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

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Rules and Regulations

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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.

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Practices and Procedures

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: The Board is amending its practices and procedures to identify the evidence which an agency must provide to show compliance with an interim relief order and to provide for enforcement of interim relief in circumstances where the sanction of dismissing the agency's petition for review is ineffective. This amendment revises the Board's regulation to more precisely reflect the language of the Whistleblower Protection Act of 1989, 5 U.S.C. 7701(b)(2)(A).

EFFECTIVE DATE: June 16, 1994.

FOR FURTHER INFORMATION CONTACT: Robert Taylor, (202) 653–7200.

SUPPLEMENTARY INFORMATION: Under 5 U.S.C. 7701(k), the Board is authorized to prescribe regulations to carry out the purpose of 5 U.S.C. 7701(b)(2). An appellant who is the prevailing party in an initial decision under 5 U.S.C. 7701(b)(1) may be entitled to interim relief pending the outcome of any petition for review under 5 U.S.C. 7701(e). In *Ginocchi v. Department of the Treasury*, 53 M.S.P.R. 62, 68 n.4 (1992), the Board ruled that it would not entertain motions for compliance with an order of interim relief and that the appellant's remedy for an agency's failure to provide the ordered interim relief would be a motion to dismiss the agency's petition for review. However, this sanction is an ineffective means to obtain compliance in cases where the appellant or an intervenor petitions for review of a decision entitling the appellant to interim relief, such as a decision mitigating the penalty imposed by the agency. The new § 1201.115(c) implements the Board's determination that in such cases the appropriate enforcement mechanism is the Board's authority to order withholding of the salary of the agency official responsible for complying with the interim relief order.

Under § 1201.115(b)(1), a petition for review or cross petition for review by the agency must be accompanied by evidence that the agency has provided any interim relief ordered (or by the evidence relating to an "undue disruption" determination which is specified in § 1201.115(b)(2)). New § 1201.116(a) implements *Ginocchi, supra*, by providing that the appellant may request dismissal of the agency's petition for failure to provide the required interim relief (or the required alternative evidence). It clarifies that dismissal may be sought in either the appellant's response to the agency's petition or in a later motion to dismiss provided the latter is based on information not readily available before the time limit for responding to the agency's petition for review. New § 1201.116(b) provides for petitions for enforcement of interim relief when such relief is still due after issuance of the final decision (e.g., a final pay check or a lump sum payment of unused annual leave earned during the interim period) and the relief sought is not available through a petition for enforcement of the final decision because the appellant is not the prevailing party.

The Board is publishing this rule as a final rule pursuant to 1204(h).

List of Subjects in 5 CFR Part 1201

Administrative practice and procedure, Government employees.

Accordingly, the Merit Systems Protection Board amends 5 CFR part 1201 as follows:

PART 1201—[AMENDED]

1. The authority citation for part 1201 continues to read as follows:

Authority: 5 U.S.C. 1204 and 7701 unless otherwise noted.

2. In § 1201.115, paragraph (c) is redesignated as paragraph (d) and paragraphs (b)(1) and (b)(2) are revised and a new paragraph (c) is added to read as follows:

§ 1201.115 Contents of petition for review.

* * * * *

(b)(1) If the appellant was the prevailing party in the initial decision, and the decision granted the appellant interim relief, any petition for review or cross petition for review filed by the agency must be accompanied by evidence that the agency has provided the interim relief required, except when the agency has made a determination as described in paragraph (b)(2) of this section. The agency may comply by submitting an SF 50 or SF 52, a letter from an agency official directing the appellant to return to work and informing the appellant of his or her reinstatement as of the date of the initial decision, or an affidavit or declaration specifying the manner of the agency's compliance. The interim relief must be effected retroactively to the date of the initial decision. Cancellation of the appealed action or relief effected retroactively to the date of the action will result in dismissal of the agency's petition for mootness.

(2) Under 5 U.S.C. 7701(b)(2), if the initial decision provides interim relief which requires that the appellant be returned to his or her place of employment pending the outcome of any petition for review and the agency determines that the return or presence of the appellant will be unduly disruptive to the work environment, the agency must notify both the appellant and the judge in writing. The agency must also provide evidence of such notification to the Board at the time of filing a petition or cross petition for review. The evidence must show that the agency has provided that the appellant will receive appropriate pay, compensation, and all other benefits as terms and conditions of employment from the date of the initial decision until a final decision is issued.

* * * * *

(c) If an appellant or an intervenor files a petition or cross petition for review of an initial decision ordering interim relief, upon order of the Clerk of the Board the agency must submit evidence that it has provided the interim relief required (or, where applicable, the evidence specified in paragraph (b)(2) of this section), *and* it must submit the name of the official responsible for compliance. The agency's failure to submit acceptable evidence of compliance with the interim relief order is a basis for the Board to order the withholding of the salary of

the responsible official pursuant to 5 U.S.C. 1204(e)(2)(A) and 5 CFR 1201.183(c). This sanction is in addition to the dismissal of an agency petition or cross petition for review provided for in paragraph (b)(4) of this section.

* * * * *

3. Sections 1201.116 through 1201.119 are redesignated as §§ 1201.117 through 1201.120, and a new § 1201.116 is added to read as follows:

§ 1201.116 Appellant requests for enforcement of interim relief.

(a) *Before a final decision is issued.* If the agency files a petition for review or a cross petition for review and has not provided required interim relief, the appellant may request dismissal of the agency's petition. Any such request must be filed with the Clerk of the Board within 25 days of the date of service of the agency's petition. A copy of the response must be served on the agency at the same time it is filed with the Board. The agency may respond with evidence and argument to the appellant's request to dismiss within 15 days of the date of service of the request. If the appellant files a motion to dismiss beyond the time limit, the Board will dismiss the motion as untimely unless the appellant shows that it is based on information not readily available before the close of the time limit.

(b) *After a final decision is issued.* If the appellant is not the prevailing party in the final Board order, and if the appellant believes that the agency has not provided full interim relief, the appellant may file an enforcement petition with the regional office under § 1201.182. The appellant must file this petition within 20 days of learning of the agency's failure to provide full interim relief. If the appellant prevails in the final Board order, then any interim relief enforcement motion filed will be treated as a motion for enforcement of the final decision. Petitions under this subsection will be processed under § 1201.183.

Dated: June 10, 1994.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 94–14590 Filed 6–15–94; 8:45 am]

BILLING CODE 7400–01–M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272 and 273

[Amendment No. 355]

RIN 0584–AB79

Food Stamp Program: Utility Reimbursement Exclusion

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim Rule and request for comments.

SUMMARY: This action excludes certain utility reimbursements made by the Department of Housing and Urban Development (HUD) and Farmers Home Administration (FmHA) from income consideration in determining Food Stamp Program eligibility and benefits. This action will result in increased benefits to households that receive the reimbursements, a consistent nationwide policy, greater consistency in the treatment of housing and energy assistance payments, and more consistency with the Aid to Families with Dependent Children (AFDC) Program.

DATES: This rule is effective and must be implemented no later than August 1, 1994. Comments must be received on or before August 15, 1994 to be assured of consideration.

ADDRESSES: Comments should be submitted to Judith M. Seymour, Eligibility and Certification Regulation Section, Certification Policy Branch, Program Development Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302. Comments may also be datafaxed to the attention of Ms. Seymour at (703) 305–2454. All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia, Room 720.

FOR FURTHER INFORMATION CONTACT: Questions regarding the proposed rulemaking should be addressed to Ms. Seymour at the above address or by telephone at (703) 305–2496.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12866

The Food and Nutrition Service is issuing this interim rule in conformance with Executive Order 12866 and it has been designated "economically significant."

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule in 7 CFR part 3015, Subpart V and related Notice (48 FR 29115), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Ellen Haas, the Assistant Secretary for Food and Consumer Services, has certified that this rule does not have a significant economic impact on a substantial number of small entities. State and local welfare agencies will be the most affected to the extent that they administer the Program.

Paperwork Reduction Act

This rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Regulatory Impact Analysis

Need for Action

This rule is required to eliminate inconsistent policies resulting from litigation, promote equity in the treatment of housing and energy assistance, and increase consistency with the Aid to Families with Dependent Children program.

Benefits

This action increases benefits to low-income households responsible for paying utility expenses separately from their rent who receive utility reimbursements from HUD and FmHA.

Costs

It is estimated that this action will increase the cost of the Food Stamp Program by approximately $13 million for each month of its implementation in FY 1994 and $160 million in FY 1995.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive

effect unless so specified in the "Effective Date" paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the Food Stamp Program the administrative procedures are as follows: (1) For Program benefit recipients—State administrative procedures issued pursuant to 7 U.S.C. 2020(e)(1) and 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 (for rules related to non-quality control (QC) liabilities) or Part 284 (for rules related to QC liabilities); (3) for Program retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

Public Participation and Effective Date

The provisions of this rulemaking are required to be effective and implemented no later than August 1, 1994. Because of the need to establish a consistent nationwide policy with respect to the treatment of the specified utility reimbursements, Ellen Haas, Assistant Secretary for Food and Consumer Services, has determined, pursuant to 5 U.S.C. 553, that public comment on this rulemaking prior to implementation is impracticable. However, because we believe that the administration of the rule may be improved by public comment, comments are solicited on this rule for 60 days. All comments will be analyzed, and any appropriate changes to the rule will be incorporated in the subsequent publication of a final rule.

Background

The HUD utility reimbursements excluded from Food Stamp Program (Program) income consideration by this rule are provided pursuant to the United States Housing Act of 1937 (the Housing Act), 42 U.S.C. 1437, to comply with a provision of the Housing Act (42 U.S.C. 1437a(a)(1)) that requires HUD to limit the shelter costs of tenants in Federally assisted housing to 30 percent of their income. In calculating a tenant's rent payment, HUD has interpreted the term "rent" to include the cost of utilities and other services, including electricity, gas, heating fuel, water and sewerage, and trash and garbage collection (24 CFR 813.102, 965.472, 965.476). In some housing, utilities are included in the tenant's rent. In units in which the utilities are paid directly by the tenant, HUD permits a deduction to be made from the rent paid to the owner on account of the separate payment being made to the utility supplier. This deduction, provided for in 24 CFR 813.102 and 913.102, for the estimated value of utilities and charges for other housing services payable directly by the family is called a "utility allowance." The amount of the utility allowance is based, not on an individual family's expenses, but on a community-wide standard. Therefore, the tenant's actual utility costs may be more or less than the allowance.

For most tenants, the amount of the utility allowance is less than the amount they are required to pay toward their rent including utilities. In most cases, the utility allowance involves no direct payment to the household, but is merely a credit reducing the household's contribution to the landlord. If the utility allowance exceeds the rent that can be charged for a dwelling, the excess is paid in the form of a "utility reimbursement" or rebate to the household.

Similar reimbursements are made to some rural low-income households by the Farmers Home Administration (FmHA) of the Department of Agriculture as part of its Rental Assistance Program which provides, pursuant to 7 CFR pt. 1930, subpt. C; pt. 1944, subpt. E, loans for housing in rural areas. Under the FmHA Program, the borrower (the owner of the property) may apply for Rental Assistance for each tenant in the project who meets the eligibility criteria. The Rental Assistance payment equals the difference between 30 percent of the household's income and the sum of the rent plus the utility allowance for the project. If the tenant pays the utilities, the total Rental Assistance payment from FmHA is made to the owner, who is obligated to pass on to the tenant the portion allocated to utilities. When FmHA's utility allowance is more than 30 percent of the household's adjusted income, the landlord is obligated to forward the difference to the tenant as a utility reimbursement.

Under section 5(d) of the Food Stamp Act of 1977 (7 U.S.C. 2014(d)), any income received by the household directly or indirectly must be counted in determining the household's eligibility and benefits, except for the exclusions listed in the Act. Neither the Food Stamp Act nor current regulations specifically address the treatment of HUD and FmHA utility reimbursements. It is clear that Federal energy assistance payments are excluded by section 5(d)(11) of the Food Stamp Act. However, the HUD and FmHA reimbursements are not provided specifically for energy assistance alone. Current policy requires counting these HUD utility reimbursements as income. This policy is applicable nationwide except in jurisdictions in which the reimbursements are excluded by judicial decision.

In the past, it was our policy that utility reimbursements did not qualify as energy assistance. In response to questions concerning the payments, we issued Policy Memo 90–6 addressing HUD payments and Policy Memo 3–91–04 regarding FmHA payments. Policy Memo 90–6 provides that any amount paid by HUD directly to the household as a utility reimbursement or indirectly to the utility provider must be counted as income to the household. Under Policy Memo 3–91–04, the utility reimbursement paid by the landlord to the tenant is counted as income to the household.

This policy has been maintained over several years and has been successfully defended in court on a number of occasions. While we believe the current policy is a permissible interpretation of the statute, we believe it is not in the best interest of the Program to continue to litigate this issue. In reexamining the policy, we have determined that there are several compelling reasons to change the policy so as to exclude the utility reimbursements in the future.

First, although the HUD and FmHA utility reimbursements are not provided specifically for energy assistance, a substantial portion of a household's utility expense is for heating and cooling. A change in policy to exclude the utility reimbursements is not inconsistent with the specific exclusion in section 5(d)(11) of the Food Stamp Act and 7 CFR 273.9(c)(11) for Federal energy assistance. Excluding the utility reimbursements under the existing regulatory provision would achieve consistency in the treatment of Federal energy assistance.

Second, the current policy is inconsistent with the policy of the Aid to Families with Dependent Children (AFDC) Program in most States. Increasing consistency between the Food Stamp and AFDC Programs is a Department priority because it makes the Programs simpler to administer and more understandable to households.

Maintaining the current policy also causes inconsistent treatment of households in subsidized housing between those in traditional housing whose utilities are included in their rent and households who are responsible for paying their own utility expenses. Excluding the utility reimbursements would provide greater consistency in treatment of various forms of housing assistance.

Finally, a change in policy eliminates the need to maintain at least two distinct and conflicting policies for the foreseeable future because courts in some jurisdictions have affirmed the current policy and others have found it insupportable.

Therefore, this rule amends 7 CFR 273.9(c)(11) to provide that payments or allowances made for the purpose of providing energy assistance under any Federal law, including HUD and FmHA reimbursements, are excluded from income. We are making a conforming amendment to 7 CFR 273.10(d)(1)(i) to provide that a utility expense which is reimbursed or paid by an excluded payment, including HUD or FmHA utility payments, shall not be deductible. In accordance with Section 5(e) of the Act, 7 U.S.C. 2014(e), households that receive these payments will be entitled to use a standard utility allowance that includes a heating or cooling component only if they incur heating or cooling costs that exceed the amount of the excluded payment.

Implementation

This rule is effective and must be implemented no later than August 1, 1994. For quality control purposes, any variances resulting from the implementation of the rule shall be excluded from error analysis for 120 days from the required implementation date, in accordance with 7 CFR 275.12(d)(2)(vii), as modified by section 13951(c)(2) of Pub. L. 103–66. Section 13951(c)(2) extended the variance exclusion period of Section 16(c)(3)(A) of the Act, 7 U.S.C. 2025 (c)(3)(A), from a maximum of 90 days to 120 days. The provisions must be implemented for all households that newly apply for Program benefits on or after the required implementation date. The current caseload shall be converted to these provisions at household request, at the time of recertification, or when the case is next reviewed, whichever occurs first, and the State agency must provide restored benefits back to the required implementation date. If for any reason a State agency fails to implement on the required implementation date, restored benefits shall be provided, if appropriate, back to the required implementation date or the date of application, whichever is later.

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs—social programs, Penalties, Records, Reporting and recordkeeping requirements, Social Security, Students.

Accordingly, 7 CFR parts 272 and 273 are amended as follows:

1. The authority citation for Parts 272 and 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2032.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1, a new paragraph (g)(134) is added to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(134) *Amendment No. 355.* The provisions of Amendment No. 355 are effective and must be implemented on August 1, 1994. Any variance resulting from implementation of the provisions of this amendment shall be excluded from error analysis for 120 days from this required implementation date in accordance with 7 CFR 275.12(d)(2)(vii) as modified by section 13951(c)(2) of Pub. L. 103–66. The provisions must be implemented for all households that newly apply for Program benefits on or after the required implementation date. The current caseload shall be converted to these provisions at household request, at the time of recertification, or when the case is next reviewed, whichever occurs first, and the State agency must provide restored benefits back to the required implementation date. If for any reason a State agency fails to implement on the required implementation date, restored benefits shall be provided, if appropriate, back to the required implementation date or the date of application, whichever is later.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

§ 273.9 [Amended]

3. In 273.9, the first sentence of paragraph (c)(11) introductory text is amended by adding the words ", including utility reimbursements made by the Department of Housing and Urban Development and the Farmers Home Administration" before the period.

4. In 273.10, paragraph (d)(1)(i) is amended by adding a sentence at the end of the paragraph to read as follows:

§ 273.10 Determining household eligibility and benefit levels.

* * * * *

(d) *Determining deductions.*

* * *

(1) *Disallowed expenses.*

(i) * * * A utility expense which is reimbursed or paid by an excluded payment, including HUD or FmHA utility reimbursements, shall not be deductible.

* * * * *

Dated: June 13, 1994.

Ellen Haas,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 94–14713 Filed 6–15–94; 8:45 am]

BILLING CODE 3410–30–U

Agricultural Marketing Service

7 CFR Parts 915 and 944

[Docket Nos. FV93–915–2FR and FV91–288–FR]

Avocados Grown in South Florida and Imported Avocados; Changes to Maturity and Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises minimum maturity requirements and suspends certain reporting requirements for avocados grown in South Florida. This rule is designed to ensure that only mature fruit is shipped to the fresh market, thereby improving grower and importer returns and promoting orderly marketing conditions. For avocados imported into the United States, this final rule reinstates maturity requirements with certain revisions; adds an exemption for certain avocado varieties; removes the exemption for avocados grown in the southern hemisphere; and adds exemptions from maturity requirements for avocados imported for certain uses. This rule is needed so that imported avocados meet the same minimum size and color maturity requirements as those established for avocados under the Federal marketing order covering Florida avocados, consistent with section 8e of the Agricultural Marketing Agreement Act of 1937.

EFFECTIVE DATE: June 20, 1994.

FOR FURTHER INFORMATION CONTACT: Caroline C. Thorpe, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; telephone: 202–720–5127; or Aleck J. Jonas, Southeast Marketing Field Office, USDA/AMS, P.O. Box 2276, Winter Haven, Florida 33883; telephone: 813–299–4770.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 148 and Order No. 915 (7 CFR part 915), as amended, regulating the handling of avocados grown in South Florida, hereinafter referred to as the order. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule is also issued under section 8e of the Act, which requires the Secretary of Agriculture to issue grade, size, quality, or maturity requirements for certain listed commodities, including avocados, imported into the United States that are the same as, or comparable to, those imposed upon the domestic commodities, under Federal marketing orders. The Secretary has determined that the maturity requirements for imported avocados should be the same as those established for avocados grown in South Florida under the order.

The Department is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of the import rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility. Import regulations issued under the Act are based on those established under Federal marketing orders.

There are about 65 avocado handlers subject to regulation under the marketing order covering avocados grown in Florida and about 95 avocados producers in South Florida. There are about 20 avocado importers who will be subject to the avocado import maturity requirements. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $500,000, and small agricultural service firms, which include avocado handlers and importers, have been defined by the Small Business Administration as those having annual receipts of less than $5,000,000. The majority of the Florida avocado handlers and producers, and avocado importers may be classified as small entities.

This rule finalizes two proposed rules: the first proposed revisions in the maturity and reporting requirements for avocados grown in Florida; the second proposed reinstatement and revision of maturity requirements for imported avocados. Both proposed rules were published in the April 4, 1994, **Federal Register** [59 FR 15658 and 15661] and provided 30 days to interested persons to file comments. No comments were received. However, several typographical and printing errors were identified in both proposed rules as published. This final rule corrects the errors in Table I of both rules: (1) For the Booth 8 variety after October 10, the minimum diameter is changed from 3 3/16 to 3 1/16 inches; (2) for the Chica variety after October 3, the minimum diameter is changed from 3 1/16 to 3 4/16 inches.

The Avocado Administrative Committee (committee) works with the Department in administering the order, and it meets prior to and during each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Florida avocados.

The committee met December 8, 1993, and unanimously recommended that the shipping schedules for avocados be revised and that certain reporting requirements be temporarily suspended. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department reviews committee recommendations, information submitted by the committee and other information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

Maturity requirements for avocados grown in Florida, based on minimum weights, diameters, and skin color, are specified in § 915.322 [7 CFR 915.322], and are in effect on a continuous basis. These maturity requirements specify minimum weights and diameters for specific shipping periods for some 60 varieties of avocados, and color specifications for those varieties which turn red or purple when mature. The maturity requirements for the various varieties of avocados are different, because each variety has different characteristics. The maturity requirements for each avocado variety are based on maturity test results.

These maturity requirements are designed to prevent shipments of immature avocados to the fresh market, especially during the early part of the harvest season for each variety. Providing fresh markets with mature fruit is an important aspect of creating consumer satisfaction and is in the interest of both producers and consumers. Fresh shipments of Florida avocados usually begin with light shipments of early varieties in May, and they continue until the following March or April, with heaviest shipments occurring from July through December.

This final rule revises the shipping schedules for the avocado varieties specified in Table I of paragraph (a)(2) of § 915.322 (7 CFR part 915.322) to synchronize those schedules with any calendar year. The previous schedules needed to be adjusted to each new year to ensure that dates and weekdays conformed to each new year. The schedules in Table I are similar to previous calendars, except that the maturity schedules have fixed dates, which become effective on the Monday nearest the date specified in Table I. The new schedules are expected to conform more closely to the needs of the industry. This final rule also exempts from maturity requirements the Hass, Fuerte, Zutano, and Edranol varieties of avocados, since these varieties of avocados are not commercially grown in the production area in Florida.

A minimum grade requirement of U.S. No. 2 currently in effect on a continuous

basis for avocados grown in Florida under § 915.306 (7 CFR part 915.306), and for avocados imported into the United States under § 944.28 (7 CFR part 944.28) remains in effect unchanged by this action.

Florida avocado handlers may ship, exempt from the minimum grade, size, and maturity requirements effective under the order, up to 55 pounds of avocados during any one day under a minimum quantity provision, and up to 20 pounds of avocados as gift packs in individually addressed containers. Also, avocados grown in Florida utilized for commercial processing are not subject to the grade, size, and maturity requirements under the order.

Paragraph (d) of § 915.150 (7 CFR part 915.150), currently requires that each handler, at the end of the day's operation, report to the committee the number of containers (¼ Bushel, ½ Bushel, and ⅘ Bushel) of avocados sold and delivered within the State of Florida. This final action suspends paragraph (d) of § 915.150 for the next two seasons, through March 31, 1996. This temporarily suspends the requirement that handlers file the "Avocado Handler Daily Size Report Form" which takes about 0.083 hours to complete for each report. The committee has determined that information needed for operations, marketing policies, and compliance, could sufficiently be obtained from inspection certificates collected on a daily basis by program staff, and that information collected on the "Avocado Handler Daily Size Report Form" will not be needed for the next two seasons. Further, Hurricane Andrew reduced avocado production by almost half, and this has reduced assessment collections, resulting in a need to reduce staff and administration costs.

This rule is also issued under section 8e of the Act, which requires the Secretary of Agriculture to issue grade, size, quality, or maturity requirements for certain listed commodities imported into the United States, including avocados, that are the same as, or comparable to, those imposed upon the domestic commodities under Federal marketing orders.

Minimum size (weight and diameter) and skin color maturity requirements for imported avocados in § 944.31 (7 CFR 944.31) were continuously in effect for several years prior to their suspension by a final rule issued May 15, 1991 (56 FR 23009, May 20, 1991). The avocado import maturity requirements were temporarily suspended to provide the United States Trade Representative (USTR) adequate time to review contemplated changes in those requirements, as required by section 8e of the Act. Suspension of the avocado import maturity requirements became necessary when the Florida avocado maturity requirements in § 915.332 (7 CFR 915.332), upon which the avocado import maturity requirements were based, were revised on May 15, 1991 (56 FR 23005, May 20, 1991). This revision was finalized on September 4, 1991 (56 FR 46224, September 11, 1991). Section 915.332 was most recently amended to make calendar date adjustments in the shipping schedule for several varieties of Florida avocados on June 29, 1993 (58 FR 34684, June 29, 1993), and that rule was finalized on October 4, 1993 (58 FR 46759, September 3, 1993).

Prior to suspension, the avocado import maturity requirements were based on minimum weights and diameters applied to avocados grown in all foreign countries, except for those grown in southern hemisphere countries. Such requirements were applied to each variety for a specific time period during the first part of the shipping period. The minimum weights or diameters were not applied to avocados grown in southern hemisphere countries, such as Chile, where practically all imported southern hemisphere avocados have originated in recent years, because the southern hemisphere's avocado growing season and various shipping periods differ from those in Florida. The import maturity requirements based on minimum weights or diameters were applied to avocados grown in northern hemisphere countries, such as those in the Bahamas and the Dominican Republic, where practically all northern hemisphere imported avocados have originated in recent years, because their growing season and various shipping periods are similar to those in Florida.

The avocado import maturity requirements based on skin color for certain varieties of avocados which turn red, purple or black when mature were applied to avocados imported from all foreign countries in both the southern and northern hemispheres. Such requirements applied to all avocados grown in both hemispheres, because all such avocados turn color when mature regardless of where they are grown.

This final rule also reinstates the minimum size (weight and diameter) requirements for avocados and the skin color maturity requirements for avocados imported from all foreign countries by lifting the suspended provisions of § 944.31. However, this final rule exempts the Hass, Fuerte, Zutano, and Edranol varieties of avocados from such import maturity requirements, because such varieties are not grown in commercial quantities in Florida and regulated under the Florida avocado maturity requirements in § 915.332.

