02/94	04/12/94	29,822	Crude oil and natural gas.
Maxus Energy Corp (Co)	Stinnett, TX	05/02/94	04/12/94	29,823	Crude oil and natural gas.
Maxus Energy Corp (Co)	Dumas, TX	05/02/94	04/12/94	29,824	Crude oil and natural gas.
Washington Energy Resources Co (wkrs).	Seattle, WA	05/02/94	04/14/94	29,825	Oil and gas.
Ashland Hide Co (Co)	Ashland, KY	05/02/94	04/21/94	29,826	Sole leather for shoes.
Seward Forest Products (Co)	Seward, AK	05/02/94	04/22/94	29,827	Lumber.
Trico Industries, Inc (wkrs)	Bradford, PA	05/02/94	04/18/94	29,828	Subsurface oilwell pumps.
Shorewood Packaging (UPIU)	Farmingdale, NY	05/02/94	04/22/94	29,829	Printed folding cartons.
Isoloc Mfg, Co (Co)	Vancouver, WA	05/02/94	04/18/94	29,830	Cooler/freezer cold storage rooms.
Nu-Kote International, Inc (IBT)	Bardstown, KY	05/02/94	04/11/94	29,831	Typewritter and computer ribbon.
IBM Corp (wkrs)	Kingston, NY	05/02/94	04/18/94	29,832	Large computer and support equipment.
Hi Lo Mfg Co., Inc (ILGWU)	Exeter, PA	05/02/94	04/21/94	29,833	Wedding dresses.
Amerada Hess Corp (wkrs)	Tulsa, OK	05/02/94	04/19/94	29,834	Oil and gas exploration.
Alta Energy Corp (wkrs)	Midland, TX	05/02/94	03/31/94	29,835	Accounting office.
Hy Test Shoe Co (UFCW)	West Plains, MO	05/02/94	04/01/94	29,836	Men's steel toe safety shoes.
Cove Industries (wkrs)	Wilburton, OK	05/02/94	04/22/94	29,837	Girls' dresses and children's sportswear.
Western Atlas Geophysical (wkrs)	Houston, TX	05/02/94	04/10/94	29,838	Oil service—engineering.
Asten Forming Fabrics (IBT)	Greenville, SC	05/02/94	04/08/94	29,839	Synthetic fabric.
Data Products Corp (Co)	Norcross, GA	05/02/94	04/11/94	29,840	Typewritter/printer ribbons.
Season-All Industries, Inc. (IUE)	Indiana, PA	05/02/94	05/02/94	29,841	Custom windows and extrusions.
Ford New Holland, Inc (Co)	Memphis, TN	05/02/94	04/14/94	29,842	Parts distribution.
Davis Great Guns Logging (wkr)	Victoria, TX	05/02/94	04/19/94	29,843	Oil and gas.
CPTC; Fac. Eng. Prod & Serv. Dept (Co).	La Habra, CA	05/02/94	04/18/94	29,844	Technical support for oil exploration.
Bryan Industries (wkrs)	Tulsa, OK	05/02/94	04/22/94	29,845	Girl's dresses and children's sportswear.

[FR Doc. 94–12313 Filed 5–19–94; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–29,427; TA–W–29,427A]

Tech-Aid, Oak Brook, IL, et al.; Negative Determination Regarding Application for Reconsideration

By an application dated April 12, 1994, the company requested administrative reconsideration of the subject petition for trade adjustment assistance (TAA). The denial notice was signed on March 21, 1994 and published in the **Federal Register** on March 30, 1994 (59 FR 14876).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The investigation findings show that Tech-Aid and Tech-Staff are contract engineering firms that provide engineering services to various firms including Reynolds Metals in McCook, Illinois, which produces an article—aluminum sheet.

The findings show that the subject workers perform technical design and alteration services on aluminum production machinery and as such do not produce an article within the meaning of the Trade Act of 1974. Other investigation findings show that the "workers firm" is Tech-Aid and Tech-Staff, not Reynolds Metals, because Tech-Aid and Tech-Staff have authority over their employees, maintain benefits and conduct all payroll and personnel actions.

The Department has consistently determined that the performance of services does not constitute the production of an article and this determination has been upheld in the U.S. Court of Appeals.

You cite the 1988 amendments to the Trade Act—the Omnibus Trade and Competitiveness Act, (OTCA) as a basis for certification. Section 1421 (a)(1)(A) of the OTCA amends section 222 of the Trade Act to add certain oil and gas workers as potentially eligible to apply for program benefits under the TAA Program. This was accomplished by adding a new subsection to section 222 which provides that any firm which engages in exploration or drilling for oil or natural gas shall be considered to be a firm producing oil or natural gas and producing articles that are directly competitive with imports of oil and natural gas. This provision does not apply to service workers in other industries.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 6th day of May 1994.

Robert O. Deslongchamps,

Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 94–12308 Filed 5–19–94; 8:45 am]
BILLING CODE 4510–30–M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of April and May, 1994.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–29,471; Wainoco Oil and Gas Co., Houston, TX

TA–W–29,640; Iron Mountain Cedar Products, Hamilton, WA

TA–W–29,561; Koch Label Co., Evansville, IN

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–29,586; Ashland Pipe Line Co., Mt. Carmel, IL

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–29,547; Reynolds Aluminum Recycling Co., Bristol, CT

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–29,568; Qualex, Inc, Norfolk, VA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–29,529; Zinc Corp of America, Palmerton Div., Palmerton, PA

U.S. imports of zinc oxide declined in 1993 compared to 1992.

TA–W–29,445; Panhandle Eastern Pipe Line Co., Alva, OK

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–29,560; Sears Logistics Services, Philadelphia, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–29,554; O & K, Inc., Batavia, NY

The workers' firm does not produce an article as required for certification under section 22 of the Trade Act of 1974.

TA–W–29,550; Ford New Holland, Bloomington, MN

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–29,570; Plan International, East Greenwich, RI

The workers' firm does not produce an article as required for certification under section 22 of the Trade Act of 1974.

Affirmative Determinations for Worker Adjustment Assistance

TA–W–29,582; Zeneca Specialities, Dighton, MA

A certification was issued covering all workers separated on or after February 25, 1993.

TA–W–29,363; Accessories By Pearl

A certification was issued covering all workers separated on or after November 15, 1992.

TA–W–29,717; American Manufacturing Co., Inc., Samson Cordage Works, Anniston, AL

A certification was issued covering all workers separated on or after April 6, 1993.

TA–W–29,525; Seattle Shake & Single, forks, WA

A certification was issued covering all workers separated on or after February 8, 1993.

TA–W–29,527; D & R Cedar Products, Forks, WA

A certification was issued covering all workers separated on or after February 8, 1993.

TA–W–29,526; Hollywood Shake, Inc., Forks, WA

A certification was issued covering all workers separated on or after February 8, 1993.

TA–W–29,404; Jackhill Oil Co., Ann Arbor, MI

A certification was issued covering all workers separated on or after December 20, 1992.

TA–W–29,693; AA Production, Inc., Lubbock, TX

A certification was issued covering all workers separated on or after March 25, 1993.

TA–W–29,643 Colebrook-Terry, Inc., Colebrook, PA

A certification was issued covering all workers separated on or after January 30, 1994.

TA–W–29,645 & TA–W–29,646; Colebrook-Terry, Inc., Leola, PA and, York, PA

A certification was issued covering all workers separated on or after February 15, 1993.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub .L. 103–183) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of February, 1994.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(A) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(B) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased.

(C) That the increase in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(2) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

NAFTA–TAA–00065; Layne & Bowler, A Division of Aurora Pump, Memphis, TN

The investigation revealed that criteria (3) and criteria (4) were not met. The Memphis TN plant is scheduled to close in June, 1994. The production of vertical turbine pumps will be transferred primarily to company-owned domestic plants. Some production of large discharge heads will be shifted to Mexico; however, this production is a relatively small proportion of the total production.

NAFTA–TAA–00076; TTX Co., Field Maintenance Operations, Tucson, AZ

The investigation revealed that workers of the subject firm do not produce an article within the meaning of the Act. The Department of Labor has consistently determined that the performance of services does not constitute production of an article as required by the Trade Act of 1974.

NAFTA–TAA–00073; Cargill, Inc., Cargill Floor Milling, Buffalo, NY

The investigation revealed that criterion (3) and criterion (4) were not met. A survey of the subject plant's customers revealed that customers did not import wheat flour from Mexico or Canada in 1992, 1993 or during the January-February period of 1994. Also, there was no shift in production from the workers' firm to Mexico or Canada during the relevant period.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–00074; Formglas, Inc., San Jose, CA

A certification was issued covering all workers of Formglas, Inc., San Jose, CA separated on or after December 8, 1993.

NAFTA–TAA–00064; ABEPP Acquisition Corp., DBA Abbott & Co., Manchester, TN

A certification was issued covering all workers of ABEPP Acquisition Corp., DBA Abbott & Co., Manchester, TN separated on or after December 8, 1993.

NAFTA–TAA–00075; C & R Cedar, Forks, WA

A certification was issued covering all workers of C & R Cedar, Forks, WA separated on or after December 8, 1993.

NAFTA–TAA–00067; Standard Products Co., Campbell Plastic Div., Schenectady, NY

A certification was issued covering all workers of Standard Products Co., Campbell Plastic Div., Schenectady, NY separated on or after December 8, 1993.

NAFTA–TAA–00063; USA Enterprises, Inc., Conyers, GA

A certification was issued covering all workers engaged in employment related to the production of men's pants at USA Enterprises, Inc., Conyers, GA separated on or after December 8, 1993.

NAFTA–TAA–00072 and NAFTA–TAA–00072A; USA Enterprises, Inc., USA Enterprises of Tennessee, Spencer, TN & Sparta, TN

A certification was issued covering all workers engaged in employment related to the production of men's pants at USA Enterprises, Inc., Spencer, TN and Sparta, TN separated on or after December 8, 1993.

NAFTA–TAA–00071; USA Enterprises, Inc., USA Enterprises of South Carolina, Bamgerg, SC

A certification was issued covering all workers engaged in employment related to the production of men's pants at USA Enterprises, Inc., Bamberg, SC separated on or after December 8, 1993.

I hereby certify that the aforementioned determinations were issued during the month of April and May, 1994. Copies of these determinations are available for inspection in room C–4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: May 11, 1994.

Violet L. Thompson,

Deputy Director, Office of Trade Adjustment Assistance.

[FR Doc. 94–12306 Filed 5–19–94; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement—Transitional Adjustment Assistance Implementation Act (Pub. L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under section 250(a) of subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended, are identified in the appendix to this notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Director of the Office of Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes actions pursuant to paragraphs (c) and (e) of section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment after December 8, 1993 (date of enactment of Pub. L. 103–182) are eligible to apply for NAFTA–TAA under subchapter D of the Trade Act because of increased imports from or the shirt in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of OTAA at the U.S. Department of Labor (DOL) in Washington, DC, provided such request is filed in writing with the Director of OTAA not later than May 31, 1994.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director of OTAA at the address shown below not later than May 31, 1994.

Petitions filed with the Governors are available for inspection at the Office of the Director, OTAA, ETA, DOL, room C–4318, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 9th day of May, 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers/firm—	Location	Date received at governor's office	Petition No.	Article produced
Shorewood Packaging Corporation; Farmingdale, NY (wkrs).	Farmingdale, NY	05/02/94	NAFTA–00094	Folding carton mfg.; record jackets, video cassette sleeves, cosmetic cartons.
Hampton Industries, Inc.; Kingston Shirt Company (wkrs).	Kingston, NC	05/02/94	NAFTA–00095	Men's and boy's woven shirts.
J & G Shake (Co.)	Forks, Wa	05/03/94	NAFTA–00096	Cedar shakes and shingles for roofing.
Moore Business Forms and Systems Div. (wkrs).	Lewisburg, PA	05/04/94	NAFTA–00097	Cut single products: checks, bank statements, letterheads, insurance forms, parking tickets, etc.
Waynesboro Apparel, Inc. (wkrs)	Waynesboro, GA	04/27/94	NAFTA–00098	Jeans and shorts for men and women.
Grief Company; Genesco (wkrs)	Lehigh Valley, PA ..	05/04/94	NAFTA–00099	Men's clothing: suit coats.
Supervalu (wkrs)	Bloomington, IN	04/29/94	NAFTA–00100	Traditional food items: fruits and vegetables, canned goods, frozen foods.
Polytech Industries, L.P. (wkrs)	Scottsboro, Al	05/04/94	NAFTA–00101	Automotive nets.
Quartet Fashions; Denise Barry Fashions, Inc. (ILGWU).	Nazareth, PA	04/04/94	NAFTA–00102	Women's skirts and pants.
Quartet Fashions; Sportette Industries, Inc. (ILGWU).	Nazareth, PA	04/04/94	NAFTA–00103	Women's apparel: Blouses, pants, skirts and jackets.
The Proctor and Gamble Manufacturing Co.; Quincy Soap Plant (IOCWQM).	Quincy, MA	05/04/94	NAFTA–00104	Safeguard Soap, Camay Soap, Ivory Bar Soap and Industrial Cleaners.
Fruit of the Loom; Arkansas (wkrs)	Osceola, AR	04/15/94	NAFTA–00105	Long sleeve tee shirts.
Viskase Corporation; Osceola Plant (Co.)	Osceola, AR	04/21/94	NAFTA–00106	Semi-finished cellulosic casings for the meat processing industry.
Southland Manufacturing (wkrs)	Lepanto, AR	05/03/94	NAFTA–00107	Clothing manufacturing.
Classic Lady Fashions (Co.)	Hialeah Gardens, FL.	05/06/94	NAFTA–00108	Women's sports clothes—shorts and blouses.
Wilmington Steel and Construction, Inc.; Main Plant (wkrs).	New Castle, PA	04/12/94	NAFTA–00109	Fabricated structural steel products.

[FR Doc. 94–12307 Filed 5–19–94; 8:45 am]

BILLING CODE 4510–30–M

Attestations Filed By Facilities Using Nonimmigrant Aliens as Registered Nurses

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is publishing, for public information, a list of the following health care facilities that have submitted attestations (Form ETA 9029 and

explanatory statements) to one of four Regional Offices of DOL (Boston, Chicago, Dallas and Seattle) for the purpose of employing nonimmigrant alien nurses. A decision has been made on the these organizations' attestations and they are on file with DOL.

ADDRESSES: Anyone interested in inspecting or reviewing the employer's attestation may do so at the employer's place of business.

Attestations and short supporting explanatory statements are also available for inspection in the U.S. Employment Service, Employment and Training Administration, Department of Labor, room N–4456, 200 Constitution Avenue, NW., Washington, DC 20210.

Any complaints regarding a particular attestation or a facility's activities under that attestation, shall be filed with a local office of the Wage and Hour Division of the Employment Standards Administration, Department of Labor. The address of such offices are found in many local telephone directories, or may be obtained by writing to the Wage and Hour Division, Employment Standards Administration, Department of Labor, room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: *Regarding the Attestation Process:* Chief, Division of Foreign Labor Certifications, U.S. Employment Service. Telephone: 202–219–5263 (this is not a toll-free number).

Regarding the Complaint Process: Questions regarding the complaint process for the H–1A nurse attestation program will be made to the Chief, Farm Labor Program, Wage and Hour Division. Telephone: 202–219–7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Immigration and Nationality Act requires that a health care facility seeking to use nonimmigrant aliens as registered nurses first attest to the Department of Labor (DOL) that it is taking significant steps to develop, recruit and retain United States (U.S.) workers in the nursing profession. The law also requires that these foreign nurses will not adversely affect U.S. nurses and that the foreign nurses will be treated fairly. The facility's attestation must be on file with DOL before the Immigration and Naturalization Service will consider the facility's H–1A visa petitions for bringing nonimmigrant registered nurses to the United States. 26 U.S.C. 1101(a)(15)(H)(i)(a) and 1181(m). The regulations implementing the nursing attestation program are at 20 CFR parts 655, subpart D, and 29 CFR part 504, (January 6, 1994). The Employment and Training Administration, pursuant to 20 CFR 655.310(c), is publishing the following list of facilities which have submitted attestations which have been accepted for filing and those which have been rejected.

The list of facilities is published so that U.S. registered nurses, and other persons and organizations can be aware of health care facilities that have requested foreign nurses for their staff. If U.S. registered nurses or other persons wish to examine the attestation (on Form ETA 9029) and the supporting documentation, the facility is required to make the attestation and documentation available. Telephone numbers of the facilities chief executive officer also are listed to aid public inquiries. In addition, attestations and explanatory statements (but not the full supporting documentation) are available for inspection at the address for the Employment and Training Administration set forth in the **ADDRESSES** section of this notice.

If a person wishes to file a complaint regarding a particular attestation or a facility's activities under the attestation, such complaint must be filed at the address for the Wage and Hour Division of the Employment Standards Administration set forth in the **ADDRESSES** section of this notice.

Signed at Washington, DC, this 10th day of May 1994.

John M. Robinson,

Deputy Assistant Secretary, Employment and Training Administration.

Division of Foreign Labor Certifications Health Care Facility Attestations; Form ETA–9029

CEO-Name/facility name/address	State	Action date
ETA Region 1 **03/28/94 to 04/03/94**		
Edward Lewis, Bergen Pines County Hospital, 230 East Ridgewood Ave., Paramus, NJ 07652, 201–967–4000 ETA CONTROL NUMBER—1/210774 ACTION—ACCEPTED	NJ	03/29/94
Jennifer R. Courlas, Presbyterian Homes of S. NJ, Inc., 3510 Route 66, Neptune, NJ 07753, 908–922–1900 ETA CONTROL NUMBER—1/210761 ACTION—ACCEPTED	NJ	03/29/94
Jeanne Lee, Frances Schervier Home & Hospital, 2975 Independence Ave, Bronx, NY 10463, 718–548–1700 ETA CONTROL NUMBER—1/210884 ACTION—ACCEPTED	NY	04/01/94
David P. Rosen, Jamaica Hospital Medical Center, 89th Avenue & Van Wyck Expressway, Jamaica, NY 11418, 718–262–6802. ETA CONTROL NUMBER—1/210842 ACTION—ACCEPTED	NY	03/31/94
Paul Cohen, Peninsula Hospital Center, 51–15 Beach Channel Drive, Far Rockaway, NY 11691, 718–945–7100 ETA CONTROL NUMBER—1/210849 ACTION—ACCEPTED	NY	03/31/94
Percy Allen, II, State U/N.Y. Health Science Center, 450 Clarkson Avenue, Brooklyn, NY 11203, 718–270–1000 ETA CONTROL NUMBER—1/210775 ACTION—ACCEPTED	NY	03/29/94
Richard A. Catallozzi, Roberts Health Centre, Inc., 990 Ten Rod Road, N. Kingstown, RI 02852, 401–884–6661 ETA CONTROL NUMBER—1/210857 ACTION—ACCEPTED	RI	03/31/94
Alfred O. Heath, St. Thomas Hospital, 48 Sugar Estates Charlotte Amalies, St. Thomas, VI 00802, 809–776–8311 ETA CONTROL NUMBER—1/210776 ACTION—ACCEPTED	VI	03/29/94
Stanley Fertel, Jewish Mem. Hospital & Rehab. Ctr., 59 Townsend Street, Boston, MA 02119, 617–442–8760 ETA CONTROL NUMBER—1/210907 ACTION—ACCEPTED	MA	04/08/94
Delores Turco, Andover Nursing Center, P.O. Box 1279 99 Mulford Road, Andover, NJ 07821, 201–383–6200 ETA CONTROL NUMBER—1/210914 ACTION—ACCEPTED	NJ	04/08/94
Harvey Adelsberg, Daughters of Miriam, Ctr. for Aged, 155 Hazel St., Clifton, NJ 07015, 201–772–3700 ETA CONTROL NUMBER—1/210906 ACTION—ACCEPTED	NJ	04/08/94
Gladys George, Lenox Hill Hospital, 100 East 77th St., New York, NY 10021–1883 ETA CONTROL NUMBER—1/210915 ACTION—ACCEPTED	NY	04/08/94
Richard N. Yezzo, St. Clare's Hospital & Health Ctr., 415 West 51st Street, New York, NY 10019, 212–586–1500	NY	04/08/94

DIVISION OF FOREIGN LABOR CERTIFICATIONS HEALTH CARE FACILITY ATTESTATIONS; FORM ETA–9029—Continued

CEO-Name/facility name/address	State	Action date
ETA CONTROL NUMBER—1/210913 ACTION—ACCEPTED		
ETA Region 1 04/11/94 to 04/17/94		
Margaret J. Straney, Cathedral Healthcare System, 135 South Center Street, Orange, NJ 07050–3599, 201–266–3200 .. ETA CONTROL NUMBER—1/210959 ACTION—ACCEPTED	NJ	04/14/94
Bruce Rowland, Astor Gardens Nursing Home, 2316 Bruner Avenue, Bronx, NY 10469, 718–882–6400 ..... ETA CONTROL NUMBER—1/210949 ACTION—ACCEPTED	NY	04/14/94
Abraham N. Klein, Fairview Nursing Care Center, Inc., 69–70 Grand Central Parkway, Forest Hills, NY 11375, 718–263–4600. ETA CONTROL NUMBER—1/210957 ACTION—ACCEPTED	NY	04/14/94
Sr. Helen Murphy, New York Foundling Hospital (The), 590 Avenue of the Americas, New York, NY 10011, 212–633–9300. ETA CONTROL NUMBER—1/210948 ACTION—ACCEPTED	NY	04/14/94
Joshua Teitelbaum, Queens Nassau Nursing Home, Inc., 520 Beach 19th Street, Apt. 1–A, Far Rockaway, NY 11691, 718–471–7400. ETA CONTROL NUMBER—1/210951 ACTION—ACCEPTED	NY	04/14/94
Charles J. Pendola, Wyckoff Heights Medical Center, 374 Stockholm St., Brooklyn, NY 11237, 718–963–7272 ..... ETA CONTROL NUMBER—1/210958 ACTION—ACCEPTED	NY	04/14/94
ETA Region 1 04/25/94 to 05/01/94		
David Fletcher, Medical Center, 925 East Jersey St., Elizabeth, NJ 07201, 908–289–8600 ..... ETA CONTROL NUMBER—1/211078 ACTION—ACCEPTED	NJ	04/29/94
Dr. Mark S. Kirk, Professional Career Placement Intl, 56–64 Broad St., Elizabeth, NJ 07207–3149, 908–289–3399 ..... ETA CONTROL NUMBER—1/211156 ACTION—ACCEPTED	NJ	04/29/94
Sister Jane Francis Brady, St. Joseph's Hospital & Med. Ctr., 703 Main Street, Patterson, NJ 07503, 201–977–2000 ..... ETA CONTROL NUMBER—1/211154 ACTION—ACCEPTED	NJ	04/29/94
Victor T. Napenas, Valley Rest Nursing Home, 56 Bogen St., Totowa, NJ 07512, 201–942–2534 ..... ETA CONTROL NUMBER—1/211167 ACTION—ACCEPTED	NJ	04/29/94
Robert Stone, Blythedale Children's Hospital, Bradhurst Avenue, Valhalla, NY 10595, 914–592–7138 ..... ETA CONTROL NUMBER—1/211090 ACTION—ACCEPTED	NY	04/29/94
Olga Lipschitz, Cobble Hill Nursing Home, Inc., 380 Henry Street, Brooklyn, NY 11201, 718–855–6789 ..... ETA CONTROL NUMBER—1/211092 ACTION—ACCEPTED	NY	04/29/94
Joan Madden, Health Care Placement Services, Inc., 192 Lexington Avenue, New York, NY 10016, 212–532–9520 ..... ETA CONTROL NUMBER—1/211150 ACTION—ACCEPTED	NY	04/29/94
ETA Region 10 04/04/94 to 04/10/94		
Bonnie J. Tucker, Phoenix Memorial Hospital, 1201 S. 7th Avenue, Phoenix AZ 85007, 602–258–5111 ..... ETA CONTROL NUMBER—10/204003 ACTION—ACCEPTED	AZ	04/04/94
Gary Rapaport, Oak Valley Hospital, 350 S. Oak Avenue, Oakdale, CA 95361, 209–847–3011 ..... ETA CONTROL NUMBER—10/204005 ACTION—ACCEPTED	CA	04/04/94
ETA Region 5 03/28/94 to 04/03/94		
Clarence Negelvoort, Norwegian American Hospital, 1044 N. Francisco Avenue, Chicago, IL 60622, 312–292–8200 ..... ETA CONTROL NUMBER—5/222362 ACTION—ACCEPTED	IL	03/30/94
Pam Kile, Trinity Lutheran Hospital, 303 Baltimore, Kansas City, MO 64108, 816–753–4600 ..... ETA CONTROL NUMBER—5/222370 ACTION—ACCEPTED	MO	03/30/94
Sidne J. Mulder, St. John's Home of Milwaukee, 1840 N. Prospect Avenue, Milwaukee, WI 53202, 414–272–2022 ..... ETA CONTROL NUMBER—5/2223642 ACTION—ACCEPTED	WI	03/30/94
ETA Region 5 04/04/94 to 04/10/94		
Jane E. Lupp, Prowers Medical Center, 401 Kendall Drive, Lamar, CO 81052, 719–336–4343 ..... ETA CONTROL NUMBER—5/222559 ACTION—ACCEPTED	CO	04/04/94
Barbara Beake, Americana Healthcare Center, 1500 South Milwaukee Avenue, Libertyville, IL 60048, 708–816–3200 ..... ETA CONTROL NUMBER—5/222560 ACTION—ACCEPTED	IL	04/04/94
Erlando V. Gallermo, Midwest Nursing Services, Inc., 1831 N. Natoma Avenue, Chicago, IL 60635, 312–637–8106 ..... ETA CONTROL NUMBER—5/222640 ACTION—ACCEPTED	IL	04/05/94
Sheila Bogen, Warren Park Nursing Pavilion, 6700 N. Damen, Chicago, IL 60645, 312–465–5000 ..... ETA CONTROL NUMBER—5/222725 ACTION—ACCEPTED	IL	04/07/94
Jackie K. Ottoson, Bon Secours Hospital, Inc., 2000 West Baltimore Street, Baltimore, MD 21223, 410–362–3000 ..... ETA CONTROL NUMBER—5/222730 ACTION—ACCEPTED	MD	04/07/94
Renee M. Moore, Fredericksburg Nursing Home, 3900 Plank Road, Fredericksburg, VA 22407, 703–786–8351 ..... ETA CONTROL NUMBER—5/222647 ACTION—ACCEPTED	VA	04/06/94
Stephanie Zeman, Marshall Manor, Inc., 8645 John Marshall Highway P.O., Box 749, Marshall, VA 22115, 703–364–1200.	VA	04/07/94

DIVISION OF FOREIGN LABOR CERTIFICATIONS HEALTH CARE FACILITY ATTESTATIONS; FORM ETA–9029—Continued

CEO-Name/facility name/address	State	Action date
ETA CONTROL NUMBER—5/222731 ACTION—ACCEPTED		
ETA Region 6 03/28/94 to 04/03/94		
Mr. Jay Kapin, Camelot Care Center of Dade, Inc., 25268 S.W. 134 Avenue, Miami, FL 33032, 305–258–2222 ..... ETA CONTROL NUMBER—6/215381 ACTION—ACCEPTED	FL	03/30/94
ETA Region 6 04/04/94 to 04/10/94		
Mr. Eugene Zuber, Newport Hospital and Clinic, Inc., 2000 McLain Street, Newport, AR 72112, 501–523–6721 ..... ETA CONTROL NUMBER—6/215476 ACTION—ACCEPTED	AR	04/07/94
Mr. Mark Hunter, Key West Convalescent Center, 5860 West Jr. College Road, Key West, FL 33040, 305–296–2459 ..... ETA CONTROL NUMBER—6/215550 ACTION—ACCEPTED	FL	04/07/94
Mr. Gerald D. Phillips, Crockett County Hospital, 103 North Ave. H and 1st, Ozona, TX 76943, 915–392–2671 ..... ETA CONTROL NUMBER—6/215435 ACTION—ACCEPTED	TX	04/05/94
Mr. Larry L. Mathis, Methodist Hospital System, 6565 Fannin MT 101, Placement, Houston, TX 77030, 713–790–2197 ... ETA CONTROL NUMBER—6/215432 ACTION—ACCEPTED	TX	04/05/94
Fe dela Calzada, Quality Health Services, Inc., 9886 Bissonnet Suite 475, Houston, TX 77036, 713–272–0077 ..... ETA CONTROL NUMBER—6/215477 ACTION—ACCEPTED	TX	04/06/94
Mr. Nelson R. Ayala, RN Staffing Resources, 13231 Champion Forest Drive Suite 310, Houston, TX 77069, 713–580–7700. ETA CONTROL NUMBER—6/216139 ACTION—ACCEPTED	TX	04/08/94
ETA Region 6 04/11/94 to 04/17/94		
Mr. Oscar K. Weinmeister, Jr., Houston Medical Center, 1601 Watson Boulevard, Warner Robins, GA 31093, 912–922–4281. ETA CONTROL NUMBER—6/215635 ACTION—ACCEPTED	GA	04/12/94
Mr. Joseph C. Bonck, Jr., East Haven Care Center, 9660 Lake Forest, New Orleans, LA 70127–2631, 504–244–9013 .... ETA CONTROL NUMBER—6/215679 ACTION—ACCEPTED	LA	04/13/94
Ms. Romona Baudy, United Medical Ctr. of New Orleans, 2419 St. Claude Avenue, New Orleans, LA 70117, 504–948–8286. ETA CONTROL NUMBER—6/215876 ACTION—ACCEPTED	LA	04/14/94
Mr. J. Stuart Mitchell, III, Baptist Memorial Hospital, Golden Triangle 2520 5th Street, North Columbus, MS 39701, 601–243–1000. ETA CONTROL NUMBER—6/215676 ACTION—ACCEPTED	MS	04/13/94
Mr. C. Norman Nelson, University of Ms. Medical Center, 2500 North State Street, Jackson, MS 39216, 601–984–1130 .. ETA CONTROL NUMBER—6/215758 ACTION—ACCEPTED	MS	04/13/94
Mr. Ted Carothers, Autumn Care of Drexel, Box 1278, Drexel, NC 28619, 704–433–6180 ..... ETA CONTROL NUMBER—6/215633 ACTION—ACCEPTED	NC	04/12/94
Mr. Thomas O. Miller, Pungo District Hospital Corp., 210 Front Street, Belhaven, NC 27810, 919–943–2111 ..... ETA CONTROL NUMBER—6/215634 ACTION—ACCEPTED	NC	04/12/94
Mr. Erik Stumpff, Texoma Manor, Inc., HC 71, Box 83, Kingston, OK 73439, 405–564–2351 ..... ETA CONTROL NUMBER—6/215585 ACTION—ACCEPTED	OK	04/12/94
Mr. Gary L. Phillips, Nurse-Pro, Inc., 9111 Cross Park Drive Suite 234, Knoxville, TN 37923, 615–539–8266 ..... ETA CONTROL NUMBER—6/215759 ACTION—ACCEPTED	TN	04/15/94
Mr. Andrew E. Anderson, Jr., Bee County Regional Medical Center, 1500 E. Houston Highway, Beeville, TX 78102, 512–358–5431. ETA CONTROL NUMBER—6/215761 ACTION—ACCEPTED	TX	04/13/94
Ms. Yvette Steele Foster, Richards Memorial Hospital, 1700 Brazos, Rickdale, TX 76567, 512–446–2513 ..... ETA CONTROL NUMBER—6/215757 ACTION—ACCEPTED	TX	04/13/94
ETA Region 6 04/18/94 to 04/24/94		
Mr. Mitchell A. Kantor, Devon Gables Health Care Center, 6150 E. Grant Road, Tucson, AZ 85712, 602–296–6181 ..... ETA CONTROL NUMBER—6/215770 ACTION—ACCEPTED	AZ	04/19/94
Ms. Freda Ebert, Halifax Convalescent Center, 820 North Clyde Morris Boulevard, Dayton Beach, FL 32117, 904–274–4575. ETA CONTROL NUMBER—6/216283 ACTION—ACCEPTED	FL	04/22/94
Mr. James E. Rogers, Palm Beach Regional Hospital, 2829 10th Avenue North, Lake Worth, FL 33461, 407–967–7800 .. ETA CONTROL NUMBER—6/215769 ACTION—ACCEPTED	FL	04/19/94
Mr. Ramsey Jennings, Bulloch Memorial Hospital, 500 East Grady Street, Statesboro, GA 30458, 912–764–6671 ..... ETA CONTROL NUMBER—6/216282 ACTION—ACCEPTED	GA	04/22/94
Ms. Marie Buoniconti, Century Care of Laurinburg, Route 3, Box 95 8900 Hasty Road, Laurinburg, NC 28352, 910–276–8400. ETA CONTROL NUMBER—6/215768 ACTION—ACCEPTED	NC	04/19/94
Mr. Andy Mannich, Granville Medical Center, 1010 College Street, Oxford, NC 27565, 919–690–3238	NC	04/19/94

DIVISION OF FOREIGN LABOR CERTIFICATIONS HEALTH CARE FACILITY ATTESTATIONS; FORM ETA–9029—Continued

CEO-Name/facility name/address	State	Action date
ETA CONTROL NUMBER—6/215773 ACTION—ACCEPTED		
Mr. Paul A. Walker, Piedmont Medical Center, 222 South Herlong Avenue, Rock Hill, SC 29732, 803–329–1234	SC	04/22/94
ETA CONTROL NUMBER—6/216284 ACTION—ACCEPTED		
Ms. Thalia H. Munoz, Starr County Memorial Hospital, P.O. Box 78, Rio Grande City, TX 78582, 210–487–5561	TX	04/19/94
ETA CONTROL NUMBER—6/215771 ACTION—ACCEPTED		
Mr. Monte Brown, The Gardens of Richardson, 1111 West Shore Drive, Richardson, TX 75080, 214–783–8000	TX	04/22/94
ETA CONTROL NUMBER—6/215303 ACTION—ACCEPTED		
Mr. Neal E. Elliott, University Care Center, 3201 North Oregon Street, El Paso, TX 799902, 915–532–8941	TX	04/19/94
ETA CONTROL NUMBER—6/215774 ACTION—ACCEPTED		
ETA Region 6 04/25/94 to 05/01/94		
Mr. Richard White, Reliance H/C of Tuskegee, Inc., 502 Gauthier Street P.O. Box 599, Tuskegee, AL 36083–2633, 205–727–1945.	AL	04/29/94
ETA CONTROL NUMBER—6215942 ACTION—ACCEPTED		
Mr. Richard White, Reliance H/C of Thonotosassa, Inc., 12006 McIntosh Road, Thonotosassa, FL 33592, 813–986–4848	FL	04/29/94
ETA CONTROL NUMBER—6215943 ACTION—ACCEPTED		
Mr. Glenn Grissinger, St. Cloud Healthcare Center, 1301 Kansas Avenue, St. Cloud, FL 34769, 407–892–5121	FL	04/28/94
ETA CONTROL NUMBER—6215856 ACTION—ACCEPTED		
Ms. Sue Lane, Russell Nursing Home, P.O. Box 588, Winder, GA 30680, 404–867–2108	GA	04/29/94
ETA CONTROL NUMBER—6215937 ACTION—ACCEPTED		
Mr. Stephen Williams, Alliant Health System, P.O. Box 35070, Louisville, KY 40232–5070, 502–629–8413	KY	04/28/94
ETA CONTROL NUMBER—6215842 ACTION—ACCEPTED		
Mr. Cecil A. Butler, Pemberton Place Nursing Ctr., Inc., 310 East Wardell Drive, Pembroke, NC 27372–2529, 910–521–1273.	NC	04/29/94
ETA CONTROL NUMBER—6215938 ACTION—ACCEPTED		
Mr. James B. Edwards, Medical Univ. of South Carolina, 171 Ashley Avenue, Charleston, SC 29425, 803–792–4592	SC	04/28/94
ETA CONTROL NUMBER—6215859 ACTION—ACCEPTED		
Dr. Andre Lee, Meharry Medical College, 1005 D. B. Todd Blvd., Nashville, TN 37208, 615–327–6628	TN	04/28/94
ETA CONTROL NUMBER—6215857 ACTION—ACCEPTED		
Mr. Richard White, Reliance H/C of Eastland, Inc., 701 Porter Road P.O. Box 68049, Nashville, TN 37206, 615–226–3264.	TN	04/29/94
ETA CONTROL NUMBER—6215941 ACTION—ACCEPTED		
Mr. Richard White, Reliance H/C of Elizabethton, Inc., 1200 Spruce Lane, Elizabethton, TN 37643, 615–543–3202	TN	04/29/94
ETA CONTROL NUMBER—6215940 ACTION—ACCEPTED		
Mr. John E. Smithhisler, Sun Belt Regional Medical Center, 13111 East Freeway, Houston, TX 77015, 713–450–0342	TX	04/29/94
ETA CONTROL NUMBER—6215858 ACTION—ACCEPTED		
Mr. Ben M. McKibbens, Valley Baptist Medical Center, 2101 Pease St. P.O. Drawer 2588, Harlingen, TX 78550, 210–421–1100.	TX	04/29/94
ETA CONTROL NUMBER—6215936 ACTION—ACCEPTED		

[FR Doc. 94–12413 Filed 5–19–94; 8:45 am]
BILLING CODE 4510–30–P

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any

modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., room S-3014, Washington, DC 20210.