This final rule obviates the need for exempting avocados imported from the southern hemisphere, since the major varieties imported from the southern hemisphere are the Hass, Fuerte, Zutano, and Edranol varieties.

This final rule also adds language to § 944.31 to cite the minimum size (weight and diameter) and skin color maturity requirements, and define the term "diameter".

This final rule also exempts imported avocados under § 944.31 from minimum weight, diameter, and color maturity requirements if they are to be used in certain specified outlets. Similar exemptions from grade requirements established for imported avocados under § 944.28 were implemented by an interim final rule published in the **Federal Register** [58 FR 69182, December 30, 1993], with an effective date of January 1, 1994.

The avocado import maturity regulation [7 CFR 944.31] is based on the maturity requirements in effect for avocados grown in Florida under the order throughout the year. Under the order, any person may handle avocados without regard to established grade, size, quality, or maturity requirements provided that such avocados are handled for (1) consumption by charitable institutions; (2) distribution by relief agencies; (3) commercial processing into products; (4) seed; or (5) individual shipments of up to 55 pounds. Prior to issuance of this rule, the only exemption allowed under the avocado import regulation was that for individual shipments of up to 55 pounds. Thus, this final rule adds consumption by charitable institutions, distribution by relief agencies, seed, and commercial processing into products to the list of exemptions allowed under the avocado import regulation.

To ensure that imported avocados exempt from the maturity requirements are utilized in exempt outlets, this rule states that such avocados be subject to the safeguard procedures for imported fruit established in § 944.350 [58 FR 69182, December 30, 1993].

Under these procedures, an importer wishing to import avocados covered herein for uses in other than regulated commercial channels, must complete in triplicate, prior to importation, an "Importer's Exempt Commodity Form." One copy will notify the Marketing Order Administration Branch (MOAB) of the Fruit and Vegetable Division, AMS, and the second copy will notify the U.S. Customs Service of the importer's intent to import a commodity

under an exemption. The third copy will accompany the exempt lot to the receiver.

The form may be obtained from either the inspection or customs offices serving the port of entry. The form may also be obtained from the MOAB in Washington, DC or from its Marketing Field Offices in Fresno, California; Portland, Oregon; McAllen, Texas; or Winter Haven, Florida.

The form must be completed at the time the commodity enters the United States. Copies are to be returned to the U.S. Customs Service at the time the commodity is offered for importation and to MOAB within 15 days after completion of the form. Information called for on the "Importer's Exempt Commodity Form" includes:

(1) The commodity and the variety (if known) being imported,
(2) The date and place of inspection, if applicable,
(3) Identifying marks or numbers on the containers,
(4) Identifying numbers on the railroad car, truck or other transportation vehicle transporting product to the receiver,
(5) The name and address of the importer,
(6) The place and date of entry,
(7) The quantity imported,
(8) the name and address of the intended receiver (eg. processor, feeder, charity, or other exempt receiver),
(9) Intended use of the exempt commodity,
(10) The U.S. Customs Service entry number and harmonized tariff code number, and
(11) Such other information as may be necessary to ensure compliance with this regulation.

For purposes of this regulation, a lot is considered to be imported when it is released by the Customs Service for entry into commercial markets or other channels. Lots that are exempt from maturity requirements of the import regulations are not subject to the inspection and certification requirements in such regulations. An imported lot intended for normal commercial channels, or any portion of such a lot, that fails established maturity requirements, could be disposed of in exempt outlets, as specified in the pertinent avocado import requirements.

The third copy of the form will accompany the exempt lot to its intended destination. The receiver will then certify that the lot has been received and it will be utilized in an exempt outlet. After the certification is signed by the receiver, the form is to be returned to MOAB by the receiver, within 15 days of receipt of the lot.

The information collection requirements contained in this final rule have been previously approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1980 [44 U.S.C. Chapter 35], and have been assigned OMB numbers 0581–0078 for avocados grown in South Florida and 0581–0167 for imported avocados.

In accordance with section 8e of the Act, the USTR has concurred with the issuance of this final rule.

This final rule reflects the committee's and the Department's appraisal of the need to make the specified changes. The Department's view is that this action will have a beneficial impact on producers and handlers since it will help ensure that only mature avocados are shipped to fresh markets. The committee considers that maturity requirements for Florida grown avocados are necessary to improve grower returns and promote orderly marketing conditions. Although compliance with these maturity requirements will affect costs to handlers, these costs will be offset by the benefits of providing the industry and consumers with mature avocados.

This final rule also reflects the Department's appraisal of the need to reinstate the suspended avocado import maturity requirements, with the specified revisions, as hereinafter set forth, in accordance with section 8e of the Act.

Based on the above, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other information, it is found that this final rule as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The shipping season for South Florida avocados is expected to begin in late May; (2) avocado handlers are aware of this action which was unanimously recommended by the committee; (3) notice of the proposed rules were published in the **Federal Register**, and no comments were received during the 30-day comment period.

List of Subjects in 7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

List of Subjects in 7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth in the preamble, 7 CFR parts 915 and 944 are amended as follows:

1. The authority citation for 7 CFR parts 915 and 944 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

2. Section 915.332 is revised to read as follows:

§ 915.332 Florida avocado maturity regulation.

(a) No handler shall handle any variety of avocados, except Hass, Fuerte, Zutano, and Edranol, grown in the production area unless:

(1) Any portion of the skin of the individual avocados has changed to the color normal for that fruit when mature for those varieties which normally change color to any shade of red or purple when mature, except for the Linda variety; or

(2) Such avocados meet the minimum weight or diameter requirements for the Monday nearest each date specified, through the Sunday immediately prior to the nearest Monday of the specified date in the next column, for each variety listed in the following TABLE I: *Provided*, that avocados may not be handled prior to the earliest date specified in column A of such table for the respective variety; *Provided further*, There are no restrictions on size or weight on or after the date specified in column D; *Provided further*, That up to a total of 10 percent, by count to the individual fruit in each lot may weigh less than the minimum specified or be less than the specified diameter, except that no such avocados shall be over 2 ounces lighter than the minimum weight specified for the variety: *Provided further*, That up to double such tolerance shall be permitted for fruit in an individual container in a lot.

Table I

Variety	A date	Min. wt.	Min. diam.	B date	Min. wt.	Min. diam.	C date	Min. wt.	Min. diam.	D date
Dr. Dupuis #2	5–30	16	3 7/16	6–13	14	3 5/16	7–04	12	3 2/16	7–18
Simmons	6–20	16	3 9/16	7–04	14	3 7/16	7–18	12	3 1/16	8–01
Pollock	6–20	18	3 11/16	7–04	16	3 7/16	7–18	14	3 4/16	8–01
Hardee	6–27	16	3 2/16	7–04	14	2 14/16	7–11	12	.....	7–25
Nadir	6–27	14	3 3/16	7–04	12	3 1/16	7–11	10	2 14/16	7–18
Ruehle	7–04	18	3 11/16	7–11	16	3 9/16	8–01	12	3 5/16	8–15
				7–18	14	3 7/16	8–08	10	3 3/16	.....
Bernecker	7–18	18	3 6/16	8–01	16	3 5/16	8–15	14	3 4/16	8–29
Miguel (P)	7–18	22	3 13/16	8–01	20	3 12/16	8–15	18	3 10/16	8–29
Nesbitt	7–18	22	3 12/16	8–01	16	3 5/16	8–08	14	3 3/16	8–22
Tonnage	8–01	16	3 6/16	8–15	14	3 4/16	8–22	12	3 0/16	8–29
Waldin	8–01	16	3 9/16	8–15	14	3 7/16	8–29	12	3 4/16	9–12
Tower	8–01	14	3 6/16	8–15	12	3 4/16	.....	.....	.....	9–05
Beta	8–08	18	3 8/16	8–15	16	3 5/16	.....	.....	.....	9–05
Lisa (P)	8–08	12	3 2/16	8–15	11	3	.....	.....	.....	8–22
Black Prince	8–15	28	4 1/16	8–29	23	3 14/16	9–12	16	3 9/16	10–03
Loretta	8–22	30	4 3/16	9–05	26	3 15/16	.....	.....	.....	9–26
Booth 8	8–29	16	3 9/16	9–12	14	3 6/16	9–26	12	3 3/16	10–24
							10–10	10	3 1/16	
Booth 7	8–29	18	3 13/16	9–12	16	3 10/16	9–26	14	3 6/16	10–10
Booth 5	9–05	14	3 9/16	9–19	12	3 6/16	.....	.....	.....	10–03
Choquette	9–26	28	4 4/16	10–17	24	4 1/16	10–31	20	3 14/16	11–14
Hall	9–26	26	3 14/16	10–10	20	3 9/16	10–24	18	3 8/16	11–07
Lula	10–03	18	3 11/16	10–10	14	3 6/16	10–31	12	3 3/16	11–14
Monroe	11–07	26	4 3/16	11–21	24	4 1/16	12–05	20	3 14/16	1–02
							12–19	16	3 9/16	.....
Arue	5–16	.....	16	5–30	14	3 3/16	.....	.....	.....	7–04
Donnie	5–23	16	3 5/16	6–06	14	3 4/16	.....	.....	.....	7–04
Fuchs	6–06	14	3 3/16	6–20	12	3 0/16	.....	.....	.....	7–04
K–5	6–13	18	3 5/16	6–27	14	3 3/16	.....	.....	.....	7–11
West Indian Seedling[1]	6–20	18	.....	7–18	16	.....	8–22	14	.....	9–19
Gorham	7–04	29	4 5/16	7–18	27	4 3/16	.....	.....	.....	8–15
Biondo	7–11	13	.....	.....	.....	.....	.....	.....	.....	8–15
Petersen	7–11	14	3 8/16	7–18	12	3 5/16	7–25	10	3 2/16	8–08
232	7–18	14	.....	8–01	12	.....	.....	.....	.....	8–15
Pinelli	7–18	18	3 12/16	8–01	16	3 10/16	.....	.....	.....	8–15
Trapp	7–18	14	3 10/16	8–01	12	3 7/16	.....	.....	.....	8–15
K–9	8–01	16	.....	.....	.....	.....	.....	.....	.....	8–22
Christina	8–01	11	2 14/16	.....	.....	.....	.....	.....	.....	8–22
Catalina	8–15	24	.....	8–29	22	.....	.....	.....	.....	9–19
Blair	8–29	16	3 8/16	9–12	14	3 5/16	.....	.....	.....	10–03
Guatemalan Seedling[2]	9–05	15	.....	10–03	13	.....	.....	.....	.....	12–05
Marcus	9–05	32	4 12/16	9/19	24	4 5/16	.....	.....	.....	10–31
Brooks 1978	9–05	12	3 4/16	9–12	10	3 1/16	9–19	8	2 14/16	10–10
Rue	9–12	30	4 3/16	9–19	24	3 15/16	10–03	18	3 9/16	10–17
Collinson	9–12	16	3 10/16	.....	.....	.....	.....	.....	.....	10–10
Hickson	9–12	12	3 1/16	9–26	10	3 0/16	.....	.....	.....	10–10
Simpson	9–19	16	3 9/16	.....	.....	.....	.....	.....	.....	10–10
Chica	9–19	12	3 7/16	10–03	10	3 4/16	.....	.....	.....	10–17
Leona	9–26	18	3 10/16	.....	.....	.....	.....	.....	.....	10–10
Herman	10–03	16	3 9/16	10–17	14	3 6/16	.....	.....	.....	10–31
Pinkerton (CP)	10–03	13	3 3/16	10–17	11	3 0/16	10–31	9	.....	11–14
Taylor	10–10	14	3 5/16	10–24	12	3 2/16	.....	.....	.....	11–07
Ajax (B–7)	10–10	18	3 14/16	.....	.....	.....	.....	.....	.....	10–31
Booth 3	10–10	16	3 8/16	10–17	14	3 6/16	.....	.....	.....	10–31
Booth 1	11–14	16	3 12/16	11–28	12	3 6/16	.....	.....	.....	12–12
Zio (P)	11–14	12	3 1/16	11–28	10	2 14/16	.....	.....	.....	12–12
Gossman	11–28	11	3 1/16	.....	.....	.....	.....	.....	.....	12–26
Brookslate	12–05	18	3 13/16	12–12	16	3 10/16	1–02	12	3 5/16	1–30
				12–19	14	3 8/16	1–16	10		
Meya (P)	12–12	13	3 2/16	12–26	11	3 0/16	.....	.....	.....	1–09
Reed (CP)	12–12	12	3 4/16	12–26	10	3 3/16	1–09	9	3 9/16	1–23

[1] Avocados of the West Indian type varieties and seedlings not listed elsewhere in Table I.

[2] Avocados of the Guatemalan type varieties and seedlings, hybrid varieties and seedlings, and unidentified seedlings not listed elsewhere in Table I.

(b) The term diameter means the greatest dimension measured at a right angle to a straight line from the stem to the blossom end of the fruit.

PART 944—FRUITS; IMPORT REGULATIONS

3. The suspension of § 944.31 is removed and the section is revised to read as follows:

§ 944.31 Avocado import maturity regulation.

(a) Pursuant to section 8e [7 U.S.C. 608e–1] of the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C 601–674], and Part 944—Fruits; Import Regulations, the importation into the United States of any avocados, except the Hass, Fuerte, Zutano, and Edranol varieties, is prohibited unless:

(1) any portion of the skin of the individual avocados has changed to the color normal for that fruit when mature for those varieties which normally change color to any shade of red or purple when mature, except for the Linda variety; or

(2) Such avocados meet the minimum weight or diameter requirements for the Monday nearest each date specified, through the Sunday immediately prior to the nearest Monday of the specified date in the next column, for each variety listed in the following Table I: Provided, that avocados may not be handled prior to the earliest date specified in column A of such table for the respective variety; Provided further, There are no restrictions on size or weight on or after the date specified in column D; Provided further, That up to a total of 10 percent, by count to the individual fruit in each lot may weigh less than the minimum specified or be less than the specified diameter, except that no such avocados shall be over 2 ounces lighter than the minimum weight specified for the variety: Provided further, That up to double such tolerance shall be permitted for fruit in an individual container in a lot.

TABLE 1

Variety	A date	Min. wt.	Min. diam.	B date	Min. wt.	Min. diam.	C date	Min. wt.	Min. diam.	D date
Dr. Dupuis #2	5–30	16	3 7/16	6–13	14	3 5/16	7–04	12	3 2/16	7–18
Simmons	6–20	16	3 9/16	7–04	14	3 7/16	7–18	12	3 1/16	8–01
Pollock	6–20	18	3 11/16	7–04	16	3 7/16	7–18	14	3 4/16	8–01
Hardee	6–27	16	3 2/16	7–04	14	2 14/16	7–11	12		7–25
Nadir	6–27	14	3 3/16	7–04	12	3 1/16	7–11	10	2 14/16	7–18
Ruehle	7–04	18	3 11/16	7–11	16	3 9/16	8–01	12	3 5/16	8–15
				7–18	14	3 7/16	8–08	10	3 3/16	
Bernecker	7–18	18	3 6/16	8–01	16	3 5/16	8–15	14	3 4/16	8–29
Miguel (P)	7–18	22	3 13/16	8–01	20	3 12/16	8–15	18	3 10/16	8–29
Nesbitt	7–18	22	3 12/16	8–01	16	3 5/16	8–08	14	3 3/16	8–22
Tonnage	8–01	16	3 6/16	8–15	14	3 4/16	8–22	12	3 0/16	8–29
Waldin	8–01	16	3 9/16	8–15	14	3 7/16	8–29	12	3 4/16	9–12
Tower	8–01	14	3 6/16	8–15	12	3 4/16				9–05
Beta	8–08	18	3 8/16	8–15	16	3 5/16				9–05
Lisa (P)	8–08	12	3 2/16	8–15	11	3 0/16				8–22
Black Prince	8–15	28	4 1/16	8–29	23	3 14/16	9–12	16	3 9/16	10–03
Loretta	8–22	30	4 3/16	9–05	26	3 15/16				9–26
Booth 8	8–29	16	3 9/16	9–12	14	3 6/16	9–26	12	3 3/16	10–24
							10–10	10	3 1/16	
Booth 7	8–29	18	3 13/16	9–12	16	3 10/16	9–26	14	3 8/16	10–10
Booth 5	9–05	14	3 9/16	9–19	12	3 6/16				10–03
Choquette	9–26	28	4 4/16	10–17	24	4 1/16	10–31	20	3 14/16	11–14
Hall	9–26	26	3 14/16	10–10	20	3 9/16	10–24	18	3 8/16	11–07
Lula	10–03	18	3 11/16	10–10	14	3 6/16	10–31	12	3 3/16	11–14
Monroe	11–07	26	4 3/16	11–21	24	4 1/16	12–05	20	3 14/16	1–02
							12–19	16	3 9/16	
Arue	5–16	16		5–30	14	3 3/16				7–04
Donnie	5–23	16	3 5/16	6–06	14	3 4/16				7–04
Fuchs	6–06	14	3 3/16	6–20	12	3 0/16				7–04
K–5	6–13	18	3 5/16	6–27	14	3 3/16				7–11
West Indian Seedling [1]	6–20	18		7–18	16		8–22	14		9–19
Gorham	7–04	29	4 5/16	7–18	27	4 3/16				8–15
Biondo	7–11	13								8–15
Petersen	7–11	14	3 8/16	7–18	12	3 5/16	7–25	10	3 2/16	8–08
232	7–18	14		8–01	12					8–15
Pinelli	7–18	18	3 12/16	8–01	16	3 10/16				8–15
Trapp	7–18	14	3 10/16	8–01	12	3 7/16				8–15
K–9	8–01	16								8–22
Christina	8–01	11	2 14/16							8–22
Catalina	8–15	24		8–29	22					9–19
Blair	8–29	16	3 8/16	9–12	14	3 5/16				10–03
Guatemalan Seedling [2]	9–05	15		10–03	13					12–05
Marcus	9–05	32	4 12/16	9–19	24	4 5/16				10–31
Brooks 1978	9–05	12	3 4/16	9–12	10	3 1/16	9–19	8	2 14/16	10–10
Rue	9–12	30	4 3/16	9–19	24	3 15/16	10–03	18	3 9/16	10–17
Collinson	9–12	16	3 10/16							10–10
Hickson	9–12	12	3 1/16	9–26	10	3 0/16				10–10
Simpson	9–19	16	3 9/16							10–10
Chica	9–19	12	3 7/16	10–03	10	3 4/16				10–17
Leona	9–26	18	3 10/16							10–10
Herman	10–03	16	3 9/16	10–17	14	3 6/16				10–31

TABLE 1—Continued

Variety	A date	Min. wt.	Min. diam.	B date	Min. wt.	Min. diam.	C date	Min. wt.	Min. diam.	D date
Pinkerton (CP)	10–03	13	3 3/16	10–17	11	3 0/16	10–31	9		11–14
Taylor	10–10	14	3 5/16	10–24	12	3 2/16				11–07
Ajax (B–7)	10–10	18	3 14/16							10–31
Booth 3	10–10	16	3 8/16	10–17	14	3 6/16				10–31
Booth 1	11–14	16	3 12/16	11–28	12	3 6/16				12–12
Zio (P)	11–14	12	3 1/16	11–28	10	2 14/16				12–12
Gossman	11–28	11	3 1/16							12–26
Brookslate	12–05	18	3 13/16	12–12	16	3 10/16	1–02	12	3 5/16	1–30
				12–19	14	3 8/16	1–16	10		
Meya (P)	12–12	13	3 2/16	12–26	11	3 0/16				1–09
Reed (CP)	12–12	12	3 4/16	12–26	10	3 3/16	1–09	9	3 0/16	1–23

[1] Avocados of the West Indian type varieties and seedlings not listed elsewhere in Table 1.
[2] Avocados of the Guatemalan type varieties and seedlings, hybrid varieties and seedlings, and unidentified seedlings not listed elsewhere in Table I.

(b) The term diameter means the greatest dimension measured at a right angle to a straight line from the stem to the blossom end of the fruit.

(c) The term importation means release from custody of the United States Customs Service. The term commercial processing into products means the manufacture of avocado product which is preserved by any recognized commercial process, including canning, freezing, dehydrating, drying, the addition of chemical substances, or by fermentation.

(d) Any person may import up to 55 pounds of avocados exempt from the requirements specified in this section.

(e) The Federal or Federal-State Inspection Service, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, is designated as the governmental inspection service for certifying the grade, size, quality, and maturity of avocados imported into the United States. Inspection by the Federal or Federal-State Inspection Service with evidence thereof in the form of an official inspection certificate, issued by the respective service, applicable to the particular shipment of avocados, is required on all such imports. The inspection and certification services will be available upon application in accordance with the Regulations Governing Inspection, Certification and Standards of Fresh Fruits, Vegetables, and Other Products (7 CFR part 51), and in accordance with the regulation designating inspection services and procedure for obtaining inspection and certification (7 CFR 944.400).

(f) Any avocados which fail to meet the import requirements prior to or after reconditioning and which are not being imported for purposes of consumption by charitable institutions, distribution by relief agencies, seed, or commercial processing into products may be reconditioned or exported, or disposed of under the supervision of the Federal or Federal-State Inspection Service with the costs of certifying the disposal of such avocados borne by the importer.

(g) The size, weight, diameter, and color maturity requirements of this section shall not be applicable to avocados imported for consumption by charitable institutions, distribution by relief agencies, seed, or commercial processing into products, but shall be subject to the safeguard provisions contained in § 944.350.

Dated: June 9, 1994.

Eric M. Forman,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–14588 Filed 6–15–94; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 926

[Docket No. FV94–926–1IFR]

Tokay Grapes Grown in San Joaquin County, California; Expenses and Assessment Rate for 1994–95 Fiscal Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenditures and establishes an assessment rate for the Tokay Grape Industry Committee (committee) under Marketing Order (M.O.) No. 926 for the 1994–95 fiscal year. Authorization of this budget enables the committee to incur expenses that are reasonable and necessary to administer this program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective beginning April 1, 1994, through March 31, 1995. Comments received by July 18, 1994, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, D.C. 20090–6456. Fax # (202) 720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Britthany Beadle, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, D.C. 20090–6456, telephone:(202) 720–5127; or Peter I. Parks, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102 B, Fresno, California 93721, telephone: (209) 487–5901.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Order No. 926 [7 CFR Part 926] regulating the handling of Tokay grapes grown in San Joaquin County, California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, Tokay grapes grown in California are subject to assessments. It is intended that the assessment rate specified herein

will be applicable to all assessable Tokay grapes handled during the 1994–95 fiscal year, beginning April 1, 1994, through March 31, 1995. This interim final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are three handlers of Tokay grapes regulated under the marketing order each season and approximately 15 Tokay grape producers in San Joaquin County, California. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of these handlers and producers may be classified as small entities.

The Tokay grape marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year apply to all assessable grapes handled from the beginning of such year. Annual budgets of expenses are prepared by the committee, the agency responsible for local administration of this marketing order, and submitted to the Department for approval. The members of the committee are grape handlers and producers. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local area, and are thus in a position to formulate appropriate budgets. The committee's budget is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing the anticipated expenses by expected shipments of grapes. Because that rate is applied to actual shipments, it must be established at a rate which will provide sufficient income to pay the committee's expected expenses.

The committee met on April 29, 1994, and unanimously recommended total expenditures of $5,150 with an assessment rate of $0.07 per carton for the 1994–95 fiscal year. In comparison, the expenditure amount and the assessment rate are remaining unchanged from the 1993–94 fiscal year.

Funds in the reserve at the end of the 1994–95 fiscal year, estimated at $4,500, will be within the maximum permitted by the order of one fiscal year's expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs should be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the committee and other available information, it is hereby found that this rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the fiscal year for the committee began April 1, 1994, and the marketing order requires that the rate of assessment for the fiscal year apply to all assessable grapes handled during the fiscal year; (3) handlers are aware of this action which was unanimously recommended by the committee at a public meeting and which is similar to budgets issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 926

Grapes, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 926 is amended as follows:

PART 926—TOKAY GRAPES GROWN IN SAN JOAQUIN COUNTY, CA

1. The authority citation for 7 CFR Part 926 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 926.233 is added to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 926.233 Expenses and assessment rate.

Expenses of $5,150 by the Tokay Grape Industry Committee are authorized and an assessment rate of $0.07 per carton of assessable grapes is established for the fiscal year ending March 31, 1995. Unexpended funds may be carried over as a reserve.

Dated: June 9, 1994.

Eric M. Forman,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–14587 Filed 6–15–94; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 932

[Docket No. FV93–932–4FIR]

Olives Grown in California; Expenses and Assessment Rate for 1994 Fiscal Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of the interim final rule that authorized expenditures and established an assessment rate for the California

Olive Committee (Committee) under Marketing Order (M.O.) No. 932 for the 1994 fiscal year. Authorization of this budget enables the Committee to incur expenses that are reasonable and necessary to administer this program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: January 1, 1994, through December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Britthany Beadle, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone: (202) 720–5127; or Terry Vawter, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102 B, Fresno, California 93721, telephone: (209) 487–5901.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement No. 148 and Marketing Order No. 932 (7 CFR Part 932), as amended, regulating the handling of olives grown in California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The Department is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, olives grown in California are subject to assessments. It is intended that the assessment rate specified herein will be applicable to all assessable olives handled during the 1994 fiscal year, beginning January 1, 1994, through December 31, 1994. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 5 handlers of olives regulated under the marketing order each season and approximately 1,350 olive producers in California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. None of the handlers may be classified as small entities. The majority of the producers may be classified as small entities.

The marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year apply to all assessable olives handled from the beginning of such year. Annual budgets of expenses are prepared by the Committee, the agency responsible for local administration of this marketing order, and submitted to the Department for approval. The members of the Committee are handlers and producers of California olives. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local area, and are thus in a position to formulate appropriate budgets. The Committee's budget is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee is derived by dividing the anticipated expenses by expected shipments of olives. Because that rate is applied to actual shipments, it must be established at a rate which will provide sufficient income to pay the Committee's expected expenses.

The California Olive Committee met on December 14, 1993, and unanimously recommended a total expense amount of $3,748,290, for its 1994 budget. This is $928,530 more in expenses than the previous year. The increase is primarily due to additional funding for market development.

The Committee also unanimously recommended an assessment rate of $27.21 per ton for the 1994 fiscal year, which is $1.46 more in the assessment rate from the 1993 fiscal year. The assessment rate, when applied to anticipated shipments of 101,000 tons, would yield $2,748,210 in assessment income. This, along with approximately $1,000,000 from the Committee's authorized reserves will be adequate to cover estimated expenses.

Major expense categories for the 1994 fiscal year include $1,150,000 for the market expansion program, $990,860 for consumer affairs, and $173,730 for salaries. Funds in the reserve at the end of the fiscal year, estimated at $300,000 will be within the maximum permitted by the order of one fiscal year's expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs should be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

An interim final rule was published in the **Federal Register** (59 FR 12526, March 17, 1994) and provided a 30-day comment period for interested persons. No comments were received.

It is found that the specified expenses for the marketing order covered in this rule are reasonable and likely to be incurred and that such expenses and the specified assessment rate to cover such expenses will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1994 fiscal year for the program began January 1, 1994. The marketing order requires that the rate of assessment apply to all assessable olives handled during the fiscal year. In addition, handlers are aware of this action which was recommended by the Committee at a

public meeting and published in the **Federal Register** as an interim final rule. No comments were received concerning the interim final rule that is adopted in this action as a final rule without change.

List of Subjects in 7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 932 is amended as follows:

PART 932—OLIVES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 932 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Accordingly, the interim final rule adding § 932.227 which was published at 59 FR 12526, is adopted as a final rule without change.

Dated: June 9, 1994.

Eric M. Forman,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 94–14585 Filed 6–15–94; 8:45 am]

BILLING CODE 3410–02–P

Food Safety and Inspection Service

9 CFR Parts 317 and 381

[Docket No. 94–018N]

Nutrition Labeling of Meat and Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of extension of compliance date.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing an extension of the date for enforcing compliance with its nutrition labeling regulations. The effective date of the final nutrition labeling regulations published on January 6, 1993, will remain July 6, 1994. However, FSIS will not take enforcement action on such meat and poultry product labeling until August 8, 1994. In addition, FSIS is providing notice that temporary label approvals, granted by the Food Labeling Division in conjunction with the July 6, 1994, rule, will now expire on August 8, 1994.

DATES: Although the effective date of the final nutrition labeling regulations remain July 6, 1994, FSIS will not take enforcement action on such meat and poultry product labeling until August 8, 1994.

FOR FURTHER INFORMATION CONTACT: Charles Edwards, Director, Product Assessment Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 254–2565.

SUPPLEMENTARY INFORMATION: On January 6, 1993, FSIS published in the **Federal Register** a final rule titled "Nutrition Labeling of Meat and Poultry Products" (58 FR 638). Corrections and technical amendments to this final rule were published on August 18, 1993 (58 FR 43787), and on September 10, 1993 (59 FR 47624), respectively. The technical amendments, which were issued as an interim final rule, were confirmed as final on March 16, 1994 (59 FR 12157). The effective date of the final rule is July 6, 1994.

The final rule amends the Federal meat and poultry products inspection regulations to permit voluntary nutrition labeling on single-ingredient, raw meat and poultry products, and establishes a mandatory nutrition labeling program for all other meat and poultry products, with certain exceptions. FSIS's nutrition labeling regulations are designed to parallel, to the extent possible, the nutrition labeling regulations issued by the Food and Drug Administration (FDA) for all other foods. Both agencies cooperated closely in the development and timeframe for implementation of their respective rules.

FDA's final nutrition labeling regulations became effective on May 8, 1994. However, Congress recently amended the Nutrition Labeling and Education Act of 1990 (NLEA) to extend the compliance date for certain FDA-regulated food products packaged prior to August 8, 1994, to comply with the nutrition labeling requirements. The legislation (S. 2087) was passed by both houses of Congress, and signed into law by the President on May 27, 1994. Although it is not subject to the NLEA, FSIS has decided not to take any enforcement action on nutrition labeling of meat and poultry products until August 8, 1994. FSIS believes that this date is reasonable and practical, and reflects its continued cooperation with FDA on nutrition labeling issues. FSIS also believes that the extended timeframe further minimizes the cost of complying with the regulations and allows for a more orderly and uniform compliance implementation for nutrition labeling of all foods.

In anticipation of the July 6, 1994, effective date, the Food Labeling Division has granted temporary label approvals under 9 CFR 317.4(d) and 381.132(b) of the regulations. These temporary approvals were granted for labels which comply with current regulations, but which would not comply with the regulations when the final rule issued on January 6, 1993, is effective. These temporary approvals are automatically extended until August 8, 1994.

FSIS encourages manufacturers to revise their labels as soon as possible. On and after August 8, 1994, products with labeling that does not comply with the nutrition labeling regulations will be misbranded and subject to enforcement action by FSIS.

Dated: June 10, 1994.

William J. Hudnall,

Acting Administrator, Food Safety and Inspection Service.

[FR Doc. 94–14569 Filed 6–15–94; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Indiana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of a proposed program amendment to the Indiana permanent regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment (Program Amendment 93–5) consists of changes to the Indiana Administrative Code (IAC) rules at 310 IAC 12. The proposed amendment pertains to definitions of terms used in the Indiana program. The amendment is intended to revise the Indiana program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: June 16, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, room 301, Indianapolis, IN 46204, Telephone (317 226–6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program.
II. Submission of Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.

V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Indiana Program

On July 29, 1982, the Indiana program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982, **Federal Register** (47 FR 32071). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.10, 914.15, and 914.16.

II. Submission of the Amendment

By letter dated July 2, 1993 (Administrative Record Number IND–1272), the Indiana Department of Natural Resources (IDNR) submitted proposed program amendment number 93–5. Program amendment 93–5 consists of proposed changes to the Indiana program definitions at 310 IAC 12–0.5.

OSM announced receipt of the proposed amendment in the August 5, 1993, **Federal Register** (58 FR 41669), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on September 7, 1993. The scheduled public hearing was not held as no one requested an opportunity to provide testimony.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17 are the Director's findings concerning the proposed amendment to the Indiana program. Revisions not specifically discussed below concern nonsubstantive wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

A. Revisions to Indiana's Rules That Are Substantively Identical to the Corresponding Federal Regulations

State regulation	Subject	Federal counterpart
310 IAC 12–0.5–23	Coal Mine Waste	30 CFR 701.5
310 IAC 12–0.5–55	Half-Shrub	30 CFR 701.5
310 IAC 12–0.5–64	Impounding Structure	30 CFR 701.5
310 IAC 12–0.5–104	Reference Area	30 CFR 701.5

Because the above proposed revisions are identical in meaning to the corresponding Federal regulations, the Director finds that Indiana's proposed rules are no less effective than the Federal regulations.

B. Revisions to Indiana's Rules That Are Not Substantively Identical to the Corresponding Federal Regulations

1. 310 IAC 12–0.5–6 Affected Area

In the introductory paragraph, Indiana has deleted the word "each" and added the word "any" in its place. With this change, Indiana has clarified that "affected area" means any one or more of the specified examples at subsection 6 (1) through (7). The Director finds that the proposed change is substantively identical to the counterpart Federal regulations at 30 CFR 701.5 concerning the definition of "affected area." The Director notes that the Indiana definition of "affected area" continues to be the subject of a required program amendment codified at 30 CFR 914.16(n) (see 58 FR 43260, August 16, 1993).

2. 310 IAC 12–0.5–53 Ground Cover

The term *ground cover* is defined to mean the area of ground which is covered by the combined aerial parts of vegetation and the litter that is produced naturally onsite, expressed as percentage of the total area of measurement. At least 95 percent of the species present must be species listed in the revegetation plan.

The first sentence of the proposed definition is substantively identical to the Federal definition of "ground cover" at 30 CFR 701.5. Indiana added the second sentence to establish a standard guideline for all to follow. The Director finds that the second sentence is not inconsistent with SMCRA and the Federal regulations.

3. 310 IAC 12–0.5–139 Valid Existing Rights (VER)

Indiana has proposed the following language for the definition of VER:

(a) *Valid existing rights* means, for the purposes of 310 IAC 12–1–1, 310 IAC 12–2–1, and 310 IAC 12–2–5 the following:

(1) Except for haul roads:

(A) Those property rights in existence on August 3, 1977, that were created by a legally binding conveyance, lease, deed, contract, or other document which authorized the applicant to conduct surface coal mining operations; and

(B) The person proposing to conduct surface coal mining operations on such lands:

(i) Had been validly issued or exercised good faith effort to obtain, on or before August 3, 1977, all state and federal permits necessary to conduct operations on those lands;

(ii) Can demonstrate to the director that the coal is both needed for and immediately adjacent to, an ongoing surface mining operation for which all permits were obtained prior to August 3, 1977; or

(iii) Can demonstrate that the operation was in existence or operation at the time an area became protected under IC 13–4.1–14–1 or at the time of the coming into existence, within the prohibited distance of a structure, road, cemetery, or other activity listed in IC 13–4.1–14–1.

(2) For haul roads:

(A) A recorded right-of-way, recorded easement, or a permit for a coal haul road recorded as of August 3, 1977;

(B) Any other road in existence as of August 3, 1977; or

(C) Any haul road that was in existence or operating at the time an area became protected under IC 13–4.1–14–1, or at the time of the coming into existence, within the prohibited distance of a structure, road, cemetery, or other activity listed in IC 13–4.1–14–1.

(b) The interpretation of the terms of a document used to establish a valid existing right is based upon the common law concerning the interpretation of documents conveying mineral rights. If there is no applicable common law, the interpretation is based upon the following:

(1) The usage and custom at the time and place where a document came into existence.

(2) A showing by the applicant that the parties to the document contemplated the right to conduct the same underground or surface activities for which the applicant claims a valid existing right.

(c) "Valid existing rights" does not mean the mere expectation of a right to conduct surface coal mining operations or the right to conduct underground coal mining. Examples of rights which alone do not constitute valid existing rights include, but are not limited to, coal exploration permits or licenses, applications or bids for leases, or where a person has only applied for a federal or state permit.

(d) If an area comes under the protection of IC 13–4.1–14–1 after August 3, 1977, valid existing rights are present if a validly authorized surface coal mining operation exists on that area on the date the protection comes into existence.

The Federal definition of VER at 30 CFR 761.5 has been affected by judicial decision and parts have been suspended by OSM (see 51 FR 41954, November 20, 1986). Specifically, 30 CFR 761.5 paragraphs (a) and (c) are suspended, and subparagraph (d)(2) is suspended insofar as it incorporates the takings test of suspended paragraph (a). Additionally, OSM has proposed that the Federal VER definition be amended (see 56 FR 33152, July 18, 1991).

In the November 20, 1986, **Federal Register** notice which suspended 30 CFR 761.5(a), OSM stated that the suspension of 30 CFR 761.5(a) has the effect of undoing that provision and leaving in its place the VER test in use before the suspended language was promulgated (the 1979 test) (51 FR 41954). That 1979 test consists of language approved on March 13, 1979 (44 FR 15342). A suspension and interpretation of the 1979 test was published in the August 4, 1980, **Federal Register** (45 FR 51547). This suspension resulted from judicial review of the 1979 test, wherein the court remanded to the Secretary that portion of the 1979 test which required the property owner to have obtained all permits necessary to mine ("all permits" test, 30 CFR 761.5(a)(2)(i)). [In Re: Permanent Surface Mining Regulation Litigation, No. 79–1144 (D.D.C. 1980)]. Specifically, the court indicated that a good faith attempt to obtain all permits before the August 3, 1977, cut-off date should suffice for meeting the "all permits" test. In Re: Permanent (I), Mem. op. at 20. To comply with the court's 1980 opinion, OSM suspended the definition only insofar as it required that to establish VER, all permits must have been obtained prior to August 3, 1977. (45 FR 51547, 51548, August 4, 1980)

The November 20, 1986, notice of suspension restated OSM's position that, pending further rulemaking, OSM would interpret the regulation as including the court's suggestion that a good faith effort to obtain all permits would establish VER. Consequently, in Federal program States and on Indian lands, OSM will make VER determinations on a case-by-case basis, and will consider property rights in existence on August 3, 1977, the owner of which by that date had made a good faith effort to obtain all permits, as one class of circumstances which would invariably entitle the property owner to VER. This is referred to as the 1980 test. VER would also exist when there are property rights in existence on August 3, 1977, the owner of which can demonstrate that the coal is both needed for and immediately adjacent to a mining operation in existence prior to August 3, 1977 (51 FR 41954, 41955).

Indiana's proposed VER language at subsection 139(a)(1)(A) and (B)(i) and (ii) is substantively identical to the two classes of VER contained in the 1979 rule, at former 30 CFR 761.5(a)(1) and (2). Because these portions of the 1979 rule, including the "good faith, all permits" interpretation of the "all-permits test" contained in former 30 CFR 761.5(a)(2)(i) have been upheld by the court, the Director is approving the proposed language at subsection 139(a)(1)(A) and (B)(i) and (ii).

The proposed language at subdivision 139(a)(1)(B)(iii) is substantively identical to the Federal language at 30 CFR 761.5(d)(1). The Director notes, however, that the proposed language at subdivision 139(a)(1)(B)(iii) duplicates the intent of the proposed language at subdivision 139(d). In response to a comment from OSM about this duplication, Indiana stated the duplicative language at subdivision 139(a)(1)(B)(iii) will be deleted at the next available opportunity. The Director agrees that, for clarity, the duplicative language should be removed at Indiana's earliest opportunity. The Director finds that the proposed language at subdivision 139(A)(1)(B)(iii), while duplicative, is no less effective than the Federal regulations.

The Director finds the proposed provisions for haulroads at subdivisions 139(a)(2) (A) and (B) are substantively identical to and no less effective than the counterpart Federal regulations at 30 CFR 761.5(b) (1) and (2). The proposed provision at subdivision 139(a)(2)(C) does not have a direct Federal counterpart. The Director finds the Indiana language to be consistent with the Federal provision at 30 CFR 761.5(d)(1) which provides for VER if, on the date an area comes under protection pursuant to section 522(e) of SMCRA, a validly authorized surface coal mining operation exists on that area. The Director is, therefore, approving the proposed language at subdivision 139(a)(2).

The proposed Indiana language at subdivisions 139(b) and (b)(1) is similar to the counterpart Federal language at 30 CFR 761.5(e). The Federal language, however, provides that the interpretation of the terms of the document relied upon to establish the VER shall be based on either applicable State statutory or case law concerning interpretation of documents conveying mineral rights. Also, the Federal language provides that where no applicable State law exists, the interpretation of the terms of the document relied upon to establish VER shall be based upon the usage and custom at the time and place that it came into existence. The counterpart Indiana language at subdivision 139(b) is silent concerning applicable State statutory law. The proposed language only provides that if there is no applicable common law the provisions at subdivisions 139(b) (1) and (2) apply. Therefore, the Director finds the proposed language at subdivision 139(b) no less effective than the counterpart Federal regulations at 30 CFR 761.5(e) except to the extent that the proposed Indiana rule is silent concerning the applicability of State statutory law. In addition, the Director is requiring that Indiana further amend 310 IAC 12–0.5–139(b) to provide that the interpretation of the terms of the document used to establish a valid existing right shall be based either upon applicable State statutory or case law concerning interpretation of documents conveying mineral rights, or where no applicable State statutory or common law exists, the interpretation is based upon the provisions at subdivisions 139(b) (1) and (2).

Proposed subdivision 139(b)(2), concerning a required showing by the applicant that the parties to the document contemplated the right to conduct the same mining activities for which the applicant claims VER, has no direct Federal counterpart.

The proposed language, however, is not inconsistent with the Federal requirements contained in the 1979 VER rule, at former 30 CFR 761.5(c) and is, therefore, approved.

Proposed subsection 139(c) has no direct Federal counterpart. The Director finds the proposed language to be a valuable clarification of VER and not inconsistent with SMCRA and the Federal VER regulations. In addition, the language is substantively identical to the language contained in the 1979 VER rule at former 30 CFR 761.5(d).

Therefore, proposed subsection 139(c) is approved.

Proposed subsection 139(d) is substantively identical to the counterpart Federal regulations at 30 CFR 761.5(d)(1) and is, therefore, approved.

The Director finds the proposed definition of VER, except as discussed above, to be consistent with an no less effective than the Federal regulations at 30 CFR 761.5 and the 1980 test (the 1979 VER rule with the "good faith, all permits test" interpretation) as discussed in the November 20, 1986, **Federal Register** (51 FR 41954).

C. Revisions to Indiana's Regulations With No Corresponding Federal Regulations

1. 310 IAC 12–0.5–72 Litter

The term *litter* is defined to mean the detached recognizable portions of the plants under evaluation that cover the ground surface. The Federal regulations use the term *litter* in definition of *ground cover*, but a Federal definition of the term *litter* is not provided. In its submittal of this amendment, Indiana stated that its definition of the term *litter* is based on the terms *litter* and "crop residue found in the "Resource Conservation Glossary," Third edition, Soil Conservation Society of America, 1982, page 188, and the needs and conditions of the Indiana program. The Director finds the proposed definition to be consistent with and no less effective than the Federal use of the term *litter* as it appears in the definition of "ground cover" at 30 CFR 701.5.

2. 310 IAC 12–0.5–111 Shelter Belt

This term is defined to mean an area used for protection from wind or snow and which is subject to proof-of-productivity standards for fish and wildlife habitat. In its submittal of this definition, Indiana stated that its definition of the term *shelter belt* is modeled after the definition of the same term as found in the "Resource Conservation Glossary," Third edition, Soil Conservation Society of America, 1982, page 145. There is no direct Federal counterpart to this definition. However, the Federal regulations at 30 CFR 816/817.116(b)(3) use the term "shelter belts" in the regulations for the standards for success for postmining land use of fish and wildlife habitat. The Director finds the proposed definition to be consistent with and no less effective than the Federal use of the term "shelter belts" at 30 CFR 816/817.116(b)(3).

3. 310 IAC 12–0.5–116 Soil Productivity

This term is defined to mean the capacity of a soil for producing a specified plant or sequence of plants under a physically defined set of management practices. In its submittal of this definition, Indiana stated that its definition of the term "soil productivity" is modeled after the definition of the same term as found in the "Resource Conservation Glossary," Third edition, Soil Conservation Society of America, 1982, page 159. There is no direct Federal counterpart to this definition. However, the Federal regulations at 30 CFR 823.15 use the term soil productivity in the regulations on prime farmland revegetation and restoration. The Director finds the proposed definition to be consistent with the Federal use of the term "soil productivity" at 30 CFR 823.15.

IV. Summary and Disposition of Comments

Agency Comments

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i), comments were solicited from various interested Federal agencies. No agency comments were received on the proposed amendments.

Public Comments

The public comment period and opportunity to request a public hearing was announced in the August 5, 1993, **Federal Register** (58 FR 41669). The comment period closed on September 7, 1993. No comments were received during the comment period, and no one requested an opportunity to testify at the scheduled public hearing so no hearing was held.

V. Director's Decision

Based on the above findings, and except as noted below, the Director is approving Indiana's proposed amendment 93–5 as submitted by Indiana on July 2, 1993. As discussed in Finding B–3, the Director is approving 310 IAC 12–0.5–139(b) except to the extent that the proposed language is silent concerning the applicability of State statutory law. In addition, the Director is requiring that Indiana further amend 310 IAC 12–0.5–139(b) to provide that the interpretation of the terms of the document used to establish a valid existing right shall be based either upon applicable State statutory or case law concerning interpretation of documents conveying mineral rights, or where no applicable State statutory or common law exists, the interpretation is based upon the provisions at subdivisions 139(b)(1) and (2).

The Federal regulations at 30 CFR 914 codifying decisions concerning the Indiana program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage the State to conform its program with the Federal standards without delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In his oversight of the Indiana program, the Director will recognize only the statutes, regulations and other materials approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Indiana of only such provisions.

Environmental Protection Agency (EPA) Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required.

VI. Procedural Determinations

Executive Order 12866

This final rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 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 the Office of Management and Budget 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. Hence, 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 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 9, 1994.

Robert J. Biggi,

Acting Assistant Director, Eastern Support Center.

For the reasons set forth in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 914—INDIANA

1. The authority citation for part 914 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. 30 CFR 914.15, is amended by adding a new paragraph (zz) to read as follows:

§ 914.15 Approval of regulatory program amendments.

* * * * *

(zz) The following amendment (Program Amendment Number 93–5) submitted to OSM on July 2, 1993, is approved, except as noted below, effective June 16, 1994: Definitions to the Indiana program at 310 IAC 12–0.5–6 concerning *affected area*; 310 IAC 12–0.5–23 concerning *coal mine waste*; 310 IAC 12–0.5–53 concerning *ground cover*; 310 IAC 12–0.5–55 concerning *half-shrub*; 310 IAC 12–0.5–64 concerning *impounding structure*; 310 IAC 12–0.5–72 concerning *litter*; 310 IAC 12–0.5–104 concerning *reference area*; 310 IAC 12–0.5–111 concerning *shelter belt*; 310 IAC 12–0.5–116 concerning *soil productivity*; and 310 IAC 12–0.5–139 concerning *valid existing rights* except to the extent that subdivision 139(b) is silent concerning the applicability of State statutory law.

3. In section 914.16, paragraph (ee) is added to read as follows:

§ 914.16 Required program amendments.

* * * * *

(ee) By July 1, 1994, Indiana shall amend 310 IAC 12–05.–139(b) to provide that the interpretation of the terms of the document used to establish a valid existing right shall be based either upon applicable State statutory or case law concerning interpretation of documents conveying mineral rights, or where no applicable State statutory or common law exists, the interpretation is based upon the provisions at subdivisions 139(b) (1) and (2).

[FR Doc. 94–14634 Filed 6–15–94; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 214

FRA Docket No. ROS–2, Notice No. 4

RIN 2130–AA91

Bridge Worker Safety Rules

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Final Rule; correction and petition for reconsideration.

SUMMARY: On June 24, 1992, FRA published safety standards for the protection of those who work on railroad bridges (49 CFR Part 214). FRA now corrects certain sections of that regulation, and changes or clarifies certain requirements in response to a petition for reconsideration filed by the Association of American Railroads (AAR). First, three sections have been corrected by adding citations to reflect the most recent American National Standards Institute (ANSI) standards for personal protective equipment. Second, the rule now sets forth conditions under which employees specially-designated as bridge inspectors may work without fall protection. Third, the rule no longer requires toeboards on walkways, and in certain instances permits work without fall protection on roadways attached to a railroad bridge. Finally, FRA clarifies that railroads and their contractors must require the use of protective footwear, but need not necessarily furnish it, which reflects current practice in the railroad, construction, and other industries where such equipment is necessary.

DATES: *Effective Date:* The effective date of this regulation is on July 18, 1994. The incorporation by reference of certain publications listed in this regulation is approved by the Director of the Federal Register as of July 18, 1994.

ADDRESSES: Any petition for reconsideration should be submitted to the Docket Clerk, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: William O'Sullivan, Chief, Office of Safety Track Division, 400 Seventh Street, SW., Washington, DC 20590 (Telephone: 202–366–0499), Gordon Davids, Office of Safety Enforcement, FRA, 400 Seventh Street, SW., Washington, DC 20590 (Telephone: 202–366–0499), or Christine Beyer, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, DC 20590 (Telephone: 202–366–0621).

SUPPLEMENTARY INFORMATION: On June 24, 1992, FRA published the Bridge Worker Safety Rules (57 FR 28116) that established requirements for the protection of those railroad and railroad contractor employees who work on railroad bridges. The rule included provisions for personal fall arrest systems, safety nets, personal protective equipment (head, face, eye, and foot equipment), contingencies for working adjacent to water, and standards for walkways, railings, and scaffolds. The regulations went into effect on September 24, 1992. However, in order to provide the industry additional time to obtain complying equipment and adequately train workers, FRA suspended the effective date of the sections requiring fall protection (*i.e.*, sections 214.103 and 214.105) until November 24, 1992. (57 FR 45326.)

On August 10, 1992, the AAR filed a petition seeking reconsideration (petition) of the bridge worker safety rules. In that petition, the AAR sought reconsideration of 49 CFR 214.101(d), 214.103(b), and 214.103(c). After careful consideration and for the reasons set forth below, FRA denied the AAR's request with respect to section 214.101(d), partially granted the request with respect to section 214.103(b), and granted the request with respect to section 214.103(c). (FRA formally responded to the petition by letter to the AAR dated January 11, 1993, a copy of which is in the docket of this matter.)

The AAR petition first suggests that section 214.101(d) violates the Rail Safety Improvement Act of 1988 (RSIA) and the Administrative Procedure Act (APA), and therefore should be withdrawn. Section 214.101(d) states that "[A]ny working conditions involving the protection of railroad employees working on railroad bridges not within the subject matter addressed by this Chapter" shall be governed by the regulations of the Occupational Safety and Health Administration (OSHA). This section is merely a restatement of the law as it stands with respect to occupational safety and health matters in the railroad environment, and was added to the final rule in order to alleviate the jurisdictional confusion expressed by rail labor and management prior to promulgation of the rule. FRA has explained the complementary jurisdiction it shares with OSHA with respect to health and safety matters in the railroad industry in its Statement of Policy (Policy Statement) (43 FR 10583) published in 1978, more recently in the Notice of Proposed Rulemaking (NPRM) (56 FR 3434) in this proceeding, and on numerous other occasions. However, a discussion of the statutory jurisdiction each agency possesses and the exercise of that authority is necessary to explain the basis for FRA's response to this aspect of the AAR's petition.