Withdrawn General Wage Determination Decision

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, General Wage Determination Nos. ND940054, ND940055, and ND940056 dated Feb. 11, 1994.

Agencies with construction projects pending, to which this wage decision would have been applicable, should utilize General Wage Determinations Nos. ND940026, ND940027, and ND940028. Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(2)(i)(A), when the opening of bids is within ten (10) days of this notice, the contract specifications need not be affected.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State.

Volume II

Maryland
MD940051 (May 20, 1994)
MD940052 (May 20, 1994)

Volume V:

Missouri
MO940077 (May 20, 1994)
MO940078 (May 20, 1994)
MO940079 (May 20, 1994)

Texas
TX940115 (May 20, 1994)

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I

New York
NY940013 (Feb. 11, 1994)
NY940021 (Feb. 11, 1994)

Volume II

Delaware
DE940002 (Feb. 11, 1994)
DE940004 (Feb. 11, 1994)
DE940005 (Feb. 11, 1994)
DE940009 (Feb. 11, 1994)

Maryalnd
MD940002 (Feb. 11, 1994)
MD940015 (Feb. 11, 1994)
MD940031 (Feb. 11, 1994)

Virginia
VA940003 (Feb. 11, 1994)
VA940009 (Feb. 11, 1994)
VA940015 (Feb. 11, 1994)
VA940017 (Feb. 11, 1994)
VA940035 (Feb. 11, 1994)
VA940046 (Feb. 11, 1994)
VA940050 (Feb. 11, 1994)
VA940079 (Feb. 11, 1994)
VA940085 (Feb. 11, 1994)

Volume III

Alabama
AL940036 (Feb. 11, 1994)

Kentucky
KY940002 (Feb. 11, 1994)
KY940004 (Feb. 11, 1994)
KY940025 (Feb. 11, 1994)
KY940027 (Feb. 11, 1994)
KY940028 (Feb. 11, 1994)
KY940029 (Feb. 11, 1994)
KY940035 (Feb. 11, 1994)
KY940055 (Feb. 11, 1994)

Volume IV

Illinois
IL940018 (Feb. 11, 1994)

Minnesota
MN940005 (Feb. 11, 1994)
MN940007 (Feb. 11, 1994)
MN940008 (Feb. 11, 1994)
MN940015 (Feb. 11, 1994)
MN940027 (Feb. 11, 1994)

Ohio
OH940001 (Feb. 11, 1994)
OH940002 (Feb. 11, 1994)
OH940003 (Feb. 11, 1994)
OH940026 (Feb. 11, 1994)
OH940027 (Feb. 11, 1994)
OH940029 (Feb. 11, 1994)
OH940034 (Feb. 11, 1994)

Volume V

Kansas
KS940006 (Feb. 11, 1994)
KS940009 (Feb. 11, 1994)
KS940012 (Feb. 11, 1994)
KS940022 (Feb. 11, 1994)
KS940025 (Feb. 11, 1994)
KS940026 (Feb. 11, 1994)

Louisiana
LA940004 (Feb. 11, 1994)
LA940005 (Feb. 11, 1994)
LA940009 (Feb. 11, 1994)
LA940017 (Feb. 11, 1994)
LA940018 (Feb. 11, 1994)

Nebraska
NE940005 (Feb. 11, 1994)

Texas
TX940009 (Feb. 11, 1994)
TX940057 (Feb. 11, 1994)
TX940070 (Feb. 11, 1994)

Volume VI

Alaska
AK940001 (Feb. 11, 1994)

California
CA940002 (Feb. 11, 1994)
CA940004 (Feb. 11, 1994)

Colorado
CO940008 (Feb. 11, 1994)

North Dakota
ND940029 (Apr. 8, 1994)

Oregon
OR940001 (Feb. 11, 1994)

South Dakota
SD940024 (Apr. 1, 1994)
SD940041 (Apr. 1, 1994)

Washington
WA940001 (Feb. 11, 1994)
WA940002 (Feb. 11, 1994)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 13th day of May 1994.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 94–12181 Filed 5–19–94; 8:45 am]

BILLING CODE 4510–27–M

NUCLEAR REGULATORY COMMISSION

Draft Commission Paper "Emergency Planning Under 10 CFR Part 52"

This notice announces the availability for comment of draft Commission paper, "Emergency Planning Under 10 CFR part 52." The paper discusses the staff's views on how emergency planning requirements will be addressed at each phase of nuclear power plant licensing under 10 CFR part 52: Early site permits, standard design certifications, and combined licenses.

For early site permit applications, NRC and Federal Emergency management Agency (FEMA) staffs have jointly developed criteria in a proposed supplement to NUREG–0654/FEMA–REP–1, "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants." The proposed supplement, containing guidance for writing, reviewing, and approving emergency plans and information to be submitted with an early site permit application, will be issued separately for public comment before its final publication.

For standard design certifications, the NRC staff has identified inspections, tests, analyses, and acceptance criteria (TAAC) pertinent to the emergency response facilities that are applicable to standard designs. With regard to combined licenses, the principle issues involve the form and role of ITAAC and the treatment of preoperational emergency preparedness exercises. An application for a combined license must include proposed ITAAC including those applicable to emergency preparedness. The emergency preparedness exercise, which is to be conducted prior to authorization for full power operation, will be included in the ITAAC.

Any interested party may submit comments on this draft Commission paper for consideration by the staff. To be certain of consideration, comments must be received within 90 days of the date of this **Federal Register** notice and should be sent to the contact indicated below. Comments received after this date will be considered to the extent practical.

A copy of the draft Commission paper has been placed in the NRC Public Document Room, Gelman Building, 2120 L Street NW., Washington, DC 20555. A free single copy may be obtained by writing to the U.S. Nuclear Regulatory Commission, Attn: Distribution and Mail Services Section, 0–P1–37, Washington, DC 20555.

For further information contact: Falk Kantor, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 504–2907.

Dated at Rockville, Maryland, this 11th day of May, 1994.

For the Nuclear Regulatory Commission.

Frank J. Congel,

Director, Division of Radiation Safety and Safeguards, Office of Nuclear Reactor Regulation.

[FR Doc. 94–12369 Filed 5–19–94; 8:45 am]

BILLING CODE 7590–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSAL(S):

(1) *Collection title:* Employee Representatives' Status and Compensation Reports.

(2) *Form(s) submitted:* DC–2a, DC–2.

(3) *OMB Number:* 3220–0014.

(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval.

(5) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(6) *Frequency of response:* On occasion.

(7) *Respondents:* Business or other for-profit.

(8) *Estimated annual number of respondents:* 50.

(9) *Total annual responses:* 50

(10) *Average time per response:* .5 hours.

(11) *Total annual reporting hours:* 25.

(12) *Collection description:* Benefits are provided under the Railroad Retirement Act (RRA) for individuals who are employee representatives as defined in section 1 of the Act. The collection obtains information on the status of such individuals and their compensation.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312–751–4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 94–12396 Filed 5–19–94; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34063; File Nos. SR–Amex–91–26, SR–CBOE–91–34, SR–NYSE–92–25, SR–PSE–91–33, and SR–Phlx–91–40]

Self-Regulatory Organizations; Order Granting Partial Approval of Proposed Rule Changes and Notice of Filing and Order Granting Accelerated Approval of Amendments to Proposed Rule Changes by the American Stock Exchange, Inc., Chicago Board Options Exchange, Inc., New York Stock Exchange, Inc., Pacific Stock Exchange Inc., and Philadelphia Stock Exchange, Inc., Relating to the Listing and Trading of Options on Preferred Stock

May 13, 1994.

I. Introduction

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] on October 8, 1991, October 4, 1991, September 23, 1992, November 20, 1991, and October 18, 1991, the American Stock Exchange, Inc. ("Amex"), the Chicago Board Options Exchange, Inc. ("CBOE"), the New York Stock Exchange, Inc. ("NYSE"), the Pacific Stock Exchange, Inc. ("PSE"), and the Philadelphia Stock Exchange, Inc. ("Phlx"), respectively (each individually referred to herein as an "Exchange" and two or more collectively referred to as "Exchanges"), filed with the Securities and Exchange Commission ("Commission") proposed rule changes to provide for the listing

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1993).

and trading of options on preferred stock.[3]

The Exchanges filed amendments ("Exchange Amendments") to their proposals to indicate that the listing of options on preferred stock on the respective Exchanges would be limited solely to preferred stock that is non-convertible.[4]

The proposed rule changes were published for comment: (1) On October 25, 1991, for the Amex, CBOE, and Phlx;[5] (2) on December 17, 1991, for the PSE;[6] and (3) December 3, 1992, for the NYSE.[7] No comments were received on these proposals. This order approves these proposals as they relate to the listing of options on preferred stock.[8]

[3] The original proposals of the NYSE and PSE, and the amended proposals of the Amex, CBOE, and Phlx, also included requests to list and trade options on American depositary receipts ("ADRs"). Four of these filings also were subsequently amended several times concerning options on ADRs (*see, e.g.*, Amex Amendment Nos. 1, 2, 3, and 4; CBOE Amendment Nos. 1 and 2; PSE Amendment Nos. 1 and 2; and Phlx Amendment Nos. 1 and 2). The portions of the filings concerning the listing and trading of options on ADRs previously were approved. *See infra* note 8.

[4] The Amex filed Amendment No. 5 to its proposal on April 14, 1994. *See* Letter from Claire P. McGrath, Managing Director, and Special Counsel, Amex, to Michael Walinskas, Branch Chief, Derivatives Regulation, Division of Market Regulation, Commission, dated April 14, 1994. The CBOE filed Amendment No. 3 to its proposed rule change on May 10, 1993. *See* Letter from Michael L. Meyer, Schiff Harding & Waite, to Sharon L. Lawson, Assistant Director, Division of Market Regulation, Commission, dated May 5, 1993. The NYSE filed Amendment No. 1 to its proposal on May 10, 1994. The PSE filed Amendment No. 3 to its proposal on March 16, 1994. *See* Letter from Michael D. Pierson, Senior Attorney, Market Regulation, PSE, to Thomas No. McManus, Division of Market Regulation, Commission, dated March 15,1994. The Phlx filed Amendment No. 3 to its proposed rule change on March 17, 1994.

[5] *See* Securities Exchange Act Release No. 29829 (October 18, 1991), 56 FR 55356 (October 25, 1991). In addition, the Commission in this release granted partial accelerated approval of proposals to permit the listing of options on the preferred stock of R.J.R. Nabisco Holdings Corporation ("RJR Preferred"). This partial approval was granted in light of the extremely active trading in RJR Preferred and the fact that RJR Preferred met the established uniform options listing standards.

[6] *See* Securities Exchange Act Release No. 30048 (December 9, 1991), 56 FR 65527 (December 17, 1991).

[7] *See* Securities Exchange Act Release No. 31528 (November 27, 1992), 57 FR 57256 (December 3, 1992).

[8] On November 27, 1992, the Commission issued orders granting partial accelerated approval of the Exchanges' proposals (including amendments thereto) to permit the Exchanges to provide for the listing and trading of options on ADRs, provided that there is a comprehensive surveillance sharing agreement in place between the particular Exchange and the primary exchange on which the foreign security underlying the ADR is listed or the governmental regulatory authority overseeing such primary exchange, or provided that the Commission otherwise approves the listing without such an agreement. *See* Securities Exchange Act Release Nos. 31529 (November 27, 1992), 57 FR 57248 (December 3, 1992) (Amex); 31531 (November 27, 1992), 57 FR 57250)December 3, 1992) (CBOE); 31529 (November 27, 1992), 57 FR 57256 (December 3, 1992) (NYSE); 31530 (November 27, 1992), 57 FR 57262 (December 3, 1992) (PSE); and 31532 (November 27, 1992), 57 FR 57264 (December 3, 1992) (Phlx) (collectively, "ADR Approval Orders"). In addition, to the extent that there is no surveillance sharing agreement between the relevant U.S. options exchange and the primary exchange on which the foreign security underlying the ADR trades, the Commission has approved other Exchange proposals to list options on such ADRs provided that 50 percent or more of the world-wide trading volume of the underlying foreign security occurs in the U.S. ADR market. *See* Securities Exchange Act Release Nos. 33555 (January 31, 1994), 59 FR 5619 (February 7, 1994) (Amex); 33554 (January 31, 1994), 59 FR 5622 (February 7, 1994) (CBOE); 33552 (January 31, 1994), 59 FR 5626 (February 7, 1994) (NYSE); 33551 (January 31, 1994), 59 FR 5631 (February 7, 1994) (PSE); and 33553 (January 31, 1994), 59 FR 5634 (February 7, 1994) (Phls).

II. Description of the Proposal

In 1991, the Commission issued an order approving proposed rules changes by the Exchanges easing the standards relating to the selection, and continuing eligibility, of securities underlying exchange-traded options (in effect, increasing the number of securities eligible for options trading).[9] In this order, the Commission stated that the Exchanges would be required to file separate rule proposals pursuant to Section 19(b) of the Act in order to list for trading options on securities other than common stock.[10] In response thereto, the Exchanges filed with the Commission the above referenced rule proposals in order to enunciate generally their policies that securities other than common stock may be appropriate for options trading, and specifically to provide for the listing of options on ADRs and preferred stock.[11]

The proposals under consideration would authorize the Exchanges to amend their rules to provide for the listing and trading of options on preferred stock which is non-convertible, and which otherwise satisfies the Exchanges' uniform options listing and maintenance listing standards.

The initial options listing standards for each of the Exchanges would require the following: (1) the preferred stock must have a "float" of a minimum of 7,000,000 shares outstanding; (2) there must be at least 2,000 holders of the underlying preferred stock; (3) the trading volume in all markets in which the underlying preferred stock is traded must have been at least 2,400,000 shares over the prior twelve months; (4) the market price per share of the preferred stock must have been at least $7.50 for the majority of business days during the prior three calendar months; (5) the preferred stock underlying the option must be registered under the Act and listed on a national securities exchange or traded through the facilities of a national securities association and reported as a national market system security; and (6) the issuer of the preferred stock must be in compliance with all applicable requirements of the Act and rules thereunder relating to the making of timely reports.[12]

The maintenance listing criteria for all Exchanges would require: (1) the preferred stock must maintain a "float" of 6,300,000 shares outstanding; (2) there must continue to be at least 1,600 holders of the preferred stock; (3) the trading volume in all markets in which the underlying preferred stock is traded must have been at least 1,800,000 shares over the prior twelve month period; (4) the market price per share must have been at least $5 for the majority of business days during the three preceding calendar months; (5) the preferred stock continues to be registered under the Act and listed on a national securities exchange or traded through the facilities of a national securities association and reported as a national market system security; and (6) the issuer of the preferred stock continues to be in compliance with all applicable requirements of the Act and rules thereunder relating to the making of timely reports.[13]

III. Commission Findings and Conclusions

The Commission finds that the portions of the proposed rule changes relating to the listing of options on non-convertible preferred stock is consistent with the requirements of Section 6(b)(5) of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that allowing options to trade on preferred stock, among other things, gives investors a better means to hedge their positions in the preferred stock, as well as enhanced market timing opportunities. Further, the pricing of the preferred stock underlying an option may become more efficient, and market makers in such preferred stock, by virtue of enhanced hedging opportunities, may be able to provide deeper and more liquid markets. In sum,

[9] Securities Exchange Act Release No. 29628 (August 29, 1991), 56 FR 43949 (September 5, 1991).

[10] *Id.*

[11] As stated earlier, the portions of the proposals relating to the listing of options on ADRs have been previously approved. *See supra* note 8.

[12] *See* Amex Rule 915; CBOE Rule 5.3; NYSE Rule 715; PSE Rule 3.6; and Phlx Rule 1009.

[13] *See* Amex Rule 916; CBOE Rule 5.4; NYSE Rule 716; PSE Rule 3.7; and Phlx Rule 1010.

the Commission believes that options on preferred stock will engender the same benefits to investors and the marketplace that exist with respect to options on common stock.

The Commission also believes that it is appropriate to permit the Exchanges to list and trade options on preferred stock given that the proposal includes specific provisions related to the protection of investors. First, the proposals require that the preferred stock must meet the particular Exchange's uniform options listing standards in all respects. As described above, this would include both initial listing and maintenance of listing criteria. These criteria ensure, among other things, that the underlying preferred stock must initially and thereafter maintain sufficient price and share float levels in order to help prevent the options on the preferred stock from being readily susceptible to manipulation.

Second, the proposals would permit the Exchanges to list only options on preferred stock that is non-convertible. The Commission currently believes that it is inappropriate to trade options on preferred stock which is convertible into another security, such as common stock. Specifically, where the preferred shares underlying a listed option could be converted into another security, the Commission is concerned that the public float of that particular preferred stock could decrease, perhaps suddenly, to a level approaching or falling below the maintenance standard of 6,300,000 shares, due to a large number of conversions. Such a decrease in the public float of the preferred stock underlying the option, in turn, may have an adverse impact on the liquidity of the preferred stock, and consequently make the markets for the preferred stock and the options thereon more readily susceptible to manipulation. Although the Commission recognizes that all options trading contains the risk that the underlying security may fall below the maintenance criteria, because the convertibility feature is attached to the preferred stock at all times, the ability of this to occur is more likely than with other non-convertible securities. Therefore, the Commission believes that permitting the Exchanges to list options only on non-convertible preferred stock addresses the foregoing concerns, and generally serves to prevent fraudulent and manipulative acts and practices, promotes just and equitable principles of trade, and protects investors and the public interest.

The Commission notes that the listing on the Exchanges of options on ADRs where the foreign securities underlying the ADRs are preferred shares must be done in a manner consistent with this order and the ADR Approval Orders.[14] Specifically, the underlying preferred shares must be non-convertible, and there must be a comprehensive surveillance sharing agreement in place between the particular Exchange and the primary exchange on which the underlying security is listed or the governmental regulatory authority overseeing such primary exchange (or the Commission must otherwise approve the listing without such an agreement).[15]

The Commission finds good cause for approving the Exchange Amendments prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. As originally proposed, the Exchanges' rule changes would have provided for the listing of options on any type of preferred stock, including convertible preferred stock. The Exchange Amendments significantly narrow the scope of the original proposals by providing for the listing only of options on non-convertible preferred stock. This refinement will serve to protect investors and the public interest, and minimize the potential for manipulation. Further, the original, broader proposals were published for the full 21-day comment period, and no comments were received. The Commission finds, therefore, that no new issues are raised by the Exchange Amendments. Accordingly, the Commission believes it is consistent with Sections 19(b)(2) and 6(b)(5) of the Act to approve the Exchange Amendments on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the Exchange Amendments. 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 changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filings also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organizations. All submissions should refer to the appropriate file number in the caption above and should be submitted by June 10, 1994.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act[16] that the portions of the proposed rule changes (File Nos. SR–Amex–91–26, SR–CBOE–91–34, SR–NYSE–92–25, SR–PSE–91–33, and SR–Phlx–91–40), as amended, relating to the listing of options on preferred stock, are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary

[FR Doc. 94–12299 Filed 5–19–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34066; File No. SR–MBS–94–02]

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to the Establishment of the Electronic Pool Notification Service

May 13, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 6, 1994, the MBS Clearing Corporation ("MBS") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–MBS–94–02) 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 Organizations Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will add Articles VI, VII, VIII, IX, and X to MBS's rules relating to the establishment of MBS's electronic pool notification ("EPN") service.

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[14] *See supra* note 8.

[15] *Id.* Such a comprehensive surveillance sharing agreement would not be necessary if 50 percent or more of the world-wide trading volume of the underlying foreign security occurs in the U.S. ADR market. *Id.*

[16] 15 U.S.C. 78s(b)(2) (1988).

[17] 17 CFR 200.30–3(a)(12) (1993).

[1] 15 U.S.C. 78s(b)(1) (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 IV below. The self-regulatory organization has prepared summaries, set forth in section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to add Articles VI, VII, VIII, IX, and X to MBS's rules relating to the establishment of MBS's EPN service. EPN is a real-time, store and forward message switch that will provide an electronic communications network through which EPN Users will be able to transmit mortgage-backed securities pool allocation information regarding securities deliveries for settlement quickly and efficiently. An EPN Message will be required to contain (i) the lot-sequence of Good Delivery Millions (i.e., the number of million dollar lots delivered in accordance with PSA guidelines); (ii) a pool number that references a specific pool of mortgages; (iii) the principal amount at date of issue; (iv) the coupon rate; and (v) a termination code. In addition, an EPN Message may contain additional information, such as the maturity date, CUSIP number, current outstanding principal amount, an MBS trade number, internal control number, and interest accrued, among other things.

Currently, in order for participants to notify other participants of pool information, participants must manually phone or fax the information to other participants. Because of the nature of this method of exchanging information, busy signals are common. Historically, billions of dollars of fails have been incurred each month because sellers are not able to communicate with buyers because of the buyer's phone, fax, and staffing limitations. The proposed rule change, therefore, will establish rules for the EPN service which should make this process more efficient and more reliable.

MBS has decided that a complete stand-alone set of rules for EPN was preferable to trying to integrate the EPN rules into existing MBS rules. As a result, many of the EPN rules mirror existing MBS rules and make those rules applicable to users of the EPN service. To this end, there has been an attempt to use the same terms and definitions that MBS uses in its current rules wherever possible.

The EPN rules do differ, however, from existing MBS rules in several respects. First, the EPN rules describe EPN and define new terms related to EPN such as "EPN Eligible Security," "EPN User," "EPN User Profile," "EPN User Agreement," "EPN User Fund," "EPN Service," "Message Detail Report," "Message Purge Report," "Message Recovery Report," and "Messages," etc. These reflect applicable names for existing functions and new services and concepts that do not exist in the current MBS rules. For example, because users of the EPN service will not necessarily be full participants of MBS, they are called "EPN Users." In addition, the EPN User fund entails the same concept as the current participants fund.

Another change from existing rules concerns who can become an EPN User. Because EPN is essentially a sophisticated e-mail-database system that does not involve the clearance or settlement of securities, the risk to MBS from defaulting EPN Users is limited to their fees. As a result, the standards for the approval of applicants to become an EPN User is significantly less than is required of applicants who wish to become full participants of MBS. It is anticipated that applicants who would not qualify as participants of MBS could still become EPN Users.

Because the EPN service will time stamp messages, the new rules provide that this time stamp will determine good delivery. The rules also provide the several reports will be issued to EPN Users, one of which will constitute a confirmation. In addition, as stated above, the new EPN rules provide for an EPN User Fund. This is intended to be similar in purpose to, but smaller in scope than, the existing participants fund. This will protect MBS in the event that any EPN User defaults in payments of fees. Finally, like MBS's existing rules, the EPN rules expressly limit MBS's liability in the performance of its obligations to the same extent as MBS's existing rules.

MBS believes that the proposed rule change is consistent with Section 17A of the Act and the rules and the regulations thereunder in that it promotes the prompt and accurate clearance and settlement of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

MBS 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

The proposed rule change was developed through discussions with participants and the Computer-To-Computer-Interface User Committee. Written comments from MBS participants or others have not been solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of MBS. All submissions should refer to File Number SR–MBS–94–02 and should be submitted by June 10, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–12302 Filed 5–19–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34065; File No. SR–OCC–94–03]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval on a Temporary Basis of a Proposed Rule Change Concerning Equity TIMS

May 13, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,[1] notice is hereby given that on April 8, 1994, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–OCC–94–03) as described in Items I and II below, which Items have been prepared mainly by OCC, a self-regulatory organization ("SRO"). The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change through May 31, 1995.

I. SRO's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will extend from June 1, 1994, through May 31, 1995, the Commission's temporary approval of OCC's use of its Theoretical Intermarket Margin System ("TIMS") for calculating clearing margin positions for equity options.[2]

II. SRO's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Equity TIMS is a modified version of OCC's Non-Equity TIMS, which is OCC's margin system used to calculate margin requirements on options for which the underlying asset is anything but an equity security. Securities Exchange Act Release No. 23167 (April 22, 1986), 51 FR 16127 [File No. SR–OCC–85–21] (order approving Non-Equity TIMS).

A. SRO's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On March 1, 1991, the Commission temporarily approved a proposed rule change which authorized OCC to use TIMS to calculate clearing member margin requirements on equity options.[3] Equity TIMS utilizes options price theory (*i.e.*, an option pricing model) to project the cost of liquidating each clearing member's short equity option positions and long equity option positions on which OCC is entitled to assert a lien in the event of a "worst case" theoretical change in the price of the underlying securities. This projected liquidation cost is then used by Equity TIMS to calculate for each clearing member a margin requirement to cover that cost.[4]

Since its initial temporary approval of Equity TIMS in 1991, the Commission has extended the temporary approval twice.[5] OCC requested these extensions in order that it might complete its analysis of Equity TIMS. Specifically, in its discussions with the Commission's staff preceding the Commission's initial temporary approval of Equity TIMS, OCC represented that it would undertake to analyze the effects of including equity option volatilities over longer periods in determining margin intervals and would report the results of its analysis to the Commission. OCC initially was delayed because it expanded the scope of its analysis from ten years to thirty years and had difficulty in obtaining an accurate data base of information covering the expanded period of review. OCC also determined that its analysis of equity options volatility would benefit from a review by an outside consultant, and because it took OCC some time to obtain the services of an appropriate consultant, its analysis has been delayed further. Because these matters now have been resolved, OCC believes that it will be able to complete its analysis and submit its report to the Commission by December 31, 1994.

OCC believes that the proposed rule change is consistent with the requirements of the Act and in particular with those of Section 17A of the Act.[6] Specifically, OCC believes that Equity TIMS enhances OCC's ability to safeguard the securities and funds for which it is responsible.

B. SRO's Statement on Burden on Competition

OCC believes that the proposed rule change will not impose any burden on competition.

C. SRO's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

OCC has not solicited or received any comments on the proposed rule change.

III. Discussion

The Commission continues to believe, on a preliminary basis, that Equity TIMS meets the requirements of the Act and, in particular, the requirements of section 17A of the Act.[7] Specifically, section 17A(b)(3)(F) of the Act[8] requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible. Additionally, section 17A(a)(1) of the Act[9] encourages the use of efficient, effective, and safe procedures for securities clearance and settlement.

As the Commission has stated previously, Equity TIMS represents an improvement over OCC's previous production margin system in several respects.[10] Nevertheless, while the Commission continues to believe that the margin methodology employed by Equity TIMS is basically sound, the Commission remains concerned that the system may be overly dependent on short-term analyses of historical and implied volatility. Consequently, the Commission is extending the temporary approval for OCC's use of Equity TIMS through May 31, 1995. By so extending the temporary approval, the Commission believes that there will be time for OCC to prepare and submit its report by December 31, 1994, and for the Commission to analyze the report

[3] Securities Exchange Act Release No. 28928 (March 1, 1991), 56 FR 9995 [File No. SR–OCC–89–12] (order approving the use of Equity TIMS to calculate margin on equity options on a temporary basis through May 31, 1992).

[4] After the Commission's approval of File No. SR–OCC–89–12 on March 1, 1991, OCC phased out its previous margin system, which was known as the "production system," and since then has used Equity TIMS to calculate its clearing members' margin requirements on equity option positions. For a complete description of Equity TIMS, refer to File No. SR–OCC–89–12 and Securities Exchange Act Release No. 28928, *supra* note 3.

[5] Securities Exchange Act Release Nos. 30761 (May 29, 1992), 57 FR 24286 [File No. SR–OCC–92–15] (order extending the approval of Equity TIMS through may 31, 1993) and 32388 (May 28, 1993), 58 FR 31989 [File No. SR–OCC–93–06] (order extending the approval of Equity TIMS through May 31, 1994).

[6] 15 U.S.C. 78q–1 (1988).

[7] 15 U.S.C. 78q–1 (1988).

[8] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[9] 15 U.S.C. 78q–1(a)(1) (1988).

[10] *Supra* note 3.

before determining whether to grant permanent approval for Equity TIMS.[11]

OCC also has requested that the Commission find good cause for approving its request for an extension of the Commission's temporary approval of OCC's use of Equity TIMS prior to the thirtieth day after the publication of notice of filing of the proposed rule change. The Commission believes that OCC's use of Equity TIMS over the past four years has resulted in better assessments of OCC's risk exposure associated with the clearance and settlement of its clearing members' equity option positions and has resulted in calculations of clearing margin that more accurately reflect that risk exposure. Accordingly, to prevent the current temporary approval of Equity TIMS from expiring on May 31, 1994, without another approved equity margin system in place, the Commission finds that good cause exists for approving the proposed rule change prior to the thirtieth day after publication of notice of filing. The Commission also notes that during the three previous temporary approval periods, OCC has not received any adverse comments regarding Equity TIMS from its clearing members.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–94–03 and should be submitted by June 10, 1994.

[11] For a detailed discussion of the Commission's concerns related to Equity TIMS, including the use of short-term volatility analysis, refer to Securities Exchange Act Release No. 28928, *supra* note 3.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the above-mentioned proposed rule change (File No. SR–OCC–94–03) be, and hereby is, approved on an accelerated basis through May 31, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–12301 Filed 5–19–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34064; File No. SR–OCC–94–04]

Self-Regulatory Organizations; the Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Flexibly Structured Options

May 13, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on April 25, 1994, The Options Clearing Corporation ("OCC") 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 OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will allow OCC to issue, clear, and settle "flexibly structured options" on foreign currencies. The rule change also proposes technical amendments to OCC's By-Laws and Rules to replace the term "FLEX options" with "flexibly structured options."

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[12] 15 U.S.C. 78s(b) (1988).

[13] 17 CFR 200.30–2(a)(12) (1991).

[1] 15 U.S.C. 78s (1988).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Generally, the purpose of the proposed rule change is to enable OCC to clear and settle flexibly structured options on foreign currencies. Specifically, the purpose of the proposed rule change is to enable OCC to accommodate within the framework of its existing By-Laws and Rules the clearance and settlement of customized strike options as proposed for trading on the Philadelphia Stock Exchange ("PHLX").[2]

Customized strike options are a type of flexibly structured options where the underlying security is a foreign currency whereas the underlying security for the current flexibly structured option product is an index group. With the current flexibly structured index option products, certain items, such as the exercise price, exercise style, and expiration date, of the option can be customized by the parties within specified limits established by the listing exchange. With PHLX's customized strike option, parties will be able to establish the exercise price for each new series of customized strike options.

Because customized strike options are foreign currency options with flexibly structured exercise prices, they can be treated and processed like the current foreign currency option product, and only a few changes to OCC's By-Laws and Rules are necessary to accommodate them. Accordingly, a definition of flexibly structured options is being added to section 1 ("Definitions") of Article XV ("Foreign Currency Options") of OCC's By-Laws which will encompass customized strike options.[3]

The term "FLEX option" in Section 1 ("Definitions") of Article XVII ("Index Options") is being changed to "flexibly structured option" in order to make that term more generic. For the same reasons, all references to FLEX options

[2] For a description of the PHLX proposed rule change, refer to Securities Exchange Act Release No. 33959 (April 25, 1994), 59 FR 22698, [File No. SR–PHLX–9411] (notice of filing of proposed rule change).

[3] With respect to foreign currency options, the term "flexibly structured option" is defined in Article XV, Section 1, F(2) of OCC's By-Laws as a foreign currency option having an expiration date, an exercise price, and an exercise style that are reported to OCC by an exchange. No similar term is being added to Article XX of OCC's By-Laws ("Cross-Rate Foreign Currency Options") at this time. In order for OCC to clear and settle flexibly structured cross-rate foreign currency options, OCC must submit for Commission approval a proposed rule change under Section 19(b)(2) of the Act.

in OCC's By-Laws and Rules are being changed to flexibly structured options. In addition, the definition of the term flexibly structured option in Section 1 of Article XVII is being modified to clarify that such definition is applicable only to flexibly structured index options. As stated above, a separate definition of flexibly structured options applicable to foreign currency options is being added to Section 1 of Article XV.

OCC Rule 602(b) also is being amended to broaden the definition of the term "premium margin" with respect to flexibly structured options. The current definition is applicable only to flexibly structured indexed options whereas the proposed definition will encompass flexibly structured index options, customized strike options, and other types of flexibly structured options as such options are approved for trading on the various exchanges and for clearance and settlement at OCC.

OCC believes that the proposed rule change is consistent with the purposes and requirements of Section 17A of the Securities Exchange Act of 1934 because it will facilitate the prompt and accurate clearance and settlement of transactions in customized strike options and the safeguarding of related securities and funds. The proposed rule change provides a framework in which the existing OCC systems, rules, and procedures can be extended to the processing of flexibly structured foreign currency options.

B. Self-Regulatory Organization's Statement on the Burden on Competition

OCC does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

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 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 N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization.

All submissions should refer to File No. SR–OCC–94–04 and should be submitted by June 10, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–12300 Filed 5–19–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Pacific Stock Exchange, Incorporated

May 16, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Goldcorp, Inc.
Class A Common Stock, No Par Value (File No. 7–12435)
Grand Casinos, Inc.
Common Stock, $.01 Par Value (File No. 7–12436)
Lone Star Industries, Inc.
Common Stock, $1,00 Par Value (File No. 7–12437)
Lone Star Industries, Inc.
Warrants (exp. 12/31/2000) (File No. 7–12438)
RJR Nabisco Holdings Corp.
Series C Dep. Shares (rep. 1/10 share of Series C Convertible Preferred Stock) (File No. 7–12441)
RMI Titanium Co.
Common Stock, $0.01 Par Value (File No. 7–12442)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 7, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–12298 Filed 5–19–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20295 ; No. 812–8734]

Application for an Order Under the Investment Company Act of 1940

May 13, 1994.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: Fortis Benefits Insurance Company ("Fortis Benefits"), Variable Account C of Fortis Benefits Insurance Company ("Fortis Benefits Account"), First Fortis Life Insurance Company ("First Fortis"), Variable Account C of First Fortis Life Insurance Company ("First Fortis Account") and Fortis Investors, Inc. ("Investors").

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) of the 1940 Act for exemptions from the provisions of sections 2(a)(32), 22(c), 26(a)(2)(C), 27(a)(3), 27(c)(1), 27(c)(2) and 27(d) and

Rules 22c–1, 6e–3(T)(b)(12), 6e–3(T)(b)(13) and 6e–3(T)(d)(1)(ii) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to the extent necessary to permit them to issue flexible premium variable life insurance policies ("Policies") that enable Fortis Benefits and First Fortis (the "Insurers") to: (1) Credit the Policy owner's account with "Policy value advances" and later recover the Policy value advances from the assets of the Fortis Benefits Account and the First Fortis Account; (2) include in the surrender charge any premium tax charge not previously recovered; and (3) deduct sales charges in a manner that may result in deductions in one period being considered to be higher than deductions taken out in a subsequent period.

FILING DATE: The application was filed on December 17, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the 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 7, 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 requester's interest, the reason for the request and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Fortis Benefits, the Fortis Benefits Account, and Investors, 500 Bielenberg Drive, Woodbury, Minnesota 55125. First Fortis and the First Fortis Account, 220 Salina Meadows Parkway, suite 255, Syracuse, New York 13220.

FOR FURTHER INFORMATION CONTACT: Wendy Finck Friedlander, Senior Attorney (202) 942–0682, or Wendell Faria, Deputy Chief (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Fortis Benefits, a Minnesota corporation, is qualified to sell life insurance in the District of Columbia and in all states except New York. It is an indirect wholly-owned subsidiary of Fortis, Inc., which is itself indirectly owned 50% by N.V. AMEV and 50% by Compaignie Financiere et de Reassurance de Group AG. Fortis, Inc. manages the United States operations for these two foreign companies. First Fortis, a New York corporation, is qualified to sell life insurance in New York. It is a wholly-owned subsidiary of N.V. Amev.

2. The Insurers established the Fortis Benefits Account and the First Fortis Account (the "Accounts") under the laws of Minnesota and New York, Respectively, as segregated investment accounts for the purpose of funding variable life insurance policies, including the policies. The Fortis Benefits Account is registered as unit investment trust under the 1940 Act. First Fortis intends to register the First Fortis Account prior to the time it offers any Policies for sale. Each Account currently consists of six subaccounts ("Subaccounts"), each of which invests, or intends to invest, exclusively in shares of a corresponding portfolio of Fortis Series Fund, Inc., a registered management investment company.

3. Investors, also an indirect wholly-owned subsidiary of Fortis, Inc., is the principal underwriter for the Policies. Investors is registered as a broker-dealer under the Securities Exchange Act of 1934.

4. The Policies may be issued either on a group or individual basis. The forms of Policy that are the subject of this application are Fortis Benefits' VUL–100 Flexible Premium Variable Life Insurance Policy and First Fortis' VUL–500, VUL–200, and VUL–100 Flexible Premium Variable Life Insurance Policies. The First Fortis VUL–500 and VUL–220 Policies permit the Policy owner to select, and change from time to time, between two death benefit options. One of these options, under which the "Policy value" is added to the Policy's face amount of insurance coverage for purposes of computing the death benefit, is not available under the VUL-100 Policies. The owner of any of the Policies also may change the face amount from time to time, subject to certain restrictions.

5. The Policy owner may allocate the Policy value to one or more of the Subaccounts and/or to the general accounts of the Insurers.

6. The Policies may be fully surrendered at any time for their surrender value and, generally after the first Policy year, the policy owner may make a partial withdrawal of the surrender value once a year. The Policy owner also may take out loans and may vary the frequency and amount of premium payments.

7. The Policy will not lapse for a specified number of years if certain minimum premium payment requirement is based on monthly minimum premiums, which are also used, among other things, to make certain sales charge and policy value advance computations. While different monthly minimum premiums may be used for different purposes, in no case will the sum of twelve monthly minimum premiums with respect to a VUL–500 OR VUL–220 Policy exceed the guideline annual premium with respect to such Policy, as defined in Rule 6e–3(T)(c)(8).

8. Unless prohibited by applicable state insurance law, a Policy may be eligible for a credit in the form of a Policy value advance ("Advance" on the last day of the ninth year (twelfth year in Oregon) and each subsequent Policy year. Except in Oregon, where there are no premium payment requirements for an Advance, eligible Policies may receive an Advance only if, as of the date of the credit, (1) The cumulative amount of premiums paid over the life of the Policy, less any outstanding policy loans, and less the cumulative amount of partial withdrawals taken by the Policy owner, at least equals (2) the cumulative monthly minimum premium payments to date. No further Advances will be paid if the premium requirement is not met for any credit.

9. Advances paid at the end of the ninth (twelfth year in Oregon) and each subsequent Policy year will equal ten percent (five percent in Oregon), of the average of the total minimum monthly premiums for each year to date. Advances at the foregoing rate are not guaranteed, and the Insurers reserve the right to reduce them, subject to guaranteed minimum rates. The guaranteed rates are based on the insured's age at Policy issue, as follows: ages 0–40, 10%; ages 41–43, 9%; ages 44–46, 8.25%; ages 47–50, 7.5%; ages 51–55, 6%; ages 56–60, 5.5%; and ages 61–70 (and all ages in Oregon), 5%. These guarantees apply through the 19th (21st in Oregon) Policy year, but not thereafter.

10. Advances will be allocated among the general account and the Subaccounts on a pro rata basis in proportion to the amount of Policy value in each, exclusive of amounts transferred to the general account as a result of Policy loans. Following such allocation, these amounts will be credited with investment performance and otherwise be treated the same as any other amounts of Policy value.

11. The Insurers will notify Policy owners that they may be forfeiting Advances by failing to make sufficient premium payments. An annual statement will inform each Policy owner of the dollar amount that must be paid for the year, plus any unpaid amounts from prior years, to be eligible for Advances, or if no such premiums must be paid.

12. Unless prohibited by applicable state insurance law, a VUL–500 or VUL–100 Policy may be eligible for an increase in Policy value in the form of a "cash value bonus" ("Bonus") on the last day of the ninth and each subsequent Policy year. The amount of any Bonus is a percentage of the surrender value at the date of the Bonus, as follows:

BONUS AS A PERCENT OF SURRENDER VALUE AT THE END OF POLICY YEAR

Surrender value of date of bonus	9 to 19		20 and later	
	VUL–500	VUL–100	VUL–500	VUL–100
Less than $50,000	.00%	.00%	.00%	.00%
$50,000 to $299,999	.10	.30	.10	.30
$300,000 to 499,999	.55	.50	.55	.50
$500,000 or more	.55	.50	.80	.50

Bonuses at the foregoing rates are not guaranteed, and each Insurer retains the right, with respect to its Policies, in its sole discretion to reduce or discontinue Bonuses upon one year's notice. Bonuses will be credited with investment performance and otherwise will be treated the same as any other amounts of Policy value. Bonuses will be allocated among the general accounts and the Subaccounts on a pro rata basis and will be fully vested.

13. A premium tax charge is assessed in the amount of 2.3% of all premium payments through monthly deductions from Policy value under the VUL–500 and VUL–220 Policies and daily deductions from Policy value under all Policies. Any portion of such amounts that is not recovered by the Insurers pursuant to the monthly and/or daily deductions may be deducted as part of the surrender charge.

14. A sales charge also is assessed in the amount of 7.5% of all premium payments through monthly deductions from Policy value under the VUL–500 and VUL–220 Policies and daily deductions from Policy value under all of the Policies. Any amount of the sales charge that is not recovered by the Insurers through these monthly and/or daily deductions may be deducted as a contingent deferred sales charge as part of the surrender charge.

15. The monthly deduction under the VUL–500 and VUL–220 Policies for premium tax and sales charges totals $4.00 per month, and the daily deduction under all of the Policies is at an aggregate annual rate of .27% of the value of the Policy's net assets in the Accounts. These deductions will be waived to the extent that the cumulative amount of all such deductions would exceed 9.8% (7.5% for sales charges and 2.3% for premium tax charges) of all premium payments made to date. Premium tax and sales charge deductions will not be made at any time when similar deductions for Advances are being made.

16. As part of the surrender charge, the VUL–500 and VUL–220 Policies impose an additional contingent deferred sales charge ("CDSC") in the amount of 22% and 12%, respectively, of premium paid in the first two Policy years that are not in excess of the sum of twelve monthly minimum premiums.

17. An additional CDSC also will be payable under the VUL–500 and VUL–220 Policies on certain total surrenders or Policy lapses following an increase in face amount requested by a Policy owner. The maximum additional CDSC will be 22% and 12%, respectively, of the lesser of: (1) The sum of twelve monthly minimum premiums for the face amount increase or (2) the amount of actual premium payment deemed attributable to the increase which are made not later than two years after the date of this increase. Any such additional CDSC arising from a face amount increase is payable only as part of the surrender charge.

18. A charge for other Policy issuance expenses also is imposed under certain Policies. This charge is $5.00 per thousand dollars of a Policy's initial face amount and also will be imposed following any increase in face amount. This charge is deducted only under the VUL–500 and VUL–200 Policies and only as part of the surrender charge. Applicants represent that this charge will not exceed the amount permitted by Rule 6e–3(T)(b)(13)(iii)(A).

19. The surrender charge may be assessed upon the lapse or full surrender of a Policy before the eleventh Policy anniversary or the eleventh anniversary of a face amount increase. No surrender charge is deducted upon a partial withdrawal of Policy value or a face amount decrease. The maximum surrender charge is the sum of: (1) Any portion of the current 2.3% premium tax charge and the 7.5% sales charge that has not yet been collected through the monthly and/or daily deductions; (2) any additional CDSCs with respect to the VUL–500 or VUL–220 Policies; and (3) the charge for other Policy (or increase) issuance expenses with respect to the VUL–500 or VUL–220 Policies.

20. The entire surrender charge is subject to an overall upper limit or "cap," based on the insured's age and the face amount or face amount increase, as follows:

Insured person's age at time of policy issuance or face amount increase (years)	Overall "Cap" on surrender charge (per thousand dollars of face amount or of face amount increase)
0–30 Years	$9.00
31–40	10.00
41–45	12.00
46–50	14.00
51–55	16.00
56–60	21.00
61–65	28.00
66–70	40.00

The cap decreases on the fifth and each subsequent Policy anniversary, or face amount increase, anniversary until it reaches zero on the eleventh Policy anniversary or increase anniversary. There is no surrender charge on surrenders or lapses as of the later of the eleventh Policy anniversary or the eleventh anniversary of any face amount increase.

21. The amount of any Advance paid by the Insurer is subject to recovery through the following deductions made after the payment of the Advance: $4.00 per month (as part of the monthly deduction) under the VUL–500 and VUL–220 Policies, plus a daily

deduction under all of the Policies at an annual rate of .27% of the value of the Policy's net assets in the Accounts. These deductions continue until their cumulative amount equals the cumulative amount of Advances actually credited to the Policy.

22. The monthly deduction from Policy value includes: (1) Premium tax and sales charges or recovery of Advances; (2) the cost of insurance charge; (3) a monthly charge for the guaranteed death benefit in the amount of $.01 per thousand dollars of face amount under the Policy or any optional riders; (4) the charge for optional insurance benefits added by riders; and (5) the monthly administrative expense charge of $4.50 per Policy. The Insurers reserve the right to raise the monthly administrative expense charge to not more than $7.50 per month and to impose an additional monthly administrative expense charge of up to $.13 per thousand dollars of face amount then in force. Applicants represent that this charge will not exceed the amount permitted by Rule 6e–3(T)(b)(13)(iii)(A).

23. A daily charge at an annual rate of .90% of the average daily value of the net assets in the Account that are attributable to the Policies is made for mortality and expense risks assumed by the Insurers.

24. The Insurers reserve the right to deduct (1) Charges to defray their administrative expenses in effecting transfers of Policy value or partial withdrawals and (2) charges for any federal income taxes that the Insurers may incur.

Applicant's Request for Relief and Legal Analysis

1. Applicants request exemptions from sections 26(a)(2)(C) and 27(c)(1) of the 1940 Act to the extent necessary to permit the deduction of monthly and/or daily charges to recover Advances.

2. Section 27(c)(2) provides that an investment company may not offer periodic payment plan certificates unless, among other things, the proceeds of all payments (other than the sales load) on such certificates are deposited with a trustee or custodian having the qualifications prescribed in section 26(a)(1) and are held by the trustee or custodian under an indenture or agreement containing, in substance, the provisions required by section 26(a)(2).

3. Section 26(a)(2)(C) provides that no payments to the depositor of, or principal underwriter for, a registered unit investment trust (or any affiliated person or agent of such depositor or principal underwriter) shall be allowed the trustee or custodian as an expense, except for payment of a fee not exceeding such reasonable amount as the Commission may prescribe, for performing bookkeeping and other administrative services of a character normally performed by the trustee or custodian.

4. Applicants submit that the recovery of all or part of an Advance returns to the Insurer its own assets and that such recovery is not a payment of the sort addressed by section 26(a)(2)(C). Applicants state that, in this respect, deductions to recover Advances are similar to the removal from separate account assets of amounts necessary to secure Policy loans, or to secure additional Policy loans that are made automatically in order to "capitalize" loan interest that the Policy owner has not otherwise paid. Similarly, Applicants submit that deductions to recover Advances may reasonably be viewed as capital adjustments rather than a charge or expense subject to section 26(a)(2)(C).

5. Section 27(c)(2) requires only that the "proceeds" or "payments" (i.e., amounts paid by the investor) be deposited with a trustee and held subject to the requirements of section 26. Applicants believe that the statutory language lends support to the conclusion that recovery of Advances is outside the ambit of those provisions, insofar as the Advance does not constitute "proceeds" of "payments" made by an investor, but is rather an advance made by each Insurer from its own funds.

6. Advances provide a significant potential benefit to eligible Policy owners by increasing the amount available to earn a return for the Policy owner. In many cases, an Advance will not be recovered or will be partially recovered because no CDSC for unrecovered Advances is imposed upon death of the insured, surrender, partial withdrawal or lapse. The total amount deducted to recover Advances under any Policy will never exceed the amount of Advances actually paid.

7. The Policy owner receives a further benefit during the time when deductions for Advances are being made because similar monthly and/or daily deductions for premium taxes and sales charges are suspended. Deferred premium tax and sales charges are equal to the monthly and/or daily deduction for Advances, assuming the 9.8% maximum on the monthly and/or daily premium taxes and sales charge deductions otherwise would not have been reached.

The monthly and/or daily deductions for premium taxes and sales charges resume after Advances have been fully recovered, unless total deductions for premium taxes and sales charges have reached 9.8% of all premiums paid to date. The Policy owner is not deemed to have "paid" any deferred periodic premium tax and sales charges that otherwise would have been deducted during the period when deductions to recover Advances were being made. The deferral of these charges enhances the value of the Advance feature by tending to offset the deductions made to recover Advances.

8. An Advance will increase Policy value and, consequently, may increase the amount of certain charges that are deducted on the basis of a percentage of Account for Fortis Series' assets: *i.e.*, the mortality and expense risk charge and the Fortis Series' investment advisory fee. The increased asset-based charges are the price paid for the opportunity of having accounts attributable to the transaction participate in the investment performance of the Accounts. Increased asset-based charges can be avoided in each case by allocating the Policy value to the Insurer's general account, rather than to the Accounts.

9. There is no assurance that separate account investment performance earned on Advances will be sufficient to offset the additional asset-based charges resulting from the Advances. The timing of the Advances and the deductions to recover them are factors that indirectly determine the amount of return that would be credited. A Policy owner who wants to be assured of earning a rate of return greater than the rate of asset-based charges can allocate amounts attributable to Advances to the Insurer's general account.

10. Advances involve various costs to the Insurers, including the costs of amounts advanced and developing and administering the Advance feature. Each if the development and administration costs are disregarded, Applicants assert that there is no reasonable set of assumptions under which (1) the value to the Insurers of (a) the revenues from deductions for Advances plus (b) any increased mortality and expense risk charge and advisory fee revenues resulting from Advances would exceed (2) the Insurers' additional cost associated with Advances. Advances and related charges thus could not be said to involve any "back door" attempt to impose additional charges to Policy owners.

11. Deductions for Advances are designed to reimburse the Insurers for amounts advanced out of their own funds to the Policy owner. Applicants represent that deductions for Advances do not contain hidden charges, are not

intended to finance sales expenses, and do not result in profits to the Insurers. Such deductions, as well as the possibility of increased asset-based charges, will be fully disclosed in the prospectus for the Policies.

12. Applicants submit that life insurance policies are typically unprofitable to an insurance company in the policies' early years because of high initial issuance costs and relatively small asset-based revenues. Advances and Bonuses are benefits intended to attract prospective purchasers and encourage Policy owners to retain and make regular premium payments in order to enhance the Insurers' financial strength and stability. To the extent that the objectives of the Advances and Bonuses are achieved, the Insurers may not need to raise their charges for cost of insurance and administrative expenses for certain Policy features; rather, the Insurers may be able to offer additional investment options or reduce charges under the Policies in the future. Policy owners also may benefit from lower expense ratios of the management investment company funding the Policies as a result of increased assets.

13. Applicants submit the Advances and Bonuses also will promote fairness between persisting and surrendering Policy owners. Persisting Policy owners make substantial premium payments and accumulate substantial amounts of cash value and, thus, generate greater profits for the Insurers. It is therefore equitable for persisting Policy owners to receive additional benefits in the form of Advances and Bonuses.

14. The Insurers have designed Advances and Bonuses and their method of operation so as to address state regulatory concerns. All sales illustrations used by the Insurers specifically will disclose the amount of any Advances and the rate of any Bonuses that are assumed by any illustrations.

15. Applicants also request exemptions from sections 2(a)(32), 22(c), 27(c)(1) and 27(d) and Rules 6e–3(T)(b)(12), 6e–3(T)(b)(13) and 22c–1 to the extent necessary to permit the amount of any premium tax charges that have not been previously collected by means of a deduction from Policy value to be included in the Surrender Charge.

16. Sections 2(a)(32), 27(c)(1) and 27(d) prohibit Applicants from selling interests under a Policy unless they are redeemable securities entitling a Policy owner, upon surrender, to receive his or her proportionate share of the Account's current net assets. Section 2(a)(32) defines a "redeemable security" as any security which entitles the holder, upon its presentation to the issuer, to receive approximately a proportionate share of the issuer's current net value, or the cash equivalent thereof. Section 27(c)(1) provides that no issuer of a periodic payment plan certificate shall sell such certificate unless the certificate is a "redeemable security." Section 27(d) requires that the holder of a periodic payment plan certificate be able to surrender the certificate under certain circumstances and recover certain amounts of sales charges.

Rule 22c–1 prohibits Applicants from redeeming interests under a Policy except at a price based on the current net asset value that is next computed after receipt of the request for full or partial redemption of interests under the Policy.

Rule 6e–3(T)(b)(12) and 6e–3(T)(b)(13) provide exemptions from sections 22(c) and 27(c)(1), and Rule 6e–3(T)(b)(13) provides an exemption from section 27(d), to the extent necessary for the payment of a flexible contract's cash value to be regarded as satisfying the requirements of those provisions if specified conditions are satisfied. Applicants represent that the Policies satisfy all such conditions.

17. The method adopted under the Policy for deducting all or part of the charges for premium taxes on a basis other than from premium payments is more favorable to investors because more Policy value is available to earn a return for the investor. Applicants represent that (1) No premium tax charge will be designed to yield a profit, (2) the total amount charged for premium taxes, including any amounts that may subsequently be deducted from premium payments, will be no greater than if all such charges were taken from premiums when paid, and (3) the premium tax charges will not take into account the "time value" of money, which would increase the charge to factor in the investment cost to the Insurers of deferring collection of the charge.

18. Applicants further request an exemption from the "stair step" requirements of section 27(a)(3) and Rules 6e–3(T)(b)(13)(ii) and 6e–3(T)(d)(1)(ii).

19. Section 27(a)(3) prohibits the sale of Policies if the sales load deducted from any one of the first twelve monthly payments thereon "exceeds proportionately the amount deducted from any other such payment, or the amount deducted from any other subsequent payment."

20. Rule 6e–3(T)(b)(13)(ii) provides an exemption from Section 27(a)(3) provided that the proportionate amount of sales load deducted from any payment shall not exceed the proportionate amount deducted from any prior payment. Rule 6e–3(T)(d)(1)(iii)(A) provides that, with respect to sales charges deducted other than from premiums (excluding asset-based sales charges), Rule 6e–3(T)(b)(13)(ii) is deemed satisfied if "the amount of sales load deducted pursuant to any method . . . does not exceed the proportionate amount of sales load deducted prior thereto pursuant to the same method." Rule 6e–3(T)(d)(1)(ii)(B) provides comparable relief for asset-based sales charges, provided that "the percentage of assets taken as sales load does not exceed any of the percentages previously taken pursuant to the same method."

21. Applicants request an exemption from these "stair step" requirements because of the following three aspects of the Policies. First, part of the $4.00 monthly charge deducted pursuant to each Policy is a sales charge. While this charge will not change from month-to-month, it will vary from month-to-month as a percentage of premiums paid and as a percentage of the Policy value. Assessing part of the sales charge as a flat monthly deduction rather than deducting it from premium payments is beneficial to Policy owners because (1) a greater amount is available to earn an investment return, (2) deductions will be more predictable than deducting the entire sales charge through a daily percentage charge, and (3) there will be an enhanced ability to make plans based on expected amounts of sales charge deductions.

22. Second, the monthly and/or daily sales charge deductions may cease for certain periods of time and subsequently be resumed. These charges are suspended when deductions to recover Advances are being made and when the maximum amount of such charges, as a percentage of premium payments, has been reached. Sales charges also will cease if additional deductions would cause sales charges to exceed permitted maximums, as a percentage of premiums actually paid. These situations create a question regarding compliance with the requirements of Rule 6e–3(T)(d)(1)(ii)(A) and (B), respectively, that the proportionate or percentage amount of sales charges deducted not exceed the proportionate or percentage amount previously deducted pursuant to this same method.

23. Applicants assert that, if section 27(a)(3) and the related provisions of Rule 6e-(3T) are interpreted to prevent the resumption of sales charge deductions from contract assets, the utility of policy designs providing for such deductions would be greatly

reduced. Deducting part of the sales charges from Policy value, rather than from premium payments, is advantageous to Policy owners because more assets are put to work as Policy value with the potential of earning a return for the Policy owner's benefit.

24. Third, Rule 6e-3(T)(c)(4) defines "sales load" for any contract period as the excess of premium payments over changes in "cash value" (other than from investment performance) and certain enumerated charges. An increase or decrease in a Policy's cash value resulting from the payment of an Advance or a Bonus or from subsequent deductions to recover an Advance could be deemed to result in an increase or decrease in the otherwise applicable sales load for the contract period in which the transaction occurs. The stair step provisions could apply because the operation of the Advance or Bonus could cause such sales load to be at a higher rate than in a preceding period or at a lower rate than in a subsequent period. Applicants submit that the Advances and Bonuses provide a significant potential benefit to Policy owners and that the Policies' charge structure complies with Rules 6e-3(T)(b)(13)(ii) and (d)(1)(ii).

25. The stair step issues under the Policies result from the imposition of deferred sales charges in the form of monthly and/or daily deductions and, in the case of Policies that are surrendered or lapse before a certain time, the surrender charge. The stair step issues under the Policies do not result from early deduction of front-end charges. No sales charges will be deducted from premiums. Although sales charges will be deducted through several different types of deductions, the rate of these charges will never increase.

Conclusion

Section 6(c) of the 1940 Act, in pertinent part, provides that the Commission may, by order upon application, conditionally or unconditionally exempt any person, security or transaction, or any classes thereof from any provisions of the 1940 Act or rules thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. For all the reasons set forth above, Applicants submit that their requested exemptive relief meets these standards for exemptive relief under section 6(c) and, therefore, should be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-12305 Filed 5-19-94; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Rel. No. 20294; 812-8742]

Norwest Corp., et al.; Notice of Application

May 13, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: Norwest Corporation, Norwest Bank Minnesota, N.A. (the "Bank"); Norwest Funds (the "Fund"); Index Fund, Managed Fixed Income Fund, Small Company Growth Fund, Growth Equity Fund, and International Fund, on behalf of themselves and other collective investment funds sponsored by the Bank which the Bank in the future may decide to convert into registered open-end investment companies in the manner described below, and in which, at that time, pension plans established and maintained for the benefit of employees of Norwest Corporation and its subsidiaries ("Norwest Plans") have invested assets (the "Converting CIFs"); Diversified Equity Fund, Conservative Balanced Fund, Moderate Balanced Fund, and Growth Balanced Fund (together with Growth Equity Fund and International Fund, the "Redeeming CIFs"); Schroder Capital Management International, Inc. ("SCMI"); and Schroder Capital Funds, Inc. ("Schroder Funds").

RELEVANT ACT SECTIONS: Order requested under sections 6(c), 17(b), 17(d) and rule 17d-1 exempting applicants from the provisions of section 17(a) and permitting certain joint transactions pursuant to section 17(d) and rule 17d-1.

SUMMARY OF APPLICATION: Applicants seek a conditional order to permit the Converting CIFs to transfer their assets to series of the Fund (the "Portfolios") in exchange for shares of the Portfolios. The order also would permit the redemption in-kind of shares of Schroder Funds held by the Redeeming CIFs prior to the transfer of their assets to the Portfolios.

FILING DATE: The application was filed on December 29, 1993, and amended on April 21, 1994, and May 9, 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 June 7, 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. Applicant, c/o Norwest Corporation, Norwest Center, Sixth and Marquette, Minneapolis, Minnesota 55479-1026.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Staff Attorney, at (202) 942-0573, or C. David Messman, 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.

Applicants' Representations

1. The Bank is a national bank wholly-owned by Norwest Corporation, a bank holding company. The Fund, formerly known as Prime Value Funds, Inc., is a registered open-end management investment company organized as a Delaware business trust. Shares of the Fund may be divided into series, and the shares of each series may be divided into classes.[1] The Portfolios are part of larger group of fifteen series of the Fund which collectively will be known as the Advantage Funds. Shares of the Advantage Funds will be offered only to the pension plans for which the Bank serves as custodian, trustee, and/or investment adviser, other employee benefit plans in related trusts, and certain other tax-deferred investors. The Bank serves as investment adviser, custodian, and transfer agent to the Fund.

2. The Converting CIFs and the Redeeming CIFs are part of a group of employee benefit plan collective

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[1] The Fund is authorized to issue multiple classes of shares pursuant to an exemptive order of the SEC. Prime Value Fund, Inc., Investment Company Act Release Nos. 19317 (Mar. 5, 1993) (notice) and 19375 (Apr. 1, 1993) (order).

investment funds sponsored by the Bank (the "CIFs"). As of January 31, 1994, the Bank had $5.9 billion of assets under management in its CIFs. The investors in the CIFs are approximately 7,500 pension plans (the "Plans") for which the Bank serves as trustee, investment adviser, and/or custodian.

3. The Bank is terminating 14 of its CIFs, including the Converting CIFs, by transferring the CIFs' assets to the Advantage Funds in exchange for shares of the Advantage Funds. The CIFs, other than the Converting CIFs, may be converted into the Advantage Funds in conformity with a variety of no-action letters in which the staff has permitted similar conversions of trust funds into mutual funds.[2] The Converting CIFs are unable to rely on the no-action letters, in part, because such relief has been conditioned on affiliated persons, or affiliated persons of affiliated persons, of the registered investment company having no beneficial interest in the proposed transactions. The Bank, as investment adviser to the Portfolios, is an affiliated person of the Portfolios and may be deemed to have a beneficial interest in the proposed transactions because the Norwest Plans invest in the Converting CIFs. Accordingly, applicants seek an exemption under sections 6(c) and 17(b) from the provisions of section 17(a) and pursuant to section 17(d) and rule 17d–1 so that assets of the Converting CIFs can be transferred to Portfolios in exchange for Portfolio shares (the "Proposed Transfers").

4. Each of the Plans, other than the Norwest Plans, that invests in the CIFs sponsored by the Bank has an independent or "second" fiduciary that supervises and will supervise the investment of the Plan's assets. The second fiduciary is generally the Plan's named fiduciary, trustee, or sponsoring employer and is subject to fiduciary responsibilities under the Employee Retirement Income Security Act of 1974 ("ERISA"). In the case of the Norwest Plans, the Norwest Corporation's Employee Benefit Review Committee (the "Committee") serves as a fiduciary. Before completing the Proposed Transfers, the Bank will seek and obtain the approval of each Plan's second fiduciary and the Committee.

5. Provided that the Bank receives the requisite approval, the acquisition of Portfolio shares will be accomplished by having each Converting CIF transfer assets to a corresponding Portfolio with virtually identical investment objectives in exchange for shares of that Portfolio at the then-current market value of the Converting CIF's assets. Simultaneously, the Converting CIF will distribute the Portfolio shares on a *pro rata* basis to all of its participating pension plan investors.

6. The Bank is terminating the CIFs and transferring their assets to the Advantage Funds because it believes the interests of its pension plan clients would be better served through the use of mutual funds. Investment of these assets through mutual funds will allow the sponsors of and participants in the pension plans to monitor more easily the performance of their investments on a daily basis (since information concerning the performance of the Advantage Funds will be available in daily newspapers of general circulation). The mutual fund vehicle also will allow for better marketing of the Bank's investment management services and, by promoting portfolio growth, will allow better diversification and risk spreading. Finally, the Act places a greater emphasis on disclosure to participants than do banking regulations and also provides a well-tested mechanism for approval of disclosure documents.