The Occupational Safety and Health Act (OSH Act) vests OSHA with responsibility for promulgating and enforcing workplace safety and health standards. However, in recognition that other Federal agencies possess parallel, industry-specific authority over occupational safety and health, section 4(b)(1) provides that no OSHA rules

> shall apply to working conditions of employees with respect to which other Federal agencies . . . exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health.

29 U.S.C. § 653(b)(1). The exercise of authority contemplated by this provision is one that results in a Federal regulation for on-the-job protection of worker safety or health or a determination that a particular form of regulation is not appropriate.

The Federal Railroad Safety Act of 1970 ("FRSA") grants FRA broad authority to prescribe standards in "all areas of railroad safety." 45 U.S.C. § 431(a). Pursuant to that authority, in 1975, FRA published an advance notice of proposed rulemaking indicating its intention to develop its own set of occupational safety and health standards that would, *in toto*, displace OSHA's regulatory program. 40 FR 10693 (March 7, 1975). After consideration of the record developed, however, FRA reduced the scope of its efforts.

In 1976, FRA published in that docket a notice of proposed rulemaking stating its intention to issue specific occupational safety and health standards on only three subjects for railroad employees (egress from structures, general environmental controls, and fire protection) that would displace otherwise applicable OSHA standards. 41 FR 29153 (July 15, 1976). FRA also indicated its intention to incrementally issue a comprehensive code of such standards for railroad employees that would gradually displace OSHA standards. FRA contemplated that these FRA standards would apply on a territorial instead of a hazard-specific basis.

In 1978, FRA sharply changed course: it terminated the regulatory proceeding and issued a Policy Statement instead of pursuing a comprehensive code of FRA occupational safety and health standards. 43 FR 10583 (March 14, 1978). In explaining its action, FRA stated:

> * * * Written comments in response to [the 1976] proposal were received, and a public hearing was conducted. The FRA has reviewed not only these comments, but also the entire original concept as to the adoption of a comprehensive code of occupational safety and health standards for the railroad industry paralleling the existing OSHA regulations.
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> * * * [G]iven the present staffing level for field investigation and inspection, the FRA has determined that, at this time, it would not be in the best interests of the public and of railroad safety for this agency to become involved extensively in the promulgation and enforcement of a complex regulatory scheme covering in minute detail as do the OSHA standards, working conditions which, although located within the railroad industry, are in fact similar to those of any industrial workplace. Rather, we believe that the proper role for FRA in the area of occupational safety in the immediate future is one that will concentrate our limited resources in addressing hazardous working conditions in those traditional areas of railroad operations in which we have special competence.

Id. at 10584–85.

Thus, contrary to its original intent, FRA's determination in 1978 was generally to leave OSHA standards in place in the railroad industry.

The Policy Statement defined "railroad operations" as the "movement of equipment over rails" (*Id.*), and rejected a "territorial" approach to delineating those working conditions over which FRA would exercise its jurisdiction from those that would remain under OSHA's control. *Id.* at 10587. FRA did not want to duplicate capabilities "already possessed by OSHA" and stated:

> FRA recognizes that OSHA is not precluded from exercising jurisdiction with respect to conditions not rooted in railroad operations nor so closely related to railroad operations as to require regulation by FRA in the interest of controlling predominant operational hazards.

Id. Therefore, until FRA exercises its statutory authority with respect to given working conditions through promulgation of a standard or through an expression that regulation is unnecessary or would be counterproductive, existing OSHA standards apply in the railroad workplace.

In support of its claim to withdraw section 214.101(d), the AAR alleges that because section 19 of the RSIA requires FRA to issue rules, as necessary, for the protection of maintenance-of-way employees on railroad bridges, FRA is the exclusive Federal agency to regulate this subject matter. Also, the AAR states that FRA does not have the discretion "to delegate to OSHA a portion of its

responsibility to regulate bridge worker safety." FRA has not delegated any authority to OSHA through publication of section 214.101(d); characterizing section 214.101(d) as a delegation is simply a misstatement of FRA's relationship with OSHA and OSHA's existing authority to regulate occupational safety and health matters in every American workplace. Rather, FRA has purposefully chosen not to exercise its authority over certain working conditions that OSHA also has the authority to regulate, and over which OSHA has comprehensively exercised its authority.

The AAR also argues that FRA violated the APA by not seeking public comment on section 214.101(d), and that this section represents "a radical departure" from the NPRM and long-standing policy. On the contrary, this section accurately reflects an extensive discussion in the preamble of the NPRM and its inclusion in the rule text is in direct response to written comments submitted to the docket during the rulemaking. Clearly, those commenters knew the matter was at issue. Notice and comment would be required if section 214.101(d) represented a new regulatory scheme for the enforcement of occupational safety and health standards in the railroad workplace. Clearly, that is not the case. Section 214.101(d) is a statement of FRA's interpretation of the law and is wholly consistent with FRA's previous interpretive statements.

From as long ago as publication of the Policy Statement in 1978, FRA has stated that it will exercise authority over working conditions intrinsic to or closely related to railroad operations requiring FRA's unique expertise, and has exercised its authority in some of those areas. All other occupational safety and health matters continue to be governed by OSHA where that agency has exercised its authority over a specific working condition. The AAR concludes that the Policy Statement makes "the regulation of areas along railroad operating rights-of-way * * * exclusively the province of FRA." This conclusion is incorrect, as it embodies the very "territorial" approach to jurisdiction FRA rejected in 1978. The AAR chooses to misconstrue the functional distinction drawn by the Policy Statement as a territorial division of jurisdiction ("fixed facilities such as offices and shops" as OSHA's versus "areas along railroad operating rights-of-way" as FRA's), which it explicitly is not. For instance, as the NPRM in this proceeding clearly states (56 FR 3435), the Policy Statement divested OSHA of authority to regulate the *surfaces* on railroad bridges, such as track and signal structures, but did not oust OSHA entirely from regulating any working condition that arises on a railroad bridge, as the AAR argues. Also, the plain language of the Policy Statement left the regulation of personal protective equipment with OSHA until FRA chose to exercise its authority in that regard. 43 FR 10583, 10588 (March 14, 1978).

In promulgating the initial final rule, FRA methodically considered the hazards bridge work poses; exercised its authority to regulate the use of certain personal protective equipment; and left other working conditions (for instance, exposure to airborne toxins and attendant respirator use) under existing applicable OSHA standards. The areas left to OSHA are those in which FRA neither has, nor can quickly acquire, the expertise necessary for effective implementation of relevant standards. Were FRA to include such matters within its rule without the ability to enforce the relevant standards, it would, as a practical matter, be creating a gap in the protection of railroad workers, which it does not want to do. Moreover, but for respiratory protection, which FRA proposed to include in its rule but ultimately decided to leave to OSHA, FRA never even proposed standards on the matters section 214.101(d) specifies as being included within the areas left to OSHA (*i.e.*, hazard communications, hearing protection, welding and lead exposure standards).

Section 214.101(d) merely states the relationship between FRA's substantive standards and OSHA's; it does not impose a new substantive burden. Whatever substantive burdens OSHA's rules place on railroads are the result of OSHA's exercise of its authority prior to issuance of FRA's rule. This section only attempts to clarify which of those pre-existing standards still apply even after the issuance of FRA's final rule, which displaces some of them. Section 214.101(d) imposes no new substantive burdens and, accordingly, notice and comment was not necessary prior to issuance of this essentially interpretive rule.

Nevertheless, there can be no doubt that the NPRM invited comment on where the jurisdictional lines should be drawn and demonstrated FRA's intent to clarify it. FRA stated:

> Thus, one question is whether the occupational safety issues presented by work on railroad bridges are so inherent to the railroad environment that FRA alone should regulate them, or whether they cut across industry lines without raising special concerns in the railroad context and thus are properly addressed by general OSHA standards.

56 FR 3434. FRA noted that there was considerable confusion about which OSHA standards applied and that it had placed in the docket various legal memoranda from railroads and railroad associations on this issue. FRA then stated: "[T]he appropriate federal standards for personal protection, and the identity of the agency responsible for their enforcement, must be crystal clear." 56 FR 3435. No participant in the rulemaking can be heard to complain about FRA's having provided the clarification it promised. Therefore, although notice of this interpretive rule was not required, it was effectively provided.

Section 214.101(d) does not reverse long-standing policy or law, does not violate the RSIA or APA and, therefore, will not be withdrawn.

Second, the AAR's petition asserts that the exemption in section 214.103(b) for instances where the installation of fall protection poses a greater risk than working without protection should be expanded to include instances where the installation and use of fall protection poses a greater risk. FRA does not believe there are compelling reasons to enlarge this exception to the fall protection requirement with respect to all railroad bridge workers. The examples cited by the AAR in their petition (fire fighting, re-railing cars, working with moving equipment) as instances where the use of fall protection equipment may pose a greater risk than completing the work without fall protection are not persuasive. FRA believes that for each of these situations installation of fall protection equipment is the most difficult part of the process, and that once installed does not interfere in the work to be done. In other words, if installation can be accomplished, the duties to be performed once protection is in place can also be accomplished. The AAR states that workers need to be able to move away from these hazards quickly and easily. However, once installed, safety nets, walkways, and fall arrest systems provide ample freedom of movement. The only fall protection device that may present questions in this regard is the personal fall arrest system, and given new designs that encompass the peculiarities of railroad bridge structures and points of attachment, these devices can be installed to allow prompt and careful movement. Therefore, FRA is not willing to expand the fall protection exception set out in section 214.103(b) for all bridge workers. However, FRA does believe that this exception should be broadened to permit railroad bridge inspectors to work without installing or

using fall protection systems, so long as certain criteria are met.

Employees performing inspections of railroad bridges must climb to all points above and below the bridge deck, as well as along the deck, and must be free to reach points on the structure that are accessed infrequently and with difficulty, and then only for inspection purposes. FRA believes that in some instances the use of fall protection could heighten the chance of injury for the inspector. Also, a blanket fall protection requirement could result in incomplete bridge inspections, a fact that raises additional safety concerns for fellow employees and the public. Therefore, persons who are capable of climbing on bridges, and who have been specifically qualified and designated by the railroad or railroad contractor, may perform bridge inspections without the installation and use of fall protection required under this regulation, provided the conditions set forth below are met.

In order to qualify for the installation and use exception now set forth in section 214.103(b)(2), the railroad or contractor using the exception must have a comprehensive written program in place that addresses pertinent climbing techniques and applicable safety equipment. The employee to whom the exception applies must be trained and qualified according to that program to conduct bridge inspections. Also, this employee must be formally designated by the railroad or contractor as one who will perform bridge inspections and voluntarily accepts the designation. The reason for this requirement is to prevent an employer from maintaining an informal bridge inspection program typified by on-the-spot designations of employees who lack training and who are uncomfortable working at heights without protection. Section 214.103(b)(2)(D) requires that the employee must actually be engaged in the inspection of the bridge or its components while the exception applies. Should this employee move to another duty on the bridge, fall protection would be required. Finally, the employee to whom the exception applies must be familiar with the appropriate climbing technique needed to scale safely the structure involved, and must be provided any generic, alternative or specialized equipment needed to complete the climb efficiently and safely. For instance, some railroads are training their bridge inspectors in rock climbing techniques and systems. If rock climbing techniques are used by a bridge inspector during the inspection, the appropriate equipment must also be provided.

The AAR also requests that FRA eliminate the requirement of toeboards on bridge walkways found in section 214.103(c). In support of its request, the AAR states that toeboards are not normally found on railroad bridges, and because they would permit snow, ice, and debris to accumulate on walkways, will present tripping or falling hazards. FRA agrees, and is removing the toeboard requirement from section 214.103(c). Therefore, fall protection will no longer be required where a bridge is equipped with secure walkways and railings that meet the remaining criteria set forth in section 214.103(c). Toeboards are used traditionally as a method to prevent tools from falling rather than as a fall protection device. Recognizing that falling tools present hazards to those who work at levels below the walkway, FRA believes that the dangers created by the presence of toeboards exceed those associated with not requiring them. Also, nearly all railroad bridges equipped with secure walkways and railings do not also possess toeboards. Therefore, the substitution of walkways for personal fall arrest systems and safety nets permitted by section 214.103(c) as originally written is largely unusable.

FRA also makes a clarification with respect to walkways in section 214.103(c). Many railroad bridges now include vehicular roadways replacing second or multiple railroad tracks that have been removed. For the purposes of this rule, FRA views these roadways as walkways. These roadways are at least as stable as the typical walkway built beside track on a railroad bridge, and footing and movement on these roadways is as secure as on a walkway or on the track portion of the railroad bridge. Because of these safety factors, FRA believes that employees working or moving at least six feet from the edge of such a roadway are not at risk of falling over the side of the bridge. Therefore, where employees are six or more feet from the edge of a vehicle roadway, fall arrest systems, safety nets, railings and handrails are not required. Section 214.103(c)(2) now permits work without fall protection on roadway bridges so long as employees remain at least six feet from the edge of the roadway.

Also, FRA is clarifying the rule with respect to personal protective equipment. FRA has received questions from the regulated community concerning the interplay of sections 214.111 and 214.115. To alleviate any confusion, section 214.111 has been clarified by stating that railroads and their contractors must require the use of protective footwear, but need not necessarily furnish that equipment. As written, section 214.115 of the final rule clearly states that employers must require workers to wear foot protection, but does not contain the requirement present in the other personal protective equipment sections stating the "employees shall be provided" such equipment. Section 214.111, which sets out personal protection standards generally, appears to contradict section 214.115 by stating that the railroads and contractors "must provide and require the use of" the equipment required by Subpart B of the rule, including footwear. That contradiction is now removed. The practical difference involved here, as in other industries, is that footwear is a personal item that the employer cannot reasonably be required to retain in stock, while other safety items are easily supplied with a store of backup units should they be required. Therefore, section 214.111 is amended to exclude protective footwear from the group of personal protective devices that the railroads and their contractors must provide. This change reflects the status of protective footwear in the railroad, construction, and other industries where the equipment is needed, reiterates FRA's original intent, and does not in any way interfere with collective bargaining agreements that address who ultimately bears the expense for personal protective equipment.

Finally, FRA is correcting sections 214.113, 214.115, and 214.117 by replacing outdated ANSI references with the most recent standards for head, foot, and eye and face protection. As noted by commenters to the NPRM, these new standards were generally used in industry when the NPRM and final rule were published, but FRA erroneously printed outdated standards.

Regulatory Impact

E.O. 12866 and DOT Regulatory Policies and Procedures

This correction of the final rule has been evaluated in accordance with existing policies and procedures and is not considered significant under Executive Order 12866 or under DOT policies and procedures. The minor technical changes made in this amendment will not increase the costs or alter the benefits associated with this regulation to any measurable degree.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of rules to assess their impact on small entities. This amendment to the final rule removes a requirement originally

placed on railroads and their contractors and clarifies an existing requirement. The changes will have no new direct or indirect economic impact on small units of government, businesses, or other organizations. Therefore, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act.

Paperwork Reduction Act

There are no paperwork requirements associated with this amendment of the final rule.

Environmental Impact

FRA has evaluated this amendment in accordance with its procedures for ensuring full consideration of the environmental impact of FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and DOT Order 5610.1c. The amendment meets criteria establishing this as a nonmajor action for environmental purposes.

Federalism Implications

This amendment will not have a substantial effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

List of Subjects in 49 CFR Part 214

Bridges, Incorporation by reference, Occupational safety and health, Personal protective equipment, Railroad operating practices, Railroad safety, Scaffolding.

The Final Rule

In consideration of the foregoing, Part 214, Title 49, Code of Federal Regulations is amended as follows:

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

Authority: 45 U.S.C. 431, 438, as amended; 49 CFR 1.49(m).

2. By amending § 214.103 to revise paragraphs (b) and (c) to read as follows:

§ 214.103 Fall protection, generally.

* * * * *

(b)(1) This section shall not apply if the installation of the fall arrest system poses a greater exposure to risk than the work to be performed. In any action brought by FRA to enforce the fall protection requirements, the railroad or railroad contractor shall have the burden of proving that the installation of such device poses greater exposure to risk than performance of the work itself.

(2) This section shall not apply to employees engaged in inspection of railroad bridges conducted in full compliance with the following conditions:

(i) the railroad or railroad contractor has a written program in place that requires training in, adherence to, and use of safe procedures associated with climbing techniques and procedures to be used;

(ii) the employee to whom this exception applies has been trained and qualified according to that program to perform bridge inspections, has been previously and voluntarily designated to perform inspections under the provisions of that program, and has accepted the designation;

(iii) the employee to whom this exception applies is familiar with the appropriate climbing techniques associated with all bridge structures the employee is responsible for inspecting;

(iv) the employee to whom this exception applies is engaged solely in moving on or about the bridge or observing, measuring, and recording the dimensions and condition of the bridge and its components; and

(v) the employee to whom this exception applies is provided all equipment necessary to meet the needs of safety, including any specialized or alternative systems required.

(c) This section shall not apply where employees are working on a railroad bridge equipped with walkways and railings of sufficient height, width, and strength to prevent a fall, provided that the employee does not work beyond the railings, over the side of the bridge, on ladders or other elevation devices, or where gaps or holes exist through which a body could fall. Where used in place of fall protection as provided for in § 214.105, this paragraph (c) is satisfied by:

(1) Walkways and railings meeting the standards set forth in the American Railway Engineering Association's Manual for Railway Engineering; and

(2) Roadways attached to railroad bridges, provided that employees on the roadway deck work or move at a distance of six feet or more from the edge of the roadway deck, or from an opening through which a person could fall.

* * * * *

3. By revising § 214.111 to read as follows:

§ 214.111 Personal protective equipment, generally.

With the exception of foot protection, the railroad or railroad contractor shall provide and the employee shall use all appropriate personal protective equipment described in this subpart in all operations where there is exposure to hazardous conditions, or where this subpart indicates the need for using such equipment to reduce hazards to railroad employees. The railroad or railroad contractor shall require the use of foot protection when the potential for foot injury exists.

4. By amending § 214.113 to revise paragraph (b) to read as follows and by removing paragraph (c):

§ 214.113 Head protection.

* * * * *

(b) Helmets for the protection of railroad employees against impact and penetration of falling and flying objects, or from high voltage electrical shock and burns shall conform to the national consensus standards for industrial head protection (American National Standards Institute, American National Standard Z89.1–1986, Protective Headwear for Industrial Workers). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American National Standards Institute, 11 West 42nd Street, New York, NY 10036. Copies may be inspected at the Federal Railroad Administration, Docket Clerk, 400 7th Street, SW., Washington, DC, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

5. By amending § 214.115 to revise paragraph (b) to read as follows:

§ 214.115 Foot protection.

* * * * *

(b) Safety-toe footwear for railroad employees shall conform to the national consensus standards for safety-toe footwear (American National Standards Institute, American National Standard Z41–1991, Standard for Personal Protection—Protective Footwear). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American National Standards Institute, 11 West 42nd Street, New York, NY 10036. Copies may be inspected at the Federal Railroad Administration, Docket Clerk, 400 7th Street, SW., Washington, DC, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

6. By amending § 214.117 to revise paragraph (b) to read as follows:

§ 214.117 Eye and face protection.

* * * * *

(b) Eye and face protection equipment required by this section shall conform to the national consensus standards for occupational and educational eye and face protection (American National Standards Institute, American National Standard Z87.1–1989, Practice for Occupational and Educational Eye and Face Protection). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American National Standards Institute, 11 West 42nd Street, New York, NY 10036. Copies may be inspected at the Federal Railroad Administration, Docket Clerk, 400 7th Street, SW., Washington, DC, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Issued this 8th day of June, 1994.

Jolene M. Molitoris,

Administrator.

[FR Doc. 94–14377 Filed 6–15–94; 8:45 am]

BILLING CODE 4910–06–P

Proposed Rules

Federal Register
Vol. 59, No. 115
Thursday, June 16, 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.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Risk Assessment for Holding Company Systems

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On March 1, 1994, The Commodity Futures Trading Commission ("Commission") published in the **Federal Register** a request for public comment on proposed rules to implement the risk assessment provisions of the Futures Trading Practices Act of 1992. 59 FR 9689 (March 1, 1994). The original comment period, which would have expired on May 2, 1994, was extended by the Commission for a period of sixty days. Thus, the extended comment period expires on July 1, 1994. 59 FR 22145 (April 29, 1994). However, in order to assure a full opportunity for comment on the issues, the Commission has determined to provide an additional sixty-day extension of the comment period with respect to those provisions of the proposed rules concerning the maintenance and filing of information concerning the futures commission merchant's ("FCM") noncustomer accounts and those provisions requiring the maintenance and reporting of financial information concerning an FCM's Material Affiliated Persons ("MAPs") required to be provided on proposed Form 1.15A.

DATES: Written comments for those provisions subject to the extension, as set forth above, must be received on or before September 1, 1994. Comments concerning all other provisions of the proposed rules must be received on or before July 1, 1994.

ADDRESSES: Comments should be sent to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to "Proposed Risk Assessment Rules."

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Associate Chief Counsel, or Lawrence T. Eckert, Attorney Adviser, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254–8955

SUPPLEMENTARY INFORMATION: The comment period on proposed rule 1.14 §§ (a)(1)(v)–(a)(1)(x), proposed rule 1.15 §§ (a)(1)(iii), (a)(2)(iii), (a)(3) and (a)(4) and proposed Form 1.15A is hereby extended for an additional sixty days, to September 1, 1994. The comment period for all other provisions of the proposed rules, including, but not limited to, the provisions concerning maintenance and filing of an FCM's organizational chart, information concerning risk management policies, procedures and systems, and consolidated and consolidating financial statements, as well as the proposed requirements with respect to providing notice to the Commission upon the occurrence of certain events, are not extended and the comment period thereon will expire on July 1, 1994.

Issued in Washington, DC, on June 10, 1994, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–14515 Filed 6–15–94; 8:45 am]

BILLING CODE 6351–01–M

LEGAL SERVICES CORPORATION

45 CFR Part 1607

Governing Bodies

AGENCY: Legal Services Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed regulation would amend the Legal Services Corporation's ("LSC" or "Corporation") regulations, relating to governing bodies of recipients of LSC funds. Many of the revisions are simply intended to clarify current Corporation policy or to interrelate this part to other LSC regulations. However, a number of the proposed revisions represent changes in Corporation policy or interpretations with respect to issues that arise under the regulation. The proposal also includes a number of technical revisions to make the rule easier to apply and use.

DATES: Comments should be received by August 15, 1994.

ADDRESSES: Comments should be submitted to the Office of the General Counsel, Legal Services Corporation, 750 First Street, NE., 11th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Victor Fortuno, General Counsel, Office of the General Counsel (202) 336–8810.

SUPPLEMENTARY INFORMATION: The Operations and Regulations Committee of the LSC Board of Directors ("Committee") held public hearings on April 15, 1994, in Washington, DC and on May 13, 1994, in Atlanta, Georgia, to consider drafts of proposed revisions to 45 CFR part 1607, LSC's regulation on recipient governing bodies. At the meeting in Atlanta, the Committee approved a draft to be published in the **Federal Register** as a proposed rule for public comment.

The Corporation is extending the customary 30-day comment period to 60 days in order to allow bar associations and other organizations with a specific interest in this rule sufficient time to comment. Bar associations play a substantial role in the appointment of recipient board members, and the Committee encourages their involvement in this rulemaking process.

The Committee recognizes that reauthorization of the Corporation is presently under consideration by Congress. Whenever Congress does reauthorize the Corporation, the Corporation's regulations will be revisited and revised accordingly.

This proposed rule is intended to amend 45 CFR part 1607 and to supersede part 1607's interpretive guideline published at 48 FR 36820 (August 15, 1983).

Section 1607.1 Purpose

No change is proposed for this section.

Section 1607.2 Definitions

Most of the changes proposed for this section are technical and clarifying in nature. The section was reordered to put the definitions in alphabetical order. Also, definitions found in other parts of the regulations, but applicable to this part are included here for easier reference. In addition, language found in other sections of this part that, in fact, constitute definitions of terms are included here both for easier reference

and to treat similar terms similarly. Some of the language has been clarified to make it consistent with past and current LSC interpretations.

Section 1607.2(a). The definition of *attorney member* was added to make it clear that national support center board members do not have to be admitted to practice in a state where the center actually provides legal assistance.

Section 1607.2(c). The definition of *eligible client member* has been changed in two principal ways. First, the language has been revised to make it clear that client board members must be eligible at the time of their appointment to each term of office. Thus, a client member who is financially eligible for services when first appointed to a recipient's board may not be reappointed to a second or subsequent term if, at the time of reappointment, the client board member is no longer financially eligible for LSC-funded services. However, nothing in the rule would require a client board member to resign during the course of a term if the client became ineligible subsequent to appointment. Second, language was added to deal with two additional, distinct issues. The proposed rule now makes it clear that the recipient should decide how client board member eligibility is determined. The proposed rule also makes it clear that the recipient should decide whether it or a particular group should make the determination, and that the recipient could decide, for some groups, the recipient will make the determination and for others it will leave the determination up to the appointing group.

The Committee considered and decided not to expand the definition of *eligible client member* to include individuals who are eligible for non-LSC-funded services provided by the recipient, because it wished to insure that the focus of the legal services program remains on the poor community.

Section 1607.2(d). The proposal revises the definition of *governing body* to clarify that, in addition to the governing bodies of recipients who have as a primary purpose the provision of legal assistance to eligible clients, it also applies to the governing bodies or policy boards created pursuant to § 1607.6(e).

Section 1607.2(e). This definition of *recipient* appears in 45 CFR part 1600, but is repeated here for clarity in interpreting this part.

Section 1607.3 Composition

Section 1607.3(a). The proposal includes general language, applicable to all categories of board membership, that requires board members to be supportive of the purposes of the LSC Act, and to be interested in and knowledgeable about the delivery of quality legal services to the poor. The current regulation does not include any similar requirement for client board members, but does include similar, although not identical, requirements for attorney and "other" board members. The proposal removes the reference to the board reflecting "the characteristics" of the client community, in part because it is not clear what that language means and in part because it could be construed to be inconsistent with diversity requirements that are included later in the rule for each category of board membership.