7. Prior to completing the Proposed Transfers, applicants seek an exemption from the provisions of section 17(a) to permit the Redeeming CIFs to receive a *pro rata* redemption in-kind of the Redeeming CIFs' shares of International Equity Fund ("IEF"), a portfolio of Schroder Funds. Schroder Funds is a registered investment company. SCMI acts as investment adviser to the Schroder Funds, and following the conversion, will act as subadviser to the six series of the Advantage Funds that will replace the Redeeming CIFs. Investments in IEF by the Redeeming CIFs represent, in the aggregate, approximately $269 million of IEF's $396 million in assets.

8. The Bank is proposing to cause the Redeeming CIFs to redeem their investment in IEF because, after conversion of the Redeeming CIFs into corresponding series of the Advantage Funds, five of the series' holdings of IEF shares would be inconsistent with section 12(d) of the Act.[3] The sixth Redeeming CIF that holds shares of IEF, the International Fund, invests all its assets in IEF. Although section 12(d) would not prohibit the International Fund from continuing to hold its shares of IEF after it converts into a series of the Advantage Funds, it would be impractical because IEF is not organized as a master fund.[4] Moreover, effecting the redemption in-kind will reduce substantially the transaction costs associated with the conversion.

9. In connection with the redemption in-kind, securities will be distributed *pro rata* after excluding securities which, if distributed, would be required to be registered under the Securities Act of 1933 and securities issued by entities in countries that restrict or prohibit the holding of securities by non-nationals other than through qualified investment vehicles like IEF. In addition, cash will be distributed in lieu of shares above around lots (i.e., 100 shares) or fractional shares. The securities distributed to the Redeeming CIFs will be valued in the same manner as they would be valued for purposes of computing IEF's net asset value, which, in the case of securities traded on a public securities market for which quotations are available, is their last reported trade price on the exchange on which such securities are principally traded, or, if there is no such reported price, is the average of the highest current independent bid and lowest current independent offer.

10. The Redeeming CIFs' *pro rata* share of the IEF portfolio securities that may not be distributed in-kind pursuant to the limitations set forth in the preceding paragraph will be sold in an appropriate market, and the proceeds of such sale will be distributed to the Redeeming CIFs in lieu of a distribution in-kind.

Applicants' Legal Conclusions

1. Section 2(a)(3) defines the term "affiliated person of another person" to include, in relevant part, (a) Any person directly or indirectly owning, controlling, or holding with the power to vote, 5% or more of the outstanding voting securities of such other person; (b) any person directly or indirectly controlling, controlled by, or under common control with such other person; and (c) if such other person is an investment company, any investment adviser thereof.

2. Under section 6(c), the SEC may exempt any person or transaction from

[2] *See, e.g.*, Trust Funds Institutional Managed Trust (pub. avail. July 20, 1988); American Medical Association Retirement Plan (pub. avail. Jan. 15, 1987); First National Bank of Chicago (pub. avail. Feb. 5, 1986); and Lincoln National Investment Management Company (pub. avail. Mar. 26, 1976).

[3] Section 12(d)(1)(A), among other things, prohibits a registered investment company from acquiring more than 3% of the outstanding voting securities of another investment company, investing more than 5% of its assets in the securities of any one other investment company, and investing more than 10% of its assets in securities issued by investment companies.

[4] Under section 12(d)(1)(E), the prohibitions under section 12(d)(1)(A) do not apply if, among other things, the securities of the portfolio investment company are the only investment securities held by the registered investment company.

any provision of the Act or any rule thereunder to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. applicants seek relief under section 6(c) so that the exemption granted from section 17(a) to permit the Converting CIFs to transfer assets to the Portfolios applies to a class of transactions, rather than to a single transaction.

3. Section 17(a), in relevant part, prohibits an affiliated person, or an affiliated person of an affiliated person, of a registered investment company acting as principal, from selling to or purchasing from such investment company any security or other property. Section 17(b) provides that, notwithstanding section 17(a), any person may file an application for an order exempting a proposed transaction from the prohibitions of section 17(a). Applications are granted under section 17(b) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned and that the proposed transaction is consistent with the policy of each registered investment company concerned and the general policies and purposes of the act.

4. Section 17(d) makes it unlawful for any affiliated person, or affiliated person of an affiliated person, of a registered investment company, acting as principal, to effect any transaction in which the company is a joint or joint and several participant with the affiliated person in contravention of such rules and regulations as the SEC may prescribe for the purpose of limiting or preventing participation by such company. Rule 17d–1 was promulgated pursuant to section 17(d). Under rule 17d–1, most joint transactions are prohibited unless approved by order of the SEC. In passing upon such applications, the SEC considers whether participation by a registered investment company is consistent with the provisions, policies, and purposes of the Act and not on a basis less advantageous than that of other participants.

5. Because the Converting CIFs may be viewed as acting as principal in the Proposed Transfers, and because the Converting CIFs and the Fund may be viewed as being under the common control of the Bank and consequently affiliated persons within the meaning of section 2(a) (3) (C), the Proposed Transfers may be subject to the prohibitions contained in section 17(a). For the same reasons, the Proposed Transfers might be deemed to be a joint enterprise or other joint arrangement prohibited by section 17(d) and rule 17d–1.

6. The Proposed Transfers will be on terms that are reasonable and fair, and do not involve overreaching on the part of any person, and will be consistent with the provisions, policies, and purposes of the Act. The Proposed Transfers will comply with rule 17a–7 in most respects, and also will comply with the policy behind the conditions set forth in rule 17a–8. Rule 17a–7 exempts certain purchase and sale transactions otherwise prohibited under section 17(a) if, among other things, the transactions are effected at an "independent market price" and the investment company's board of directors reviews the transactions for fairness. Rule 17a–8 exempts certain mergers and consolidations from the provisions of section 17(a) if, among other things, the investment company's board of directors determines that the transactions are fair. Because applicants intend to comply with the terms of rules 17a–7 and 17a–8 to the extent possible, the transactions will be effected at an independent current market price and will be reviewed by the Fund's board of directors, including a majority of the independent directors, for their fairness. Because the investment objectives and policies of the Portfolios and the Converting CIFs are virtually identical, the securities received by the Portfolios will not violate the Portfolios' investment objectives or policies. The Bank will not collect fees at both the pension plan level and the Fund level for managing the same assets, and although the fees charged to the pension plans may increase slightly as a result of the greater costs of mutual fund administration, the Bank's total net fees will not increase significantly after the conversion.

7. The Redeeming CIFs may be deemed affiliated persons of IEF under section 2(a) (3) (A) because several of the Redeeming CIFs own, individually, more that 5% of IEF's outstanding voting securities (and own, in aggregate, approximately two-thirds of IEF's outstanding voting securities). To the extent that an in-kind redemption of shares would involve a "purchase" of securities for purposes of section 17(a), the proposed redemption in-kind would be prohibited by section 17(a) (2).

8. The proposed redemption in-kind will be on terms that are reasonable and fair to IEF and the Redeeming CIFs and that do not involve overreaching on the part of any person. The securities will be distributed *pro rata* and valued at the last reported trade price on the exchange on which the securities are traded, or if there is no reported trade price, at the most recent reported mid-market price. As a result, the Redeeming CIFs will not receive any advantage over any other shareholder if the proposed redemptions are permitted.

Applicants' Conditions

Applicants agree that any order of the SEC granting the requested relief shall be subject to the following conditions:

1. The Proposed Transfers will comply with the provisions of rule 17a–7(b)–(f).

2. The proposed Transfers will not occur unless and until: (a) The board of trustees of the Fund (including a majority of its disinterested trustees) and the Committee or the Plans' second fiduciaries, as the case may be, find that the Proposed Transfers are in the best interests of the Fund and the Plans, respectively; and (b) the board of trustees of the Fund (including a majority of its disinterested trustees) finds that the interests of the existing shareholders of the Fund will not be diluted as a result of the Proposed Transfers. These determinations and the basis upon which they are made will be recorded fully in the records of the Fund and the Plans.

3. The securities distributed to the Redeeming CIFs pursuant to a redemption in-kind (the "In-Kind Securities") will be limited to securities which are traded on a public securities market or for which quoted bid and asked prices are available.

4. In-Kind Securities will be distributed on a *pro rata* basis after excluding: (a) Securities which, if distributed, would be required to be registered under the Securities Act of 1933; (b) securities issued by entities in countries which restrict or prohibit the holdings of securities by non-nationals other than through qualified investment vehicles, such as IEF; and (c) certain securities that—although liquid and marketable—must be traded through the marketplace in order to effect a change in beneficial ownership. In addition, cash will be distributed in lieu of any shares not amounting to a round lot (*e.g.*, 100 shares), fractional shares, and accruals (*i.e.*, dividends receivable) on such securities.

5. The Redeeming CIFs' *pro rata* share of the IEF portfolio securities that may not be distributed in-kind pursuant to conditions 3 and 4 above will be sold in an appropriate market, and the proceeds of such sale will be distributed to the Redeeming CIFs in lieu of a distribution in-kind.

6. Schroder Funds will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any redemption in-kind to a CIF occurred, the first two years in an easily accessible place, a written record of each such redemption that describes each security distributed, the terms of the distribution, and the information or materials upon which the valuation was made.

7. The In-Kind Securities distributed to the Redeeming CIFs will be valued in the same manner as they would be valued for purposes of computing a portfolio's net asset value, which, in the case of securities traded on a public securities market for which quotations are available, is their last reported trade price on the exchange on which the securities are principally traded, or, if there is no such reported price, is the average of highest current independent bid and lowest current independent offer.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–12304 Filed 5–19–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26052]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

May 13, 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 June 6, 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 of 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.

Northeast Utilities (70–7701)

Northeast Utilities ("Northeast"), 174 Brush Hill Avenue, West Springfield, Massachusetts 01089, a registered holding company, has filed a post-effective amendment to its declaration under sections 6(a) and 7 of the Act.

By order dated May 23, 1990 (HCAR No. 25093) ("Order"), Northeast was authorized to create a new dividend reinvestment plan ("DRP") which may purchase Northeast's common shares, $5.00 par value per share ("Common Shares"), on behalf of Northeast's common shareholders who participate in the DRP either directly from Northeast or in the open market. Pursuant to the Order, Northeast was granted authority to issue and sell to the DRP through December 31, 1995, up to 10 million of its Common Shares. The Order also granted Northeast an exception from the competitive bidding requirements of Rule 50 for its issuance and sale of the Common Shares.

Northeast Utilities Service Company, a service company subsidiary of Northeast ("Administrator"), currently administers the DRP and does not receive any reimbursement for costs incurred in connection with its administrative activities. The agent for the DRP, which makes purchases and sales of shares in the open market for participants ("Agent"), currently receives brokerage reimbursement fees of $0.03 per share from participants only upon the sale of such participants' shares.

Northeast proposes to amend the DRP to provide that, in the case of open market purchases and sales of common shares: (1) A brokerage reimbursement fee, initially $0.03 per share, will be paid to the Administrator to reimburse the Administrator for brokerage fees and commissions charged to the Administrator by the Agent; and (2) an administrative fee, initially $0.02 per share, will be paid to the Administrator to offset the Administrator's costs of administering the DRP. If Northeast intends to change the brokerage reimbursement or administration fees, prior notice of such change will be sent to all participants. These charges will be effective for dividends payable on and after September 30, 1994, and for optional cash payments received on and after September 1, 1994. If Northeast intends to change the administrative or brokerage reimbursement fees (brokerage reimbursement fees will be changed only upon the change of such charges by the Agent), prior notice of such change will be sent to all participants. Northeast requests the authority to change such fees from time-to-time so the Administrator may recover an amount, not exceeding its costs, from the participants for such transactions.

Northeast also proposes to implement two administrative changes to the DRP which it believes will benefit participants. The first of the proposed administrative changes is that Common Shares purchased on behalf of participants directly from Northeast, whether through reinvestment of dividends or cash payments, will be purchased at the fair market value of such shares on the dividend payment date or, in months during which no dividends are paid, on the last trading day of such month. "Fair market value" will be defined for these purposes as the average of the high and low prices for such shares on the dividend payment date, as reported by the Wall Street Journal as Composite Transactions for such date. If the dividend payment date is not a trading day, the purchase price will be equal to the average of the fair market values on the trading days immediately preceding and following the dividend payment date. The price of shares purchased directly from Northeast under the DRP is currently the average of the closing sales prices during the five trading days prior to the Original Issue Investment Date, as defined. Secondly, Northeast is requesting authorization to permit participants to reinvest in the DRP dividends on any number of shares owned by a participant, instead of requiring that such reinvestment be at least 50%, or any higher even multiple of 10%, of dividends.

Consolidated Natural Gas Company, et al. (70–8415)

Consolidated Natural Gas Company ("CNG"), a registered holding company, CNG Tower, 625 Liberty Avenue, Pittsburgh, Pennsylvania 15222–3199, and its wholly owned nonutility subsidiary companies, CNG Research Company ("Research"); Consolidated System LNG Company ("LNG"); and Consolidated Natural Gas Service Company, Inc. ("Service"), all located at CNG Tower, 625 Liberty Avenue, Pittsburgh, Pennsylvania 15222–3199; CNG Coal Company ("Coal"); CNG Producing Company ("Producing") and its subsidiary company, CNG Pipeline Company ("Pipeline"), all located at CNG Tower, 1450 Poydras Street, New Orleans, Louisiana 70112–6000; CNG

Transmission Corporation ("Transmission") and CNG Storage Service Company ("Storage"), both located at 445 West Main Street, Clarksburg, West Virginia 26301; CNG Gas Services Corporation ("Gas Services"), One Park Ridge Center, P.O. Box 15746, Pittsburgh, Pennsylvania 15244–0746; and Consolidated's public-utility subsidiary companies, The Peoples Natural Gas Company ("Peoples"), CNG Tower, 625 Liberty Avenue, Pittsburg, Pennsylvania 15222–3199; The East Ohio Gas Company ("East Ohio") and The River Gas Company ("River Gas"), both located at 1717 East Ninth Street, Cleveland, Ohio 44114–0759; Virginia Natural Gas, Inc. ("VNG"), 5100 East Virginia Beach Boulevard, Norfolk, Virginia 23502–3488; Hope Gas, Inc. ("Hope Gas"), P.O. Box 2868, Clarksburg, West Virginia 26301–2868; and West Ohio gas Company ("West Ohio"), P.O. Box 1217, Lima, Ohio 45802–12217 ("collectively, Subsidiaries"), have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b) and 12(c) of the Act and rules 43 and 45.

CNG proposes to issue and sell commercial paper in an aggregate principal amount not to exceed $800 million outstanding at any one time, from time-to-time through June 30, 1995, ("Commercial Paper"). Such Commercial Paper may be domestic commercial paper ("Domestic Paper") and/or European commercial paper ("Euro Paper"). Domestic Paper will have varying maturities of not more than 270 days and Euro Paper will have maturities from 7 to 183 days. CNG proposes to sell Domestic Paper or Euro Paper, whichever provides the lower cost in a given transaction, but only so long as the discount rate or the effect interest cost on the date of sale does not exceed the prime rate of interest from a commercial bank.

To the extent that it becomes impractical to sell the Commercial Paper due to market conditions or otherwise, CNG proposes to borrow, repay and reborrow, without collateral under back-up lines of credit, an aggregate principal amount not to exceed $600 million through June 30, 1995 ("Loans"). The remaining $200 million of back-up credit will be provided by the unused commitments under an existing credit agreement among CNG and several banks (HCAR Nos. 25283 and 25626; March 28, 1991, and September 9, 1992, respectively). Such Loans, together with any sales of Commercial Paper, will not exceed an aggregate outstanding principal amount of $800 million.

The Loans will mature not more than one year form the date of each borrowing, will be prepayable in whole or part at any time, and will bear interest at a rate not to exceed the prime commercial rate of interest of the lending bank in effect on the date of each borrowing. A commitment fee of no more than 0.1225% of the principal amount of each bank's commitment may be paid.

It is also proposed that through June 30, 1995, CNG provide financing to the Subsidiaries in an aggregate amount not to exceed $1.115 billion in the form of open account advances, long term loans and/or capital stock purchases. Individual Subsidiary financing by CNG would not exceed the following amounts: (1) Transmission, $250 million; (2) East Ohio, $250 million; (3) Peoples, $125 million; (4) VNG, $60 million; (5) Hope Gas, $25 million; (6) Gas Services, $100 million; (7) Storage, $1 million; (8) West Ohio, $25 million; (9) Service, $15 million; (10) Producing, $250 million; (11) River Gas, $10 million; (12) Coal, $3 million; and (13) Research, $1 million.

Open account advances ("Advances") may be made, repaid and remade on a revolving basis, and all such Advances will be repaid within one year from the date of the first Advance to the borrowing Subsidiary with interest at the same effective rate of interest as CNG's weighted average effective rate of commercial paper and/or revolving credit borrowings. If no such borrowings are outstanding, the interest rate shall be predicated on the Federal Funds' effective rate of interest as quoted by the Federal Reserve Bank of New York. Advances will be made through the CNG System Money Pool authorized by Commission order dated June 12, 1986 (HCAR No. 24128).

Long-term loans will mature over a period of time not in excess of 30 years with the interest rate predicated on and substantially equal to CNG's cost of funds for comparable borrowings. In the event CNG has not had recent comparable borrowings, the rates will be tied to the Salomon Brothers indicative rate for comparable debt issuances published in Salomon Brothers, Inc. Bond Market Roundup, or to a comparable rate index, on the date nearest to the time of takedown.

Capital stock will be purchased from the Subsidiaries at its par value (book value in the case of VNG). Capital stock transactions between CNG and its utility Subsidiaries would occur under an exemption pursuant to rule 52 and are not part of the authorization requested herein.

Producing proposes to provide to Pipeline, from time-to-time through June 30, 1995, up to an aggregate of $1 million of financing through short-term loans in the form of open account advances and/or long-term loans evidenced by non-negotiable notes (documented by book entry only) and/or the purchase of up to 10,000 shares of Pipeline's common stock, $100 par value. The open account advances and long-term loans will bear interest at rates equal to the cost of money to Producing through its borrowing from CNG.

The Subsidiaries also proposes to increase their authorized common stock as needed to accommodate proposed stock sales and to provide for future issues, any such increase being limited to a number of shares calculated by dividing the aggregate financing proposed for such Subsidiary herein by the par value (book value in the case of VNG) of such Subsidiary's common stock rounded up to the nearest hundred. It is also proposed that West Ohio effect a one for two-thousand reverse stock split, resulting in an increase in the par value of its common stock from $5 to $10,000 in order to reduce state franchise taxes.

CNG, East Ohio and River Gas are seeking Commission approval in S.E.C. File No. 70–8387 to merge River Gas into East Ohio. In the event that such a merger is consummated, it is requested that East Ohio be authorized to assume the position of River Gas regarding all unused authorization concerning River Gas in this matter.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–12303 Filed 5–19–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20296; 812–8932]

Smith Barney Shearson Unit Trusts and Smith Barney Shearson Inc.; Notice of Application

May 16, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Smith Barney Shearson Inc. ("Smith Barney Shearson" or the "Sponsor"); Directors Unit Investment Trust, E.F. Hutton Corporate Income Trust, E.F. Hutton Tax-Exempt Trust, E.F. Hutton Trust for Government

Guaranteed Securities, Hutton Investment Trust, Hutton Telephone Trust, Pennsylvania Fund, Smith Barney Shearson Unit Trusts, Tax-Exempt Municipal Trust, the Tax-Exempt Trust, and the Uncommon Values Unit Trust (the "Shearson Funds"); and Corporate Securities Trust, Government Securities Trust, Harris Upham Tax Exempt Fund, and Tax Exempt Securities Trust (the "Smith Barney Funds").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from section 14(a) and pursuant to section 11(a).

SUMMARY OF APPLICATION: Applicants request an order to amend a previous order (the "Shearson Order") that let the Shearson and Smith Barney Funds (a) make certain exchange offers between the Shearson and Smith Barney Funds (the "Exchange Option"); (b) make certain exchange offers to holders of any registered unit investment trust carrying a specified sales load (the "Conversion Option"); and (c) publicly offer units of the trusts without previously privately placing at least $100,000 of units. The present order is necessary because of the sale of the assets of Shearson Lehman Brothers ("Shearson") to Primerica Corporation and Primerica's subsidiary, Smith Barney Shearson, formerly Smith Barney Upham & Co. Inc. ("Smith Barney").

FILING DATE: The application was filed on April 11, 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 7, 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, Two World Trade Center, 104th Floor, New York, NY 10048.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 942–0572, 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 at the SEC's Public Reference Branch.

Applicant's Representations

1. Each of the Shearson and Smith Barney Funds is registered under the Act as a unit investment trust and consists of one or more separate series. Each series holds a separate portfolio of securities and has a separate registration statement under the Securities Act of 1933 (the "1933 Act"). The Sponsor is a registered broker-dealer and investment adviser.

2. On March 12, 1993, Shearson entered into an asset purchase agreement with Primerica and its indirect wholly-owned subsidiary Smith Barney. The agreement provided for the sale to Smith Barney and its designated affiliates of substantially all the assets of Shearson (the "Transaction"). Upon the closing of the Transaction on July 31, 1993, Smith Barney changed its name to Smith Barney Shearson Inc. and became the sponsor and principal underwriter of the Shearson Funds, which were formerly sponsored and underwritten by Shearson. Subsequently, Primerica was acquired by the Travelers, Inc.

3. The Shearson Order let the Shearson Funds and their sponsor (a) make certain exchange offers between the Shearson Funds; (b) make certain exchange offers to holders of any registered unit investment trust carrying a specified sales load; and (c) publicly offer units of the unit trusts without previously privately placing at least $100,000 of units.[1] At the request of Shearson and Smith Barney, the SEC's Division of Investment Management informed Shearson and Smith Barney that the Division would not recommend that the SEC take any enforcement action against them if registered investment companies sponsored by Shearson operate under the terms of any prior order until the earlier of (a) the date any prior order is renewed by the SEC pursuant to a renewal order specifying Smith Barney and its subsidiaries or affiliates as applicants or (b) June 8, 1994.[2] Applicants request an order to continue and renew the exemptions granted in the Shearson Order and request that the relief be extended to Smith Barney Shearson and any of its subsidiaries or affiliates, or any future series of funds as to which Smith Barney Shearson or any of its subsidiaries or affiliates may act as Sponsor or principal underwriter in the same manner and to the same extent as the relief in the Shearson Order applied to the former sponsor of the Shearson Funds (collectively with the Shearson Funds and the Smith Barney Funds, the "Funds").

A. The Exchange and Conversion Options

1. To create a series of a Fund, the Sponsor usually acquires a portfolio of securities believed to satisfy the investment objective of the particular series, and then deposits the securities with a bank (the "Trustee") in exchange for units of fractional undivided interest in the deposited portfolio. The Sponsor offers units to the public at a price that is initially based on the offering prices of the underlying securities plus a sales charge. In the secondary market, the price of a unit is generally based on the bid prices of the underlying securities or, for listed common or preferred stock, the closing sales price, plus a sales charge.

2. The sales charge in the primary market is currently as high as 4.5% of the public offering price. The sales charge is reduced on large purchases. The secondary sales charge on the series is typically 1% higher at each level and has ranged between 5.50% and 3.0% of the public offering price with reductions based on the number of units purchased.

3. The Sponsor maintains a secondary market for units of outstanding series and continually offers those units at prices normally based on the bid side evaluation of the underlying securities in the particular series. If the Sponsor discontinues maintaining this market, units of the series can be liquidated by their holders ("Holders") by direct presentation to the Trustee at redemption prices also based on the bid side evaluation of the underlying securities. The evaluations are determined by an independent evaluator except in the case of series comprised principally of securities traded on a national securities exchange or for which over-the-counter quotations are readily available, in which case the unit price is based on the closing sale prices of the underlying securities, as determined by the Trustee.

4. Units purchased in the secondary market by the Sponsor may be reoffered to the public, at a price generally based on the aggregate bid side evaluation of

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[1] Investment Company Act Release Nos. 18145 (May 14, 1991) (notice) and 18191 (June 11, 1991) (order).

[2] Shearson Lehman Brothers Inc. (pub. avail. June 8, 1993).

the underlying securities plus the applicable sales charge. Those units also may be presented to the Trustee for redemption.

5. The Sponsor intends to allow Holders to exchange their units of any series for units of other series of Funds in which a secondary market is maintained (the "Exchange Funds") at a reduced sales charge equal to 1.5% of the public offering price of units. Applicants reserve the right to change these fixed charges subject to the terms and conditions of rule 22d–1 and may otherwise modify, amend, or terminate the Exchange Option, provided that the existing Holders will be given prior notice if required by condition 1 below.

6. The Exchange Option would operate in a manner similar to any secondary market transaction except for the reduced sales charge. The Exchange Option would be available only on series for which the Sponsor is maintaining a secondary market. The Sponsor does not currently anticipate that the Exchange Option would be offered with respect to units of any series currently available on original issue but may permit such exchanges in the future.

7. The Exchange Option would permit the Holder to acquire only those units which the Sponsor has acquired in the secondary market and has legally available for sale in the state in which the Holder resides. Exchanges would be effected for whole units only, but if the cash proceeds of units exchanged is insufficient to acquire an even number of whole units of the Exchange Fund selected, the Holder would be permitted to add cash sufficient to round up to the next higher number of whole units of the Exchange Fund.

8. The applicable sales charge for units exchanged within five months from the date of purchase for units of an Exchange Fund with a higher sales charge than that paid on the units being exchanged, will be the greater of the exchange fee, or an amount ("Alternative Charge") that together with the sales charge actually paid on the acquisition of units being exchanged, equals the sales charge applicable to the direct purchases of the quantity of Exchange Fund units being acquired, determined as of the date of the exchange.

9. The Sponsor proposes to offer the Conversion Option to holders of registered unit investment trusts (other than the Exchange Funds) (the "Conversion Holders") which are offered at a maximum applicable sales charge of at least 3% of the public offering price ("Conversion Trusts") under the terms essentially identical to the Exchange Option as described above. All Conversion Holders would be eligible to participate in the Conversion Option, regardless of whether they are or were retail customers of the Sponsor or whether the Sponsor participated as an underwriter or selling dealer in the original public offering of units of the Conversion Trust.

10. The Conversion Holder would order his or her broker to sell those units by presentation to the trustee of his or her trust and to apply the proceeds to purchase whole units of an Exchange Fund available in the secondary market. The broker must certify to the Sponsor that the purchase is pursuant to the Conversion Option and therefore eligible for the reduced sales charge.

11. The Sponsor intends to hold the Conversion Option open under most circumstances. Applicants, however, reserve the right to modify, suspend, or terminate the Conversion Option at any time without further notice. The reduced sales charge for the Conversion Option will be identical to that for the Exchange Option. The Sponsor also reserves the right to change the reduced sales charge from time to time subject to rule 22d–1. The Alternative Charge also would apply to the exercise of the Conversion Option within five months of purchase of the units exchanged.

B. The Section 14(a) Exemption

1. The Sponsor states that each series to be covered by the requested order is intended to, at the date of deposit of the underlying securities and before any unit is offered to the public, have a net worth far in excess of $100,000. Each of these series also contemplates subsequent deposits of securities in connection with the creation of additional units, maintaining to the extent practicable the original proportionate relationship among the number of shares of each security as originally deposited.

Applicants' Legal Analysis

A. The Exchange and Conversion Options

1. Applicants are prohibited by sections 11 (a) and (c) from making an offer to Holders to exchange units for the securities of any other investment company unless the terms of offer have first been submitted to and approved by the SEC.

2. With respect to the Exchange Option, applicable believe that the reduced sales charge is a reasonable and justifiable expense to be allocated for the professional assistance and operational expenses contemplated in connection with the option. Applicants further believe that the Alternative Charge is appropriate in order to maintain the equitable treatment of various investors in each series.

3. With respect to the Conversion Option, applicants believe that it should have little or no competitive effect on the unit investment trust market. Applicants state that Conversion Holders will not be induced or encouraged to participate in the Conversion Option through the active advertising or sales campaign. The Sponsor recognizes its responsibility to its customers against generating excessive commissions through churning.

B. The Section 14(a) Exemption

1. Section 14(a) provides, in pertinent part, that no registered investment company shall make a public offering of its securities unless such company has a net worth of at least $100,000 or certain undertakings are included in the investment company's registration of its securities under the 1933 Act to ensure, among other things, that the company has a net worth of $100,000 within 90 days after the registration statement becomes effective.

2. Rule 14a–3 exempts unit investment trusts from the provisions of section 14(a) if they are "engaged exclusively in the business of investing in eligible trust securities" as defined in the rule. Most of the series are engaged in the business of investing in eligible trust securities. However, a series holding corporate securities other than fixed rate non-convertible bonds and preferred stocks would not be engaged and the exemption under the rule would not be available. Accordingly, applicants request an exemption from section 14(a) for each series that does not exclusively hold "eligible trust securities."

C. Section 6(c)

1. Applicants believe that the granting of the requested order is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act within the meaning of section 6(c).

Applicants' Conditions for the Exchange and Conversion Offers

Applicants agree to the following as conditions to the requested order:

1. Whenever the Exchange Option is to be terminated or its terms are to be amended materially, any holder of a security subject to that privilege will be given prominent notice of the

impending termination or amendment at least 60 days prior to the date of termination or the effective date of the amendment, *provided that*:

a. No such notice need be given if the only material effect of an amendment is to reduce or eliminate the sales charge payable at the time of an exchange, to add one or more new series eligible for the exchange option, or to delete a series which has terminated; and

b. No notice need be given if, under extraordinary circumstances, either—

i. There is a suspension of the redemption of units of the Exchange Fund under section 22(e) of the Act and the rules and regulations thereunder, or

ii. An Exchange Fund temporarily delays or ceases the sale of its units because it is unable to invest amounts effectively in accordance with applicable investment objectives, policies, and restrictions.

2. The sales charge collected at the time of any exchange or conversion shall not exceed 1.5% of the public offering price of the unit being acquired on each exchange.

3. The prospectus of each Exchange Fund and any sales literature or advertising that mentions the existence of the Exchange Option will disclose that the Exchange Option is subject to modification, termination, or suspension.

Applicants' Conditions for Relief from Net Worth Requirements

Applicants agree to the following as conditions to the requested order:

1. The Sponsor will refund, on demand and without deduction, all sales charges to purchasers of units of any of these series from the Sponsor or from any underwriter or dealer participating in the distribution, and liquidate the securities held by that series and distribute the proceeds thereof, if, within ninety days from the time that the registration statement relating to the units thereof shall have become effective under the 1933 Act, the net worth of the series shall be reduced to less than $100,000 or if the series shall have been terminated.

2. The Sponsor will instruct the Trustee to terminate any series in the event redemption by the Sponsor of units which have not been sold in the initial distribution thereof results in the series having a net worth of less than 40% of the net worth of securities in its original portfolio, and in the event of any such termination the Sponsor will refund, or demand and without deduction, all sales charges to purchases of units of that series from the Sponsor or from any underwriter or dealer participating in the distribution.

3. The Sponsor agree to require any future sponsor, as a condition to becoming a sponsor, to agree to the foregoing undertakings.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–12391 Filed 5–19–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20297; 812–8934]

Smith Barney Shearson Unit Trusts and Smith Barney Shearson Inc.; Notice of Application

May 16, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Smith Barney Shearson Unit Trusts ("SBSUT") (formerly known as Shearson Lehman Hutton Unit Trusts) (on behalf of Principal Return Trust I of SBSUT) and Smith Barney Shearson Inc. ("Smith Barney Shearson" or the "Sponsor").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from sections 12(d)(1), 14(a), and 22(d) and under section 17(d) and rule 17d–1.

SUMMARY OF APPLICATION: Applicants request an order to amend a previous order (the "Prior Order") that let SBSUT and the Sponsor (a) invest in portfolios consisting the zero-coupon obligations and shares of certain investment companies, (b) publicly offer units of the unit investment trusts without previously placing at least $100,000 of units, (c) waive a deferred sales load under certain circumstances, and (d) engage in certain affiliated transactions. The present order is necessary because of the sale of the assets of Shearson Lehman Brothers ("Shearson") to Primerica Corporation and Primerica's subsidiary, Smith Barney Shearson, formerly Smith Barney Upham & Co. Inc. ("Smith Barney").

FILING DATE: The application was filed on April 11, 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 request should be received by the SEC by 5:30 p.m. on June 7, 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, N.W., Washington, D.C. 20549. Applicants, Two World Trade Center, 104th Floor, New York, NY 10048.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 942–0572, 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 at the SEC's Public Reference Branch.

Applicants' Representations

1. SBSUT is registered under the Act as a unit investment trust and consists of a series of separate trusts. Each of the Funds (defined below) is, or is a series of, an open-end management investment company registered under the Act. The Sponsor is a registered broker-dealer and investment adviser. Applicants request that relief be extended to each future series of SBSUT (together with SBSUT, a "Trust") and to any fixed income or equity mutual funds other than money market and no-load funds (the "Funds") which are part of the group of mutual funds that have a common investment adviser, principal underwriter or depositor, or whose investment advisers, principal underwriters or depositors are under common control (as "control" is defined in section 2(a)(9)) and that hold themselves out to investors as related funds for purposes of investment and investor services.