Section 1607.3(b). With respect to attorney board members, the proposal revises the language of the rule that is based on the requirements of the McCollum Amendment, which require a majority of the board members to be appointed by state, county and municipal bar associations. The revision clarifies that the appointments can be made by one or more such bar associations, so long as those bar associations collectively represent a majority of attorneys practicing law in the recipient's service area. If there are minority or gender-based bar associations that represent attorneys practicing in a particular locality, those bar associations may be included in the mix of bar associations that make appointments of attorneys to a recipient's board, especially if their inclusion would help to insure that there is appropriate diversity among the attorney members of the board. In addition, although the rule, consistent with the language of the McCollum Amendment, states that the appointments are to be made by the "governing bodies" of the bar associations, the Committee recognizes that different bar associations should be free to exercise their appointment responsibility in a manner consistent with their own policies, procedures and practices. The McCollum Amendment does not direct LSC to impose any particular method of appointment on a bar association.

The proposed rule also adds language which is based on part of the McCollum amendment that makes it clear that national support centers are not required to use the American Bar Association ("ABA") or a collection of all state bars to appoint their attorney members, simply because they provide service nationally. The proposed rule also recognizes that some recipients, especially Native-American or migrant programs, may have offices in one state, but also provide services in one or more adjacent or nearby states. The language is intended to permit those programs, if they so decide, to have the bar associations of the other states in which they provide service make appointments as well as the bar of the state in which their principal office is located.

In addition, the proposed rule explicitly states what is implicit in the language of the current regulation, i.e., that the additional ten percent of the board members who must be attorneys, but who are not covered by the McCollum amendment, may be selected by the recipient's governing body, if it so chooses. The proposed rule does change current law with respect to the additional ten percent of attorney board members in one respect, however. Under the current regulation, the additional attorneys must be representatives of bar associations or other legal organizations, e.g., law schools. This requirement is not contained in the LSC Act. Under the proposed regulation, the recipient may select attorneys who are not representatives of any particular bar or legal organization, or may select attorneys who are affiliated with non-legal organizations, as long as they are admitted to practice in a state within the recipient's service area, and as long as the organization has an interest in the delivery of legal services to the poor. Thus, the recipient would be able to select lawyers who represent the business community or the United Way and may be helpful in fundraising, or lawyers who provide substantial pro bono services to the client community and may be helpful in designing a recipient's private attorney involvement program.

Finally, the proposed regulation revises and relocates the section that relates to diversity among attorney board members. This provision is a variation of the language previously found in § 1607.3(c). It is revised to incorporate a more current statement of the concerns addressed by that subsection, but no substantive change is intended. While the language of the proposed rule specifically mentions race, ethnicity and gender, it also includes a reference to other factors that may be relevant in a particular legal community and population of the area served by the recipient, including, for example, age, physical abilities and religious belief.

Section 1607.3(c). The proposal includes a number of changes in the language that relates to client board members. The principal revision addresses an issue that has remained

ambiguous under the language of the current regulation and has caused problems for some LSC recipients. The proposed revision would codify the current LSC interpretation of the language to require that client board members be selected by client groups that have been designated by the recipient. This proposal also adds language that more accurately reflects the kind of groups or organizations that would be appropriate client groups for purposes of eligible client member selection. In addition, the proposal adds a diversity goal for client board members that is similar to the requirement for attorney board members.

Section 1607.3(d). With respect to the "other" board members, i.e., those that are neither attorney members nor eligible client members, the proposal makes it clear that recipient boards are permitted to fill the remaining "other" slots. This gives recipients flexibility to include board members who can help them with fundraising, community relations, coordination with other social service providers, or any other locally identified need. Law school professors who cannot count as "attorney members" because they are not admitted to practice in a state within the recipient's service area, could be selected for this category of membership. Although there is no comparable language in the current regulation, this provision is consistent with longstanding LSC interpretations. In addition, the proposal includes language that makes it clear that "other" board members should be selected with the goals of diversity in mind.

Section 1607.3(e). This proposal adds language to the "domination" provision in the current regulation to make it clear that the provision was not intended to prevent recipients from designating a single regional or statewide client council as the appointing organization for client board members, so long as that client council represents numerous smaller client groups.

Section 1607.3(f). The proposal deletes language which could be incorrectly interpreted to give LSC authority to veto particular methods of selecting local board members. In addition, the proposal states affirmatively that recipients may recommend names to and consult with bar associations and other appointing groups to insure that appropriate appointments are made. This revision recognizes that bar associations or other groups may request information on who would make a good legal services program board member and may rely on input from the recipients in making the appointments.

Section 1607.3(g). The proposed rule includes a new provision that is intended to establish standards for dealing with recipient board vacancies. It establishes a standard of reasonable and good faith efforts to insure that governing body vacancies are filled promptly, but recognizes that recipients often have no control over the appointment process other than to change the groups that they have designated to make the appointments if a particular group fails to make an appointment in a timely manner. In order to avoid the creation of vacancies, recipients, through their own by-laws or board policies, could take a number of actions when appointing organizations are slow in making appointments, refuse to make them, or are unable to make them for whatever reason. For example, a recipient's board could permit its members to hold over until replacements are appointed, or could make short-term interim appointments, if necessary, until regular appointments can be made.

Section 1607.3(h). The proposed regulation includes a new provision that grants the recipient the authority to reject an appointment of a board member when the recipient determines that the person who has been appointed does not meet the criteria set out in the regulation, including financial eligibility for client board members, or where the person appointed has a significant individual or institutional conflict of interest with the recipient or its client community. The ABA's Standards for Providers of Legal Services to the Poor states, in Standard 7.2–5, that "governing body members should not knowingly attempt to influence any decisions in which they have a conflict of interest with provider clients" and Standard 7.2–6 states that "members should not be selected by * * * any institution or agency which is in conflict with the provider or its clients." The Commentary to those standards contains discussions of both institutional and individual conflicts of interest and suggests that when such conflicts arise with respect to a sitting board member, the member and the recipient should be guided by laws of the jurisdiction regarding disclosure and recusal. While the Standards state an absolute rule prohibiting appointments by institutions or agencies that have a conflict with the recipient or its clients (e.g. a welfare department or county attorney's office should not make appointments to a recipient's board), they also note that:

> If a person is employed by or is otherwise significantly connected with an institution that is in conflict with the provider's clients, generally that person should not serve on the governing body. That person may serve, however, if there is evidence * * * that the particular individual is not in actual conflict * * *.

Thus, the question of whether it is appropriate for government attorneys or other public employees or elected officials, or attorneys representing finance companies or real estate developers, to serve on recipient governing bodies as members appointed by a bar association as its representative is a factual issue. The Commentary recognizes that:

> (c)onflicts may arise in the representation by attorney board members of institutions or individuals who are in conflict with provider clients. Concern about the risks associated with conflicts should not exclude from the governing body every person identified with an institution or individual with an adverse interest. A strict rule could exclude persons with skills and experience of benefit to the provider and could inhibit development of an effective relationship between the provider and the private bar. In rural areas particularly, where the pool of potential members is relatively small, it may be impossible to avoid all conflicts. The provider, however, should assure that the presence of members with potential conflicts does not inhibit forceful representation of clients.

The proposed provision suggests a way that, under appropriate circumstances, the recipient can assure that individuals with clear and substantial conflicts of interest do not serve on its governing body, while permitting it to seat other individuals who may have a less substantial or merely potential conflict, and leaving it to the guidance of the applicable rules of professional responsibility when actual conflicts arise.

Section 1607.4 Functions of a Governing Body

Section 1607.4(a). This proposal deletes the requirement for "effective" prior public notice, which has proven to be a difficult concept to enforce and may be very fact-specific. The Committee felt that truly effective public notice is virtually impossible to achieve, even if a recipient spent huge amounts of money on advertising. The Corporation does not wish to promote such wasteful expenditures or assume that the efforts were not "effective" simply because few members of the public showed up at a board meeting. Instead, the standard should be that of "reasonable" prior public notice, so that recipients would only be required to do

what is reasonable under the specific local circumstances.

The Committee also considered whether it should include within the regulation specific guidance as to what kinds of matters were properly discussed in executive session. Instead, it decided to recommend that recipients look to the kinds of matters described in the LSC bylaws and Sunshine Act regulation (45 CFR part 1622), state Sunshine Act provisions, or other provisions in state non-profit corporation law for guidance as to the kinds of matters that should appropriately be discussed out of the public eye. A recipient should determine, based on that review and local circumstances, how it should conduct its business.

Section 1607.4(b). The proposed regulation includes new language to make it clear that recipient governing bodies have, in addition to the specific functions described in the regulation, the authority and responsibility inherent in their status as boards of non-profit corporations. The Committee felt that the current regulatory language did not grant the governing body the general authority, for example, to hire and fire a program's executive director, and there should be language that granted such authority.

In addition, there is new language that was added to make the section consistent with ABA opinions on the role of governing bodies of legal assistance programs under the Model Rules, especially with respect to the governing bodies' interference with an attorney's representation of a client or with the conduct of any ongoing representation. The Committee wished to make clear that while Board members were prohibited from such interference, the Board as a whole should be encouraged to adopt policies to guide the executive director's actions when he or she discovers that the recipient has undertaken representation in a case that is inappropriate under the restrictions of the LSC Act or regulations.

Section 1607.4(c). This new provision is intended to make it clear that it is up to recipients to design their own bylaws. The Corporation would have authority to review a program's bylaws, as well as any revisions that are made in them, for the purpose of ensuring that they comply with the LSC Act and regulations.

Section 1607.5 Compensation

Section 1607.5(a). The proposed regulation makes two significant changes in the current rule dealing with recipient board member compensation. First, since the provision of the LSC Act that prohibits compensation applies only to attorney board members, it would be consistent with the Act to permit a recipient to pay compensation to a client or other non-attorney board member for board service or other service to the recipient. The regulation was revised to make it consistent with the restriction in the Act.

Second, this proposal reverses the policy decision made by the LSC Board in 1988, which interpreted the language of the LSC Act to prohibit a recipient board member from receiving compensation from any recipient, not just the one on whose board the member sat. The effect of the 1988 revision was to prohibit field program staff from sitting on state and national support center boards, and vice versa. It prevented support centers from being accountable through their boards to the programs that they were intended to serve. This proposed language restores and clarifies the prior LSC policy that was in existence from 1975 to 1988 and which reflects the intent of Congress. Both the Legal Services Corporation Reauthorization bill that passed the House in 1992 (H.R. 2039) and the bill that was approved by the Senate Committee on Labor and Human Resources the same year (S. 2870) would have amended the LSC Act in a manner consistent with the proposed revision.

In addition, the proposal clarifies that all board members may receive a per diem payment for expenses in lieu of actual expense reimbursements, so long as such a payment is reasonable in light of actual average costs. Such a per diem may be easier for programs to administer and may encourage board members to save money on items such as meals and lodging by setting the per diem at a relatively low rate. The last phrase of the sentence was deleted to make it clear that reimbursement could be made for expenses incurred by recipient board members, on the same terms and conditions that are applicable to non-board members when such board members are involved in other program activities not directly related to their board membership or service, e.g., attorney board members who volunteered to drive a program client to a meeting or a hearing could receive reimbursement for automobile expenses, or attorney board members who did pro bono work on behalf of the program could receive reimbursement for travel expenses for attending an out-of-town settlement conference.

Sections 1607.5 (b) and (c). The proposal includes two new provisions that clarify how the compensation prohibition relates to a recipient's private attorney involvement program. One provision makes it clear that the Corporation could partially waive the compensation prohibition for those rural programs that operate in areas where there are so few attorneys that it is difficult or impossible to find attorneys willing to serve on program boards if that means that their partners and associates are barred from participating in judicare or other compensated PAI activities. The second provision was added to clarify that attorney board members can receive referrals of fee-generating cases and participate freely in the recipient's pro bono PAI programs on the same terms as any other attorney. This is particularly important for rural areas where there are few private attorneys.

Section 1607.6 Waiver

Section 1607.6(a). There is no change in this waiver provision which was designed to cover those programs, primarily reservation-based Native-American programs, that existed prior to the creation of the Corporation and had nonattorney majorities on their boards. In lieu of attorneys, most of those programs include tribal advocates who practice in tribal courts.

Section 1607.6(b). This new provision was added to permit the Corporation president the discretion to waive the requirement of one-third client membership when the president has determined that a recipient, like the National Clearinghouse for Legal Services or the Food Research & Action Center ("FRAC"), does not have as a primary purpose the provision of legal assistance to clients. The waiver provision requires a specific determination by the Corporation president, rather than a self-determination by the recipient, and does not permit waiver of the client board member requirement so long as the recipient has as a primary purpose the provision of legal assistance to clients. Such a waiver does not conflict with the statutory provision governing client membership because that provision applies only to those recipients that are organized "solely for the provision of legal assistance to eligible clients." It is anticipated that this waiver will be used sparingly for exceptional circumstances.

Section 1607.6(c). This provision was revised to clarify that the Corporation president could waive any provisions of the regulation, as long as the waiver conforms with applicable law. It also allows partial waivers to be granted. In addition, language was added to make it clear that the nature of the legal community could be considered as a basis for a waiver, as well as

requirements of state law. The Committee recognized that there may be programs, especially in rural areas, where there are peculiar problems or situations within the legal community that may make it necessary or desirable to permit the recipient to have a governing board that varies from the normal. An example would be for those programs that serve native-American populations and practice in tribal courts. The president, through the waiver authority, could permit the recipient to substitute one or more tribal advocates for attorney board members. In addition, this provision could be used as authority for partial waiver of the compensation prohibition, to permit a recipient to adopt policies that would allow partners or associates of a board member to participate in compensated PAI activities supported by the recipient.

Section 1607.6(d). The only change made in this subsection was a reference to the previous subsection.

Section 1607.6(e). This new provision was added to permit the LSC president to require an organization that is not principally a legal assistance organization but gets an LSC grant for legal assistance activities, to set up a policy board, similar to those established for several of the Delivery Systems Study programs during the late 1970's, to govern the activities covered by the LSC grant.

Deletion of Section 1607.7 Compliance

The compliance section of the current regulation is no longer applicable, since it refers to the changes that were made in the regulation in 1983. None of the proposed revisions would require programs to change anything about their board structures in order to come into compliance, although they would permit programs to make numerous changes and still remain in compliance with the regulation. Therefore the Committee proposal deletes the provisions on compliance. The Corporation should insure compliance with the new regulation in the same manner as it insures compliance with the other regulations.

List of Subjects in 45 CFR Part 1607

Legal services.

For the reasons set forth in the preamble, LSC proposes to amend 45 CFR part 1607 as follows:

PART 1607—GOVERNING BODIES

1. The authority citation for part 1607 is revised to read as follows:

Authority: 42 U.S.C. 2996f(c).

2. Section 1607.1 is revised to read as follows:

§ 1607.1 Purpose.

This part is designed to insure that the governing body of a recipient will be well qualified to guide a recipient in its efforts to provide high-quality legal assistance to those who otherwise would be unable to obtain adequate legal counsel, and to insure that the recipient is accountable to its clients.

3. Section 1607.2 is revised to read as follows:

§ 1607.2 Definitions.

(a) *Attorney member* as used in this part means a board member who is an attorney admitted to practice in a State within the recipient's service area.

(b) *Board member* refers to a member of a recipient's governing body.

(c) *Eligible client member* as used in this part means a person who is eligible to receive legal assistance under the Act at the time of appointment to each term of office to the recipient's governing body, without regard to whether the person actually has received or is receiving legal assistance at that time. Eligibility of client members shall be determined by the recipient or, if the recipient so chooses, by the appointing organization(s) or group(s), in accordance with policies adopted by the recipient.

(d) *Governing body* refers to the board of directors or other governing policy board or body of a recipient receiving funds under section 1006(a)(1)(A) of the Act.

(e) *Recipient* refers to any grantee or contractor receiving financial assistance from the Corporation under section 1006(a)(1)(A) of the Act.

4. Section 1607.3 is revised to read as follows:

§ 1607.3 Composition.

(a) A recipient shall be incorporated in a State in which it provides legal assistance, and shall have a governing body that reasonably reflects the interests of the eligible clients in the area served and consists of members, each of whom is supportive of the purposes of the Act and has an interest in, and knowledge of, the delivery of quality legal services to the poor.

(b) At least sixty percent (60%) of a governing body shall be attorney members.

(1) A majority of the members of the governing body shall be attorney members appointed by the governing body(ies) of one or more State, county or municipal bar associations, the membership of which represents a majority of attorneys practicing law in the localities in which the recipient provides legal assistance.

(i) Appointments may be made either by the bar association which represents a majority of attorneys in the recipient's service area or by bar associations which collectively represent a majority of the attorneys practicing law in the recipient's service area.

(ii) Recipients that provide legal assistance in more than one State may provide that appointments of attorney members be made by the appropriate bar association(s) in the State(s) or locality(ies) in which the recipient's principal office is located or in which the recipient provides legal assistance.

(2) Any additional attorney members may be selected by the recipient's governing body or may be appointed by other organizations that are designated by the recipient and have an interest in the delivery of legal services to the poor.

(3) Appointments shall be made so as to insure that the attorney members reasonably reflect the diversity of the legal community and the population of the areas served by the recipient, including race, ethnicity, gender and other factors.

(c) At least one-third of the members of a recipient's governing body shall be eligible clients when appointed. The members who are eligible clients shall be appointed by a variety of appropriate groups designated by the recipient that may include, but are not limited to, client and neighborhood associations and community-based organizations which advocate for or deliver services or resources to the client community served by the recipient. Recipients shall designate groups in a manner that reflects, to the extent possible, the variety of interests within the client community, and eligible client members should be selected so that they reasonably reflect the diversity of the eligible client population served by the recipient, including race, gender, ethnicity and other factors.

(d) The remaining members of a governing body may be appointed by the recipient's governing body or selected in a manner described in the recipient's bylaws or policies, and the appointment or selection shall be made so that the governing body as a whole reasonably reflects the diversity of the areas served by the recipient, including race, ethnicity, gender and other factors.

(e) The nonattorney members of a governing body shall not be dominated by persons serving as the representatives of a single association, group or organization, except that eligible client members may be selected from client organizations that are composed of coalitions of numerous

smaller or regionally based client groups.

(f) Members of a governing body may be selected by appointment, election, or other means consistent with this part and with applicable State law. Recipients may recommend candidates for governing body membership to the appropriate bar associations or other appointing groups and may consult with appointing organizations to insure that appointments are made consistent with the provisions of this part.

(g) Recipients shall make reasonable and good faith efforts to insure that governing body vacancies are filled as promptly as possible.

(h) A recipient may reject the appointment of a board member if the recipient determines that:

(1) The person does not meet the criteria for board membership set out in this part, including financial eligibility for persons appointed as eligible client members, or

(2) The person has an actual and significant individual or institutional conflict of interest with the recipient or the recipient's client community that could influence the person's ability to exercise independent judgment as a member of the recipient's governing body.

5. Section 1607.4 is revised to read as follows:

§ 1607.4 Functions of a governing body.

(a) A governing body shall have at least four meetings a year. A recipient shall give timely and reasonable prior public notice of all meetings, and all meetings shall be public except for those concerned with matters properly discussed in executive session.

(b) In addition to other powers and responsibilities that may be provided for by state law, a governing body shall establish and enforce broad policies governing the operation of a recipient, but neither the governing body nor any member thereof shall interfere with any attorney's professional responsibilities to a client or obligations as a member of the profession or interfere with the conduct of any ongoing representation.

(c) A governing body shall adopt bylaws which are consistent with State law and the requirements of this part. Recipients shall submit a copy of such bylaws to the Corporation and shall give the Corporation timely notice of any changes in such bylaws.

6. Section 1607.5 is revised to read as follows:

§ 1607.5 Compensation.

(a) While serving on the governing body of a recipient, no attorney member shall receive compensation from that recipient, but any member may receive a reasonable per diem expense payment or reimbursement for actual expenses for normal travel and other reasonable out-of-pocket expenses.

(b) Pursuant to a waiver granted under § 1607.6(c)(1), a recipient may adopt policies that would permit partners or associates of attorney members to participate in any compensated private attorney involvement activities supported by the recipient.

(c) A recipient may adopt policies that permit attorney members, subject to terms and conditions applicable to other attorneys in the service area, (1) to accept referrals of fee-generating cases under part 1609 of this chapter, (2) to participate in any uncompensated private attorney involvement activities supported by the recipient, (3) to seek and accept attorneys' fees awarded by a court or administrative body or included in a settlement in cases undertaken pursuant to paragraphs (c)(1) and (2) of this section, and (4) to receive reimbursement from the recipient for out-of-pocket expenses incurred by the attorney member as part of the activities undertaken pursuant to paragraph (c)(2) of this section.

7. Section 1607.6 is revised to read as follows:

§ 1607.6 Waiver.

(a) Upon application, the president shall waive the requirements of this part to permit a recipient that was funded under section 222(a)(3) of the Economic Opportunity Act of 1964 and, on July 25, 1974, had a majority of persons who were not attorneys on its governing body, to continue such nonattorney majority.

(b) Upon application, the president may waive § 1607.3(c) for those recipients which the president has determined do not have as a primary purpose the provision of legal assistance to clients.

(c) Upon application, the president may grant any waivers of the requirements of this part which are permitted by applicable law if a recipient demonstrates that it cannot comply with them because of (1) the nature of the population, legal community or area served, or (2) special circumstances, including but not limited to, conflicting requirements of the recipient's other major funding source(s) or State law.

(d) A recipient seeking a waiver under paragraph (c) of this section shall demonstrate that it has made diligent efforts to comply with the requirements of this part.

(e) As a condition of granting a waiver under paragraph (c) of this section, the president may require that a recipient establish a policy board or body, whose membership is selected consistent with the requirements of § 1607.3, to establish and enforce policy, consistent with the provisions of § 1607.4, with respect to the services provided under any grant or contract made under the LSC Act.

Dated: June 10, 1994.

Victor M. Fortuno,

General Counsel.

[FR Doc. 94–14566 Filed 6–15–94; 8:45 am]

BILLING CODE 7050–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[CC Docket No. 94–46, FCC 94–113]

Concurrent Use of Transmitters in Common Carrier and Non-Common Carrier Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This rule making proceeding proposes to allow transmitters authorized under part 22 to be concurrently licensed and used for both common carrier and private carrier operations. The purpose of this proposed rule is to promote economic efficiencies for carriers in providing paging services. This proposed action will lead to more effective use of carrier resources without undermining the Commission's rules.

DATES: Comments must be submitted on or before July 11, 1994. Reply comments must be submitted on or before July 26, 1994.

FOR FURTHER INFORMATION CONTACT: Dan Abeyta, Common Carrier Bureau, Mobile Services Division, (202) 632–6450.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making and Order (NPRM and Order) in CC Docket 94–46, adopted May 13, 1994 and released June 9, 1994. The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Docket Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street NW., Washington, DC 20037.

Paperwork Reduction

The proposed action does not impose a paperwork burden on the public.

Initial Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, the Commission's initial regulatory flexibility analysis follows:

Reasons for Action and Objective

This rule making proceeding is initiated to obtain comment regarding changes in the provision of common carrier and private carrier paging services through the use of a single transmitter. The purpose of the proposed rule is to promote economic efficiencies for carriers in providing paging services.

Legal Basis

The proposed action is authorized under Section 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(j), 303(r).

Reporting, Recordkeeping and Other Compliance Requirements

None.

Federal Rules Which Duplicate or Conflict With These Rules

None.

Description, Potential Impact, and Number of Small Entities Involved

A rule change in this proceeding would benefit providers of common carrier and private carrier paging services by reducing costs. A number of these providers are small entities.

Any Significant Alternative Minimizing the Impact on Small Entities Consistent with the Stated Objectives

We have determined no specific alternative. The Chief Counsel for Advocacy of the Small Business Administration will be served with a copy of this Notice of Proposed Rule Making and Order in accordance with Section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 603(a).

Synopsis of NPRM and Order

By this NPRM and Order, the Commission proposes to delete 22.119 of the Rules, which prohibits the concurrent licensing and use of transmitters for common carrier and non-common carrier purposes. In this regard, the Commission notes that several factors make it appropriate to reevaluate the § 22.119 prohibition and to propose deleting or modifying the rule. First, advances in technology, such as improved digital transmission techniques and store and forward technology, have resulted in dramatically increased capacity, thus reducing the need for a transmitter to be devoted on a full-time basis to common carrier uses. Second, licensees providing wider-area service could achieve substantial economies of scale by sharing transmitters when building out a regional or nationwide system without diminishing the licensee's current quality of service. Third, the Omnibus Budget Reconciliation Act of 1993 (1993 Budget Act) enacted by Congress amends Section 3(n) and Section 332 of the Communications Act of 1934 to create a comprehensive framework for all mobile services. The Commission has initiated several rulemakings to implement the provision of Section 3(n) and 332 of the Act, as amended by the 1993 Budget Act. Lastly, increased competition in the industry provides an assurance that service to existing customers will not suffer from joint use of transmitters when the carriers are offering distinct services on different frequencies. Because of these factors, the NPRM and Order tentatively concludes that permitting a single transmitter to operate on both common carrier and private channels will cause no disruption or impairment of service to existing part 22 subscribers. Nevertheless, the NPRM and Order seeks comment on whether the proposed rules should be limited to circumstances where the joint use will facilitate the provision of national and or regional service as an overly to local paging service or where the part 22 licensee is utilizing batched paging.

Ordering Clauses

Accordingly, *it is ordered* that pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(j), 303(r), this Notice of Proposed Rule Making is issued.

List of Subjects in 47 CFR Part 22

Communications common carriers, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Adoption of Rule Change

Title 47 of the Code of Federal Regulations, part 22, is proposed to be amended as follows:

PART 22—PUBLIC MOBILE SERVICE

1. The authority citation for part 22 continues to read as follows:

Authority: Sections 4 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154 and 303.

§ 22.119 [Removed and Reserved]

2. Section 22.119 is removed and reserved.

[FR Doc. 94–14646 Filed 6–15–94; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 94–49, RM–8446]

Radio Broadcasting Services; Commerce, Oklahoma and Neosho, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by KBTN, Inc. requesting the allotment of Channel 259A to Neosho, Missouri, as that community's first local FM broadcast service. The coordinates for Channel 259A are 36–46–56 and 94–23–17. There is a site restriction 10 kilometers (6.2 miles) south of the community. To accommodate Channel 259A at Neosho, KBTN, Inc. has also requested the substitution of Channel 282A for vacant Channel 259A at Commerce, Oklahoma, at coordinates 37–00–24 and 94–48–54. There is a site restriction 9.4. kilometers (5.9 miles) northeast of the community. However, if no interest is expressed in retaining a channel in Commerce during the comment cycle, the channel will be deleted.

DATES: Comments must be filed on or before August 1, 1994, and reply comments on or before August 16, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: John M. Pelkey, Haley, Bader & Potts, 4350 North Fairfax Drive, suite 900, Arlington, Virginia 22203–1633.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 94–48, adopted May 25, 1994, and released June 10, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the

Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–14643 Filed 6–15–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 22

RIN 1018 AB81

Eagle Transportation Permits for American Indians and Public Institutions

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service proposes to revise the general eagle permit restrictions applicable to American Indians and public institutions. The Service proposes to issue permits of limited duration and conditions, for the transportation into and out of the United States of eagle parts, nests or eggs or articles containing such parts, nests or eggs of the bald eagle (*Haliaeetus leucocephalus*) or the golden eagle (*Aquila chrysaetos*) that are lawfully possessed by American Indians and public institutions.

The proposed regulation will provide for eagle permits to be issued only for transportation into and out of the United States when the eagle parts have religious significance or value, or are being transported by a public institution for scientific or exhibition purposes. The Service makes this proposal in order to address the concerns which have been expressed by American Indians and public institutions who have sought the Service's permission for the international travel of lawfully possessed eagle parts or other articles containing eagle parts.

DATES: Comments must be submitted on or before August 15, 1994.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Director, U.S. Fish and Wildlife Service, P.O. Box 3247, Arlington, Virginia 22203–3247. Comments and materials may be hand-delivered to the U.S. Fish and Wildlife Service, Division of Law Enforcement, 4401 N. Fairfax Drive, room 500, Arlington, Virginia, between the hours of 8 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Frank Shoemaker, Special Agent in Charge, Branch of Investigations, Division of Law Enforcement, Fish and Wildlife Service, U.S. Department of Interior, Washington, DC 20240, Telephone Number (703) 358–1949.

SUPPLEMENTARY INFORMATION:

BACKGROUND

The golden eagle and most notably the bald eagle are proud symbols of our nation's natural beauty, our democratic form of government and our national heritage. The bald eagle was selected by the Continental Congress in 1782 as our national symbol and was given special protection by Congress in the Eagle Act of June 8, 1940. The Act as originally enacted provides that the Secretary of Interior may permit the taking and possession of bald eagle specimens for the scientific or exhibition purposes of public museums, scientific societies, and zoological parks.

The Eagle Act was amended by Congress on October 24, 1962 (16 U.S.C. 668a) to include the golden eagle within its provisions and to permit the taking, possession, and transportation of eagle specimens for the religious purposes of Indian tribes.

Summary of Comments and Information Received

On Thursday, November 14, 1991, the Service published in the **Federal Register** a Notice of Intent to Review 50 CFR part 22 (56 FR 57872). In this notice the Service requested that all interested parties submit written comments. In response to this request the Service received six comments pertaining to 50 CFR part 22. The Service has carefully considered all comments received in response to the November 14, 1991, **Federal Register** notice in proposing these changes to part 22.

In making this proposal the Service has carefully considered the recommendations made by commentaries in response to the Notice of Intent to Review published on Thursday November 14, 1991, **Federal Register** (56 FR 57872). The Service invites comments on this proposed rule and on all comments pertaining to Part 22, summarized herein, submitted in response to the Notice of Intent to Review.

Comments Pertaining to Section 22.21. Permits for Scientific or Exhibition Purposes

Several comments were received on the proposed revision of Section 22.21. One recommendation was that § 22.21, Permits for Scientific or Exhibition Purposes, limiting possession of bald or golden eagles to museums, public scientific societies and zoological parks, should be amended to allow eagles to be placed in private institutions. The commenter noted that there has been an increased number of birds that are for various reasons non-releasable and hard to place into public institutions. The Service does not anticipate changing the current regulations to allow for the placement of eagles with private institutions. The Service has been successful in placing non-releasable birds in public institutions in the past and expects the availability of these types of placements to continue. Public institutions have been the placement of preference for such birds because they usually provide a greater opportunity for the citizens of the United States to enjoy the rare beauty of these birds.

Comments Pertaining to Section 22.22. Permits for Indian Religious Purposes

One commenter requested that the Service include language within the regulations that would make it easier for tribal members to obtain eagle feathers. The Service has striven to make its current procedures as fair and equitable as possible in light of the limited supply and the increasing demand for eagle feathers. The Service is working with the tribal entities to make substantive changes in its policies.

Another recommendation was that Service procedures be revised to allow American Indians who find dead eagles to have the same eagle they found returned, because of what was termed, the found eagle's "spiritual and cultural" significance to individual American Indians. The Service recognizes and has carefully considered the concern raised. The Service is presently reviewing its policies and procedures to provide for this special need and allow American Indians to

pick up and keep eagles found dead on tribal lands. The Service is also making administrative changes to allocate more resources to the National Eagle Repository and to simplify the entire eagle permit process for the religious use of American Indians. The Service will continue to work with tribal entities to develop recommendations to enhance these initial efforts.

Another recommendation was to revise the applicant certification requirement and permit issuance criteria set out in § 22.22. The Service has traditionally followed, as a matter of policy, guidelines established by the Bureau of Indian Affairs (Bureau) in reviewing such matters. These same guidelines are used by the Bureau to determine the status of an individual seeking federal assistance. The Bureau's certification simply indicates that an applicant is a member of a federally-recognized tribe in good standing. The establishment of an additional set of guidelines for the sole purpose of the allocation of eagles feathers would be redundant and inconsistent with the equitable standards set out by the Bureau. The Service, therefore, will continue to defer to the Bureau's criteria and anticipates no changes in the current certification requirements.

A recommendation was also made to include language allowing tribal members who lack proper paperwork to prove that they have permission from the Service to possess eagle feathers. Under current regulations, bald eagle parts, nests, or eggs lawfully acquired prior to June 8, 1940, and golden eagles parts, nests or eggs lawfully acquired prior to October 24, 1962, may be possessed, or transported within the United States without a Federal permit. Except for the above stated exceptions, a valid permit for American Indian religious purposes is required. No change in these provisions are anticipated at this time.

Comments Pertaining to Section 22.23. Permits to Take Depredating Eagles

Another recommendation relating to part 22 was the suggestion that the Service should include within the current issuance criteria required for Permits to take depredating eagles, in § 22.23(a), an additional permit criteria requiring the applicant to provide documentation of other methods that were attempted to reduce depredations. The Service anticipates no changes in the permit criteria for permits to take depredating eagles at this time. The Service considers the factual inquiry already required under existing application criteria to be sufficient to assure the continued protection of wild eagle populations.

Comments were also received on the subject of the use of eagles in falconry. Specific comments were that the Service should relax and simplify the requirements necessary for obtaining permits for golden eagles used in falconry for falconers who want to fly eagles. The Service considers current permit requirements as generally necessary and proper in order to assure the safety and welfare of both the eagle and the falconer. In the Service's considered view, any relaxation of these standards to allow other than master class falconers to possess golden eagles for falconry could be detrimental to the bird and the handler. Therefore, no changes to this effect are anticipated within the regulation at this time.

Another commenter recommended that eagles taken under permits, pursuant to § 22.23(b)(3), Permits to take depredating eagles, should be made available for scientific purposes, including deposition in a museum. In the Service's experience, the demand for eagles and eagle parts by American Indians is greater than the supply. The Service, therefore, has an obligation to fulfill the religious needs of the American Indian before alternative depositions are considered. Therefore, the Service does not anticipate making any changes at this time.

Need for Proposed Rulemaking

The Fish and Wildlife Service proposes to amend the regulations restricting the issuance of eagle permits, in order to respond to the particular needs of American Indians and public institutions. In order to assist the legitimate needs of American Indians and public institutions for bald or golden eagle feathers and other parts, the Service currently provides for the issuance of permits to American Indians and public institutions to possess bald and golden eagle feathers or parts. Under the permit system the possession and transportation within the United States of eagle feathers and parts is legal, but they may not be imported, exported, purchased, sold, traded, bartered or offered for purchase, sale, trade or barter. The Service has established an eagle repository for eagle parts at the Clark R. Bavin National Fish and Wildlife Forensic Laboratory in Ashland, Oregon, where American Indians through the permit process may lawfully obtain feathers and other parts, nests or eggs of eagles.

American Indians and representatives of public institutions in the past have sought the Service's permission to travel internationally with their lawfully possessed bald or golden eagle feathers, parts, eggs, nests or other articles which may contain eagle parts. A change in the permit requirements was necessitated because the regulations, as they currently exist, do not authorize the transportation into or out of the United States of religiously significant bald or golden eagle parts or articles containing such parts, nests or eggs by American Indians, or the transportation into or out of the United States or bald or golden eagle parts or articles containing such parts, nests or eggs for scientific or exhibition purposes. The Service, therefore, proposes to make accommodations for the religious needs of the American Indian community and for public institutions by making changes in the eagle permit regulations that generally prohibit all imports and exports of eagle parts, nests or eggs and do not differentiate between transportation within and transportation outside the United States.

The Service proposes to amend the regulations to provide for the issuance of eagle permits when the parts are lawfully possessed by American Indians and public institutions for the transportation into and out of the United States. The intent or the end result of the transportation into and out of the United States by American Indians and public institutions shall not be, under any circumstance, for the purchase, sale, barter or trade of bald eagle or golden eagle parts, nests or eggs.

The Service proposes to provide that eagle permits of limited duration may be issued under substantially the same general requirements and conditions applicable to the domestic possession and transportation of such articles by American Indians and public institutions. The Service hopes that this revision of the regulation will facilitate the international travel of American Indians and representatives of public institutions. The Service believes that it can serve its mandate to protect and preserve the viability of bald eagle or golden eagle populations and at the same time provided for a reasonable and proper balance of regulations which address the legitimate needs of the American Indian community and public institutions. In addition to the above changes, several references within the Sections have been updated or more clearly stated.

Required Determinations

Note. This rule was not subject to Office of Management and Budget (OMB) review under Executive Order 12866. The Department of the Interior (Department) certifies that this proposed rule will not have

a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This action is not expected to have significant taking implications, as per Executive Order 12630. The only effect of this rule will be to make it easier for American Indians and public institutions to travel or move internationally with lawfully possessed articles containing bald or golden eagle parts. This proposed rule does not contain any additional information collection requirements, beyond those approved under OMB approval Number 1018–0022, that would require the approval of the Office of Management and Budget under the Paperwork Reduction Act, (44 U.S.C. 3501 *et seq.*). This action does not contain any federalism impacts as described in Executive Order 12612. These proposed changes in the regulations in Part 22 are regulatory and enforcement actions which are covered by a categorical exclusion from National Environmental Policy Act procedures under 516 Departmental Manual. An Environmental Action Memorandum is on file at the U.S. Fish and Wildlife Service Office in Arlington, Virginia. The determination has been made pursuant to Section 7 of the Endangered Species Act that the proposed revision to Part 22 will not effect a federally listed species.

Civil Justice Reform—Executive Order 12778

In revising these regulations the Service has made every reasonable effort in formulating these proposals to ensure that these regulations:

(A) Have no preemptive effects upon other regulations not being revised herein.

(B) The major effects upon Federal regulations is to provide eagle permits for the transportation into and out of the United States with lawfully obtained bald and golden eagle parts, nests, and eggs, for American Indian tribe religious use and public institutions for scientific and exhibition purposes.

(C) The standards proposed in this proposed revision are intended to articulate a precise and understandable criterion of what transportation into and out of the United States is being regulated and how the affected interests may conform their activities and comply with applicable eagle permit regulations. This standard will promote regulatory simplification and burden reduction upon affected interests by providing notice:

(1) That members of American Indian tribes and public institutions may now take their lawfully obtained eagle parts, nests, eggs, or items containing such with them when they travel outside the territory of the United States;

(2) That, a Service eagle permit is required in order to transport eagle parts, nests, or eggs into or out of the United States;

(3) That the Service will issue such permits under specified permit "Issuance criteria" stated in 50 CFR 22.22(c);

(4) That permits for the transportation of eagle parts, nests, or eggs into and out of the United States will be of certain and limited duration; and

(5) That the import, export purchase, sale, barter, or trade, of eagle parts, nests, or eggs shall remain prohibited by regulation.

(D) These proposed changes to the regulations in title 50 CFR part 22 are intended to have no retroactive effect directly or indirectly.

(E) The Service Administrative procedures for permit application, issuance, revocation, denial, and appeal are set out in title 50 CFR part 13. No additional Administrative procedures are anticipated for exhaustion of remedies.

(F) All key terms have been defined within the CFR.

Author

The originator of this proposed rule is Law Enforcement Specialist Paul McGowan, Division of Law Enforcement, U.S. Fish and Wildlife Service. Washington, DC.

List of Subjects in 50 CFR Part 22

Exports, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Regulation Promulgation

For the reasons set out in the preamble, title 50, chapter I, subschapter B of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 22—[AMENDED]

1. The authority citation for part 22 continues to read as follows:

Authority: Sec. Eagle Protection Act of June 8, 1940, Chapter 278, 54 Stat. 251; Pub. L. 87–884, 76 Stat. 1246; sec 2, Pub. L. 92–535, 86 Stat 1065; sec 9, Pub. L. 95–616, 92 Stat. 3114 (16 U.S.C. 668a).

2. Section 22.1 is revised to read as follows:

§ 22.1 Purposes of regulations.

The regulations contained in this Part govern the taking possession, transportation within the United States of bald and golden eagles for scientific, educational, depredation control purposes and for the religious purposes of Indian tribes, and the transportation into and out of the United States under permit of bald and golden eagles for scientific, educational, and Indian religious purposes. The import, export, purchase, sale, or barter of bald or golden eagles, their parts, nests, or eggs is not permitted by any regulation of this subchapter B.

3. Section 22.2 is amended by revising paragraph (a) to read as follows:

§ 22.2 Scope of regulations.

(a) Bald eagles, alive or dead, or their parts, nests, or eggs lawfully acquired prior to June 8, 1940, and golden eagles, alive or dead, or their parts, nests, or eggs lawfully acquired prior to October 24, 1962, may be possessed, or transported within the United States without a Federal permit, but may not be transported into or out of the United States, imported, exported, purchased sold, traded, bartered, or offered for purchase, sale, trade, or barter; and all shipments containing such birds, parts, nests, or eggs must be marked as provided by 16 U.S.C. 3372(b) and § 14.81 of this chapter: Provided, That no exemption from any statute or regulation shall accrue to any offspring of such birds.

* * * * *

4. Section 22.3 is amended by adding in alphabetical order definitions for "export," "import," and "transportation into and out of the United States" to read as follows:

§ 22.3 Definitions.

* * * * *

Export for the purpose of this Part does not include the transportation out of the United States pursuant to a valid transportation permit.

* * * * *

Import for the purpose of this Part does not include the transportation of eagle parts into the United States pursuant to a valid transportation permit.

* * * * *

Transportation into or out of the United States means that the item or items being transported into or out of the United States do not change ownership at any time, they are not transferred from one person to another in the pursuit of gain or profit, and are being transported into or out of the United States for Indian religious purposes, or scientific or exhibition purposes.

§ 22.11 [Amended]

5. Section 22.11 is amended by removing the term "(*Aquilachrysaetos*)" and adding in its place "(*Aquila chrysaetos*)" every where it appears.

6. Section 22.12 is revised to read as follows:

§ 22.12 General restrictions.

No person shall sell, purchase, barter, trade or offer for sale, purchase, barter or trade, export or import, at any time

or in any manner, any bald eagle (*Haliaeetus leucocephalus*), or any golden eagle *Aquila chrysaetos)*, or the parts, nests , or eggs of such birds, and no permit will be issued to authorize such acts. Permits may be issued pursuant to the provision of this part and parts 13, 17, 21 and 23 of this chapter, however, to allow the transportation into and out of the United States of lawfully possessed parts, nests or eggs of such birds for Indian religious purposes, or for scientific or exhibition purposes, subject to the conditions of the permit.

7. Section 22.21 is amended by revising the introductory text to the Section, paragraph (a) introductory text, paragraph (b), and paragraph (c) introductory text, to read as follows:

§ 22.21 Permits for scientific or exhibition purposes.

The Director may, upon receipt of an application and in accordance with the issuance criteria of this Section, issue a permit authorizing taking, possession, transportation within the United States, or transportation into and out of the United States of bald eagles or golden eagles, or their parts, nests, or eggs for the scientific or exhibition purposes of public museums, public scientific societies, or public zoological parks.

(a) *Application procedure.* Applications for permits to take, possess, transport within the United States, or transport into and out of the United States bald or golden eagles, their parts, nets or eggs for scientific or exhibition purposes shall be submitted to the appropriate Assistant Regional Director—Law Enforcement (See: § 13.11(b) of this chapter). Each such application must contain the general information and certification required by § 13.12(a) of this chapter plus the following information:

* * * * *

(b) *Additional permit conditions.* In addition to the general conditions set forth in Part 13 of this chapter, permits to take, possess, transport within the United States, or transport into and out of the United States bald or golden eagles for scientific or exhibition purposes, shall be subject to the following condition: In addition to any reporting requirement set forth in the permit, the permittee shall submit a report of activities conducted under the permit to the Assistant Regional Director—Law Enforcement within 30 days after expiration of the permit.

(c) *Issuance criteria.* The Director shall conduct an investigation and not issue a permit to take, possess, transport within the United States, or transport into and out of the United States bald or golden eagles for scientific or exhibition purposes unless he has determined that such taking, possession, or transportation is compatible with the preservation of the bald or golden eagle. In making such determination, the Director shall consider, among other criteria, the following:

* * * * *

8. Section 22.22 is amended by revising the introductory text to the Section, paragraph (a) introductory text, paragraph (a)(5), paragraph (b) introductory text, paragraph (b)(2), paragraph (c) introductory text and paragraph (d) to read as follows:

§ 22.22 Permits for Indian religious purposes.

The Director may, upon receipt of an application and in accordance with the issuance criteria of this Section, issue a permit authorizing the taking, possession, transportation within the United States, and transportation into and out of the United States, of bald or golden eagles, or their parts, nets, or eggs for the religious use of Indians.

(a) *Application procedure.* Applications for permits to take, possess, transport within the United States, and transport into and out of the United States bald or golden eagles, their parts, nests, or eggs for the religious use of Indians shall be submitted to the appropriate Assistant Regional Director—Law Enforcement (See: § 13.11(b) of this chapter). Only applications from individual Indians will be accepted. Each such application must contain the general information and certification required by § 13.12(b) of this chapter plus the following additional information:

* * * * *

(5) Applicant must attach a certificate from the Bureau of Indian Affairs that the applicant is a member of an Indian tribe listed in the Federal Register notice published in accordance with 25 CFR 83.6(b).

* * * * *

(b) *Additional permit conditions.* In addition to the general conditions set forth in part 13 of this chapter, permits to take, possess, transport within the United States, and transport into and out of the United States bald or golden eagles, their parts, nests or eggs, for the religious use of Indians shall be subject to the following conditions:

* * * * *

(2) Permittees shall make such reports or submit inventories of eagle feathers or parts on hand as may be requested by the Assistant Regional Director—Law Enforcement.

(c) *Issuance criteria.* The Director shall conduct an investigation and not issue a permit to take, possess, and transport within the United States, and transport into and out of the United States bald or golden eagles, their parts, nests or eggs, for the religious use of Indians unless he has determined that such taking, possession, and transportation is compatible with the preservation of the bald or golden eagle. In making such determination, the Director shall consider, among other criteria, the following:

* * * * *

(d) *Tenure of permits.* Any permit issued pursuant to this Section under which the applicant is authorized to take eagles shall be valid during the period specified on the face thereof, which shall in no case be longer than 1 year from the date of issue. Any permit issued pursuant to this Part which authorizes the permittee to transport within the United States and possess eagles or their parts shall be valid for the life of the permittee unless sooner revoked. Any permit issued pursuant to this Part which authorizes the permittee to transport into or out of the United States eagle parts shall be valid for a period of 30 days or the date designated on the face of the permit unless amended or revoked.

9. Section 22.23 is amended by revising paragraph (a) introductory text, and paragraph (b)(4) to read as follows:

§ 22.23 Permits to take depredating eagles.

* * * * *

(a) *Application procedure.* Applications for permits to take depredating bald or golden eagles shall be submitted to the appropriate Assistant Regional Director—Law Enforcement (See § 13.11(b) of this chapter). Each such application must contain the general information and certification required by § 13.12(a) of this chapter plus the following additional information:

* * * * *

(b) * * *

(4) In addition to any reporting requirement set forth in the permit, the permittee shall submit a report of activities conducted under the permit to the Assistant Regional Director—Law Enforcement within 10 days following completion of the taking operations or the expiration of the permit whichever occurs first.

* * * * *

10. Section 22.25 is amended by revising paragraph (a) introductory text to read as follows:

§ 22.25 Permits to take golden eagle nests.

* * * * *

(a) *Application procedure.* Applications for permits to take golden eagle nests must be submitted to the appropriate Assistant Regional Director—Law Enforcement (see § 13.11(b) of this chapter) Applications are only accepted from persons engaged in a resource development or recovery operation, including the planning and permitting stages of an operation. Each application must contain the general information and certification required by § 13.12(a) of this chapter plus the following additional information:

* * * * *

Dated: May 9, 1994.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 94–14597 Filed 6–15–94; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 940538–4138; I.D. 100893B]

RIN 0648–AF74

Atlantic Tuna Fisheries

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes modifications to NOAA Form 370, Fisheries Certificate of Origin (FCO), to allow that form to also serve as a Bluefin Tuna Statistical Document (BSD), and proposes amendments to the regulations governing the Atlantic and Pacific bluefin tuna fisheries to require: An appropriately completed, approved BSD as a condition for import, export, or re-export of fresh or frozen bluefin tuna into or from the United States; a Federal permit for all dealers that export Pacific bluefin tuna; preparation and submission of a biweekly report on exports of Pacific bluefin tuna by permitted dealers; and affixation of an identification tag to fresh or individually frozen Pacific bluefin tuna sold for export.

The amendments would enable the United States to assist the International Commission for the Conservation of Atlantic Tunas (ICCAT) in accounting for all bluefin tuna entering into commerce or international trade and would bring the United States into compliance with the 1992 recommendation of ICCAT and the Atlantic Tunas Convention Act (ATCA).

DATES: Comments are invited and must be received by July 18, 1994.

ADDRESSES: Comments on the proposed revisions to NOAA Form 370 and on the proposed rule should be sent to, and copies of supporting documents, including an Environmental Assessment and Regulatory Impact Review, are available from, Richard H. Schaefer, Director, Office of Fisheries Conservation and Management (F/CM), NMFS, 1315 East-West Highway, Silver Spring, MD 20910. NOAA Form 370, as proposed to be revised, bluefin tuna dealer permit application, biweekly bluefin tuna dealer report, and tuna identification tags may be obtained from NMFS, Northeast Region, Fisheries Management Division, 1 Blackburn Drive, Gloucester, MA 01930–2298, or NMFS, Southwest Region, Fisheries Management Division, 501 W. Ocean Blvd. Suite 4200, Long Beach, CA 90802-4213.

FOR FURTHER INFORMATION CONTACT: Richard B. Stone, 301–713–2347; Kevin B. Foster, 508–281–9260; or Patricia J. Donley, 310–980–4033.

SUPPLEMENTARY INFORMATION: The Atlantic tuna fisheries are managed under regulations at 50 CFR part 285 issued under the authority of ATCA. ATCA authorizes the Secretary of Commerce (Secretary) to implement regulations as may be necessary to carry out the recommendations of ICCAT. The authority to implement ICCAT recommendations has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA).

Purpose

Parties to the Eighth Special Meeting of ICCAT held in Madrid, Spain, on November 8–12, 1992, adopted a recommendation to implement a statistical documentation program to collect more complete information on the catch of, and trade in, Atlantic bluefin tuna. That recommendation, which this proposed rule would implement, requires Contracting Parties to implement a statistical documentation program whereby any bluefin tuna imported into the territory of a Contracting Party or at the first entry into a regional economic organization must be accompanied by an appropriately completed BSD. The ICCAT recommendation is based on the need to improve the reliability of statistical information on worldwide harvests of bluefin tuna, particularly western Atlantic bluefin tuna, which is an overexploited stock.

Without statistical documentation and differentiation with respect to ocean area of catch, ICCAT cannot determine the total harvest of Atlantic bluefin tuna. While the primary market for bluefin tuna is Japan, which is a member country of ICCAT, the origin of all bluefin tuna on the international market cannot be ascertained without documentation of the flag state of harvesting vessels and ocean areas of catch. Some vessels that harvest bluefin tuna are registered to nations not affiliated with ICCAT and are not subject to ICCAT quota constraints; some of these nations have difficulty in obtaining information on the catches of vessels under their flag and therefore do not report catches to ICCAT.