2. On March 12, 1993, Shearson entered into an asset purchase agreement with Primerica and its indirect wholly-owned subsidiary Smith Barney. The agreement provided for the sale to Smith Barney and its designated affiliates of substantially all the assets of Shearson (the "Transaction"). Upon the closing of the Transaction on July 31, 1993, Smith Barney changed its name to Smith Barney Shearson Inc. and became the sponsor and principal underwriter of the Trusts, which were formerly sponsored and underwritten by Shearson. In addition, upon the closing of the Transaction, the investment advisory services which had formerly

been provided to the Funds by Shearson Lehman Advisors, an affiliate of Shearson, were assumed by Greenwich Street Advisors Division of Mutual Management Corp., an affiliate of Smith Barney Shearson. Other advisory services are performed by Smith Barney Advisers, Inc., its SBS asset management division or its subsidiary, Smith Barney Shearson Strategy Advisers, Inc. Subsequently, Primerica was acquired by The Travelers, Inc.

3. The Prior Order let the Trusts and the Sponsor (a) invest in portfolios consisting of zero-coupon obligations and shares of certain investment companies, (b) publicly offer units of the Trusts without previously placing at least $100,000 of units, (c) waive a deferred sales load under certain circumstances, and (d) engage in certain affiliated transactions.[1] At the request of Shearson and Smith Barney, the SEC's Division of Investment Management informed Shearson and Smith Barney that the Division would not recommend that the SEC take any enforcement action against them if registered investment companies sponsored by Shearson, which would include the Trusts and the Funds, operate under the terms of any prior order until the earlier of (a) the date any prior order is renewed by the SEC pursuant to a renewal order specifying Smith Barney and its subsidiaries or affiliates as applicants or (b) June 8, 1994.[2] Applicants request an order that would continue and renew the exemption granted to Shearson and its subsidiaries and grant the same exemptions to Smith Barney Shearson and its subsidiaries and affiliates.

4. Each Trust will be a unit investment trust and will hold a separate portfolio of securities and file a separate registration statement under the Securities Act of 1933 (the "1993 Act"). Each Trust will be created under its own trust indenture which will incorporate by reference a master trust agreement to be entered into among the Sponsor (as depositor), a bank meeting the requirements of section 26(a) (as trustee ("Trustee")), and an independent evaluator (collectively, the master trust agreement and the indenture are the "Trust Agreement").

5. Pursuant to the Trust Agreement, the Sponsor will deposit with the Trustee securities consisting of: stripped Government securities, as defined in section 2(a)(16), or certificates of interest of receipts for or other evidences of an ownership interest therein (the "zero-coupon obligations") and shares of one Fund per Trust. The Sponsor will purchase the zero-coupon obligations to be deposited in the Trust at the prevailing market price from unaffiliated third parties. Simultaneously with such deposit, the Trustee will deliver to the Sponsor registered certificates for units representing the entire beneficial ownership of each Trust. These units then will be offered for sale to the public by the Sponsor.

6. The Sponsor may deposit additional securities, which may result in a potential corresponding increase in the number of units outstanding. The Sponsor anticipates that any additional securities deposited in a Trust subsequent to the date of the initial deposit in connection with the sale of additional units will maintain as far as practicable the original percentage relationship between the principal amounts of zero-coupon obligations and Fund shares in the portfolio.

7. The purpose of the Trusts is to provide preservation of capital and the opportunity for capital appreciation. Each Trust will contain a sufficient amount of zero-coupon obligations to ensure that, at the specified maturity date for such Trust, investors purchasing units on the date of the initial deposit will receive back the approximate total amount of their original investment in such Trust, including the sales charge.

8. The shares of the Funds will be sold at net asset value for deposit in any one Trust. The Funds will waive any otherwise applicable front-end sales loads or contingent deferred sales loads ("CDSCs") with respect to all shares deposited in any trust to avoid pyramiding of expenses. Furthermore, because Fund shares have their net asset values calculated daily and this value is readily available to the Sponsor, no evaluation fee will be charged with respect to determining the value of Fund shares that constitute part of a Trust's portfolio. An evaluation fee will be charged, however, with respect to that portion of the Trust's portfolio that consists of zero-coupon obligations. Moreover, the Sponsor will rebate to the Trustee any rule 12b–1 fees it receives on shares of the Funds attributable to the shares held by a Trust.

9. Investors may be provided a reinvestment vehicle for distributions made during the life of a Trust whereby a unitholder may elect to invest such distributions directly in Fund shares underlying a Trust. Such reinvestment also will be permitted upon maturity of a Trust. In either case, the Fund shares will be registered in the unitholder's name and will not become part of the Trust's assets.

10. The Sponsor intends to maintain a secondary market for units of each Trust, although it is not legally obligated to do so. The existence of such a secondary market will reduce or eliminate the number of units tendered for redemption and, thus, alleviate the necessity to sell securities to meet redemption obligations. In the event that the Sponsor does not maintain a secondary market, the underlying Fund shares will be sold first to meet unit redemption obligations. To ensure that the benefit of the zero-coupon obligations is not impaired, the master trust agreement provides that the Sponsor will not instruct the Trustee to sell zero-coupon obligations from any Trust's portfolio until the Fund shares held therein have been liquidated, unless the Sponsor is able to sell zero-coupon obligations and still maintain at least the original proportional relationship to unit value. The trust indenture also provides that zero-coupon obligations may not be sold to meet Trust expenses.

Applicants' Legal Analysis

1. Section 12(d)(1) limits the amount of securities a registered investment company may hold of other investment companies. The section is intended to prevent the duplication of fees and costs, undue concentration of control, and other adverse consequences to investors incident to the pyramiding of investment companies. Applicants believe that their proposal is structured to eliminate such pyramiding of expenses and control problems and that the unit investment trust format is uniquely adaptable to avoiding such concerns.

2. Applicants believe that there will be no duplicative sales charges, distribution fees, or investment advisory fees. The evaluation fee for Fund shares held by a Trust will be waived. In addition, applicants believe that the administration and operation of the Trusts and the Funds will be reduced by the proposed arrangement. Applicants further believe that their proposal and the conditions below address potentially abusive control problems resulting from concentration of voting power in a fund holding company or from the threat a large-scale redemptions.

3. Section 14(a) provides, in pertinent part, that no registered investment company shall make a public offering of its securities unless such company has a net worth of at least $100,000 or

[1] Investment Company Act Release Nos. 16904 (Apr. 6, 1989) (notice) and 16940 (Apr. 27, 1989) (order).

[2] Shearson Lehman Brothers Inc. (pub. avail. June 8, 1993).

certain undertakings are included in the investment company's registration of its securities under the 1933 Act to ensure, among other things, that the company has a net worth of $100,000 within 90 days after the registration statement becomes effective. Applicants recognize that under the Trust's proposed operation, the Sponsor could be deemed to be reducing the net worth of each Trust below he requirement imposed by section 14(a) and, thus, request an exemption from section 14(a).

4. Each of the Funds which imposes a rule 12b–1 fee also currently imposes a CDSC. Section 22(d) generally prohibits a registered investment company from selling its redeemable securities other than a current public offering price described in the company's prospectus. Applicants request relief to continue the waiver of any otherwise applicable CDSC for redemptions under all circumstances where the Sponsor has purchased Fund shares in connection with the sale of Trust units (as well as where the proceeds of the zero-coupon obligations at the maturity of the Trust, and distributions from the Trust made during the life of the Trust, have been reinvested by the unitholder in additional Fund shares). Applicants believe that waiver of the CDSC in the above circumstances will not harm the Funds or their remaining shareholders or unfairly discriminate among shareholders or purchasers.

5. Applicants further believe that the granting of the requested order is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act within the meaning of section 6(c).

6. Section 17(d) and rule 17d–1 prohibit an affiliated person of an investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates. Applicants state that their proposal addresses potential section 17(d) and rule 17d–1 concerns. Applicants believe that neither the Funds nor any Trust will be disadvantaged by the arrangement and each stands to gain significant benefits from the proposed transaction.

Applicants' Conditions

Applicants agree to the following as conditions to the requested order:

1. The Trustee will not redeem Fund shares except to the extent necessary to meet redemptions of units by untiholders, or to pay Trust expenses should distributions received on Fund shares insufficient to cover such expenses.

2. The rule 12–1 fees received by the Sponsor in connection with the distribution of Fund shares to the Trust will be rebated to the Trustee.

3. Applicants will comply with rule 12b–1 as currently adopted and may be modified.

4. Applicants will comply with rule 22d–1 as adopted and may be modified.

5. Applicants agree to comply with rule 6c–10 as proposed, adopted, and may be modified.

6. No one series of the Trust will, at the time of any deposit of any Fund shares, hold as a result of the deposit, more than 10% of the then-outstanding shares of a Fund.

7. All Trust series will be structured so that their maturity dates will be at least thirty days apart from one another.

8. Creation and operation of each Trust series will comply in all respects with the requirements of rule 14a–3, except that the Trust will not restrict its portfolio investments to "eligible trust securities."

9. Shares of a Fund which are held by a series of the Trust will be voted by the Trustee of the Trust, and the Trustee will vote all shares of a Fund held in a Trust series in the same proportion as all other shares of that Fund not held by the Trust are voted.

For the Commission, by the Division of Investment Management, Pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–12392 Filed 5–19–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 27753]

Stage 3 Noise Abatement Equipment Programs for Certain First-Generation Narrow-body Jet Aircraft

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice, request for information.

SUMMARY: On December 31, 1994, the first interim compliance date for the national transition to an all Stage 3 aircraft fleet, each affected U.S. and foreign operator must either phase out 25% of its Stage 2 aircraft fleet or achieve a fleet composition of 55% Stage 3 aircraft. Based upon a review of annual reports and contacts with individual operators the Federal Aviation Administration anticipates no difficulty in compliance with the first interim requirement.

Although Stage 3 noise abatement equipment is or will be available for virtually all affected aircraft types, there may be a small number of aircraft for which such equipment may not be available.

This notice solicits information on programs to develop and provide Stage 3 noise abatement equipment for these aircraft.

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

ADDRESSES: Responses to this notice should be mailed, in triplicate, to the Federal Aviation Administration, Office of Chief Counsel, Attn.: Rules Docket (AGC–10), Docket No. 27753, 800 Independence Avenue SW., Washington, DC 20591. Responses may be inspected in room 915G between 8:30 a.m. and 5 p.m. weekdays, except Federal holidays.

Respondents who wish the Federal Aviation Administration (FAA) to acknowledge their responses must submit with their responses a pre-addressed stamped postcard on which the following statement is made: "Response to Docket No. 27753." The postcard will be date-stamped by the FAA and returned to the sender.

FOR FURTHER INFORMATION CONTACT: Mr. James P. Muldoon, Special Assistant for Environmental Planning (AEE–5), Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7513, facsimile (202) 267–5594.

SUPPLEMENTARY INFORMATION:

Background

The Airport Noise and Capacity Act of 1990 (ANCA) represents a balance between the needs to expand and preserve the capacity of the U.S. air transportation system and to provide relief to those residents affected by aircraft noise around the nations airports.

The balance is demonstrated in the programs initiated by the legislation. Limitations are now imposed upon airport operators in the establishment of local noise and access restrictions (14 CFR part 161) and a national program is now in place to achieve an all Stage 3 aircraft fleet by the year 2000 (14 CFR part 91). This notice deals with the Stage 3 transition.

The first interim compliance date in the national transition to Stage 3 aircraft is December 31, 1994. After that date, all U.S. and foreign operators of Stage 2 aircraft over 75,000 pounds must have

either removed from service 25% of its Stage 2 fleet or achieved a fleet composition of 55% Stage 3 aircraft.

Each year, the FAA and the Department of Transportation (DOT) must report to Congress on the progress of the transition to an all Stage 3 fleet. The report for calendar year 1992 indicated that the total Stage 2 fleet had been reduced by approximately 20% and the overall fleet of large airplanes had increased to 59.5% Stage 3. Preliminary analysis of the 1993 reports indicates that the Stage 2 fleet had been reduced by 25% and the Stage 3 portion of the total fleet had increased to about 62.5%. Based upon these reports as well as contacts with individual operators, the FAA does not anticipate any significant problems in operators meeting the first interim compliance date.

The aircraft noise mitigation benefits implicit in the Stage 3 transition program, including those due at each of the interim compliance dates, are a critical element of the balance that was struck under the ANCA, and the FAA plans to fully enforce both the interim and final requirements.

Over the last several years, Stage 3 noise abatement equipment has been available for virtually all aircraft affected by the Stage 3 transition regulations. The purpose of this notice is to solicit information on the status and economic feasibility of any noise abatement equipment development programs for the few aircraft types for which no approved noise abatement equipment is currently available.

Information Requested

A review of the annual progress reports submitted in accordance with § 91.875 indicates that certain versions of first generation narrow-body jet aircraft are the only aircraft types currently operated in the United States for which Stage 3 noise abatement equipment has not yet been approved. Both the B–707 and some of the early versions of the DC–8 are included in this category.

The purpose of this notice is to request information on Stage 3 noise abatement equipment programs for these and any other similarly affected aircraft types. Information is specifically solicited from noise abatement equipment providers and potential providers as well as affected aircraft operators on the status and economic feasibility of programs to develop noise abatement equipment for aircraft types for which an approved installation is not currently available.

Issued in Washington, DC on May 12, 1994.

Louise E. Maillett,

Director of Environment and Energy.

[FR Doc. 94–12379 Filed 5–19–94; 8:45 am]

BILLING CODE 4910–13–M

Federal Aviation Administration

Updated Guidelines for Determining Apportionments of Airport Improvement Program Funds to Cargo Service Airports

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: This notice provides updated guidelines for the reporting of data which determines apportionments to cargo service airports pursuant to Public Law 97–248, as amended. It is also to announce the availability of the revised FAA Form 5100–108 entitled "All-Cargo Carrier Activity Report" for use in reporting cargo carrier activity data.

DATES: These guidelines will be used for the reporting of calendar year 1994 cargo data (fiscal year 1996 Airport Improvement Program apportionment funds) and beyond.

ADDRESSES: Federal Aviation Administration, Office of Airport Planning and Programming, National Planning Division (APP–400), 800 Independence Avenue, SW, Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Sharon Glasgow, Program Manager, (202) 267–8739.

SUPPLEMENTARY INFORMATION: The Airport and Airway Improvement Act of 1982, as amended, (Public Law 97–248) recognizes that cargo service airports play a critical role in the national aviation system and appropriate provisions should be made to facilitate the development and enhancement of such airports. Section 507 of this Act provides for the apportionment of funds to sponsors of airports which are served by aircraft providing air transportation of only property, including mail. Airports qualifying are those with an aggregate annual landed weight of such aircraft in excess of 100 million pounds. Three and on-half percent of the amount made available under Section 505 for such fiscal years to be distributed as follows: In the proportion which the aggregate annual landed weight of all such aircraft landing at each such airport bears to the total aggregate annual landed weight of all such aircraft landing at all such airports.

The following guidelines will be used in determining apportionments for cargo service airports.

1. An airport must have in excess of 100 million pounds of aggregate annual landed weight of all-cargo aircraft only to qualify as a cargo service airport.

2. U.S. air carriers, as well as foreign air carriers, who engage in all-cargo transportation and meet all the cargo criteria provided herein are eligible for inclusion.

3. Airports who think they may meet or exceed the annual 100 million pound minimum, should complete and submit FAA Form 5100–108 entitled, "All-Cargo Carrier Activity Report."

4. In lieu of submitting FAA Form 5100–108, airports may report the required cargo data electronically. Those airports must submit, along with the quarterly electronic submissions, a statement signed by an authorized airport representative certifying that the data is true and accurate to the best of their knowledge. Additional information concerning electronic reporting is available from FAA/APP-400.

5. Cargo data should be submitted quarterly according to the following schedule:

Quarter	Deadline
First (January-March)	April 30.
Second (April-June)	July 30.
Third (July-September)	October 30.
Fourth (October-December)	January 30.

6. FAA Forms and/or electronic reports should be submitted by the deadlines listed above to: Research and Special Programs Administration, Volpe National Transportation Systems Center (DTS-44), ATTN: All-Cargo Carrier Activity Report, 55 Broadway, Kendall Square, Cambridge, MA 02142.

7. Definitions:

A. CARGO SERVICE AIRPORT is an airport which is served by all-cargo aircraft in scheduled and on-scheduled service providing air transportation of only property, including mail, with an aggregate annual landed weight in excess of 100 million pounds.

B. ALL-CARGO AIRCRAFT means any aircraft designed, manufactured, and/or modified to be used solely for transportation of property, i.e., cargo, mail, and/or freight.

C. AIRCRAFT LANDED WEIGHT means the weight of an aircraft providing scheduled and nonscheduled service of only property (including mail) in intrastate, interstate, and foreign air transportation. For cargo service apportionment purposes, the aircraft landed weight is the certificated maximum gross landed weight of the aircraft type as specified by the aircraft

manufacturer without regard to its carrying capacity, fuel supply, and/or actual payload.

D. NUMBER OF REVENUE LANDINGS means the number of landings performed by the cargo carrier in revenue producing or commercial operations only. It excludes landings on all nonrevenue, training, or practice flights.

8. Exclusions:

A. Aircraft that are engaged in transportation of both revenue passengers and cargo are excluded.

B. Aircraft that have permanently installed passenger facilities (such as seats, overhead bins, interior decor, etc.) for scheduled and non-scheduled passenger flights are excluded.

9. Required Signatures:

A. Airport Representative/Date: Each copy of the FAA Form 5100–108 or approved substitute form must bear a "Signature and Date" of the designated airport official authorized to certify and attest to the validity and accuracy of the reported information.

B. Cargo Carrier Representative/Date: It is no longer required that each FAA Form bear a "Signature and Date" of the designated cargo official.

Paul L. Galis,

Director, Office of Airport Planning and Programming.

[FR Doc. 94–12381 Filed 5–19–94; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

[FHWA Docket No. 94–2]

Request for Public Participation in the Development of the National Program Plan for Intelligent Vehicle-Highway Systems; Announcement of Public Forums

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; request for comments.

SUMMARY: The Department of Transportation solicits public participation on a second draft of a National Program Plan (the Plan) for Intelligent Vehicle-Highway Systems (IVHS). IVHS applies advanced technologies such as information processing, communications, and electronics to surface transportation needs; examples include in-vehicle route guidance systems, collision-avoidance systems, "electronic" license plates, personalized public transit systems, and automated highways. The draft Plan describes the systematic development of a set of IVHS user services, including the research, development, operational testing, and commercial product development that need to be accomplished to reach deployment of these services. Because the Plan is being developed with the user as the focus, the Department is interested in participation from a broad range of individuals and organizations including, but not limited to, public officials from State and local governments, consumer groups, vehicle manufacturers and other private sector entities, transit authorities, toll authorities, small businesses, academic institutions, associations, and individual citizens. In addition to this request for comments, a series of five public forums will be held to generate discussion and obtain feedback on the scope of the Plan. These forums will be held in the following cities: Detroit, June 20, 1994; Hartford, June 22, 1994; Washington, D.C., June 24, 1994; Los Angeles, June 27, 1994 and Houston, June 29, 1994.

This is the second notice on the Plan. The first notice, at 58 FR 65814 (December 15, 1993), contained background information on the national IVHS program, including a detailed description of the user services. Comments received in response to that notice have been utilized in preparing the second draft of the Program Plan that is now available.

DATES: Comments on the May 1994 draft are due July 8, 1994. Comments received after that date will be considered to the extent possible.

ADDRESSES: Comments should be sent to: Docket Clerk, Docket No. 94–2, room 4232, United States Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Commenters on the first draft will automatically receive a copy of the May, 1994 draft; others may obtain a copy by contacting the Federal Highway Administration, HTV–10, 400 Seventh Street, SW., Room 3400, Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Gary Euler, Chief, Program Management and Systems Engineering Division, Federal Highway Administration, HTV–10, 400 Seventh Street, SW., room 3400, Washington, DC 20590, Phone: (202) 366–2196, Fax: (202) 366–8712 or Beverly Russell, Transportation Specialist, Federal Highway Administration, HTV–10, 400 Seventh Street, SW., Room 3400, Washington, DC 20590, Phone: (202) 366–2202, Fax: (202) 366–8712.

SUPPLEMENTARY INFORMATION:

Background

The objective of the IVHS program is to apply advanced technology in the areas of information processing, communications, control, and electronics to improve safety, reduce congestion, increase mobility, reduce the energy and environmental harm caused by transportation, and increase economic productivity. The IVHS program also incorporates the use of strategic planning and innovative management practices at all levels of government to implement those initiatives which enhance our national surface transportation system, strengthen our economy, and benefit a broad range of users.

The Plan will attempt to integrate Federal, State, local government, and private sector activities in a single document to present a coherent picture of how the public and private sectors will work together to achieve IVHS program goals. The Plan seeks to reflect the consensus view of all parties interested in the development and deployment of IVHS. To that end, the second draft incorporates various of the comments received through the earlier notice process, as well as those received from individual members and staff of IVHS AMERICA, a broad-based, non-profit organization that also serves as a utilized Federal Advisory Committee under the Federal Advisory Committee Act (5 U.S.C. App. 2). IVHS AMERICA will also be distributing copies of the Plan to its membership, and member comments to IVHS AMERICA need not be duplicated in comments to the DOT docket.

The Plan is intended to clearly present the IVHS program to Congress, other government leaders, and private sector entities. It is intended to guide investment decisions in the development and deployment of IVHS products and services to be made by private entities, the Federal government, and local governments; to facilitate prioritization and coordination of IVHS development activities; to reduce duplication of effort; and to ensure IVHS program activities are focused toward deployment of IVHS services in a nationally compatible intermodal system.

The Plan is being developed based on a set of user services, each of which is designed to respond to perceived needs of particular users. These have been grouped into the following categories or "bundles": Travel and Traffic Management, which would improve the flow of traffic and provide travel-related information to the public; Public Transportation Management, which would assist in delivering improved public transportation systems; Commercial Vehicle Operations, which would improve the efficiency and safety of commercial fleet operations;

Electronic Payment Services, which would allow travelers to pay for transportation services with electronic cards or tags; Emergency Management, which can be used by police, fire, and rescue authorities to improve their management of, and response to, emergency situations; and Advanced Vehicle Safety Systems, which would provide improved vehicle safety.

The deployment of these user services will depend on a range of issues that will be assessed in formulating and implementing the Plan, including cost, public acceptance, the maturity or availability of the technologies, and regulatory issues. The Plan will also serve as the framework for a continuing process that will assess progress and allow government and private sector investment decisions to be made after the views of all interested parties have been considered.

The second draft of the Plan is substantially more complete than the first. Chapters on Integration, Deployment Support, and Program Assessment have been added, with the Integration chapter incorporating materials included in the National Compatibility Planning chapter of the earlier draft. The Integration chapter includes a functionality figure that assists in analyzing decision options, costing potential investments, and depicts the marginal investment required for deploying added functionality. Additional information is provided as to how the user services relate to IVHS program goals and objectives, including environmental, energy, and safety concerns. In response to a number of comments, the user services have been "bundled" as described above, and the lengthy materials describing them have been relocated to a separate volume. The Deployment chapter is in an early stage of development; materials are included that indicate the direction in which the chapter is headed, summarize many of the factors that are expected to influence deployment decisions, and relate examples of ongoing IVHS activities. However, many details have yet to be included. While the Overview section has been expanded, the Executive Summary is still in preparation.

Information Requested

The Department is interested in receiving information, suggestions, and opinions on (1) the scope and thrust of Plan, (2) the completeness and accuracy of the recently completed additions to the draft, (3) additional materials that should be included within the Deployment chapter, and (4) any other comments that would assist in further developing the Plan. The following issues are examples of other areas in which public comment would be helpful:

1. Are the benefits of IVHS products and services apparent, such that they will be successful if costs are kept reasonable?

2. Do the user services accurately present a vision of foreseeable technological development, in terms of feasibility and milestones?

3. Does the draft Plan reflect an objective and balanced consideration of the safety, efficiency, energy, environmental, productivity, and accessibility goals of the IVHS program?

4. Are there additional activities or applications properly within the sphere of IVHS that have not been included within the Plan?

5. Emissions testing and mitigation has been identified as a prospective additional user service. Is the description and discussion accurate? Should this be included as a separate user service, or retained within Travel Demand Management?

To facilitate stakeholder participation, the Department is holding public forums to facilitate the direct and interactive participation of the public in the development of the Plan. The dates and locations of these summer 1994 public forums are: (1) June 20, Westin Hotel, Renaissance Center, Detroit, Michigan 48243; (2) June 22, Holiday Inn, 50 Morgan Street, Hartford, Connecticut 06120; (3) June 24, Marriott Crystal Gateway, 1770 Jefferson Davis Highway, Arlington, Virginia 22202; (4) June 27, Renaissance Hotel, 9620 Airport Boulevard, Los Angeles, California 90045; and (5) June 29, Hilton Hobby Airport, 8181 Airport Boulevard, Houston, Texas 77061. Each session will begin at 8:30 am., and continue until all questions and comments have been addressed (estimated at 12:30 pm). An overview of IVHS and the Program Plan will be presented, with questions and comments from the public to follow.

Authority: 23 U.S.C. 315; 49 CFR 1.48; Pub. L. 102–240, Secs. 6051–6059, 105 Stat. 2189–2195.

Issued on: May 13, 1994.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 94–12320 Filed 5–19–94; 8:45 am]

BILLING CODE 4910–22–P

Federal Aviation Administration

Intent To Rule on Application To Impose and Use the Revenues From a Passenger Facility Charge (PFC) at Baltimore Washington International Airport, Baltimore, Maryland

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to Impose and Use the revenues from a PFC at Baltimore Washington International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before June 20, 1994.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Washington Airports District Office, 101 West Broad Street, suite 300, Falls Church, Virginia 22046.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Theodore E. Mathison, Administrator of the Maryland Aviation Administration at the following address: P.O. Box 8766, BWI Airport, Baltimore, Maryland 21240–0766.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Maryland Aviation Administration under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Robert Mendez, Manager, Washington Airports District Office 101 West Broad Street, suite 300, Falls Church, Virginia 22046. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Baltimore Washington International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On April 28, 1994, the FAA determined that the application to impose and use the revenue from a PFC submitted by Maryland Aviation Administration was substantially

complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than August 2, 1994.

The following is a brief overview of the application.

Level of the Proposed PFC: $3.00.
Proposed Charge Effective Date: October 1, 1992.
Proposed Change Expiration Date: May 31, 2009.
Total Estimated PFC Revenue: $286,593,094.
Brief Description of Proposed Project(s):
—Construct New International Terminal (Use Only).
—Terminal Roadways Improvement (Use Only).
—Runway 10–28 extension (Use Only).
—Pier C expansion (Impose and Use).
—Aircraft Deicing Facilities (Impose and Use).
Class or Classes of Air Carriers Which the Public Agency Has Requested Not Be Required to Collect PFCs: Air Texi/ commercial operators filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Maryland Aviation Administration.

Issued in New York City, New York on May 11, 1994.

A.H. DeGraw,

Acting Manager, Airports Division, Eastern Region.

[FR Doc. 94–12380 Filed 5–19–94; 8:45 am]

BILLING CODE 4910–13–M

Maritime Administration

Interagency Working Group on the Dredging Process; Public Meetings and Availability of Options Paper

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of public meetings; availability of options paper.

SUMMARY: In October, 1993, U.S. Secretary of Transportation Federico Peña convened an Interagency Working Group on the Dredging Process (Group) to look at ways to improve the dredging process. The Group is comprised of representatives of the Environmental Protection Agency, the Department of the Interior's Fish and Wildlife Service, the National Marine Fisheries Service and the Office of Ocean and Coastal Resource Management of the Department of Commerce, the Department of the Army's Corps of Engineers, and the Maritime Administration from the Department of Transportation. The Group is composed solely of government employees and therefore is not governed by the Federal Advisory Committee Act. A range of ideas from the public concerning ideas on ways to improve the dredging process have been solicited in a series of ten regional public listening sessions held in January and February. Since the first round of public meetings the Group has produced an Options Paper addressing the dredging process which has taken into consideration many of the comments expressed through the outreach program. To discuss the Options Paper and get further public response to the five issue areas identified below, the Group will be holding a second series of regional public meetings. This notices lists the locations, time and dates for the outreach session.

FOR FURTHER INFORMATION CONTACT: Please contact Carl Sobremisana, Outreach Coordinator, Maritime Administration, U.S. Department of Transportation, 400 Seventh Street, SW., room 7201, Washington, DC 20590; Phone (202) 366–1765/5471; FAX (202) 366–6988; Internet address: Carl—Sobremisanapostmaster@2.dot. gov

Single copies of the Options Paper can be obtained by contacting Ms. Brenda Reed at 400 Seventh Street, SW., room 7201, Washington, DC 20590; Phone (202) 366–1765; FAX (202) 366–6988; Internet address: Brenda—Reed@postmaster2.dot.gov.

SUPPLEMENTARY INFORMATION: The Group's objective is to bring about greater certainty and predictability in the dredging process by reviewing and identifying ways of improving interagency coordination, information gathering, criteria review, and overall sequencing of approvals; and, to facilitate effective long-term management strategies for addressing dredging and disposal needs at both the national and local levels. The Options Paper presents resolution options for the dredging process. These options are preliminary and are intended to foster discussion. They do not represent conclusions or recommendations of the Group. In addition, the options should not be considered mutually exclusive. Each option should be evaluated both individually and in conjunction with other options.

Each set of options is preceded by a brief statement about the issue area. They are then listed, along with clarifying information and/or relevant examples. Please note that the options address the Federally initiated "new" navigation projects (i.e., deepening and widening of channels) as well as operations and maintenance dredging and the related permit application process. The options cover the following five issue areas:

- Federal Interagency and External Coordination—options discussing ways to improve the overall working relationships regarding the review of dredging proposals.
- Proactive Local Planning and Coordination—options concerning development of effective advanced planning mechanisms which adequately address dredging and dredged material disposal projects and include greater State, local, and public participation.
- Dredged Material Disposal—options involve mechanisms needed to allow responsible parties to better plan for and more effectively manage dredged material disposal decisions.
- Dredging Policy—options discuss what is an appropriate national policy with respect dredging and at what level of government should these decisions be made and what mechanisms need to be developed to implement and coordinate these decisions.
- Funding and Project Development—options discuss whether policy and procedural changes should be adopted for funding the development, improvement, and maintenance of deep draft navigation channels and harbors, including the disposal of dredged material, what is the national interest in federally funding dredging projects, and what criteria should be used for funding port activities.

All meetings are open to the public and public participation is encouraged. Advanced notice of attendance will be appreciated and can be made by phone or FAX as noted above. Written comments on the Options Paper should be submitted to the contact person above by June 15, 1994.

INTERAGENCY WORKING GROUP ON THE DREDGING PROCESS SECOND ROUND OUTREACH SESSIONS

[Schedule]

Locations	Dates	Times
Washington, DC, U.S. Department of Transportation, Nassif Building, Room 2201, 400–7th St SW.	May 18th, Wednesday	1–5 p.m.
Savannah, GA, Hyatt Regency Hotel, 2 West Bay Street	May 23rd, Monday	1–5 p.m.
Cambridge, MA, Volpe National Transportation Systems Center (Auditorium), 55 Broadway, Kendall Square.	May 25th, Wednesday	1–5 p.m.
Hoboken, NJ, Stevens Institute of Technology, River Road, Stevens Center, Bessinger Room, 4th Floor.	May 26th, Thursday	1–5 p.m.
Des Plaines, IL, Federal Aviation Administration Bldg, 2300 East Devon, Room 170	May 26th, Thursday	1–5 p.m.
Portland, OR, Federal Building Auditorium, 911 NE 11th Avenue	May 31st, Tuesday	1–5 p.m.
New Orleans, LA, New Orleans Board of Trade, 316 Board of Trade Place	May 31st, Tuesday	12:30–4:40.
Oakland, CA, Federal Auditorium Building, 1301 Clay St., 3rd Floor	June 1st, Wednesday	1–5 p.m.
Houston, TX, U.S. Department of the Interior, Minerals Management Services, 4141 N. Sam Houston Parkway, Room 100.	June 1st, Wednesday	1–5 p.m.
San Pedro, CA, Port of Los Angeles, 425 S. Palos Verdes Street	June 2nd, Thursday	1–5 p.m.

Dated: May 13, 1994.

Joan B. Yim,

Deputy Maritime Administrator.

[FR Doc. 12271 Filed 5–19–94; 8:45]

BILLING CODE 4910–81–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Citizens Federal Savings & Loan Association, Jacksonville, FL; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in Subdivision (C) of section 5 (d)(2) of the House Owners' Loan Act, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator Citizens Federal Savings and Loan Association, Jacksonville, Florida ("Association"), with the Resolution Trust Corporation as Receiver for the Association on April 29, 1994.

Dated: May 17, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–12435 Filed 5–19–94; 8:45 am]

BILLING CODE 6720–01–M

Commonwealth Federal Savings Bank, Manassas, VA; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in Subdivision (C) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator for Commonwealth Federal Savings Bank, Manassas, Virginia ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on May 6, 1994.

Dated: May 17, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–12442 Filed 5–19–94; 8:45 am]

BILLING CODE 6720–01–M

Far West Federal Savings Bank, Portland, OR; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in Subdivision (C) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator for Far West Federal Savings Bank, Portland, Oregon ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on April 15, 1994.

Dated: May 17, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–12438 Filed 5–19–94; 8:45 am]

BILLING CODE 6720–01–M

Goldome Federal Savings Bank, St. Petersburg, FL; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in Subdivision (C) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator for Goldome Federal Savings Bank, St. Petersburg, Florida ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on April 15, 1994.

Dated: May 17, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–12439 Filed 5–19–94; 8:45 am]

BILLING CODE 6720–01–M

Great American Federal Savings Association San Diego, CA; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in Subdivision (C) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator for Great American Federal Savings Association, San Diego, California ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on May 13, 1994.