The documentation requirement would facilitate accounting for all fresh or frozen shipments of bluefin tuna into Japan and other ICCAT countries, by both member and non-member ICCAT countries. This information would be used by ICCAT for Atlantic bluefin tuna stock assessments, to develop management policies, and to help determine compliance with its conservation program for Atlantic bluefin tuna.

In addition to the proposed BSD requirement, NMFS proposes to require a Federal permit for each dealer who exports Pacific bluefin tuna. NMFS also proposes to require these dealers to complete a biweekly report on bluefin tuna exports and to affix a tag on all fresh or individually frozen Pacific bluefin tuna sold for export. When combined with the existing permitting and reporting requirements for Atlantic bluefin tuna dealers, this would give NMFS the ability to track all bluefin tuna shipments imported into, exported, or re-exported from the United States.

NMFS has determined that these additional requirements would bring the United States into compliance with the 1992 ICCAT recommendation that all bluefin tuna (Atlantic and Pacific) imported into ICCAT countries be required to be accompanied by a BSD. ICCAT has determined that inclusion of Pacific bluefin is necessary due to the similarity of appearance of the two subspecies. Without Pacific bluefin tuna dealer permits, bi-weekly reports and tags for exports, the United States could not assure compliance with the documentation requirement for Pacific bluefin.

Bluefin Tuna Statistical Document

The proposed rule would require a completed, approved BSD as a

condition for the import, export, or re-export of all bluefin tuna shipments into or from the United States. The BSD would be required to accompany each fresh or frozen shipment along with other shipping documentation ordinarily required for international trade. Consistent with the ICCAT recommendation and subsequent agreements with Japan and Canada, the BSD would be required for all bluefin tuna beginning June 1, 1994.

The BSD would be required for all fresh or frozen bluefin tuna products that are exported from or imported into the United States and identified by Harmonized Tariff Schedule (HTS) numbers for fresh or chilled bluefin tuna, excluding fillets and other fish meat—0302.39.00.20; and frozen bluefin tuna, excluding fillets—0303.49.00.20.

Contents of Document

NMFS proposes to modify the FCO (NOAA Form 370) so that it can also serve as the BSD. Interested persons may obtain copies of the proposed combined form from NMFS (see **ADDRESSES**).

In order to be considered appropriately completed, the approved BSD accompanying each shipment would have to provide all of the required information indicated in the proposed regulatory text for § 285.202 and be certified by the exporter, importer, and government official, as applicable.

Validation

The completed, approved BSD would have to be validated by a responsible government official of the country whose flag vessel harvested the tuna regardless of where the bluefin tuna is first landed, unless the AA waives the validation requirement for that country because the AA finds, based on information from ICCAT, that: (1) All fresh or individually frozen bluefin tuna available for sale from that country are tagged, or included in an ICCAT-accepted logbook or ICCAT-accepted information retrieval system; (2) all information relating to the tag, the ICCAT-accepted logbook, or the ICCAT-accepted information retrieval system is compiled by the government of that country and includes the name of the country issuing the document, the name of the exporter and the importer, the name of the harvesting vessel and the area of harvest, the gear utilized, the type of product and total weight, and the point of export; and (3) the compiled information is provided in a timely fashion to ICCAT. Validation requirements would be waived for all but bulk-frozen shipments upon publication in the **Federal Register** of a finding and waiver by the AA.

Dolphin-Safe Tuna Designation

Under the Marine Mammal Protection and International Dolphin Conservation Acts and their implementing regulations, only dolphin-safe tuna may be purchased, sold, transported, or shipped in the United States after June 1, 1994 (16 U.S.C. 1417). All shipments of tuna and tuna products, except fresh tuna, from all countries must be accompanied by an appropriately completed FCO (NOAA Form 370). As proposed to be revised, NOAA Form 370 would serve as an FCO/BSD and appropriately completing the form would satisfy both FCO requirements and, if bluefin tuna, BSD requirements.

All fresh tuna and other fresh fish products are presumed to be captured by dolphin-safe methods and do not require an appropriately completed FCO (NOAA Form 370) for lawful importation to the United States. In addition, imports of certain fish and fish products other than tuna, except fresh fish, as specified at 50 CFR 216.24(e), from countries having registered vessels that use large-scale driftnets (no countries so designated at this time) must be accompanied by an appropriately completed FCO (NOAA Form 370). Although an FCO is not required for fresh tuna or any other fresh fish products, under the proposed rule an appropriately completed BSD (NOAA Form 370 as proposed to be revised) would be required for all bluefin tuna, fresh or frozen, that enters or exits the United States. Exhibit 1 below summarizes when a completed FCO or BSD, that is, an appropriately completed NOAA Form 370, as proposed to be revised, is required.

EXHIBIT 1.—REQUIREMENTS FOR THE PROPOSED REVISED NOAA FORM 370

Product form	Bluefin tuna	Other tunas	Certain other fish
Fresh	Imports—BSD; Exports—BSD	Not applicable	Not applicable.
Frozen	Imports—BSD/FCO; Exports—BSD.	Imports—FCO	Imports from countries using large-scale driftnets—FCO.
Canned	No HTS code for canned bluefin; requirements for other tunas apply.	Imports—FCO	Imports from countries using large-scale driftnets—FCO.
Any non-fresh form labeled "Dolphin-Safe".	Exports—FCO	Exports—FCO	Not applicable.

Responsible Parties

For the purposes of the exporter's certification, the exporter would be considered the person or company that first exported the shipment from the country where the fish is first landed.

For the purposes of the importer's certification, intermediate country importer(s) would be the person(s) or company(ies) that transship(s) the product through an intermediate country(ies). An intermediate country would be a country from which bluefin tuna or bluefin tuna products that were previously imported (i.e., not harvested or landed) by that country are exported to the United States. An intermediate country for the purposes of these proposed 50 CFR part 285 regulations is distinct from an intermediary nation as defined in section 3 of the Marine Mammal Protection Act and its implementing regulations at 50 CFR part 216. Shipments of bluefin tuna or bluefin tuna products through a nation on a through bill of lading, or in any other manner that does not enter the products into that country's customs territory as an import, would not make that country an intermediate country under this definition.

For the purposes of the importer's certification, the final destination importer would be the person or company that is the recipient of the product at its final destination (i.e., country of consumption).

Pacific Bluefin Tuna Dealer Requirements

Permit Requirements

Dealers purchasing or receiving Pacific bluefin tuna for export would be required to possess a valid bluefin tuna dealer permit and comply with all applicable reporting requirements.

Tagging Requirements

The proposed rule would require that identification tags be placed on all bluefin tuna, except bulk-frozen bluefin, landed by U.S. vessels and exported from the United States, regardless of ocean area of catch. Similar to the NMFS Northeast Region program for dealers purchasing Atlantic bluefin tuna, the Director, Southwest Region, NMFS (Regional Director) would issue numbered tags to each person receiving a dealer's permit for exporting Pacific bluefin tuna. Such tags would not be transferable. A dealer or agent would be required to affix a tag to each fresh or individually frozen Pacific bluefin tuna purchased, or received, for export, except bulk-frozen Pacific bluefin tuna, immediately upon its offloading from a vessel. The tag would be required to be affixed between the fifth dorsal finlet and the keel.

Individual Pacific bluefin tuna carcasses that are landed in bulk-frozen form would not be required to be tagged for export. A tagging requirement for individual fish frozen in bulk would be difficult to implement and enforce, and would require a drastic change in current handling practice. However, exported bulk-frozen shipments would be accompanied by a completed BSD.

A tag affixed to any Pacific bluefin tuna would have to remain on the tuna until the tuna is cut into portions, which NMFS understands may occur on occasion. If the tuna or tuna parts subsequently are packaged for transport for domestic commercial use or for export, the tag number would be required to be written legibly and indelibly on the outside of any package or container. Tag numbers would be required to be recorded on any document accompanying shipment of bluefin tuna for U.S. commercial use or export.

Reporting Requirements

Pacific bluefin tuna dealers would be exempted from the requirement at 50 CFR 285.29(a) to record and report bluefin tuna landings via the Daily Dealer Report Card. However, they would be required to submit biweekly reports on exports of bluefin tuna to the Regional Director. The report would have to be postmarked and mailed within 10 days after the end of each 2-week reporting period in which Pacific bluefin tuna were exported. The biweekly reporting periods would be defined as the first day to the fourteenth day of each month and the fifteenth day to the last day of the month. Each report would have to specify accurately and completely for each tuna or each shipment of bulk-frozen tuna exported: Date of landing or import; any tag number (if so tagged); and weight in pounds (specify if round or dressed).

Dealers would be required to allow an authorized officer, or any employee of NMFS designated by the Regional Director for this purpose, to inspect and copy any records of transfers, purchases, or receipts of Pacific bluefin tuna. Finally, the dealer would be required to maintain a copy of each biweekly report for a period of 6 months from the date on which it was submitted to the Regional Director.

Ports of Entry

To facilitate enforcement, the AA may, in the future, designate ports of entry. If ports of entry are designated, all bluefin tuna shipments entering the United States would be restricted to the designated ports of entry, which would be published in the **Federal Register**.

Enforcement

Any fresh or frozen bluefin tuna product identified by the HTS item numbers referred to previously that is unaccompanied by a completed, approved BSD would be considered unlawful for importation into the United States. If the AA has designated ports of entry for shipments of bluefin tuna or bluefin tuna products, any shipment arriving at non-designated ports of entry would be considered unlawful and the importer would be subject to penalties under ATCA.

When a bluefin tuna is presented for entry into the customs territory of the United States and is found to be without a completed, approved BSD, U.S. Customs would suspend entry authorization, notify the importer of record of the documentation deficiency, notify NMFS enforcement agents of the deficiency, and offer the importer of record the opportunity to cure the defect. If the importer of record cannot cure the defect within 8 hours (justified by perishable nature of product), the importer could withdraw the product from U.S. Customs territory (i.e., re-export within 24 hours under Customs supervision); place the product into a bonded warehouse; post a bond to release the product; or abandon the product (Customs takes custody), whereupon the product would be disposed of under Customs laws and regulations, as long as that disposition does not result in its introduction into the United States.

In the event the importer can cure the defect within 8 hours, the fish would be released for importation and no penalties would be incurred under ATCA. If, within 10 days of fish being placed into a bonded warehouse, the Regional Director notifies the District Director of Customs that complete, approved documentation for that fish has been received, the fish would be allowed to be entered into the United States; otherwise, it would be disposed of as allowed under Customs laws and regulations. If, within 10 days of fish being released under bond, the Regional Director does not receive complete, approved documentation for that fish, the importer or consignee would be notified to redeliver or cause to be redelivered to the District Director of Customs those fish that were released under bond. In the event that any such fish is not redelivered within 3 days following the notification, without impairment in value, liquidated damages would be assessed in the full amount of the bond given. The importer would remain liable for any expenses incurred in the storage and/or disposal of bluefin tuna refused admission under these regulations. In addition, if the fish is refused entry into the United States or if the importer abandons the product, the importer would be subject to the civil and criminal penalties and the forfeiture provisions provided for under ATCA.

Scenarios

The following are five examples of use of the BSD under the proposed rule in which shipments of bluefin tuna are imported into and/or exported from the United States:

1. Exports from a country for which the AA has not waived validation requirements:

A BSD from a country for which the AA has not waived validation requirements would have to be validated by a responsible government official for that country. The export, exporter certification, and description of shipment (excluding the country-issued tag number) sections on the BSD would be completed by the exporter. The exporter then would submit the original of the BSD for validation by the designated government official. A copy would be submitted to the domestic fisheries agency and the original BSD would accompany the shipment into the United States.

If the U.S. importer re-exports the fish, the import section (naming the United States as the intermediate country) and the importer's certification section of the BSD would be completed by the importer. The original BSD, with the importer's entries and certification, would accompany the shipment to the final destination, and a completed copy

would be submitted to NMFS within 24 hours of the time of re-export.

If the U.S. importer sells the fish for consumption in the domestic market, the import section (naming a United States state and city as the final point of import) and the importer's certification section of the BSD would be completed by the importer. The original BSD with the importer's entries and certification would be submitted to NMFS within 24 hours of the time of import.

2. Exports from a country for which the AA has waived validation requirements:

If the AA has waived validation requirements for a country, a BSD, except for bulk-frozen shipments, would not have to be validated by a government official of that country. The export, exporter's certification, and description of shipment (excluding the country-issued tag number) sections on the BSD would be completed by the exporter. A copy would be submitted to the domestic fisheries agency and the original BSD would accompany the shipment into the United States.

If the U.S. importer re-exports the fish, the import section (naming the United States as the intermediate country) and the importer's certification section of the BSD would be completed by the importer. The original BSD with the importer's entries and certification would accompany the shipment to the final destination, and a completed copy would be submitted to NMFS within 24 hours of the time of re-export.

If the U.S. importer sells the fish for consumption in the domestic market, the import section (naming a United States state and city as the final point of import) and the importer's certification section of the BSD would be completed by the importer. The original BSD with the importer's entries and certification would be submitted to NMFS within 24 hours of the time of import.

3. Export of U.S.-caught bluefin tuna:

Since the United States has a tagging requirement for individually exported Atlantic bluefin tuna, and this proposed rule would implement such a tagging requirement for Pacific bluefin tuna exported from the United States, the BSD would not have to be validated by a government official (except for bulk-frozen shipments, which would not be tagged and would be accompanied by a validated BSD). The export, exporter certification, and description of shipment (including the country-coded tag number) sections on the BSD would be completed by the exporter. The original BSD with the exporter's entries and certification would accompany the shipment to the final destination, and a completed copy would be submitted to NMFS within 24 hours of the time of export.

4. Import of bulk-frozen shipments to the United States:

For a bulk-frozen import, the export, exporter's certification, and description of shipment (excluding the country-issued tag number) sections on the BSD would be completed by the foreign exporter. The exporter would then submit the BSD to a responsible government official of the country of the flag vessel harvesting the tuna for validation, even if validation requirements have been otherwise waived for that country. The exporter would then submit and/or retain copies of the document as required by the regulations of the country, and the original document would accompany the shipment into the United States.

If the U.S. importer re-exports the fish, the import section (naming the United States as the intermediate country) and the importer's certification section of the BSD would be completed by the importer. The original BSD with the importer's entries and certification would accompany the shipment to the final destination, and a completed copy would be submitted to NMFS within 24 hours of the time of re-export.

If the U.S. importer sells the fish for consumption in the domestic market, the import section (naming a U.S. state and city as the final point of import) and the importer's certification section of the BSD would be completed by the importer. The original BSD with the importer's entries and certification would be submitted to NMFS within 24 hours of the time of import.

5. Export of bulk-frozen shipments from the United States:

For a bulk-frozen export, the export, exporter's certification, and description of shipment (excluding the country-issued tag number) sections on the BSD would be completed by the U.S. exporter. The exporter would submit the original to the designated NMFS official for validation, then submit a copy of the completed document to NMFS (see **ADDRESSES**) within 24 hours of the time of export. The original completed document would accompany the shipment to any intermediate countries, if applicable, and to the country of final destination.

Classification

This proposed rule is published under the authority of the ATCA, 16 U.S.C. 971 *et seq.* The AA has preliminarily determined that this proposed rule is necessary to implement the recommendation of ICCAT and is necessary for management of the bluefin tuna fisheries.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities because the estimated annual cost to all respondents in the aggregate would be less than $56,000. Approximately 230 bluefin dealers would be affected. This proposed rule has been determined to be not significant for purposes of E.O. 12866.

This proposed rule contains new and revised collection-of-information requirements subject to review under the Paperwork Reduction Act. It modifies and renews requirements that were approved by the Office of Management and Budget (OMB) under OMB control numbers 0648–0040, 0648–0204 and 0648–0239. The public reporting burden for completing an application for a Federal permit for dealers that export or re-export Pacific bluefin tuna is estimated at 0.08 hours (5 minutes) per response. The public reporting burden for these dealers for collection-of-information on dealer reports is estimated at 0.20 hours (12 minutes) per response for the biweekly dealer reports and affixing tags, and 0.33 hours (20 minutes) per response for all bluefin tuna dealers for completing a BSD. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspects of these collections of information, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and the Office of Management and Budget, Paperwork Reduction Project (0648–0040), Washington, D.C. 20503.

List of Subjects in 50 CFR Part 285

Fisheries, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: June 10, 1994.

Charles Karnella,

Acting Program Management Officer, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 285 is proposed to be amended as follows:

PART 285—ATLANTIC TUNA FISHERIES

1. The authority citation for part 285 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*

2. In § 285.2, definitions of "bluefin tuna", "intermediate country", and "Pacific bluefin tuna" are added in alphabetical order; the definition of "Atlantic bluefin tuna" is revised; in the definition of "owner", paragraphs (a) through (c) are redesignated paragraphs (1) through (3), respectively; and in the definition of "Regional Director", paragraphs (a) and (b) are redesignated paragraphs (1) and (2), respectively, and redesignated paragraph (1) is revised to read as follows:

§ 285.2 Definitions.

* * * * *

Atlantic bluefin tuna means the subspecies of bluefin tuna *Thunnus thynnus thynnus* that is found in the Atlantic Ocean. Size classes for Atlantic bluefin tuna are defined in § 285.26.

* * * * *

Bluefin tuna means the fish species *Thunnus thynnus* that is found in any ocean area.

* * * * *

Intermediate country means a country from which bluefin tuna or bluefin tuna products that were previously imported by that nation are exported to the United States. Shipments of bluefin tuna or bluefin tuna products through a country on a through bill of lading or in another manner that does not enter the shipments into that country as an importation do not make that country an intermediate country under this definition.

* * * * *

Pacific bluefin tuna means the subspecies of bluefin tuna *Thunnus thynnus orientalis* that is found in the Pacific Ocean.

* * * * *

Regional Director means

(1) For the purposes of Atlantic bluefin dealers, the Director, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–3799; and for the purposes of Pacific bluefin dealers, the Director, Southwest Region, National Marine Fisheries Service, 501 W. Ocean Blvd. Suite 4200, Long Beach, CA 90802-4213.

* * * * *

3. In § 285.30, the section heading and paragraph (d) are revised to read as follows:

§ 285.30 Tags.

* * * * *

(d) *Removal of tags.* A tag affixed to any Atlantic bluefin tuna under paragraph (c)(1) of this section or under § 285.202(a)(5)(ii) must remain on the tuna until the tuna is cut into portions. If the tuna or tuna parts subsequently are packaged for transport for domestic commercial use or for export, the tag number must be written legibly and indelibly on the outside of any package or container. Tag numbers must be recorded on any document accompanying shipment of bluefin tuna for commercial use or export.

4. In § 285.31, paragraph (a)(19) is revised to read as follows:

§ 285.31 Prohibitions.

(a) * * *

(19) Remove any tag affixed to an Atlantic bluefin tuna under § 285.30(c)(1) or under § 285.202(a)(5)(ii), before removal is allowed under § 285.30(d), or fail to write the tag number on the shipping package or container as prescribed by that section;

* * * * *

5. New subparts F and G are added to part 285 to read as follows:

Subpart F—Pacific Bluefin Tuna

Sec.
285.150 Dealer permits.
285.151 Dealer recordkeeping and reporting.
285.152 Tags.
285.153 Prohibitions.

Subpart G—Bluefin Tuna Statistical Documentation

285.200 Species subject to statistical documentation requirements.
285.201 Documentation requirements.
285.202 Contents of documentation.
285.203 Waiver of validation requirements.
285.204 Enforcement.
285.205 Ports of entry.
285.206 Prohibitions.

Subpart F—Pacific Bluefin Tuna

§ 285.150 Dealer permits.

(a) *General.* A dealer purchasing, or receiving, Pacific bluefin tuna for export must have a valid permit issued under this section.

(b) *Application.* A dealer must apply for a permit in writing on an appropriate form obtained from the Regional Director. The application must be signed by the dealer and be submitted to the Regional Director at least 30 days before the date upon which the dealer desires to have the permit made effective. The application must contain the following information: Company name, principal place of business, owner or owners' names, applicant's name (if different from owner or owners) and mailing address and telephone number, and any other information required by the Regional Director.

(c) *Issuance.* (1) Except as provided in subpart D of 15 CFR part 904, the Regional Director will issue a permit within 30 days of receipt of a completed application.

(2) The Regional Director will notify the applicant of any deficiency in the application. If the applicant fails to correct the deficiency within 15 days following the date of notification, the application will be considered abandoned.

(d) *Duration.* Any permit issued under this section is valid until December 31 of the year for which it is issued, unless suspended or revoked.

(e) *Alteration.* Any permit that is substantially altered, erased, or mutilated is invalid.

(f) *Replacement.* The Regional Director may issue replacement permits. An application for a replacement permit is not considered a new application.

(g) *Transfer.* A permit issued under this section is not transferable or assignable; it is valid only for the dealer to whom it is issued.

(h) *Inspection.* The dealer must keep the permit issued under this section at his/her principal place of business. The permit must be displayed for inspection upon request of any authorized officer, or any employee of NMFS designated by the Regional Director for such purpose.

(i) *Sanctions.* The Assistant Administrator may suspend, revoke, modify, or deny a permit issued or sought under this section. Procedures governing permit sanctions and denials are found at subpart D of 15 CFR part 904.

(j) *Fees.* The Regional Director may charge a fee to recover the administrative expenses of permit issuance. The amount of the fee is calculated, at least annually, in accordance with the procedures of the NOAA Finance Handbook for determining administrative costs of each special product or service. The fee may not exceed such costs and is specified on each application form. The appropriate fee must accompany each application. Failure to pay the fee will preclude issuance of the permit. Payment by a commercial instrument later determined to be insufficiently funded shall invalidate any permit.

(k) *Change in application information.* Within 15 days after any change in the information contained in an application submitted under this section, the dealer issued a permit must report the change to the Regional Director in writing. The permit is void if any change in information is not reported within 15 days.

§ 285.151 Dealer recordkeeping and reporting.

Any person issued a dealer permit under § 285.150:

(a) Must submit to the Regional Director a biweekly report on bluefin exports on forms supplied by NMFS.

(1) The report required by this paragraph (a) must be postmarked and mailed within 10 days after the end of each 2-week reporting period in which Pacific bluefin tuna were exported. The biweekly reporting periods are defined as the first day to the fourteenth day of each month and the fifteenth day to the last day of the month.

(2) Each report must specify accurately and completely for each tuna or each shipment of bulk-frozen tuna exported: Date of landing or import; any tag number (if so tagged); weight in pounds (specify if round or dressed); and any other information required by the Regional Director. At the top of each form, the company's name, license number, and the name of the person filling out the report must be specified. In addition, the beginning and ending dates of the 2-week reporting period must be specified by the dealer and noted at the top of the form.

(b) Must allow an authorized officer, or any employee of NMFS designated by the Regional Director for this purpose, to inspect and copy any records of transfers, purchases, or receipts of Pacific bluefin tuna.

(c) Must retain at his/her place of business a copy of each biweekly report for a period of 6 months from the date on which it was submitted to the Regional Director.

§ 285.152 Tags.

(a) *Issuance of tags.* The Regional Director will issue numbered tags to each person receiving a dealer's permit under § 285.150.

(b) *Transfer of tags.* Tags issued under this section are not transferable.

(c) *Affixing tags.* A dealer or agent must affix a tag to each fresh or individually frozen Pacific bluefin tuna purchased or received for export, except bulk-frozen Pacific bluefin tuna purchased or received for export, prior to its packaging for export. The tag must be affixed between the fifth dorsal finlet and the keel.

(d) *Removal of tags.* A tag affixed to any Pacific bluefin tuna under § 285.152(c) or under § 285.201(a)(5)(ii) must remain on the tuna until the tuna is cut into portions. If the tuna or tuna parts subsequently are packaged for transport for domestic commercial use or for export, the tag number must be written legibly and indelibly on the outside of any package or container. Tag numbers must be recorded on any document accompanying shipment of bluefin tuna for commercial use or export.

§ 285.153 Prohibitions.

It is unlawful for any person or vessel subject to the jurisdiction of the United States to:

(a) Purchase or receive Pacific bluefin tuna for export without a valid dealer permit issued under § 285.100.

(b) Fail to affix an individually numbered bluefin tuna identification tag as specified in § 285.152.

(c) Remove any tag affixed to a Pacific bluefin tuna under § 285.152(c) or under § 285.201(a)(5)(ii), before removal is allowed under § 285.152(d), or fail to write the tag number on the shipping package or container as specified in § 285.152(d).

(d) Falsify or fail to make, keep, maintain, or submit any reports or other record required by this subpart.

(e) Refuse to allow an authorized officer or employee of NMFS designated by the Regional Director to make inspections for the purpose of checking any records relating to the catching, harvesting, landing, purchase, or sale of any Pacific bluefin tuna required of this subpart.

(f) Make any false statement, oral or written, to an authorized officer or employee of NMFS designated by the Regional Director to make inspections concerning the catching, harvesting, landing, purchase, sale, or transfer of any Pacific bluefin tuna.

Subpart G—Bluefin Tuna Statistical Documentation

§ 285.200 Species subject to statistical documentation requirements.

Imports into the United States and exports or re-exports from the United States of bluefin tuna or bluefin tuna products identified by the following item numbers from the Harmonized Tariff Schedule are subject to the documentation requirements of § 285.201:

(a) Fresh or chilled bluefin tuna, excluding fillets and other fish meat, No. 0302.39.00.20.

(b) Frozen bluefin tuna, excluding fillets, No. 0303.49.00.20.

§ 285.201 Documentation requirements.

(a) Bluefin imports. (1) Dealers importing bluefin tuna into the United States beginning June 1, 1994, must obtain from the shipment of tuna upon its receipt a completed approved Bluefin Tuna Statistical Document with the information and exporter's certification specified in § 285.202(a)(1) through (7). Such information must be validated as specified in § 285.202(a)(8) by a responsible government official of the country whose flag vessel caught the tuna (regardless of where the fish are first landed), unless the Assistant Administrator has waived validation requirements for the country pursuant to § 285.203 and such shipment is not frozen in bulk but is comprised of fresh or individually frozen bluefin tuna.