Dated: May 17, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–12441 Filed 5–19–94; 8:45 am]

BILLING CODE 6720–01–M

Hansen Federal Savings Association Hammonton, NJ; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in Subdivision (C) of section 5 (d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator for Hansen Federal Savings Association, Hammonton, New Jersey ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on April 15, 1994.

Dated: May 17, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–12440 Filed 5–19–94; 8:45 am]

BILLING CODE 6720–01–M

Jacksonville Federal Savings & Loan Association, Jacksonville, FL; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in Subdivision (C) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator Jacksonville Federal Savings and Loan Association, Jacksonville, Florida ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on April 8, 1994.

Dated: May 17, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–12430 Filed 5–19–94; 8:45 am]

BILLING CODE 6720–01–M

Pan American Federal Savings Bank San Mateo, CA; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in Subdivision (C) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator Pan American Federal Savings Bank, San Mateo, California ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on April 29, 1994.

Dated: May 17, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–12436 Filed 5–19–94; 8:45 am]

BILLING CODE 6720–01–M

Piedmont Federal Savings Association Manassas, Virginia; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in Subdivision (C) of section 5(d)(2) of the Home Owners, Loan Act, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator for Piedmont Federal Savings Association, Manassas, Virginia ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on May 13, 1994.

Dated: May 17, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–12443 Filed 5–19–94; 8:45 am]

BILLING CODE 6720–01–M

Polifly Federal Savings & Loan Association, New Milford, NJ; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in Subdivision (C) of section 5 (d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator Polifly Federal Savings and Loan Association, New Milford, New Jersey ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on May 6, 1994.

Dated: May 17, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–12433 Filed 5–19–94; 8:45 am]

BILLING CODE 6720–01–M

Security Federal Savings Association Panama City, FL; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in Subdivision (C) of section 5 (d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator Security Federal Savings Association, Panama City, Florida ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on May 6, 1994.

Dated: May 17, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–12434 Filed 5–19–94; 8:45 am]

BILLING CODE 6720–01–M

Southern Federal Savings Association of Georgia, Atlanta, GA; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in Subdivision (C) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator Southern Federal Savings Association of Georgia, Atlanta, Georgia ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on April 22, 1994.

Dated: May 17, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–12431 Filed 5–19–94; 8:45 am]

BILLING CODE 6720–01–M

Vista Federal Savings Association, Reston, VA; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in Subdivision (C) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator for Vista Federal Savings Association, Reston, Virginia ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on April 29, 1994.

Dated: May 17, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–12437 Filed 5–19–94; 8:45 am]

BILLING CODE 6720–01–M

White Horse Federal Savings & Loan Association, Trenton, NJ; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in Subdivision (C) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator White Horse Federal Savings and Loan Association, Trenton, New Jersey ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on May 6, 1994.

Dated: May 17, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–12432 Filed 5–19–94; 8:45 am]

BILLING CODE 6720–01–M

[AC–30; OTS No. 02256]

1st Savings Bank, F.S.B., Mount Vernon, MO; Approval of Conversion Application

Notice is hereby given that on May 13, 1994, the Deputy Assistant Director,

Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of 1st Savings Bank, F.S.B., Mount Vernon, Missouri, convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, suite 600, Irving, Texas 75039.

Dated: May 16, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–12345 Filed 5–19–94; 8:45 am]

BILLING CODE 6720–01–M

Office of the Treasury

[AC-31; OTS NO. 04773]

Beckley Federal Savings Bank, Beckley, WV; Approval of Conversion Application

Notice is hereby given that on May 13, 1994, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Beckley Federal Savings Bank, Beckley, West Virginia, convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Northeast Regional Office, Office of Thrift Supervision, 10 Exchange Place, 18th floor, Jersey City, New Jersey 07302.

Dated: May 16, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–12344 Filed 5–19–94; 8:45 am]

BILLING CODE 6720–01–M

Office of Thrift Supervision

[AC–37; OTS NO. 03647]

Bedford Federal Savings Bank, Bedford, Virginia; Approval of Conversion Application

Notice is hereby given that on May 13, 1994, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Bedford Federal Savings Bank, Bedford, Virginia, convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Southeast Regional Office, Office of Thrift Supervision, 1475 Peachtree Street, NE, Atlanta, GA 30309.

Dated: May 16, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–12338 Filed 5–19–94; 8:45 am]

BILLING CODE 6720–01–M

[AC–29; OTS No. 02928]

Community Federal Savings & Loan Association, Winnsboro, SC; Approval of Conversion Application

Notice is hereby given that on May 6, 1994, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Community Federal Savings and Loan Association, Winnsboro, South Carolina, convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, and the Southeast Regional Office, Office of Thrift Supervision, 1475 Peachtree Street NE., Atlanta, GA 30309.

Dated: May 16, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–12348 Filed 5–19–94; 8:45 am]

BILLING CODE 6720–01–M

[AC–38; OTS No. 02928]

Community Federal Savings and Loan Association, Winnsboro, South Carolina; Approval of Conversion Application

Notice is hereby given that on May 6, 1994, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Community Federal Savings and Loan Association, Winnsboro, South Carolina, convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Southeast Regional Office, Office of Thrift Supervision, 1475 Peachtree Street, NE, Atlanta, GA 30309.

Dated: May 16, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–12337 Filed 5–19–94; 8:45 am]

BILLING CODE 6720–01–M

[AC–19, OTS NO. 01510]

Fidelity Savings Bank, F.S.B., Kalamazoo, Mi; Approval of Conversion Application

Notice is hereby given that on May 12, 1994, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Fidelity Savings Bank, F.S.B., Kalamazoo, Michigan, convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Central Regina Office, Office of Thrift Supervision, 111 Wacker Drive, suite 800, Chicago, Illinois 60601–4360.

Dated: May 16, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94– 12347 Filed 5–19–94; 8:45 am]

BILLING CODE 6720–01–M

[AC–32; OTS NO. 05182]

Financial Federal Savings & Loan Association, Long Island City, NY; Approval of Conversion Application

Notice is hereby given that on May 13, 1994, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Financial Federal Savings and Loan Association, Long Island, New York, convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Northeast Regional Office, Office of Thrift Supervision, 10 Exchange Place, 18th floor, Jersey City, New Jersey 07302.

Dated: May 16, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–12343 Filed 5–19–94; 8:45 am]

BILLING CODE 6720–01–M

[AC–33; OTS No. 03244]

First Federal Savings Bank of Kent, Kent, OH; Approval of Conversion Application

Notice is hereby given that on May 13, 1994, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of First Federal Savings Bank of Kent, Kent, Ohio, convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 Wacker Drive, suite 800, Chicago, Illinois 60601–4360.

Dated: May 16, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–12342 Filed 5–19–94; 8:45 am]

BILLING CODE 6720–01–M

[AC–23; OTS No. 04999]

First Federal Bank of Eau Claire, F.S.B., Eau Claire, WI; Approval of Conversion Application

Notice is hereby given that on May 3, 1994, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of First Federal Bank of Eau Claire, F.S.B., Eau Claire, Wisconsin, convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 Wacker Drive, Chicago, IL 60601–4360.

Dated: May 16, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–12330 Filed 5–19–94; 8:45 am]

BILLING CODE 6720–01–M

[AC–21; OTS No. 04829]

Harbor Federal Savings and Loan Association, Baltimore, Maryland; Approval of Conversion Application

Notice is hereby given that on April 25, 1994, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Harbor Federal Savings and Loan Association, Baltimore, Maryland, convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Southeast Regional Office, Office of the Thrift Supervision, 1475 Peachtree Street, NE, Atlanta, GA 30309.

Dated: May 16, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–12332 Filed 5–19–94; 8:45 am]

BILLING CODE 6720–01–M

[AC–34; OTS No. 06700]

Home Federal Savings & Loan Association, Carbondale, IL; Approval of Conversion Application

Notice is hereby given that on May 13, 1994, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Home Federal Savings and Loan Association, Carbondale, Illinois, convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 Wacker Drive, suite 800, Chicago, Illinois 60601–4360.

Dated: May 16, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–12341 Filed 5–19–94; 8:45 am]

BILLING CODE 6720–01–M

[AC–39; OTS NO. 02818]

Home Federal Savings Bank, Spring Valley, Minnesota; Approval of Conversion Application

Notice is hereby given that on May 13, 1994, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Home Federal Savings Bank, Spring Valley, Minnesota, convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, Suite 600, Irving, Texas 75039.

Dated: May 16, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–12336 Filed 5–19–94; 8:45 am]

BILLING CODE 6720–01–M

[AC–27; OTS No. 00260]

Horizon Federal Savings Bank, Oskaloosa, IA; Approval of Conversion Application

Notice is hereby given that on May 6, 1994, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Horizon Federal Savings Bank, Oskaloosa, Iowa, convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, suite 600, Irving, Texas 75039.

Dated: May 16, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–12326 Filed 5–19–94; 8:45 am]

BILLING CODE 6720–01–M

[AC–36; OTS No. 00065]

Iowa Savings Bank, F.S.B., Des Moines, IA; Approval of Conversion Application

Notice is hereby given that on May 13, 1994, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Iowa Savings Branch, F.S.B., Des Moines, Iowa, convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of

Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, suite 600, Irving, Texas 75039.

Dated: May 16, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–12339 Filed 5–19–94; 8:45 am]

BILLING CODE 6720–01–M

[AC–28; OTS No. 01843]

Lincoln Federal Savings Bank, Stanford, KY; Approval of Conversion Application

Notice is hereby given that on May 13, 1994, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Lincoln Federal Savings Bank, Stanford, Kentucky, convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 Wacker Drive, suite 800, Chicago, Illinois 60601–4360.

Dated: May 16, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–12349 Filed 5–19–94; 8:45 am]

BILLING CODE 6720–01–M

[AC–35; OTS No. 03777]

Main Line Federal Savings Bank, Villanova, PA; Approval of Conversion Application

Notice is hereby given that on May 13, 1994, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Main Line Federal Savings Bank, Villanova, Pennsylvania, convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Northeast Regional Office, Office of Thrift Supervision, 10 Exchange Place, 18th floor, Jersey City, NJ 07302.

Dated: May 16, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–12340 Filed 5–19–94; 8:45 am]

BILLING CODE 6720–01–M

[AC–22; OTS No. 02622]

Mid-Continent Federal Savings & Loan Association of El Dorado, El Dorado, KS; Approval of Conversion Application

Notice is hereby given that on May 2, 1994, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Mid-Continent Federal Savings & Loan Association of El Dorado, El Dorado, Kansas, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, suite 600, Irving, Texas 75039.

Dated: May 16, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–12331 Filed 5–19–94; 8:45 am]

BILLING CODE 6720–01–M

[AC–25; OTS No. 03984]

Ottawa Savings Bank, FSB, Holland, MI; Approval of Conversion Application

Notice is hereby given that on May 6, 1994, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Ottawa Savings Bank, FSB, Holland, Michigan, Convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552 and the Central Regional Office of Thrift Supervision, 111 Wacker Drive, Chicago, IL 60601–4360.

Dated: May 16, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–12328 Filed 5–19–94; 8:45 am]

BILLING CODE 6720–01–M

[AC–40; OTS No. 04896]

Penn Federal Savings Bank, West Orange, NJ; Approval of Conversion Application

Notice is hereby given that on May 13, 1994, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated athority, approved the application of Penn Federal Savings Bank, West Orange, New Jersey, convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Northeast Regional Office, Office of Thrift Supervision, 10 Exchange Place, 18th Floor, Jersey City, New Jersey 07302.

Dated: May 16, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–12335 Filed 5–10–94; 8:45 am]

BILLING CODE 6720–01–M

[AC–26; OTS No. 00124]

Springfield Federal Savings & Loan Association, Springfield, OH; Approval of Conversion Application

Notice is hereby given that on May 9, 1994, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Springfield Federal Savings and Loan Association, Springfield, Ohio, convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 Wacker Drive, Chicago, IL 60601–4360.

Dated: May 16, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–12327 Filed 5–19–94; 8:45 am]

BILLING CODE 6720–01–M

[AC–24; OTS No. 00807]

Standard Federal Bank for Savings, Chicago, IL; Approval of Conversion Application

Notice is hereby given that on May 6, 1994, the Deputy Assistant Director, Corporate Activities Division, Office of

Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Standard Federal Bank for Savings, Chicago, Illinois, convert to the stock form of organization. Copies of the application are available for inspection at the Information Service Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 Wacker Drive, Chicago, IL 60601–4360.

Dated: May 16, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–12329 Filed 5–19–94; 8:45 am]

BILLING CODE 6720–01–M

[AC–42; OTS NO. 02966]

Third Federal Savings and Loan Association of Philadelphia, Newton; Approval of Conversion Application

Notice is hereby given that on May 13, 1994, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Third Federal Savings and Loan Association of Philadelphia, Newton, convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Northeast Regional Office, Office of Thrift Supervision, 10 Exchange Place, 18th Floor, Jersey City, New Jersey 07302.

Dated: May 16, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–12333 Filed 5–19–94; 8:45 am]

BILLING CODE 6720–01–M

[AC–41; OTS No. 04862]

Troy Hill Federal Savings and Loan Association, Pittsburgh, PA; Approval of Conversion Application

Notice is hereby given that on May 13, 1994, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Troy Hill Federal Savings and Loan Association, Pittsburgh, Pennsylvania, convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Northeast Regional Office, Office of Thrift Supervision, 10 Exchange Place, 19th Floor, Jersey City, New Jersey 07302.

Dated: May 16, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–12334 Filed 5–19–94; 8:45 am]

BILLING CODE 6720–01–M

[AC–20; OTS No. 02881]

Wichita Federal Savings & Loan Association, Wichita, KS; Approval of Conversion Application

Notice is hereby given that on April 14, 1994, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Wichita Federal Savings and Loan Association, Wichita, Kansas, convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, suite 600, Irving, Texas 75039.

Dated: May 16, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–12346 Filed 5–19–94; 8:45 am]

BILLING CODE 6720–01–M

UNITED STATES INFORMATION AGENCY

Grants and Cooperative Agreements; Availability, Etc.: Russia; Curriculum Development in Civics Education

TITLE: Curriculum Development in Civics Education for Russia.

ACTION: Notice—request for proposals.

SUMMARY: Subject to the availability of funds, the United States Information Agency (USIA) invites applications from U.S. educational institutions and public and private non-profit organizations meeting the provisions described in IRS regulation 501(c)(3) to develop a 30-day group program for approximately 15 professionals involved in secondary-level education from Russia. Program participants will be interested in curriculum reform to introduce and strengthen civics education in Russia.

Overall grantmaking authority for this program is contained in the Freedom Support Act. The funding for the program cited above is appropriated through the Foreign Assistance Act of 1994. Programs and projects outlined in a proposal must conform with Agency requirements and guidelines contained in the Application Package.

DATES: Deadline for proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time, on Wednesday, June 29, 1994. Faxed documents will not be accepted, nor will documents postmarked on June 29, 1994, but received at a later date. It is the responsibility of each grant applicant to ensure that the proposals are received by the above deadline. The 30-day program should take place in the Fall of 1994.

ADDRESSES: The original and 8 copies of the completed application, including required forms, should be submitted by the deadline to:

U.S. Information Agency, Reference: (E/AAS–94–01), Office of Grants Management, E/XE, room 336, 301 4th Street SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested organizations/institutions should contact Gretchen Christison at U.S. Information Agency, 301 4th Street SW., Study of the U.S. Branch, E/AAS room 256, (202) 619–4557 or facsimile, (202) 619–6790 to request a detailed Application Package, which includes award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget. Interested applicants should read the complete **Federal Register** announcement before addressing inquiries to the Study of the U.S. Branch or submitting their proposals. Once the RFP deadline has passed, USIA staff may not discuss this competition in any way with applicants until after the Bureau review process has been completed.

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorizing legislation, programs should maintain a non-political character, and should be balanced and representative of the diversity of American political, social, and cultural life. Programs should maintain their scholarly integrity and should meet the highest standards of academic excellence. "Diversity" should be interpreted in the broadest sense and encompass differences including but not limited to ethnicity, gender, religion, geographic location, socioeconomic status, and physical

challenges. Applicants are strongly encouraged to adhere to the advancement of this principle.

Overview

The long-term goal of this 30-day program is to assist participants to develop a framework for civic education that comprises democratic concepts, values and practices, to apply to national, regional, and local curriculum reform in Russia. The program also should introduce participants to civic education as it is taught at the secondary school level in the United States Review of the content of relevant courses and discussion of teaching methodologies should provide participants with a foundation on which the development of a new, strengthened program in civic education could be based. The project should demonstrate how democratic concepts, values, and practices are incorporated into curricula.

Participants

The program is designed for a group of fifteen educators and administrators from Russia. Participants may be employees of the Ministry of Education or regional entities, secondary school administrators, teacher-trainers of secondary school level instructors, textbook writers, or developers of secondary school curricula. All participants will be concerned with instituting reform of the secondary school civic education curricula. USIA and the USIA posts overseas will be responsible for participant selection.

Program Description

Project should include, and proposal should address:

1. An introduction to the U.S. education system. Participants should receive background information on the U.S. education system to provide context for the project's major emphasis on the role of civic education in a democratic society. This introduction should include information about the federal-state-local system, the philosophy and goals of public and private education, funding patterns, and the major players involved in civic education, such as schools, government, private clubs, religious institutions, public libraries, and parents. The program might include, but not emphasize, some of the major issues in American education, such as teacher qualifications, "back-to-basics," bilingualism, and multiculturalism. Selected school and other relevant site visits may be included.

2. Information on courses in civics education and traditional social studies courses, such as U.S. and world history, U.S. Government and comparative government institutions, media and current events, and courses that include discussion of community volunteerism, public interest groups, legal norms and procedures. The institute should address courses stressing the philosophy of democratic institutions, citizen behavior, social responsibility, and political practices such as the balance of individual rights and rights of the group, reconciliation and compromise within the democratic process, rights of minorities, etc.

3. Information on methods and issues in civic education such as textbook and materials development and selection, teaching techniques, the use of audio-visual and print media, and field trips. The project should include the provision of a "short shelf" of approximately 10–20 items, including books, sample curricula, visual materials, etc., for participants' use when they return home. Relevant subscriptions and memberships may also be included.

Program Administration

All programming, administrative logistics, and management of the academic program and cultural tour will be the responsibility of the project director. A project secretary and/or project assistant should be assigned to carry out clerical and administrative duties required for the smooth operation of the institute during the program period, from the planning period to the completion of mandatory reports to USIA. Staff escorts traveling under USIA cooperative agreement support must be U.S. citizens with demonstrated qualifications for this service.

USIA will be responsible for all communications to and from the USIA posts overseas which submit participant nominations to the Division for the Study of the U.S. The participants will travel directly from Russia to the airport most convenient to the campus site. International travel costs and arrangements will be the responsibility of the USIA posts overseas and USIA. The program staff will be expected to make arrangements to have participants met upon arrival at the local airport, and also assist with participant departures. The USIA program officer will be available to provide advice and guidance.

Proposals must clearly demonstrate quality on-site management capabilities for both residential and travel portions of the program. The overall effectiveness of the program hinges, in part, on the leadership skills and the administrative and organizational capabilities of the project director who is coordinating the academic program and managing the interactions between the foreign educators and Americans.

Proposed Budget

Applicants must submit a comprehensive line item budget for which specific details are available in the Application Package. Total institute costs funded by USIA may not exceed $150,000 for 15 participants; within the assistance award total institutional administrative costs funded by USIA may not exceed $45,000. Grants awarded to eligible organizations with less than four years experience in conducting international exchange programs will be limited to $60,000. The assistance award recipient is expected to provide significant cash and/or in-kind cost-sharing.

Funding Arrangements

A USIA cooperative agreement will be issued to the recipient institution selected to conduct the institute. The agreement will cover administrative costs and program costs which are defined in the Application Package. The recipient will directly disburse participant living costs and other authorized allowances. Attachment checklist, additional required forms, instructions, and samples are attached.

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. The proposals recommended by these panels will also be reviewed by the Agency's Office of General Counsel, the appropriate geographic area offices, and the budget and contracts 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 grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the following criteria:

1. *Quality:* Proposals should exhibit originality, substance, precision, and relevance to Agency mission and specific program goals.

2. *Program Planning:* Detailed agenda and relevant work plan should demonstrate appropriate content and logistical capacity. Agenda and plan

should adhere to the program overview and guidelines described above.

3. *Ability to achieve program objectives:* Objective should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. *Multiplier effect/impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program's goals.

6. *Institutional's Record/Ability:* Proposals should demonstrate an institutional record of successful international exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts (M/KG). The Agency will consider past performance of prior grantees and the demonstrated potential of new applicants.

7. *Follow-on Activities:* Proposals should provide a realistic plan for possible cost-effective follow-on activities to insure that USIA-supported programs are not isolated venues.

8. *Evaluation Plan:* Proposals should provide an outline for evaluation of the program by the grantee institution.

9. *Cost-Effective:* The overhead and administrative components of grants, as well as salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

10. *Cost-sharing:* Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

11. *Support of Diversity:* Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity throughout the program. This can be accomplished through documentation (such as a written statement or account) summarizing past and/or on-going activities and efforts that further the principle of diversity within both the organization and the program activities.

Notice

The terms and conditions published in this RFP are binding and may not be modified by an USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about August 15, 1994. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: May 16, 1994.

Barry Fulton,

Deputy Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 94–12408 Filed 5–19–94; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 97
Friday, May 20, 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).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Tuesday, May 24, 1994, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Memorandum and resolution clarifying that the authority which had been delegated to the Directors of the Division of Supervision and the Division of Resolutions would also extend to the Executive Director for Supervision and Resolutions.

Memorandum and resolution re: Delegation to the Director, Division of Supervision, the authority, pursuant to section 38 of the Federal Deposit Insurance Act, to make initial determinations with respect to institutions for which the Corporation is the appropriate federal banking agency and to affirmatively concur with actions thereunder by other appropriate federal banking agencies, as to any action in lieu of appointing a receiver for a critically undercapitalized institution.

Memorandum and resolution re: Amendment to an Existing Privacy Act System of Records—Confidential Employee Financial Disclosure Statement System (formerly Employee Financial Disclosure Statement System).

Memorandum re: Contract to support the development of automated information systems.

Memorandum re: First Quarter 1994 Financial Management Report

Discussion Agenda

Memorandum and resolution re: Final analysis of comments on whether section 362.4 of Part 362, entitled, "Activities and Investments of Insured State Banks," should be amended to reflect a more limited geographic scope of the insurance underwriting exception contained therein.

Memorandum and resolution re: Proposed amendments to Parts 327 and 304 of the Corporation's rules and regulations, entitled "Assessments" and "Forms, Instructions, and Reports," respectively, which would: (1) Collect assessments on a quarterly basis via direct debits initiated by the Corporation; (2) update an institution's risk-based assessment classification on a quarterly, rather than semiannual basis; (3) clarify the requirements for insurance assessment payments due with regard to deposits assumed from institutions terminating their insured status; and (4) make certain other technical amendments.

Memorandum and resolution re: Final amendment to section 327.4 of Part 327 of the Corporation's rules and regulations, entitled "Assessments," which exclude certain liabilities arising under depository institution investment contracts from the insurance assessment base.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 942–3132 (Voice); (202) 942–3111 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Acting Executive Secretary of the Corporation, at (202) 898–6757.

Dated: May 17, 1994.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 94–12500 Filed 5–18–94; 10:31 am]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:07 a.m. on Tuesday, May 17, 1994, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Recommendations regarding administrative enforcement proceedings.

Matters relating to the probable failure of a certain insured depository institution.

Matters relating to the Corporation's corporate and supervisory activities.

In calling the meeting, the Board determined, on motion of Director Eugene A. Ludwig (Comptroller of the Currency), seconded by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), concurred in by Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Dated: May 17, 1994.

Federal Deposit Insurance Corporation.

Patti C. Fox,

Acting Deputy Executive Secretary.

[FR Doc. 94–12501 Filed 5–18–94; 10:31 am]

BILLING CODE 6714–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, May 25, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: May 17, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–12506 Filed 5–18–94; 12:43 pm]

BILLING CODE 6210–01–P

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of May 23, 1994.

A closed meeting will be held on Tuesday, May 24, 1994, at 10:00 a.m..

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, May 24, 1994, at 10:00 a.m., will be:

Institution of injunctive actions.

Institution of administrative proceedings of an enforcement nature.

Settlement of injunctive actions.

Litigation matter.

Opinions.

At times, changes in Commission priorities require alternations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contract: Monica Parry (202) 942–0600.

Dated: May 17, 1994.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–12467 Filed 5–17–94; 4:22 pm]

BILLING CODE 8010–01–M

Federal Register

Friday
May 20, 1994

Part II

Environmental Protection Agency

40 CFR Part 227

Clarification of Suspended Particulate Phase Bioaccumulation Testing Requirements for Material Dumped in Ocean Waters; Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 227

[FRL–4886–5]

Clarification of Suspended Particulate Phase Bioaccumulation Testing Requirements for Material Dumped in Ocean Waters

AGENCY: Environmental Protection Agency (EPA).
ACTION: Interim final rule.

SUMMARY: EPA today is issuing an interim final rule interpreting and clarifying the ocean dumping regulations. The rule clarifies provisions of the regulations related to bioaccumulation testing of the suspended particulate phase of materials proposed to be dumped at sea. This rule would make clear that for the suspended particulate phase of the dumped material, it is unnecessary to perform bioaccumulation testing. This clarification applies to the suspended particulate phase only and does not affect any other testing requirements contained in the regulations. EPA believes that bioaccumulation testing of the suspended particulate phase is unnecessary and inappropriate. The Agency has not previously interpreted or applied its regulations to require such testing. EPA is issuing this rule to remove any possible ambiguity. This interim final rule is effective immediately. By separate notice of proposed rulemaking published elsewhere in today's **Federal Register**, EPA also is publishing and seeking comment on a proposed rule, identical to this interim final rule, that also clarifies that bioaccumulation testing for the suspended particulate phase of dumped material is not required.

DATES: This interim final rule becomes effective May 20, 1994. Written comments on this interim final rule will be accepted until 30 days after May 20, 1994. All comments must be postmarked or delivered by hand by June 20, 1994.

ADDRESSES: Send written comments on the interim final rule to the Ocean Dumping Interim Final Rule Comment Clerk; Water Docket, MC–4101, Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460. Commenters are requested to submit any references cited in their comments. Commenters are also requested to submit an original and three copies of their written comments and enclosures. Commenters who want receipt of their comments acknowledged should include a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted.

A copy of the comments and supporting documents cited in the reference section of this document are available for review at EPA's Water Docket, room L–102, 401 M Street SW., Washington, DC 20460. For access to the docket materials, call 202/260–3027 between 9 a.m. and 3:30 p.m. for an appointment.

FOR FURTHER INFORMATION CONTACT: John Lishman, Chief, Marine Pollution Control Branch, Oceans and Coastal Protection Division (4504F), U. S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, telephone 202/260–8448.

SUPPLEMENTARY INFORMATION:

A. Statutory and Regulatory Background

The Ocean Dumping Regulations, which govern the evaluation and permitting of material to be ocean dumped, were promulgated by EPA on January 11, 1977, under title I of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 *et seq.* (hereinafter "the Act" or "the MPRSA"). These regulations are contained in 40 CFR parts 220–229. They have not undergone substantive revision since 1977.

The MPRSA prohibits transporting materials from the United States for the purpose of ocean dumping without a permit, and prohibits U.S. instrumentalities and U.S. registered or flagged vessels from transporting materials from any location for the purpose of ocean dumping without a permit. The Act also prohibits the unpermitted dumping of material transported from a location outside the United States into the territorial sea or contiguous zone, if the dumping affects the territorial sea or U.S. territory.

Section 102(a) of the MPRSA requires the Administrator, in establishing criteria for ocean dumping, to apply the standards and criteria binding upon the United States under the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, (referred to in this rulemaking as "the London Convention," "the LC," or "the Convention", and formerly known as the London Dumping Convention), including its Annexes, to the extent EPA may do so without relaxing the requirements of MPRSA title I.

Annex I of the LC contains absolute prohibitions on the dumping of certain listed materials, except when they are present as "trace contaminants" or when they are "rapidly rendered harmless" by physical, chemical, or biological processes in the sea. Annex II of the LC contains a list of materials for which "special care" must be used in their disposal if they are present in "significant amounts". Annex III of the LC contains a list of technical considerations to be considered in establishing criteria to implement the requirements of the Convention.

Under section 102(a) of the Act, 33 U.S.C. 1412(a), EPA has responsibility for issuing permits for ocean dumping of all materials other than dredged material. Under section 103(a) of the Act, 33 U.S.C. 1413(a), the Secretary of the Army has responsibility for issuing permits for ocean dumping of dredged material. This permitting authority has been delegated to the Army Corps of Engineers ("the Corps"). EPA's role in regard to Corps issuance of dredged material disposal permits is one of review and concurrence. (Although the Corps is the permitting authority for dredged material, section 103 of the Act establishes a substantial role for EPA with regard to evaluation of the impacts of dredged material ocean disposal.)

Under sections 102(a) and 103(a) of the Act, 33 U.S.C. 1412(a) and 1413(a), ocean dumping permits may be issued upon a determination that:

> The dumping will not unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities.

The Act directs EPA to establish criteria for evaluating ocean dumping permit applications and requires that EPA consider the following factors in establishing these criteria:

(A) The need for the proposed dumping.

(B) The effect of such dumping on human health and welfare, including economic, aesthetic, and recreational values.

(C) The effect of such dumping on fisheries resources, plankton, fish, shellfish, wildlife, shorelines and beaches.

(D) The effect of such dumping on marine ecosystems particularly with respect to—

(i) The transfer, concentration, and dispersion of such material and its by-products through biological, physical, and chemical processes,

(ii) Potential changes in marine ecosystem diversity, productivity, and stability, and

(iii) Species and community population dynamics.

(E) The persistence and permanence of the effects of the dumping.

(F) The effect of dumping particular volumes and concentrations of such materials.

(G) Appropriate locations and methods of disposal or recycling, including land-based alternatives and the probable impact of requiring use of such alternative locations or methods upon considerations affecting the public interest.

(H) The effect on alternative uses of oceans, such as scientific study, fishing, and other living resource exploitation, and nonliving resource exploitation.

(I) In designating recommended sites, the Administrator shall utilize, wherever feasible, locations beyond the edge of the Continental Shelf. (section 102(a), 33 U.S.C. 1412(a).)

Under section 103(b) of the Act, 33 U.S.C. 1413(b), when considering whether to issue a dredged material disposal permit, the Corps (as designee of the Secretary of the Army) must apply the EPA criteria relating to the effect of the dumping. If the Corps determines that the proposed dumping meets those environmental effects criteria, MPRSA Sec. 103(c), 33 U.S.C. 1413(c), provides that it must notify the EPA of its intention to issue the permit. EPA must then evaluate the environmental impacts of the proposed permit, and either concur or decline to concur in the Corps determination regarding compliance with the environmental effects criteria.

In the event that EPA nonconcurs in a dredged material ocean dumping permit, section 103(d) of the Act, 33 U.S.C. 1413(d), allows the Secretary of the Army to seek a waiver of the criteria from the Administrator. To obtain a waiver, the Secretary must certify to the Administrator that there are no economically feasible alternatives to the proposed dumping and must request a waiver of the specific criteria involved. The Act provides that the waiver shall be issued within 30 days, unless the Administrator finds that the dumping will result in unacceptably adverse impacts on municipal water supplies, shellfish beds, wildlife, fisheries, or recreational areas.

Under section 102(c) of the MPRSA, 33 U.S.C. 1412(c), EPA is further charged with designating recommended sites and times for dumping after consideration of the section 102(a) criteria described above. EPA must designate sites or times for dumping that mitigate adverse environmental impacts to the greatest extent practicable. EPA may also designate sites or times within which certain materials may not be dumped if, after consultation with the Corps, EPA finds that it is necessary to protect critical areas. In addition, section 103(b) of the Act, 33 U.S.C. 1413(b), provides that in considering appropriate locations for disposal of dredged material, the Corps shall utilize sites designated by EPA under section 102(c), to the maximum extent feasible.

Under section 103(b), in any case where the use of an EPA-designated dredged material disposal site is not feasible, the Corps may select an alternative site with EPA's concurrence. Selection of the site shall be based on the section 102(a) criteria previously described. Disposal at an alternative site shall be limited to five years, unless the site is subsequently designated by EPA pursuant to section 102(c). An alternative site may be used for an additional five years if:

(1) No feasible site has been designated by EPA;

(2) Continued use of the alternative site is necessary to maintain navigation and facilitate interstate commerce; and

(3) EPA determines that the use of the site does not pose an unacceptable risk to human health, aquatic resources, or the environment.

Beginning on January 1, 1997, no ocean dumping permit, or authorization under section 103(e) of the Act, shall be issued for a site which does not have a site management plan, unless it is an alternative site selected under section 103(b).

B. Discussion

1. The Litigation

On June 1, 1993, Clean Ocean Action, an organization concerned with issues affecting oceanic water quality, and others ("the plaintiffs"), filed a complaint and request for injunctive relief in the United States District Court against the U.S. Army Corps of Engineers, EPA, and the Port Authority of New York and New Jersey ("the Port Authority"), challenging the issuance of a permit to the Port Authority (*Clean Ocean Action* v. *York*, Civil No. 93–2402, D. N.J.). The permit authorized the Port Authority to perform up to 500,000 cubic yards of maintenance dredging from two Port Authority facilities in Newark Bay, and to deposit the dredged material in the Atlantic Ocean at the New York Bight Dredged Material Disposal Site (also known as the Mud Dump Site). This area has been used to deposit dredged material since 1914.

The permit was issued on January 6, 1993, suspended on January 14, 1993, at the request of EPA, and reinstated on May 26, 1993, after further review by EPA and the Corps. The plaintiffs sought to have the permit invalidated on the basis that it was impermissibly granted. In a decision on June 7, 1993, the Court denied the plaintiffs' request to enjoin the dredging of the Port Authority facilities. However, the Court raised concerns in its decision that applicable regulations may not have been followed, and ordered the Port Authority to demonstrate that the permit had been lawfully issued. After submissions by the Port Authority and the plaintiffs, the Court issued a second opinion on July 6, 1993, which preliminarily determined that additional testing of the dredged material was required, because bioaccumulation testing on pelagic organisms in the suspended particulate phase had not been conducted prior to the granting of the permit to the Port Authority.

Under 40 CFR 227.6, materials proposed for dumping may not contain any of the following contaminants, unless these compounds are determined to be present only in trace amounts: (1) Organohalogen compounds; (2) mercury and mercury compounds; (3) cadmium and cadmium compounds; (4) oil of any kind, or in any form, transported for the purpose of dumping, to the extent that the discharge is not regulated under the Clean Water Act; and (5) known or suspected carcinogens, mutagens, or teratogens. Whether these contaminants are present in trace amounts in the material proposed for disposal is determined by conducting biological tests on living marine organisms. These tests, known as bioassays, must be conducted according to procedures approved by EPA and the Corps.

Bioassays are conducted using both marine organisms that live in the water column (known as pelagic organisms), and organisms that live on or in the ocean floor (known as benthic organisms). The results of these bioassays determine the potential for, and the extent of, impacts on the marine environment. These impacts include acute effects, such as lethality, as well as chronic effects, such as mutagenic growth and reproductive dysfunction. The potential for chronic effects are evaluated, in part, on the results of bioaccumulation bioassays, which indicate the degree to which contaminants have accumulated in the tissues of the organisms being tested. The Court determined that 40 CFR 227.6(c)(2) of the ocean dumping regulations required that suspended particulate phase bioaccumulation tests must be conducted on pelagic organisms, and that this requirement was not met prior to permit issuance.

As a result of this interim opinion, there is uncertainty as to whether permit applicants must perform

bioaccumulation testing for the suspended particulate phase of dumped material. Today's rule, consistent with the Agency's interpretation of the existing regulations and its long-standing practice, is intended to clarify that suspended particulate phase bioaccumulation testing of dumped material is not required.

Suspended particulate phase bioaccumulation testing of dumped material is unnecessary and inappropriate for three principal reasons. First, exposure to the suspended particulate phase in the environment does not provide sufficient time for bioaccumulation; second, bioaccumulation testing of marine organisms in the solid phase already provides a worst case indication of the bioaccumulation potential, so that separate suspended phase testing would be unnecessary in any event; and third, no reliable tests are available for bioaccumulation in the suspended particulate phase of dumped materials. Further discussion of these points follows below.

1. Exposure to the Suspended Particulate Phase Does Not Provide Sufficient Time for Bioaccumulation

For appreciable bioaccumulation to occur in aquatic organisms, exposure to the potential bioaccumulant for up to one month is generally necessary. In contrast, suspended particulate material from dumping operations is a short-term and near-field (limited area) phenomenon in the marine environment (References 3, 4, 5). As a result, the potential for appreciable bioaccumulation in marine organisms from the suspended particulate phase is very low (Reference 6). This is due to the transient nature of the suspended particulate phase, as a result of dilution and dispersion by movement of the water column and settling of the material to the bottom, as well as the mobility of marine species that could be impacted by exposure to the suspended particles (References 1, 2, 7). Recent Agency state-of-the-art plume tracking studies (Reference 15), which examined the disposal of the New York/New Jersey Port Authority dredged material, have also confirmed the transient nature of the suspended phase, finding that suspended particulate phase plumes could be acoustically and physically detected for only a few hours after dumping. Studies at the Mud Dump Site (where the water depth is approximately 90 feet) demonstrate the rapid dilution and dispersion of dumped material following ocean dumping. Dissolved metals and non-polar organic compounds such as dioxin were diluted at least 3,000 times within 15 minutes of dumping; suspended particulate matter was diluted at least 10,000 times in the same time period (References 15, 16). After two hours, the metals and non-polar organics were diluted up to 64,000 times; the suspended particulates were diluted by more than 500,000 times (Reference 18).

Given the physical characteristics of suspended particulate plumes, and the life history characteristics of the marine species potentially impacted by them, the potential exposure durations are of such short term (at most, only a few hours), that appreciable bioaccumulation is extremely unlikely (References 8, 9). Reflecting this, the 1977 edition of EPA's Dredged Material Testing Manual (known as the "Green Book") states "* * * it is considered unlikely that bioaccumulation would occur at the disposal site from the suspended particulate phase, since animals would be exposed to it for such short periods [of time], due to dilution [of the dumped material in the water column] * * *" (Reference 1). The manual concluded, "(b)ioaccumulation from the suspended particulate phase is of secondary concern (compared to the solid phase), except in special cases, due to the short exposure time resulting from rapid dispersion of the suspended particulates by mixing" (Reference 1). This view was based on studies performed by the Corps (Reference 13). The 1991 edition of the Dredged Material Testing Manual corroborates this view: "Because concern about bioaccumulation focuses on the impact of gradual uptake over long exposure times, primary attention [must be] given to the dredged material deposited on the bottom. Bioaccumulation from the material in the water column is generally of minor concern, due to the short exposure time and the low exposure concentrations, resulting from rapid dispersion and dilution" (Reference 2).

As noted above, for appreciable bioaccumulation to occur in a marine organism, a period of exposure for up to one month is generally necessary, by whatever exposure route is used, whether it is food ingestion, absorption through gill membranes from the water column, or a combination of these mechanisms (Reference 19). Designing and conducting a suspended particulate phase water column bioassay that maintains necessary conditions for a long enough time to induce bioaccumulation would not be representative of actual *in vivo* (real world) conditions that would occur as a result of dumping (Reference 18). Furthermore, as will be discussed below, the benthic bioaccumulation tests that are run in evaluating material proposed for dumping are carried out for a 28-day period, and expose test organisms to undiluted sediment. As a result, those test results provide a more conservative estimate of bioaccumulation potential, including any bioaccumulation that could possibly result from limited exposure to the suspended particulate phase.

2. Bioaccumulation Results From Solid Phase Testing Provide a Worst Case Representation of Bioaccumulation in the Suspended Particulate Phase

In evaluating material proposed for ocean disposal, including dumped material, bioaccumulation tests on the solid phase of dumped material are performed on appropriately sensitive benthic marine organisms, using procedures approved by EPA (and the Corps in the case of dredged material). See 40 CFR 227.6(c)(3) and 227.27(d). These solid phase tests are run using the whole material to be dumped, including the fine particles that make up the suspended particulate phase. The tests are set up to allow the fine particles of the suspended phase to settle out so that they are available for direct consumption as a food source for sensitive deposit-feeding test organisms (References 1, 2). This mimics real-world exposure scenarios and, as explained below, also represents a worst case estimate of suspended phase bioaccumulation potential.

Research conducted by the Agency and the Corps (References 5, 17, 18) has shown that the greatest potential for bioaccumulation at the dumpsite is not in the water column, but in the benthic environment. This is because material deposited on the ocean bottom provides a habitat for benthic marine organisms for the extended periods of time necessary for bioaccumulation to occur.

Appropriate solid phase bioaccumulation test organisms have been identified by EPA and the Corps (Reference 2). No appropriate organisms have been identified for bioaccumulation testing for the suspended particulate phase. These appropriate organisms live in benthic sediments, and ingest them as part of their nutritive requirements. They readily accumulate organic compounds, thereby providing a reliable indication of the bioaccumulation potential of the material. They have long life cycles and are hardy enough to survive the stress of exposure to contaminants so that they can be exposed for periods long enough to result in bioaccumulation. These organisms also have high tissue lipid

content which effectively bioaccumulate organic compounds (References 7, 8).

This extended benthic exposure, using sediment-ingesting organisms with high lipid content, presents a conservative estimate of the potential for bioaccumulation from the suspended phase. This is because the duration of exposure in the solid phase is far greater than it would be in the water column of a dumpsite. In addition, benthic test organisms live in the sediment, are in direct contact with it, and also consume it, therefore substantially increasing their exposure to contaminants in the sediment, as compared to water column organisms.

Thus, even though there is only limited potential for bioaccumulation in the suspended particulate phase, testing of the solid phase of dumped material provides the Agency with all the necessary information to determine whether there is significant undesirable bioaccumulation from either the suspended particulate phase or the solid phase; that is, whether a listed material is present in more than trace amounts, with regard to bioaccumulation.

3. No Reliable Tests Are Available For Bioaccumulation in the Suspended Particulate Phase

Bioaccumulation tests in the suspended particulate phase would require the use of accepted species, as well as procedures approved by EPA (and the Corps for dredged material), to provide reliable information on the potential for bioaccumulation of the contaminants at the dump site. See 40 CFR 227.6(c)(2) and 227.27(c). There are no such tests that are currently recommended, approved, or required, either in the 1977 or 1991 editions of the ocean dumping dredged material testing manual (the "Green Book") (References 1, 2), or the bioassay procedures for the ocean disposal permit program (Reference 14). In contrast, the Green Book specifies procedures for bioaccumulation testing of the solid phase. Bioaccumulation testing of the suspended particulate phase is not run in any nationwide ocean disposal program, since such testing for regulatory purposes is not a standard practice. One reason for this is that the interpretation of these suspended particulate phase bioassay tests for human or ecological impacts would be difficult, since there are no meaningful indices against which to measure these test results (Reference 1).

Approved benthic bioaccumulation tests generally require large volumes of tissue from the test organism to adequately measure effects. That volume of tissue is not available in the majority of standardized laboratory organisms for water column suspended particulate phase toxicity testing without using thousands of individual organisms. Exposure durations in laboratory tests would also require exposures far exceeding exposure times in the real-world environment of a dump site in order for bioaccumulation to occur. The results of using such large numbers of organisms in non-standardized bioaccumulation tests at unrealistic exposure durations and conditions would be very difficult to interpret, or to relate to ecological impact or human health effects (Reference 1).

C. Today's Rule

Today's rule clarifies that bioaccumulation testing of the suspended particulate phase is not required. This is being done by adding a clarifying and interpretive statement to § 227.6(c)(2), which was the particular section of the regulations interpreted by the July 1993 interim opinion in Clean Ocean Action as appearing to require such tests. Today's rule also adds a clarifying statement to § 227.27(b) of the regulations. Although not directly at issue in the Court's interim ruling, this provision of the regulations also addresses testing requirements. In order to avoid any implication that this provision might also call for suspended particulate phase bioaccumulation testing, EPA believes a similar clarification is appropriate.

D. References

1. "Ecological Evaluation of Proposed Discharge of Dredged Material into Ocean Waters", U.S. Environmental Protection Agency and U.S. Army Corps of Engineers, Second Printing, April 1978.
2. "Evaluation of Dredged Material Proposed for Ocean Disposal, Testing Manual", U.S. Environmental Protection Agency and U.S. Army Corps of Engineers, April 1991.
3. "Evaluation of Dredged Material Pollution Potential", James M. Brannon, U.S. Army Waterways Experiment Station, Technical Report DS–78–6, August 1978.
4. "Aquatic Dredged Material Disposal Impacts", Thomas D. Wright, U.S. Army Waterways Experiment Station, Technical Report DS–78–1, August 1978.
5. "Summary of U.S. Army Corps of Engineers and U.S. Environmental Protection Agency Field Verification Program", report by Battelle Ocean Sciences, U.S. Army Waterways Experiment Station, Technical Report D–88–6, October 1988.
6. "The transport and fate of particulate hydrocarbons in an urban fjord-like estuary", P.P. Murphy, et al., in Estuarine, Coastal, and Shelf Science, 27(5):461–482, 1988.
7. "Bioaccumulation of organic micropollutants from sediments and suspended particulates by aquatic animals", J.M. Neff, in Fresenius Zeitschrift fur Analyische Chemie, 319(2):132–136, 1984.
8. "Accumulation mechanisms and geographical distribution of PCBs in the North Sea", K. Delbeke and C. Joiris, pp. 771–779, in "Environmental Protection of the North Sea", edited by P.J. Newman and A.R. Agg, Heinemann Publishers, Oxford, 1988.
9. "Organochlorine dynamics between zooplankton and their environment: A reassessment", G.C. Harding, in Marine Ecology Progress Series, 33:167–191, 1986.
10. "Guidance for Performing Tests on Dredged Material To Be Disposed in Ocean Waters", U.S. Army Corps of Engineers, New York District, and U.S. Environmental Protection Agency, Region 2, 21 December 1984.
11. "2,3,7,8–TCDD, 2,3,7,8–TCDF, and PCBs in Marine Sediments and Biota: Laboratory and Field Studies", R.J. Pruell, et al., report to U.S. Army Corps of Engineers, New York District, U.S. Environmental Protection Agency, Environmental Research Laboratory, Narragansett, RI, March 1990.
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13. "Field Study of the Mechanics of the Placement of Dredged Material at Open Water Disposal Sites", Volume 1 and Appendices, H.J. Bokuniewicz, et al., U.S. Army Corps of Engineers Dredged Material Research Program, Technical Report D–78–7, April 1978.
14. "Bioassay Procedures for the Ocean Disposal Permit Program", U.S. Environmental Protection Agency, Office of Research and Development, March 1978.
15. "Plume Tracking of Dredged Material Containing Dioxin", Draft Final Report, P. Dragos and C. Peven, Battelle Ocean Sciences Laboratory, Report to EPA Region 2 under Contract No. 68–C2–0134, 1994.
16. "Plume Tracking Model Verification Project", Draft Final Report, P. Dragos and D. Lewis, Battelle Ocean Sciences Laboratory, Report to EPA Region 2 under Contract No. 68–C2–0134, 1993.
17. "Synthesis of Research Results: Applicability and Field Verification of Predictive Methodologies for Aquatic Dredged Material Disposal", J.H. Gentile et al., U.S. Army Waterways Experiment Station, Technical Report D–88–5, 1988.

18. "Use of Suspended Phase Bioaccumulation Tests as Part of the Evaluation of the Suitability of Material for Ocean Disposal", Oceans and Coastal Protection Division, EPA, Washington, D.C., May 1994.
19. "Guidance Manual: Bedded Sediment Bioaccumulation Tests", H. Lee, et al., U.S. Environmental Protection Agency, Environmental Research Laboratory, Newport, OR, September 1989.

Compliance With Other Laws and Executive Orders

A. Administrative Procedure Act

The Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.*, generally requires notice of proposed rulemaking to be published in the **Federal Register** with an opportunity for public comment prior to promulgation of a final rule. The APA also provides, however, that the normal notice and comment requirements do not apply to "interpretative rules" or to cases in which

> "[T]he Agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rule issued) that notice and public procedures thereon are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b) (A) and (B).

EPA believes that the "interpretative rule" and "good cause" exceptions apply to this interim final rule. To ensure that the Agency has the full benefit of public comment on any issues surrounding the bioaccumulation testing of the suspended particulate phase, however, EPA is publishing a proposal elsewhere in today's **Federal Register** that seeks public comment on this interim final rule and other alternatives that would accomplish the same regulatory result. EPA will take final action on the proposal by reissuing the interim final rule as a final rule or amending it as appropriate in light of comments received. Today's interim final rule will remain in effect until EPA takes final action on the proposal.

Interpretative Rule Exception

Today's interim final rule interprets and clarifies the existing ocean dumping regulations, consistent with EPA's longstanding interpretation and practice, by eliminating any implication that bioaccumulation testing of the suspended particulate phase is required in order to obtain a permit to dump material in ocean waters. Today's rule is therefore an interpretative rule that is exempt from notice and comment requirements under section 553(b)(A).

As EPA has explained in its submissions to the Court in the Clean Ocean Action case, the Agency does not interpret the existing ocean dumping regulations to require bioaccumulation testing of the suspended particulate phase. The existing regulations provide that with certain exceptions, the ocean dumping of materials containing certain listed constituents as other than trace contaminants will not be approved. 40 CFR 227.6(a). These listed constituents will be considered to be present as trace contaminants:

> Only when they are present in materials otherwise acceptable for ocean dumping in such forms and amounts in liquid, suspended particulate, and solid phases that the dumping of the materials will not cause significant undesirable effects, including the possibility of danger associated with their bioaccumulation in marine organisms. 40 CFR 227.6(b)

40 CFR 227.6(c) provides that the potential for undesirable effects due to the presence of these constituents shall be determined "by application of results of bioassays on liquid, suspended particulate, and solid phases of wastes *according to procedures acceptable to EPA and for dredged material, acceptable to EPA and the Corps of Engineers.*" (Emphasis added). 40 CFR 227.6(c)(2) and 227.27(b) together state that the bioassay tests on the suspended particulate phase should be conducted with appropriate sensitive marine organisms "*accepted by EPA as being reliable test organisms* to determine the anticipated impact of the wastes on the ecosystem at the disposal site" using procedures accepted by EPA and the Corps. (Emphasis added). The regulations thus vest substantial discretion in EPA and the Corps to determine the testing procedures and test organisms to be used in assessing the anticipated effects of dumping the material.

Accordingly, as the Agency explains more fully earlier in this notice, it is EPA's longstanding interpretation of the existing ocean dumping regulations that the existing regulations do not require bioaccumulation testing of the suspended particulate phase. It is the Agency's longstanding practice not to require these tests, because: (1) No reliable tests are available for bioaccumulation in the suspended particulate phase; (2) exposure to the suspended particulate phase in the environment does not provide sufficient time for bioaccumulation; (3) the bioaccumulation testing of marine organisms in the solid phase provides a worst case indication of the bioaccumulation potential, so that separate suspended phase testing would be unnecessary in any event. Bioaccumulation testing of the suspended particulate phase is not run in any nationwide ocean disposal program, including that administered by EPA and the Corps under the MPRSA because bioaccumulation testing of the suspended particulate phase is not a standard practice.

As the Agency also explains more fully earlier in this notice, no such tests were recommended, approved, or required in either the 1977 or the 1991 editions of the ocean dumping dredged material testing manual (the Green Book), or the bioassay procedures for the ocean permit disposal program. (The Green Book does, however, specify bioaccumulation tests of whole sediment on benthic species. See Green Book, Section 12.) EPA issued the 1991 Green Book after noticing its availability for comment in the **Federal Register** and considering the comments it received, adding further weight to the Agency's interpretation of the regulations as not requiring bioaccumulation testing of the suspended particulate phase. 55 FR 8191 (March 7, 1990)(notice of availability of draft Green Book); 56 FR 13826 (April 4, 1991)(notice of availability of final Green Book).

Accordingly, in light of the Agency's position regarding the proper interpretation of the existing regulations, and in the absence of any recommended, approved or required procedures for bioaccumulation of the suspended particulate phase, it is appropriate to issue today's rule as an interpretative rule that will be effective on the date of publication in the **Federal Register**, and will remain in effect until completion of the proposed notice and comment rulemaking that is referenced above.

Good Cause Exception

EPA also believes that the "good cause exception at 5 U.S.C. 553(b)(B) provides an independent basis for issuing today's interim final rule without notice and comment. EPA estimates that issuing this rule through normal notice and comment procedures would take four to six months. Delaying the issuance of this rule for that period of time would be contrary to the public interest as evidenced by the urgent safety and economic concerns that have arisen in the Port of New York and New Jersey.

The uncertainties surrounding the need for bioaccumulation testing of the suspended phase that have followed the Court's interim ruling in the Clean Ocean Action case, coupled with the lack of practicable and reliable suspended phase bioaccumulation tests, has complicated and ultimately delayed the issuance of ocean dumping permits that are essential for dredging projects in New York/New Jersey Harbor.

Twenty-five applications are pending before the Corps of Engineers from non-federal entities to dispose of dredged material at sea from projects proposed for the Port of New York. There are also at least eight Federal projects that are being delayed by uncertainty over the testing requirements. Since EPA's interpretation of the regulations differs from the interpretation reflected in the Court's interim ruling in the Clean Ocean Action case, there is a real possibility of legal challenge whether or not the applicants are required to perform bioaccumulation testing of the suspended particulate phase. The Corps has informed EPA that it is withholding issuance of seven of these permits, and that analysis and review of the other 18 have been delayed as well, solely because of these legal uncertainties surrounding the testing requirements that are addressed by today's interim final rule.

If navigation channels and berthing areas are not routinely dredged to adequate depths to accommodate the vessels they service, there is an increased potential for grounding of vessels and barges that transport bulk goods, petroleum products, chemicals, and other materials. There is also an increased need to lighter (partially off-load) vessels while they are moored in deeper waters. Both groundings and lightering operations can result in serious environmental consequences such as spills, as well as increased safety risks to vessel operators and their crews. Finally, concerns about safety and the need to lighter affect the volume of shipping and the amount of cargo that can enter a port. All of these concerns have resulted in a situation in New York/New Jersey Harbor that EPA believes must be addressed by the issuance of this rule as an interim final rule with immediate effectiveness.

For example, on April 13, 1994, a cargo vessel collided with a petrobulk vessel that was engaged in lightering operations off Stapleton, Staten Island, New York. (USCG Case No. MC94007346). Although EPA is unable to confirm that the petrobulk vessel was lightering because navigation channels or berthing areas have not been dredged, this accident illustrates the hazard that lightering operations can pose. Dredging of the Port would lessen the need for lightering and consequently lower the risk of collision and the potential for injury and environmental harm.

Delays in dredging also are beginning to cause serious economic impacts to the Port of New York/New Jersey. As an example, on large cargo vessels, it is estimated that for every one foot of depth lost below a vessel's controlling draft, the vessel must carry 100 fewer cargo containers. These containers are either diverted or the vessels carrying them are lightered prior to entering the Port. Each container holds between fifteen and twenty tons of cargo. Approximately two to three thousand container vessels enter the Port each year. The Port Authority of New York and New Jersey estimates that two to three percent of the total tonnage of cargo previously entering the Port is diverted to other ports due to decreased depths in the navigation channels and berthing areas. The New York Shipping Association believes this estimate is conservative.

Similarly, a petroleum refining facility in Perth Amboy, New Jersey submitted a dredging permit application to the Corps of Engineers on February 2, 1991. Tankers servicing this facility normally draw thirty-six feet of water; however, the current depth at the facility is thirty-two feet. The result has been loss of revenue at a rate of $2 million per year, as estimated by the company, from space left empty on tankers to decrease draft and allow for safe berthing at the facility. It is not possible to offset this loss by increasing the number of ships servicing this facility because of the lack of berthing area. According to the New York Shipping Association, there is a facility in Yonkers, New York that has a charter that requires it to provide thirty feet of water. The water depth at this facility currently is twenty-four feet as a result of permitting delays. Captains are docking, but only "under protest." This means that the facility is liable for damage that may occur to a ship as a result of inadequate water depths. It is not feasible for the facility to compensate for this loss by trucking.

Finally, the New York Shipping Association has reported that the International Longshoremen's Association has lost 300,000 man hours of wages during the year ending September 30, 1993 because of cargo diversions. This equates to somewhere in the neighborhood of $6 million in lost wages. The Port Authority of New York and New Jersey has reported that 100,000 hours were lost during a three month period in the fall of 1993 because of cargo diversions. This equates to somewhere in the neighborhood of $2 million for those three months.

In the case of four permit applicants, there is special need for dredging permit decisions to be issued expeditiously. The proposed permits for these projects included restrictions limiting dredging to certain times of the calendar year in order to protect juvenile striped bass, winter flounder, anadromous fish including various herrings and alewives, and the endangered shortnose sturgeon. If dredging is not completed for these projects this fall, it would be further delayed between three and a half and eleven months as a result of these restrictions. For these applicants to complete the dredging this fall, they must receive a permit within the next month.

These serious safety and economic problems can not be abated unless New York/New Jersey Harbor is dredged to safe depths. According to the Corps of Engineers, issuance of this rule as an interim final rule will enable it to issue seven dredging permits immediately, and to proceed with the review of the remaining 18 permits expeditiously, without resulting in any lesser protection of the ocean environment at the Mud Dump Site. The practical effect of this interim final rule clarifying the testing requirements will be limited to New York/New Jersey Harbor because this is the only area where the issue has arisen whether suspended particulate phase bioaccumulation testing is required. It is not conducted elsewhere in the ocean dumping program. Accordingly, EPA believes that delaying the issuance of this final rule to obtain public comment would be contrary to the public interest.

Immediate Effectiveness

The APA also generally requires that substantive rules be published 30 days prior to their effective date except:

"(1) A substantive rule which grants or recognizes an exemption or relieves a restriction;

* * * * *

or (3) as otherwise provided by the agency for good cause found and published with the rule". 5 U.S.C. 553(d).

EPA is issuing today's interim final rule as immediately effective under the provisions of 5 U.S.C. 553(d). As detailed elsewhere in this notice, today's rule clarifies the regulations to eliminate potential unnecessary testing of material proposed for ocean disposal. It thus serves to "relieve a restriction" within the meaning of APA section 553(d)(1). In addition, for the reasons previously set forth in this preamble as to why public comment is unnecessary, EPA also believes there is "good cause" for issuing today's interim final rule in immediately effective form.

B. Executive Order 12866

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

requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely and materially effecting 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;

(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.

C. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, is intended to minimize the reporting and record-keeping burden on the regulated community, as well as to minimize the cost of Federal information collection and dissemination. In general, the Act requires that information requests and record-keeping requirements affecting ten or more non-Federal respondents be approved by the Office of Management and Budget. Since today's rule would not establish or modify any information or record-keeping requirements, it is not subject to the requirements of the Paperwork Reduction Act.

D. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, EPA must prepare a Regulatory Flexibility Analysis for regulations having a significant impact on a substantial number of small entities. The RFA recognizes three kinds of small entities, and defines them as follows:

(1) Small governmental jurisdictions—any government of a district with a population of less than 50,000.

(2) Small business—any business which is independently owned and operated and not dominant in its field, as defined by Small Business Administration regulations under the Small Business Act.

(3) Small organization—any not-for-profit enterprise that is independently owned and operated and not dominant in its field.

As discussed above in the discussion of Executive Order 12866, today's interim final rule does not impose economic burdens. Accordingly, EPA has determined that today's rule would not have a significant impact on a substantial number of small entities, and that a Regulatory Flexibility Analysis therefore is unnecessary.

List of Subjects in 40 CFR Part 227

Environmental protection, Water pollution control.

Dated: May 13, 1994.

Carol M. Browner,

Administrator, Environmental Protection Agency.

For the reasons set out in this preamble, part 227 of title 40 of the Code of Federal Regulations is amended as follows:

PART 227—[AMENDED]

1. The authority citation for part 227 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 227.6 is amended by adding at the end of paragraph (c)(2) a footnote 1 to read as follows:

§ 227.6 Constituents prohibited as other than trace contaminants.

* * * * *

(c) * * *

(2) * * *[1]

[1] This provision shall not be interpreted as requiring bioaccumulation testing of the suspended particulate phase of dumped materials.

* * * * *

3. Section 227.27 is amended by adding at the end of paragraph (b) a footnote 2 to read as follows:

§ 227.27 Limiting permissible concentration (LPC).

* * * * *

(b) * * *

[2] This provision shall not be interpreted as requiring bioaccumulation testing of the suspended particulate phase of dumped materials.

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[FR Doc. 94–12216 Filed 5–19–94; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 227

[FRL–4886–6]

Clarification of Suspended Particulate Phase Bioaccumulation Testing Requirements for Material Dumped in Ocean Waters

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today is issuing a proposed rule interpreting and clarifying the ocean dumping regulations. The proposal clarifies provisions of the regulations related to bioaccumulation testing of the suspended particulate phase of material proposed to be dumped. The proposal would make clear that for the suspended phase of the material, it is unnecessary to perform bioaccumulation testing. This proposal applies to the suspended phase only and does not affect other testing requirements contained in the regulations. EPA believes that bioaccumulation testing of the suspended particulate phase is inappropriate, and has not interpreted or applied its regulations to require such testing. EPA is proposing to amend the regulations to remove any possible ambiguity. By separate notice published elsewhere in today's **Federal Register**, EPA also is publishing an interim final rule which is effective date of publication.

DATES: Written comments on this proposed rule will be accepted until 30 days after May 20, 1994.

ADDRESSES: Send written comments on this proposed rule to the Ocean Dumping Proposed Rule Comment Clerk; Water Docket, MC–4101, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Commenters are requested to submit any references cited in their comments. Commenters are also requested to submit an original and three copies of their written comments and enclosures. Commenters who want receipt of their comments acknowledged should include a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted.

A copy of the supporting information for this notice is available for review at EPA's Water Docket, room L–102, 401 M Street, Washington, DC 20460. For access to the docket materials, call 202/260–3027, between 9 a.m. and 3:30 p.m. for an appointment.

FOR FURTHER INFORMATION CONTACT: John Lishman, Chief, Marine Pollution Control Branch, Oceans and Coastal Protection Division, 401 M Street SW., Washington, DC.

SUPPLEMENTARY INFORMATION: In the final rule section of today's **Federal Register**, EPA has issued an interim final rule, which is effective immediately, to clarify that the ocean dumping regulations issued by EPA under Title I of the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. 1401 *et seq.* (MPRSA) should not be interpreted to require suspended particulate phase bioaccumulation testing. Readers should refer to the preamble to that interim final rule for further information on the MPRSA statutory scheme and other pertinent background information.

EPA is proposing today to revise the ocean dumping regulations by adding a footnote to 40 CFR 227.6(c)(2) and 227.27(b) which reads:

> (1) This provision shall not be interpreted as requiring bioaccumulation testing of the suspended particulate phase of dumped materials.

EPA is today requesting comment on this proposed revision to the regulations.

The Agency is also requesting comment on a second option to accomplish the same regulatory result, which is to amend the first sentence of 40 CFR 227.6(c)(2) by deleting the words "including bioaccumulation", and to amend the third sentence of § 227.6(c)(2) by deleting the words "either" and "or to bioaccumulation". Further, this option would amend 40 CFR 227.27(b) by inserting between the first and second sentence thereof the following additional sentence:

> Suspended particulate phase bioaccumulation testing is not required.

EPA also requests comment on other rulemaking options that would clarify that bioaccumulation testing of the suspended particulate phase is not required.

Although EPA does not interpret its regulations to require suspended phase bioaccumulation testing, the Agency believes it is prudent to amend the regulations to assure that there is no ambiguity on this issue. Today's proposal would make these changes by amending § 227.6(c)(2) and § 227.27(b)(2) of the regulations, consistent with the Agency's interpretation of the existing regulations and its long-standing practice, to clarify that suspended particulate phase bioaccumulation testing is not required.

Suspended particulate phase bioaccumulation testing is inappropriate for three principal reasons. First, exposure to the suspended particulate phase in the environment does not provide sufficient time for bioaccumulation; second, bioaccumulation testing of marine organisms in the solid phase already provides a worst case indication of the bioaccumulation potential of the suspended phase so that separate suspended phase testing would be unnecessary in any event; and third, no reliable tests are available for bioaccumulation in the suspended particulate phase of dumped materials. Further discussion of these points and the basis for this proposal are contained in the preamble accompanying the interim final rule for dumped materials, which appears elsewhere in today's **Federal Register**. Readers should refer to that preamble for further details.

Compliance With Other Laws and Executive Orders

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely and materially effecting 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;

(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.

B. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, is intended to minimize the reporting and record-keeping burden on the regulated community, as well as to minimize the cost of Federal information collection and dissemination. In general, the Act requires that information requests and

record-keeping requirements affecting ten or more non-Federal respondents be approved by the Office of Management and Budget. Since today's proposal would not establish or modify any information or record-keeping requirements, it is not subject to the requirements of the Paperwork Reduction Act.

C. Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, EPA must prepare a Regulatory Flexibility Analysis for regulations having a significant impact on a substantial number of small entities. The RFA recognizes three kinds of small entities, and defines them as follows:

(1) Small governmental jurisdications—any government of a district with a population of less than 50,000.

(2) Small business—any business which is independently owned and operated and not dominant in its field, as defined by Small Business Administration regulations under the Small Business Act.

(3) Small organization—any not-for-profit enterprise that is independently owned and operated and not dominant in its field.

As discussed above in the discussion of Executive Order 12866, the changes being proposed do not impose economic burdens. Accordingly, EPA has determined that today's proposal would not have a significant impact on a substantial number of small entities, and that a Regulatory Flexibility Analysis therefore is unnecessary.

List of Subjects in 40 CFR Part 227

Environmental protection, Water pollution control.

Dated: May 13, 1994.

Carol M. Browner,

Administrator, Environmental Protection Agency.

[FR Doc. 94–12215 Filed 5–19–94; 8:45 am]

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federal register

Friday
May 20, 1994

Part III

Department of Housing and Urban Development

Office of Assistant Secretary for Public and Indian Housing

Funding Availability for Fiscal Years 1993 and 1994; Invitation for Applications: Public Housing Development—MROP Activities; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Public and Indian Housing

[Docket No. N–94–3758; FR–3637–N–01]

Notice of Funding Availability (NOFA) for FY 1993 and 1994; Invitation for Applications: Public Housing Development—MROP Activities

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability (NOFA) for Fiscal Year (FY) 1993 and FY 1994 for Public Housing Development—MROP Activities; Invitation for Applications.

SUMMARY: This NOFA announces the availability of FY 1993 and 1994 funding, and invites eligible public housing agencies (PHAs) to submit development applications for MROP activities. Because the number of applications for FY 1993 funding which received perfect scores was in excess of available funding (funding of all applications receiving a perfect score of 90 would only have permitted funding at 40 percent of the amount requested), this NOFA withdraws the FY 1993 NOFA published on September 13, 1993 (58 FR 47940).

The FY 1993 funding is being combined and re-announced with the FY 1994 funding under this Public Housing Development—MROP Activities NOFA (MROP Activities NOFA).

All unfunded MROP activities applications submitted in response to the FY 1993 NOFA will be returned to the PHAs for resubmission in response to this combined FY 1993 and FY 1994 NOFA. At the option of the PHA, an application may be amended and resubmitted, or a new MROP activities application may be submitted. No other types of applications will be accepted under this NOFA.

A separate NOFA applicable to the public housing development program will be published in the **Federal Register**.

This MROP Activities NOFA provides instructions regarding the preparation and processing of applications.

This NOFA is NOT applicable to the Indian housing program.

DATES: Applications are due at the HUD Field Office on or before 4 p.m., local time, on July 5, 1994. Section III of this NOFA provides further information on application submission. The PHA must clearly write "Public Housing Development—MROP Activities Application" on the outside of the envelope and obtain a return receipt indicating the date and time of delivery.

The application deadline is firm as to date and hour. In the interest of fairness to all applicants, HUD will not consider any application that is received after the deadline. PHAs should take this into account and submit applications as early as possible to avoid risk of application ineligibility brought about by unanticipated delays or delivery-related problems. In particular, PHAs intending to mail applications must provide sufficient time to permit delivery on or before the deadline. Acceptance by a Post Office or private mailer does not constitute delivery. Facsimile (Fax), COD, and postage due applications will NOT be accepted.

FOR FURTHER INFORMATION CONTACT: Janice Rattley, Office of Construction, Rehabilitation and Maintenance, Department of Housing and Urban Development, 451 Seventh Street SW., room 4136, Washington, DC 20410. Telephone (202) 708–1800 (voice) or (202) 708–4594 (TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Paperwork Reduction Act Statement: The information collection requirements contained in this NOFA have been approved by the OMB under the Paperwork Reduction Act of 1980 and have been assigned OMB control numbers 2577–0033, 2577–0036, and 2577–0044.

I. Introduction

A. Authority

Section 5 of the United States Housing Act of 1937 (42 U.S.C. 1437c); and section 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). Public housing development regulations are published at 24 CFR part 941. The Catalog of Federal Domestic Assistance Program number is 14.850.

B. Fund Availability

In accordance with the FY 1994 HUD Appropriations Act (Pub. L. 103–124, approved October 28, 1993), the Department is making available, through this NOFA, up to $119.2 million of the FY 1994 public housing development funds for MROP activities consistent with section 111 of the Housing and Community Development (HCD) Act of 1992 (Pub. L. 102–550, approved October 28, 1992). Because some of the appropriated funds are to be derived from recapture of prior year obligations, a lesser amount may be available under this NOFA, unless actual recaptures during the current Fiscal Year return the amount to the appropriated level.

In addition, the $60 million of FY 1993 public housing development funds provided in the FY 1993 HUD Appropriations Act (Pub. L. 102–389, approved October 6, 1992) for MROP activities consistent with section 111 of the HCD Act of 1992, is also being made available.[1]

Consistent with section 624 of the HCD Act of 1992, HUD has established a set-aside of five percent of the total of up to $179.2 million (which provides up to $8,950,000 depending on recaptures) for MROP Activities for housing designated for disabled families, which will be the subject of a separate NOFA to be published by the Department.

C. Fund Assignments

Funding for MROP activities is provided for the reconstruction of existing public housing, the extent of which is not predictable by formula. Therefore, the funds provided under this NOFA will not be fair-shared. This determination was made on the basis of the exclusion of funds as incapable of geographic allocation pursuant to 24 CFR 791.403(b) published in the **Federal Register** on August 4, 1993 (58 FR 41426).

Field Offices will ascertain threshold-approvability and, after Joint Review, send the threshold-approvable applications to a review selection panel(s) comprised of representatives from various Field Offices (hereafter referred to as "panel(s)").

The panel(s) shall rate and rank the threshold-approvable applications based on the criteria in Section IV.E. of this NOFA, and provide Headquarters with a list, in rank order, reflecting the ratings. The Department, in its discretion, may choose to select or partially fund a lower-rated application in order to increase national geographic diversity, and/or to increase the diversity of development types (high-rise buildings of five or more stories and those which include only low-rise buildings).

D. Eligibility

Applications for public housing development—MROP activities must be submitted by PHAs eligible for development funding which have the required local cooperation and legal

[1] As noted in the September 13, 1993 FY 93 MROP Activities NOFA, the FY 1993 funds are being made available for MROP activities in accordance with the Joint Statement of the Managers in Explanation of the Conference Agreement (see H.R. Rep. 103–165, pg. 31) on the Supplemental Appropriations Act of 1993 (Pub. L. 103–50, approved July 2, 1993).

authority to develop, own and operate public housing projects.

PHAs eligible under the Comprehensive Improvement Assistance Program (CIAP) (CIAP-eligible PHAs) and under the Comprehensive Grant Program (CGP) (CGP-eligible PHAs) may apply for these funds. CIAP and CGP are hereinafter referred to as "modernization." Applications will be determined eligible using the modernization procedures outlined in Public Housing Modernization rule 24 CFR part 968, as amended by the interim rule for Public and Indian Housing, Revised Comprehensive Improvement Assistance Program, published on March 15, 1993 (58 FR 13916), (as modified by this NOFA).

Applications must meet the threshold approvability requirements in Section IV.B of this NOFA, including the following requirements which must be addressed in the PHA's Narrative Statement accompanying its application, and will be rated by a panel(s) on the Technical Review Factors listed in Section IV.E. of this NOFA.

1. A project proposed for MROP activities must have long-term viability after reconstruction and the annual contributions contract (ACC) for the project must remain in effect for 40 years. In determining viability, the PHA must have a comprehensive plan (funded from other sources such as CIAP, CGP, donations, etc.) for the project for which the funds for MROP activities are being requested. The comprehensive plan for the project may be part of the PHA's comprehensive plan for modernization. The comprehensive plan must demonstrate a strategy which will assure that the entire development will be viable for a minimum period of 20 years. This strategy may include, but not be limited to, an estimate of the required amount needed for rehabilitation of the remaining portion of the development to the extent any additional rehabilitation is required; sources of funding for the additional work; any proposed demolition/disposition that may be planned; and written evidence of local government and resident support for the strategy.

2. A proposed MROP activities project must be a rental (not homeownership) project.

3. An "obsolete project or building" is one that has design or marketability problems that have resulted in:

a. Current vacancies of more than 25 percent of the units available for occupancy; or

b. (1) Estimated costs of the project (including any costs for lead-based paint abatement activities) that exceed 70 percent of the total current development cost limits for new construction of similar units in the area; and

(2) The project or building has:

(a) An occupancy density or a building height that is significantly in excess of that which prevails in the neighborhood; or

(b) A bedroom configuration that could be altered to better serve the needs of families seeking occupancy to public housing; or

(c) Significant security problems in and around the project; or

(d) Significant physical deterioration or inefficient energy and utility systems.

4. The deficiencies must be determined correctable under the CGP or the CIAP procedures (see 24 CFR part 968 and related issuances), to ensure long-term viability (a useful life with full occupancy) of more than 20 years after completion of reconstruction; the ACC for the project must remain in effect for 40 years.

5. Existing projects which consist of more than one building may have MROP activities funding in any single year limited to one or more (less than all) of a project's buildings. Where separate portions of an existing project receive MROP funding in different fiscal years, each portion must be given a separate MROP project number and the funds reserved must be sufficient to complete all of the reconstruction needed to make the portion viable; in such cases, the funds for each MROP project must be kept separate and may not be commingled.

6. A combination of MROP activities and modernization funds may be used within a project, but may not be used within the same units (or buildings, as applicable). For example, if an existing project consists of low-rise, row, and elevator buildings, an MROP activities project could be approved to include all or some of the row units, with the balance of units included in a modernization project. MROP funds may, however, be used in conjunction with Urban Revitalization Demonstration funds (HOPE VI) without limitation.

7. Management improvements are an eligible cost under MROP activities to the extent that such improvements are necessary for the viability of the project (i.e., to maintain the physical improvements resulting from the proposed redesign, reconstruction, or redevelopment MROP activities).

E. Restrictions

1. If partial demolition/disposition is required:

a. A demolition/disposition application must have been approved before the MROP activities application may be approved; or

b. The application must have been submitted along with evidence of approval by the unit of general local government in which the project is located. This approval may be obtained from the Chief Executive Officer.

2. Conversion of units (by combining small units to make larger units or vice versa) must either be approved before an MROP activities application involving conversion may be approved, or an application for said conversion must have been submitted, and the cost of any conversion must be considered in the MROP activities application.

3. Funding provided for MROP activities at a project may not be used for total demolition/disposition of that project, but may be used for partial demolition/disposition if required to meet long-term viability; however, 75 percent of the units in the project or portion of the project which comprises the MROP application must be reconstructed.

II. Application Process Overview

A. PHA Application

A PHA applying for development funds for MROP activities shall prepare a CIAP application, as modified by this NOFA. The initial review process shall follow the CIAP procedures; however, once selected, the application shall be processed under public housing development procedures.

B. Application Processing

The Field Office will screen each application for completeness and will provide the PHA with a 14 calendar-day opportunity to furnish any missing technical information or exhibits, or to correct technical mistakes. Each application will then be subjected to a "pass/fail" threshold examination by the Field Office. Each passing application will be rated as to the Technical Review Factors listed in Section IV.E. of this NOFA by a panel(s).

C. Application Approval

Panels comprised of representatives from various Field Offices will prepare rankings based on the panels' ratings and Headquarters will select applications for approval to the extent funds are available.

D. Disclosure of Information

The Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act) prohibits advance disclosure of funding decisions. (See 24 CFR part 4.) Civil penalties related to advance disclosure are set out in 24 CFR part 30. Application approval/non-approval notifications shall not occur until the Congressional notification process is completed. (See Section VIII.F of this NOFA for more detailed information.)

E. Records Retention

Applications and materials related to applications (e.g., application scoring sheets, and notifications of selection/non-selection) will be retained in the appropriate Field Office for five years, and be available for public inspection in accordance with 24 CFR part 12. (See Section VIII.G of this NOFA for more detailed information.)

III. Application Requirements

A. All Applicants

No more than one project (or portion of a project) may be proposed for MROP activities per application, although more than one application may be submitted by a PHA. Each application shall consist of an original and two copies, and must include the following:

1. Cover letter

The cover letter must identify the project proposed for MROP activities by its original project number (e.g., WY 22–2), and its total number of units (and buildings, if applicable). If fewer than the total number of units are being proposed, the cover letter shall summarize the PHA's plans for the remaining units. If more than one application is submitted, the cover letter must state the PHA's priorities for funding. The PHA must include a statement of whether the PHA will accept funding for the reconstruction of fewer units.

2. CIAP Application and Budget—Forms HUD 52822 and 52825

The application and budget forms must each be signed and dated and include the information as specified in the forms. No more than one original project number shall be included in each application submission.

3. Narrative Statement

The narrative statement must address each of the technical review factors under Section IV.E. of this NOFA, each of the eligibility criteria under Section I.D. of this NOFA and each of the restriction criteria under Section I.E. of this NOFA.

4. Demolition/Disposition or Conversion of Units

If, as part of the MROP activities, the PHA intends to demolish/dispose (demo/dispo) of some of the units or to convert units (combine small units to make larger ones, or vice versa), the PHA shall provide the date the demo/dispo or conversion was approved by HUD or the date the demo/dispo or conversion application was submitted. If the demo/dispo application has not yet been approved, the application for MROP activities that involves the demo/dispo of units must be accompanied by evidence of approval by the unit of general local government in which the project is located (it can be provided by the Chief Executive Officer). Development funds for MROP activities may not be used for total demo/dispo (see Section I.E.3. of this NOFA).

5. PHA Resolution In Support of the Application (Form HUD–52471)

Under this resolution, the PHA agrees to comply with all requirements of 24 CFR part 941. These requirements include, among others: nondiscrimination under the applicable civil rights laws; the requirements imposed by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601–4655); the accessibility requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and HUD's implementing regulations at 24 CFR part 8; and section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and HUD's implementing regulations at 24 CFR part 135. By executing the PHA resolution, the PHA also certifies that it will comply with the accessibility requirements of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131), and its implementing regulation at 28 CFR part 35.

6. Local Governing Body Resolution (Form HUD–52472)

If front-end funds are requested, the PHA must submit a Local Governing Body Resolution/ Transcript of Proceedings (Form HUD–52472).

7. Drug-Free Workplace

The PHA must submit the Certification for a Drug-Free Workplace (Form HUD–50070) in accordance with 24 CFR 24.630.

8. Certification for Contracts, Grants, Loans and Cooperative Agreements (Form HUD–50071)

In accordance with section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (the "Byrd Amendment") and the regulations at 24 CFR part 87, the PHA must certify that no federally appropriated funds have been paid or will be paid, by or on behalf of the PHA for influencing or attempting to influence an officer or employee of any agency, or a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant or loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modifications of any Federal contract, grant, loan, or cooperative agreement. (See also Section VIII.D of this NOFA.)

9. Form SF-LLL, Disclosure of Lobbying Activities

Also, in accordance with the Byrd Amendment and the regulations at 24 CFR part 87, the PHA must complete and submit Form SF-LLL if funds other than federally appropriated funds have been paid or will be paid by or on behalf of the PHA for influencing or attempting to influence an officer or employee of any agency, or a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant or loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modifications of any Federal contract, grant, loan, or cooperative agreement. (See also Section VIII.D of this NOFA.)

10. Disclosure of Government Assistance and Identity of Interested Parties (Form HUD 2880)

The PHA must submit the Applicant/Recipient Disclosure/Update Report (Form HUD–2880) in accordance with the requirements of 24 CFR part 12, subpart C.

IV. Field Office Processing of Applications

A. Initial Screening

1. Immediately after the deadline for receipt of applications, the Field Office will screen each application to determine whether all information and exhibits have been submitted; no qualitative evaluation will be made at this time.

a. If an application lacks any technical information or exhibit, or contains a technical mistake, the PHA will be advised in writing and will have 14

calendar days from the date of the issuance of HUD's notification to deliver the missing or corrected information or documentation to the Field Office. For example, the PHA Narrative Statement must address each of the technical review factors under Section IV.E., the eligibility criteria under Section I.D. and the restriction criteria under Section I.E. of this NOFA.

b. Curable technical deficiencies relate only to items that would not improve the substantive quality of the application, relative to the ranking factors.

c. If Forms HUD 52822 (Application) or HUD 52825 (Budget) are missing, the PHA's application will be considered substantively incomplete, and therefore ineligible for further processing. However, if other forms [for example, Form HUD 50070 (Drug Free Workplace Certification), Form HUD 50071 (Certification for Contracts, Grants, Loans and Cooperative Agreements), Form SF LLL (Disclosure of Lobbying Activities), if applicable, or Form HUD 2880 (Application/ Recipient Disclosure/Update Report)] are missing, or if there is a technical mistake, such as no signature or the wrong signature on a submitted form, the PHA will be given an opportunity to correct the deficiency.

2. The responsibility for submitting a complete application rests with the PHA. Failure of the Field Office to identify and provide a notice of deficiency to the PHA shall not relieve the PHA of the consequences of submitting an incomplete application.

3. An application that does not meet all of the NOFA requirements after the 14-day technical deficiency period will be removed from processing and determined to be unapprovable. If the PHA fails to correct deficiencies or fails to submit missing forms or certifications, or any certification is incomplete or not executed by the appropriate person(s), or the PHA Narrative Statement fails to address each of the Section IV.E. technical review factors, and each of the Section I.D. eligibility criteria and the Section I.E. restriction criteria, the application will not be examined for threshold approvability.

B. Application Threshold Approvability

After initial screening and upon expiration of the deficiency "cure" period, applications for which *all* the information, certifications, and documentation required by the NOFA have been received by HUD will be examined for threshold approvability. Applications that fail one or more of the threshold criteria will be removed from processing and determined to be unapprovable. Applications which successfully pass the threshold review (threshold-approvable applications) will, following Joint Review, be submitted by the Field Office to a panel(s) which will rate applications, using the criteria set out in Section IV.E. of this NOFA. *All* applications must meet the following thresholds to be determined threshold-approvable:

1. The MROP activities application must meet the eligibility criteria of Section I.D. and the restriction criteria of Section I.E.

2. The PHA may not have any litigation pending which would preclude approval of the application. The PHA must have the required local cooperation and be legally eligible to develop, own, and operate public housing under the U.S. Housing Act of 1937 and the application must have a properly executed and complete PHA Resolution (Form HUD 52471) referring to the need for front-end funding, if requested, and a Local Governing Body Resolution (HUD 52472) which approves the request for front-end funds, if front-end funds are requested.

(**Note:** The PHA Resolution certifies to the PHA's intent to comply with all requirements imposed by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601–4655); the accessibility requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and HUD's implementing regulations at 24 CFR part 8; and section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and HUD's implementing regulations at 24 CFR part 135. By executing the PHA resolution, the PHA also certifies that it will comply with the accessibility requirements of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131), and its implementing regulation at 28 CFR part 35.)

3. The Field Office must determine that the PHA has or will have the capability (as defined by Section IV.E.(1)(c)) to complete the MROP reconstruction activities and manage the resulting housing. The Field Office shall determine capability based upon the PHA's overall performance, which includes the PHA's total score under the Public Housing Management Assessment Program (PHMAP) (see 24 CFR part 901), and the PHA's most recent fiscal audit.

a. A PHA shall not be determined to lack administrative or development capability simply because it has no recent experience in developing or managing public/assisted housing.

b. No application shall be determined to be approvable if the PHA has failed to return excess advances received during development or modernization, or amounts determined by HUD to constitute excess financing based on a HUD-approved Actual Development Cost Certificate (ADCC) or Actual Modernization Cost Certificate (AMCC), unless HUD has approved a pay-back plan.

4. There are no environmental factors precluding the MROP activities.

5. The PHA must be in compliance with civil rights laws and equal opportunity requirements. A PHA will be considered to be in compliance if (1) 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; (2) there is no adjudication of a civil rights violation in a civil action brought against it by a private individual, unless the applicant demonstrates that it is operating in compliance with a court order designed to correct the area(s) of noncompliance; (3) there is no deferral of Federal funding based upon civil rights violations; (4) there is no pending civil rights suit brought against the PHA by the Department of Justice; or (5) 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.

C. Joint Review

In accordance with the designation of projects requiring Joint Reviews, the Field Office will conduct a (either on-site or off-site) Joint Review for each threshold-approvable MROP activities application as early as possible pursuant to the interim rule for the revised CIAP program, published on March 15, 1993 (58 FR 13916). The purpose of the Joint Review is to allow the Field Office to more thoroughly understand the goals of the proposed MROP so it can prepare written comments summarizing the results of the Joint Review; in contrast to the CIAP procedures, the PHA's MROP application shall not be modified as a result of the Joint Review in any way.

D. Field Submissions

For each threshold-approvable application, the following must be prepared and submitted by the Field Office to the panel(s):

1. Copy of each application, narrative description of the number of units and units by bedroom size, structure type(s), cost area, funding required, metro/non-metro designation, results of the eligibility determinations made under Section I.D. of this NOFA and the

restriction determinations under Section I.E. of this NOFA, as well as the results of the Joint Review pursuant to Section IV.C. of this NOFA; and

2. Review sheet summarizing critical information about the project, including a brief description of proposed MROP activities and their proposed cost including any management improvements and a statement of the determination made as to the extent such improvements are necessary to maintain the physical improvements resulting from the proposed MROP activities, the applicable total development cost limitation, a discussion of the relationship and approval date of any demolition/disposition or conversion, and the feasibility of MROP activities compared to demolition/disposition.

E. Panel Review Criteria

The panel(s) will review and rate each application on the basis of the following Technical Review Factors; the panel(s) may request information from the Field Office, or make site visits, as needed:

MROP activities panel technical review factors	Points
(1) PHA's management capability to carry out the proposed MROP activities: (Maximum of 30 points)	
(a) PHMAP overall rating 60–100 and	15
(b) PHMAP (#12) development and (#1) modernization scores A–B average or	15
(c) PHMAP overall rating <60, but contingent contract is included meeting procurement requirements with qualified entity to act as project administrator on PHA's behalf	30
(2) The expected term of useful life of the project or building after completion of MROP activities. (Maximum of 30 points)	
(a) The plan/strategy is comprehensive and demonstrates that the rehabilitation will result in a useful life of at least 20 years; e.g., management deficiencies are addressed; all physical deficiencies are addressed; local and resident support are integrated throughout the project improvement effort	1–10
(b) Degree of Resident Involvement and degree of PHA activity in resident initiatives, including resident management, economic development, and drug elimination efforts	1–5
(c) Degree of local government and private sector involvement and support	1–5
(d) Evidence of satisfactory maintenance of other developments in the PHA's inventory.	1–10
(3) The likelihood of achieving full occupancy of the reconstructed units comprising the project or building after completion of MROP activities. (Maximum of 40)	
(a) Need—The PHA's needs for CIAP/CGP/URD are so great that there is little or no likelihood this project, which has demonstrated need, will be modernized in the foreseeable future without MROP funds.	1–30
(b) Adequate occupancy systems/procedures are in place or will be in place to achieve full occupancy once modernized	1–10
MROP activities panel total possible points	100

V. MROP Activities Funding and Further Processing

A. Each MROP activities application selected for funding by Headquarters shall:

1. Have funds reserved in an amount of at least 70 percent of the development cost limitation for the area and:

a. The reservation amount will be "trended" to preclude the need for amendment funds;

b. The trend will be calculated by multiplying the percent of development cost by 5.4 percent (1.054), rounded to the nearest $50;

2. Be assigned a development project number and entered into the appropriate HUD data systems; and

3. During and after fund reservation, development procedures shall be followed (24 CFR part 941 and Handbook 7417.1 REV–1) *except:*

a. MROP activities work may only be accomplished by:

(1) Sealed bid procurement method with award to the lowest responsible bidder; or

(2) Competitive proposal method as permitted for modernization projects under Notice PIH 93–50 (HA), whereby the PHA would execute a fixed price contract in which the contractor would be responsible for design of specific work items identified in the Request for Proposals, soliciting and contracting for construction work, contract administration and construction inspection; the contract could either provide for progress payments, as in the sealed bid method, or a lump sum payment after successful completion of all work;

b. CIAP modernization standards set forth in Handbook 7485.2 REV–1 must be used;

c. The PHA must incorporate its approved MROP activities application into a PHA Proposal (Form HUD–52483A);

d. The special MROP Annual Contributions Contract (Form HUD–53010–I), included in Notice PIH 89–41(HUD), must be used;

e. There will be no amendment funds to increase the original amount of the MROP activities fund reservation.

VI. Checklist of Application Submission Requirements

A. Application Checklist

PHAs may use the following application checklist, which enumerates the submission requirements of Section III of this NOFA.

1. Forms HUD–52822 and HUD–52825, CIAP Application and CIAP Budget;

2. Narrative statement addressing each of the eligibility criteria under Section I.D. of this NOFA, each of the restriction criteria under Section I.E. of this NOFA, and each of the Technical Review Factors under Section IV.E. of this NOFA;

3. Information/certification, as applicable, if the application involves demo/dispo or conversion of units;

4. HUD–52471, PHA Resolution in Support of Public Housing;

5. HUD–52472, Local Governing Body Resolution, if front-end funds are being requested by the PHA.

[Note: If front-end funds are requested, the HUD–52471 must be appropriately modified.];

6. PHA statement identifying its funding preferences if more than one application is being submitted;

7. HUD–50070, PHA Certification for a Drug-Free Workplace;

8. HUD–50071, Certification for Contracts, Grants, Loans and Cooperative Agreements;

9. Form SF–LLL, Byrd Amendment Disclosure and Certification Regarding Lobbying, only if the applicant determines it is applicable;

10. Form HUD–2880, Disclosure of Government Assistance and Identity of Interested Parties.

B. Application Packets

Forms comprising the application package may be obtained from the HUD Field Office.

VII. Other Matters

A. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, implementing 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 between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, 451 Seventh Street SW., room 10276, Washington, DC 20410.

B. Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this NOFA will not have substantial, direct effects on States, on their political subdivisions, or on their relationship with the Federal government, or on the distribution of power and responsibilities between them and other levels of government. The NOFA will provide PHAs with funding for public housing development MROP activities.

C. Family Impact

The General Counsel, as the Designated Official for Executive Order 12606, the Family, has determined that the provisions of this NOFA do not have the potential for significant impact on family formation, maintenance and general well-being within the meaning of the Order. To the extent that the funding provided through this NOFA results in additional or improved housing, the effects on the family will be beneficial.

D. Prohibition Against Lobbying Activities

The Byrd Amendment. The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) 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. A certification is required, at the time the application for funds is made, that Federally appropriated funds are not being or have not been used in violation of section 319 and that disclosure will be made of payments for lobbying with other than Federally appropriated funds. Also, there is a standard disclosure form, SF–LLL, "Disclosure Form to Report Lobbying," which must be used to disclose lobbying with other than Federally appropriated funds.

E. Prohibition Against Lobbying of HUD Personnel

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.

HUD's regulation implementing section 13 is codified at 24 CFR part 86. If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule. Appendix A of this rule contains examples of activities covered by this rule.

Any questions concerning 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. 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.

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. That regulation 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 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 by 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. Accountability in the Provision of HUD Assistance

HUD's regulations at 24 CFR part 12 implement section 102 of the HUD Reform Act. Section 102 contains a number of provisions designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. The following requirements concerning documentation and public access disclosures are applicable to assistance awarded under this NOFA.

1. Documentation and Public Access

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.)

2. Disclosures

HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period of less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (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.)

Dated: May 13, 1994.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

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LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

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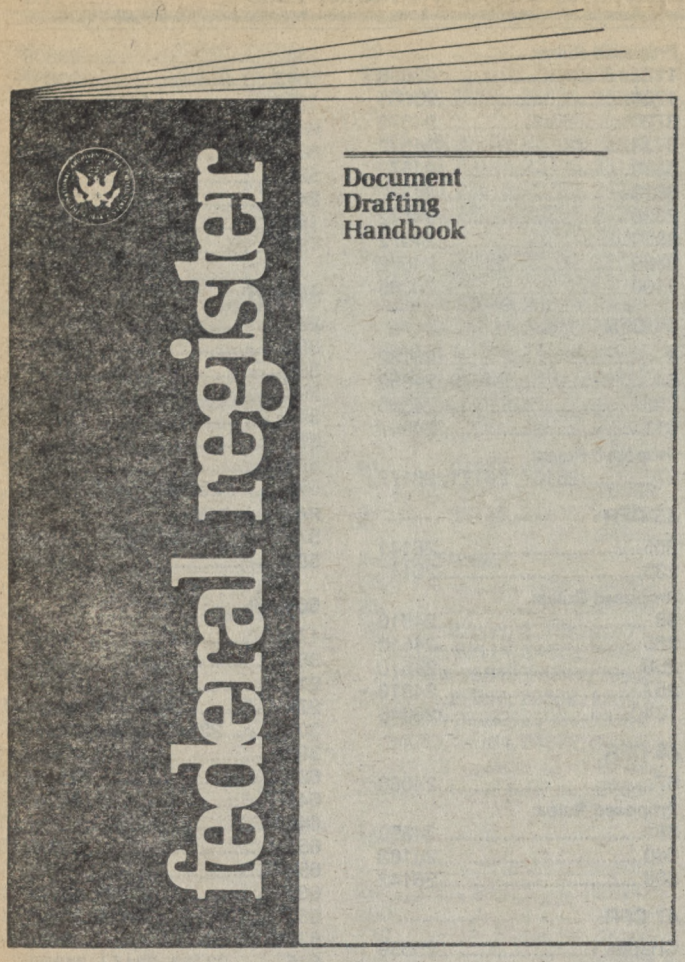

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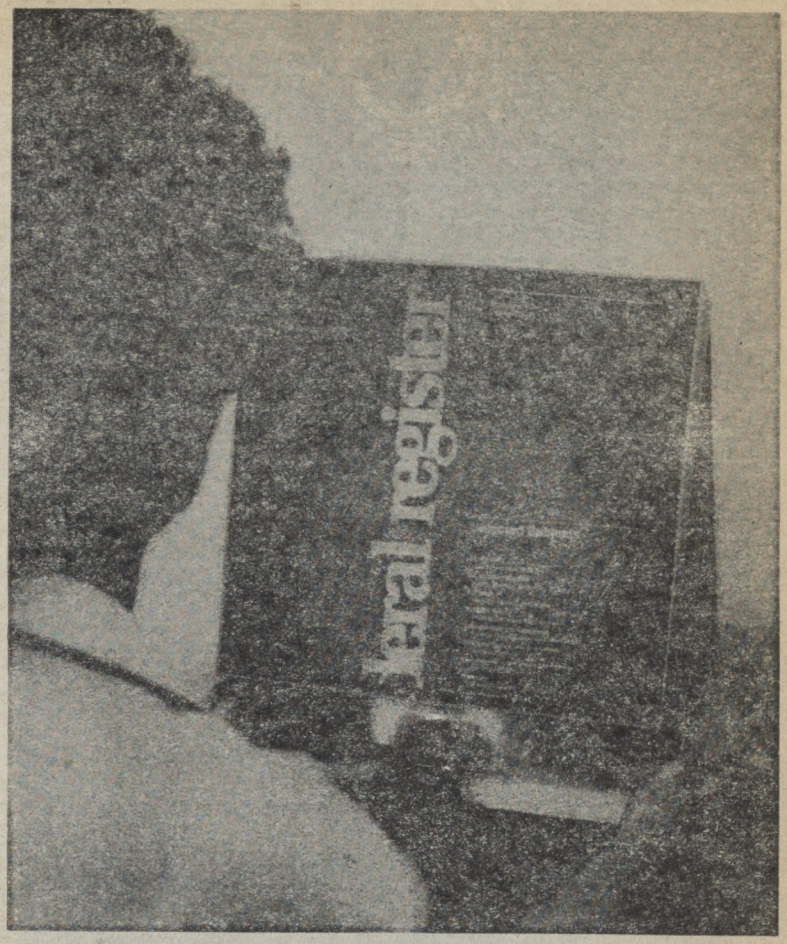

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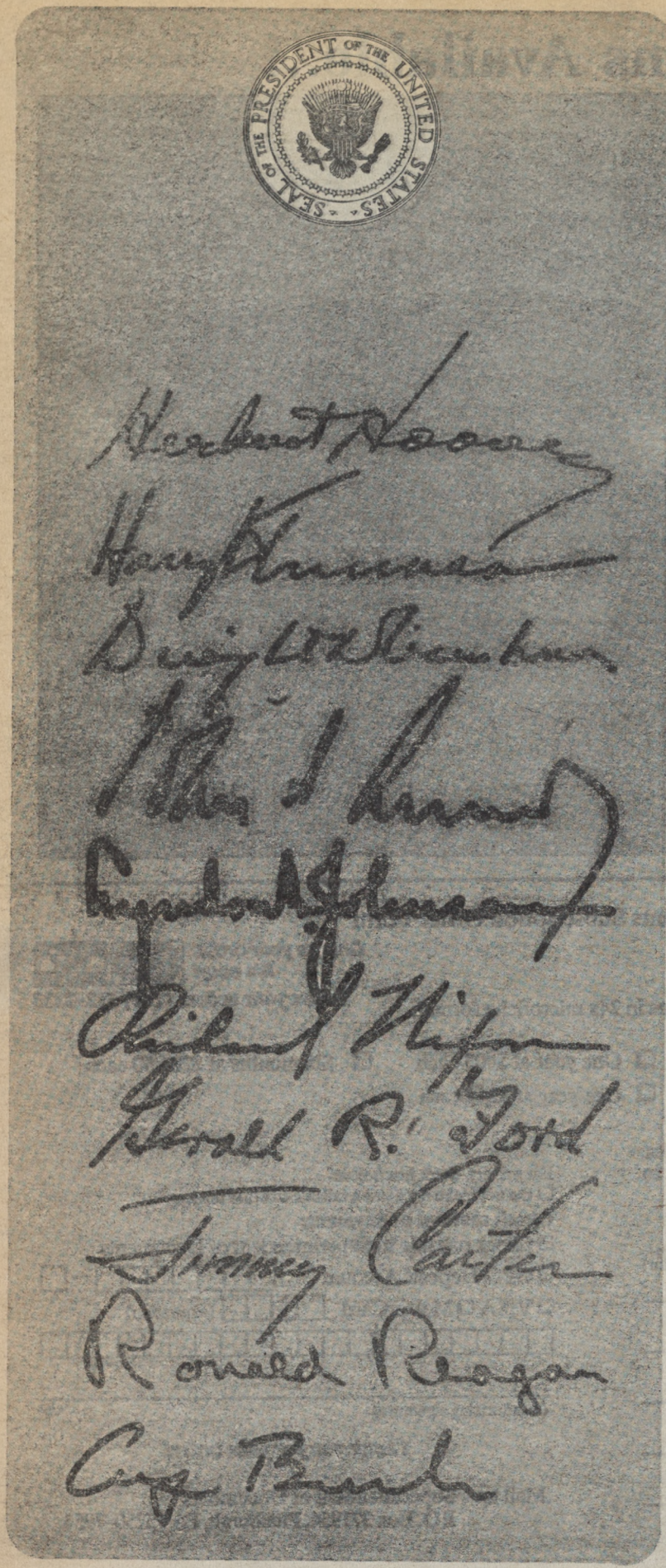

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