(2) Bluefin tuna imported into the United States from a country requiring a tag on all such tuna available for sale must be accompanied by the appropriate tag issued by that country, and said tag must remain on any tuna until it reaches its final point of import. If the point of final import is the United States, the tag must remain on the tuna until it is cut into portions. If the tuna portions are subsequently packaged for domestic commercial use or export, the tag number and the issuing country must be written legibly and indelibly on the outside of the package.

(3) Dealers selling bluefin tuna that was previously imported into the United States for domestic commercial use in the United States must provide on the Bluefin Tuna Statistical Document the correct information and importer's certification specified in § 285.202(a)(4) and (9). The original of the completed Bluefin Tuna Statistical Document must be submitted to the Regional Director within 24 hours of the time the tuna was imported into the United States.

(b) Bluefin exports. (1) Dealers exporting bluefin tuna that was harvested by U.S. vessels and first landed in the United States must provide on the Bluefin Tuna Statistical Document the correct information and exporter certification specified in § 285.202(a)(1) through (7). If such tuna is frozen in bulk (not individually tagged pursuant to § 285.152), such information must be validated as specified in § 285.202(a)(8) by an official of the U.S. Government authorized to validate Bluefin Tuna Statistical Documents. A list of such officials may be obtained by contacting the Office of Fisheries Conservation and Management, NMFS, Silver Spring, MD (301–713–2347), or the nearest NMFS Enforcement Office. NMFS Enforcement Offices are located at: Portland, ME (207–780–3241); Otis Air Force Base, MA (508–563–5721); Brielle, NJ (908–528–3315); Atlantic Beach, NC (919–247–4549); Brunswick, GA (912–265–0108); Miami, FL (305–361–4224); St. Thomas, U.S. Virgin Islands (809–774–5226); San Juan, Puerto Rico (809–782–8686); St. Petersburg, FL (813–893–3145); St. Joseph, FL (904–227–1879); Corpus Christi, TX (512–888–3362);

Juneau, AK (907–586–7225); Anchorage, AK (907–271–5006); Dutch Harbor, AK (907–581–2061); Seattle, WA (206–526–6133); and Los Angeles, CA (310–980–4050). The original of the completed Bluefin Tuna Statistical Document must accompany the shipment of tuna to its export destination. A copy of the completed Bluefin Tuna Statistical Document must be submitted to the Regional Director within 24 hours of the time of export.

(2) U.S. dealers re-exporting bluefin tuna that was previously imported into the United States must provide on the Bluefin Tuna Statistical Document the correct information and intermediate importer's certification specified in § 285.202(a)(9). The original of the completed Bluefin Tuna Statistical Document must accompany the shipment of bluefin tuna to its re-export destination. A copy of the completed Bluefin Tuna Statistical Document must be submitted to the Regional Director within 24 hours of the time the tuna was re-exported from the United States.

(c) Dealers must retain at their place of business a copy of each Bluefin Tuna Statistical Document required to be submitted to the Regional Director pursuant to this section for a period of 6 months from the date on which it was submitted to the Regional Director.

§ 285.202 Contents of documentation.

(a) A Bluefin Tuna Statistical Document, to be deemed complete, must:

(1) Have a document number assigned by the country issuing the document;

(2) State the name of the country issuing the document, which is the country whose flag vessel harvested the bluefin tuna, regardless of where the tuna is first landed;

(3) State the exporter and point of export, which is the city, state or province, and country from which the bluefin tuna is first exported;

(4) State the importer and point of import, which is the city, state or province, and country into which the bluefin tuna is first imported;

(5) State the following specified information about the shipment:

(i) U.S. Tariff Schedule Number and species description;

(ii) The identifying tag number, if landed by vessels from countries with tagging programs;

(iii) The product type (fresh or frozen) and product form (round, dressed, fillet);

(iv) The weight of each fish (in kilograms for same product form previously specified);

(v) The ocean area where caught (by region, e.g., Western Atlantic);

(vi) The method of fishing (purse seine, trap, rod & reel, etc.);

(vii) The flag state of the vessel that harvested the bluefin;

(viii) The fishing trip dates; and

(ix) The name of the vessel that caught the fish;

(6) If frozen, have the appropriate box checked to indicate that the bluefin tuna was captured in a manner that is dolphin-safe as defined under 50 CFR part 247;

(7) State the name and license number of, and be signed and dated in the exporter's certification block by, the exporter;

(8) If applicable, state the name and title of, and be signed and dated in the government's validation block by, the responsible government official of the country whose flag vessel caught the tuna (regardless of where the tuna are first landed), with official government seal affixed, thus validating the information on the Bluefin Tuna Statistical Document; and

(9) As applicable, state the name(s) and address(es), including the name of the city and state or province of import, and the name(s) of the intermediate country(ies) or the name of the country of final destination, and license number(s) of, and be signed and dated in the importer's certification block by, each intermediate and the final importer.

(b) An approved Bluefin Tuna Statistical Document (NOAA Form 370) may be obtained from the Regional Director to accompany exports of bluefin tuna from the United States. Bluefin tuna dealers in countries that do not provide an approved Bluefin Tuna Statistical Document to exporters may obtain an approved Bluefin Tuna Statistical Document (NOAA Form 370) from the Regional Director to accompany exports to the United States.

(c) A country exporting bluefin tuna to the United States may use the approved Bluefin Tuna Statistical Document (NOAA Form 370) obtainable from the Regional Director or its own document, if that country submits a copy to the Assistant Administrator and the Assistant Administrator determines that the document meets the information requirements of this section. In such case, the Assistant Administrator will publish a finding to that effect and an approval of the document in the **Federal Register**. Effective upon the date of publication of such finding in the **Federal Register**, shipments of bluefin tuna or bluefin tuna products offered for importation from said country may be accompanied by either that country's approved Bluefin Tuna Statistical Document or by the Bluefin Tuna Statistical Document provided to the exporter by the Regional Director.

§ 285.203 Waiver of validation requirements.

(a) The approved Bluefin Tuna Statistical Document accompanying any import of bluefin tuna that is not frozen in bulk from any country, whether or not that country is a member of ICCAT, is not required to be validated by a government official from that country if the Assistant Administrator waives the validation requirement for that country. Such a waiver does not apply to shipments of tuna frozen in bulk.

(b) The Assistant Administrator shall publish such finding and waiver in the **Federal Register** upon finding that:

(1) All fresh or individually frozen bluefin tuna available for sale from a country are tagged, or included in an ICCAT-accepted logbook or ICCAT-accepted information retrieval system;

(2) All information relating to the tag, the ICCAT-accepted logbook, or the ICCAT-accepted information retrieval system is compiled by the government of that country and includes the name of the country issuing the document, the name of the exporter and the importer, the name of the harvesting vessel and the area of harvest, the gear utilized, the type of product and total weight, and the point of export; and

(3) The compiled information is provided in a timely fashion to ICCAT.

§ 285.204 Enforcement.

(a) *Bluefin tuna refused entry.* If a shipment containing bluefin tuna or bluefin tuna products is denied entry under the provisions of § 285.200, the District Director of Customs shall refuse to release the fish for entry into the United States and shall issue a notice of such refusal to the importer or consignee, and to NMFS Enforcement.

(b) *Disposition of bluefin tuna not accompanied by required documentation.* (1) Bluefin tuna that is offered for importation without the required Bluefin Tuna Statistical Document must be either:

(i) Exported under Customs supervision within 24 hours;

(ii) Released under bond as provided for in paragraph (c) of this section;

(iii) Placed in a bonded warehouse; or

(iv) Disposed of under Customs laws and regulations, as long as that disposition does not result in its introduction into the United States.

(2) The importer remains liable for any expenses incurred in the storage and/or disposal of bluefin tuna refused admission under these regulations. If, within 24 hours of fish being placed in

a bonded warehouse, the Regional Director notifies the District Director of Customs that approved documentation for that fish has been received, the fish will be allowed to be entered into the United States; otherwise it will be disposed of as set out in paragraph (b)(1)(i) or paragraph (b)(1)(iv) of this section.

(c) *Release under bond.* (1) Bluefin tuna or bluefin tuna products not accompanied or covered by the required documentation or certification when offered for entry may be entered into the United States if the importer or consignee gives a bond on Customs Form 7551, 7553, or 7595 for the production of the required documentation or certification. The bond shall be in the amount required under 19 CFR 25.4(a).

(2) Within 24 hours after such Customs entry, or such additional period as the District Director of Customs may allow for good cause shown, the importer or consignee shall deliver an original or copy, as required, of the Bluefin Tuna Statistical Document to the Regional Director, who will notify the District Director of Customs that the fish is covered by an approved Bluefin Tuna Statistical Document. If such notification is not delivered to the District Director of Customs for the port of entry of such fish within 24 hours of the time of Customs entry or such additional period as may have been allowed by the District Director of Customs for good cause shown, the importer or consignee shall, by a specified date, redeliver or cause to be redelivered to the District Director of Customs those fish that were released in accordance with this paragraph (c).

(3) In the event that any such fish is not redelivered without impairment in value by the date specified in paragraph (c)(2) of this section, liquidated damages shall be assessed in the full amount of bond given on Form 7551. When the transaction has been charged against a bond given on Form 7553 or 7595, liquidated damages shall be assessed in the amount that would have been demanded under this paragraph (c)(3) under a bond given on Form 7551.

(4) Fish released for entry into the United States through use of the bonding procedure provided in this paragraph (c) shall be subject to the civil and criminal penalties and the forfeiture provisions provided for under the Act if the required Bluefin Tuna Statistical Document is not delivered to the Regional Director within 24 hours of the time of Customs entry, or such additional period as may have been allowed by the District Director of Customs for good cause shown.

(5) Fish refused entry into the United States shall also be subject to the civil and criminal penalties and the forfeiture provisions provided for under the Act.

§ 285.205 Ports of entry.

The Assistant Administrator shall monitor the importation of bluefin tuna into the United States. If the Assistant Administrator determines that the diversity of handling practices at certain ports at which bluefin tuna is being imported into the United States allow for circumvention of the Bluefin Tuna Statistical Document requirement, he/she may designate, after consultation with the U.S. Customs Service, those ports at which Pacific or Atlantic bluefin tuna may be imported into the United States. The Assistant Administrator shall announce in the **Federal Register** the names of ports so designated.

§ 285.206 Prohibitions.

It is unlawful for any person to do any of the following:

(a) Import or attempt to import any bluefin tuna into the United States without an accompanying approved Bluefin Tuna Statistical Document correctly completed with the appropriate certification.

(b) Import any bluefin tuna into the United States from a country that requires all such tuna to be tagged, without said tag accompanying the bluefin tuna.

(c) Remove a tag from any bluefin tuna imported into the United States accompanied by a tag, prior to its being cut into portions for a destination in the United States or for export.

(d) Fail to write legibly and indelibly, on the outside of any package containing a part or parts of a bluefin tuna that was imported into the United States accompanied by a tag, the tag number and the issuing country.

(e) Export or re-export from the United States any bluefin tuna without an accompanying approved Bluefin Tuna Statistical Document correctly completed with the appropriate certification.

(f) Fail to provide in a timely manner any copies of Bluefin Tuna Statistical Documents required to be submitted to the Regional Director pursuant to § 285.201.

(g) Falsify or modify any Bluefin Tuna Statistical Document required by this subpart.

(h) Fail to maintain any copies of a Bluefin Tuna Statistical Document that is required by § 285.202.

(i) Import any Pacific or Atlantic bluefin tuna at any port other than a port designated pursuant to § 285.205.

[FR Doc. 94–14664 Filed 6–13–94; 4:43 pm]
BILLING CODE 3510–22–F–P

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50 CFR Part 644

[I.D. 051794D]

Atlantic Billfish Fisheries

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

ACTION: Atlantic billfishes; notice of additional scoping meetings and extension of comment period.

SUMMARY: NMFS has previously announced scoping meetings for Atlantic billfish. The purpose of the scoping meetings is to receive comments concerning the Atlantic billfish fishery from fishery participants and other members of the public regarding: A definition of overfishing; reducing fishing mortality; reporting requirements; and other issues. This notice announces additional scoping meetings and extends the comment period for the billfish scoping meetings.

DATES: Written scoping comments must be received by August 15, 1994. The scoping meetings will be held on August 4, August 10, August 11, August 14, and August 15, 1994.

ADDRESSES: Written scoping comments should be sent to Richard B. Stone, Chief, Highly Migratory Species Management Division (F/CM4), Office of Fisheries Conservation and Management, National Marine Fisheries Service, 1315 East-West Highway, Room 14853, Silver Spring, MD 20910. Clearly mark the outside of the envelope "Atlantic Billfish Scoping Comments." Input for the issues/options statement may also be provided to the same address, or by sending a fax to C. Michael Bailey at 301–713–1035. The scoping meetings will be held in Savannah, GA; Houston, TX; New Orleans, LA; Cape May, NJ; and Morehead City, NC.

FOR FURTHER INFORMATION CONTACT: C. Michael Bailey, 301–713–2347 or fax: 301–713–1035.

SUPPLEMENTARY INFORMATION:

Scoping Meeting

Depending upon the interest of the audience, the Meeting Officer may increase the length of the meeting. Additional meetings will be announced at a later date. NMFS is also soliciting written comments on issues of concern

in this fishery. NMFS requests input at any time during the scoping process, by mail or by fax. An issues/options statement was prepared for the initial hearing and revised, based on written and oral comments, for subsequent hearings. This hearing is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Richard B. Stone by July 29, 1994 (see **ADDRESSES**). NMFS previously announced scoping meetings on February 9, 1994 (59 FR 5978), March 1, 1994 (59 FR 9720) and April 5, 1994 (59 FR 15882). The scoping meetings will be held at the following locations:

August 4, 1994, Savannah, GA, 7 to 10 p.m.

Holiday Inn MidTown
7100 Abercorn Street
Savannah, GA 31406

August 10, 1994, Houston, TX, 7 to 10 p.m.

Days Inn - Hobby Airport
8611 Airport Blvd.
Houston, TX 77061

August 11, 1994, New Orleans, LA, 7 to 10 p.m.

World Trade Center Building
Suite 1830, Crescent City Room
#2 Canal Street
New Orleans, LA 70130

August 14, 1994, Cape May, NJ, 10 a.m. to 12 noon

Canyon Club Resort Marina,
900 Ocean Highway
Cape May, NJ 08204

August 15, 1994, Morehead City, NC, 7 to 10 p.m.

Carteret Community College
Joslyn Hall
3505 Arendale Street
Morehead City, NC 28557–2989

Dated: June 9, 1994.

Richard H. Schaefer,

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

[FR Doc. 94–14674 Filed 6–15–94; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 59, No. 115
Thursday, June 16, 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.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Programmatic Agreement for Consideration of Historic Properties in Surface Coal Mining and Reclamation Operations

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of availability and request for comments.

SUMMARY: The Advisory Council on Historic Preservation (Council) and the Office of Surface Mining Reclamation and Enforcement (OSM), are inviting written comments from the public on a proposed Programmatic Agreement (PA) among OSM, the Council, and the National Conference of State Historic Preservation Officers (NCSHPO), that would set forth OSM procedures for taking into account the effects of surface coal mining and reclamation operations on historic properties.

The Council and OSM have jointly developed the proposed PA with NCSHPO, pursuant to § 800.13 of the Council's regulations (36 CFR part 800). The PA sets forth proposed procedures for meeting the requirements of section 106 of the National Historic Preservation Act of 1966 (Pub. L. 89–665) (NHPA or the Act) and other provisions of the Act as amended in 1992 (Pub. L. 102–575).

The Council is an independent Federal agency that advises the President and Congress on matters of historic preservation. OSM is the Federal agency within the Department of the Interior created by the Surface Mining Control and Reclamation Act of 1977 (SMCRA) to implement SMCRA's requirements concerning the regulation of surface coal mining and reclamation operations and the reclamation of abandoned mine lands. OSM's SMCRA responsibilities include conducting oversight of State administration of approved State regulatory programs in the 24 primacy States and providing regulatory grants to primacy States to administer and enforce their regulatory programs.

OSM initiated consultation with the Council in April 1993 to explore options for implementing its responsibilities under the 1992 Amendments to the NHPA, particularly in relation to State permitting actions and related activities. Over the past year, the Council, OSM, and NCSHPO have been working together to develop the proposed PA as a potential compliance mechanism for implementing OSM's responsibilities under the 1992 NHPA Amendments and the 1991 judicial decision in Indiana Coal Council, Inc. v. Lujan (744 F. Supp. 1385 [D.DC. 1991]). A PA is one of the options set forth in the Council's regulations at § 36 CFR section 800.13 for a Federal agency to tailor section 106 review procedures to meet its historic preservation obligations in lieu of the standard process set forth at 36 CFR § 800.4–6. The 1992 amendments to the Act clarified that State regulatory programs administered pursuant to a delegation or approval by a Federal agency, such as OSM's approval of State programs and delegation of surface coal mining regulation to State Regulatory Authorities (SRAs), are Federal undertakings subject to section 106 of the Act. Therefore, OSM is now responsible for ensuring that the effects on historic properties of each State permitting action are appropriately considered. Each SRA must assist OSM in fulfilling its NHPA responsibilities as a standard condition of each regulatory grant.

The proposed PA sets forth procedures for implementing OSM's NHPA section 106 responsibilities as an alternative to the standard section 106 review process. The PA covers State permitting activities in the 24 primacy States and on Federal lands in cooperative agreement States, where the States exercise regulatory jurisdiction over such lands. The PA also covers OSM permitting actions in Federal program States, and on Federal lands in non-cooperative agreement States, where OSM is the regulatory authority. The terms of the PA do not apply to OSM's regulatory activities on Indian lands or where National Historic Landmark properties may be affected. In these situations, the standard process at 36 CFR § 800.4–6, applies. In contrast to the standard section 106 review process, the PA is intended to expedite and streamline the process by granting more decisionmaking and implementation authority to the States. The proposed PA provides for Council and OSM involvement in a proposed surface coal mining permitting action only if disputes arise that are unresolvable at the State level or if a member of the public requests such involvement. The PA also encourages SRAs and State Historic Preservation Officers to develop and formalize their own State-specific procedures based on those contained in the PA. Finally, the PA establishes a monitoring and reporting system whereby OSM can ensure compliance with section 106 requirements.

Publication of this proposed PA and request for comments on its scope, efficacy, and adequacy is part of the public participation process as set forth at 36 CFR § 800.13(c) of the Council's regulations with the purpose of gathering information, comments, and suggestions on the proposed PA.

FOR COPIES OF THE PROPOSED PA CONTACT: Thomas M. McCulloch, Office of Education and Preservation Assistance, Advisory Council on Historic Preservation, 1100 Pennsylvania Ave. NW., suite 803, Washington, DC 20004 (202–606–8520).

COMMENTS DUE: Written comments on the proposed PA should be submitted to the Council, at the address given above, by 5 p.m. Eastern time on the 15th of August, 1994.

FOR FURTHER INFORMATION CONTACT: Thomas M. McCulloch, Office of Education and Preservation Assistance, Advisory Council on Historic Preservation, 1100 Pennsylvania Ave. NW., suite 803, Washington, DC 20004 (202–606–8520) OR Suzanne Hudak, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave. NW., Washington, DC 20240 (202–208–2700).

Dated: June 7, 1994.

Robert D. Bush,

Executive Director.

[FR Doc. 94–14653 Filed 6–15–94; 8:45 am]

BILLING CODE 0000–00–M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

June 10, 1994.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection;

(2) Title the information collection;

(3) Form number(s), if applicable;

(4) How often the information is requested;

(5) Who will be required or asked to report;

(6) An estimate of the number of responses;

(7) An estimate of the total number of hours needed to provide the information;

(8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, D.C. 20250, (202) 690–2118.

Revision

• Cooperative State Research Service
Grant Application Kit—Facilities Program
Forms CSRS–850, –851, –852, –853, –854, –860, and environmental assessment
On occasion; Annually
Non-profit institutions; 77 responses; 727 hours
Evelyn J. O'Connor-Miller, (202) 401–6466

Farmers House Administration

7 CFR 1940–T, System for Delivery of Certain Rural Development Programs
Recordkeeping; On occasion; Quarterly
State or local governments; 140 responses; 567 hours
Jack Holston, (202) 720–9736

Extension

• Agricultural Marketing Service
Grapes Grown in a Designated Area of Southeastern California, Marketing Order No. 925
FV–74, FV–77, FV–78, and FV–78–A
On occasion; Annually; Every six years
Farms; Businesses or other for-profit; Small Businesses or organizations; 507 responses; 39 hours
Charles Rush, (202) 690–3670

• Agricultural Marketing Service
Irish Potatoes Grown in Modoc and Siskiyou Counties, California, and in all Counties in Oregon, except Malheur County—Marketing Agreement and Order No. 947
FV–79, FV–79–A, and FV–80
Recordkeeping; On occasion; Weekly; Monthly; Annually; Biennially
Farms; Businesses or other for-profit; 2,461 responses; 267 hours
Robert F. Matthews, (202) 690–0464

• Agricultural Marketing Service
Onions Grown in South Texas, Marketing Order No. 959
FV–89; FV–90; and FV–94
Recordkeeping; On occasion; Monthly; Annually
Farms; Businesses or other for-profit; Small businesses or organizations; 915 responses; 68 hours
Robert F. Matthews, (202) 690–0464

• Foreign Agricultural Service
Licensing of Sugar Free From Quota
FAS–947
Recordkeeping; On occasion
Businesses or other for-profit; 545 responses; 1,000 hours
Fred Kessel, (202) 720–5676

• Forest Service
Free Use Permit—Timber—36 CFR 223.5–223.13
FS–2400–8
Recordkeeping; On occasion; Annually
Individuals; 50,000 responses; 10,000 hours
Michael T. Miller, (202) 205–0854

• Federal Crop Insurance Corporation
Planting Record Fresh Sweet Corn—Planting Record Peppers—Planting Record Tomatoes
FCI–527, FCI–528, & FCI–529
On occasion
Individuals or households; Farms; 1,374 responses; 2,061 hours
Bonnie Hart, (202) 254–5046

• Federal Crop Insurance Corporation
Macadamia Tree Worksheet and Macadamia Tree Worksheet Continuation Form
FCI–74–A (2)
On occasion
Individuals or households; Farms; 3,000 responses; 3,000 hours
Bonnie L. Hart, (202) 254–8393

• Federal Crop Insurance Corporation
Statement of Facts
FCI–6
On occasion
Individuals or households; Farms; 75,000 responses; 75,000 hours
Bonnie L. Hart, (202) 254–5046

Larry K. Roberson,

Deputy Departmental Clearance Officer.

[FR Doc. 94–14684 Filed 6–15–94; 8:45 am]

BILLING CODE 3410–01–M

Cooperative State Research Service

Forestry Research Advisory Council; Meeting

According to the Federal Advisory Committee Act of October 6, 1987 (Pub. L. 92–463, 86 Stat. 770–776), U.S. Department of Agriculture announces the following meeting:

Name: Forestry Research Advisory Council.

Date: July 14–15, 1994.

Time: 8:30 a.m.–5 p.m.

Place: Room 338B & 338C Aerospace Center, 901 D Street SW., Washington, DC.

Type of Meeting: Open to the public. Persons may participate in the meeting if time and space permit.

Comments: The public may file written comments before or after the meeting by contacting the person below.

Purpose: The council will be deliberating agenda topics that include: federal science planning as it relates to forestry and natural resources; implementation of the National Research Council report: Forestry Research: A Mandate for Change; joint planning and priority setting by forestry research cooperators; review of the Cooperative Forestry Research Program (McIntire-Stennis); and other current research issues.

Contact Person for Agenda and More Information: Peter A. Muscato, Cooperative State Research Service, Room 329, Aerospace Building, U.S. Department of Agriculture, Washington, DC 20250–2210; telephone (202) 401–4555.

Dated: June 8, 1994.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 94–14683 Filed 6–15–94; 8:45 am]

BILLING CODE CSRS–3410–22M

Forest Service

Angeles National Forest; Proposed Pacific Pipeline Project EIS/SEIR; Notice of Intent

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: The California Public Utilities Commission (CPUC) and the United States Forest Service, Angeles National Forest (ANF) will direct the preparation of a joint Environmental Impact Statement (EIS) and a Subsequent Environmental Impact Report (SEIR) referred to as an EIS/SEIR for the Pacific

Pipeline Project proposed by Pacific Pipeline System, Inc. (PPSI). Aspen Environmental Group, a third-party contractor, under the direction of the CPUC, as the lead California State agency, and the USFS/ANF, as the lead Federal agency will prepare a draft and final EIS/SEIR to comply with the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA).

On October 10, 1991, PPSI filed an Application with the CPUC for authorization to issue capital stock and other indebtedness to fund development of a proposed pipeline to transport offshore Santa Barbara crude oil to Los Angeles area refineries. At the same time, PPSI submitted a Proponent's Environmental Assessment (PEA) pursuant to the provisions of CEQA. The CPUC conducted comprehensive scoping meetings and solicited public and agency comments on the scope of the EIR. The CPUC selected a third party contractor (Aspen Environmental Group) to independently prepare an Environmental Impact Report (EIR) pursuant to their responsibility as a lead agency under CEQA.

The project, as proposed at that time, was a 171-mile long, 20-inch insulated pipeline with a capacity to transport 130,000 barrels per day (bpd) of crude oil. This originally proposed pipeline would have extended from Gaviota Marine Terminal in Santa Barbara County to oil refinery destinations in the Los Angeles Basin. The pipeline would have traversed across Santa Barbara and Ventura Counties, and enter Los Angeles County near Santa Clarita. For much of its length, the proposed pipeline would have been buried in the Southern Pacific Transportation Company railroad right-of-way (ROW). In Los Angeles County the pipeline would have continued southeasterly, mostly parallel to Interstate 5(I–5) to near Glendale and then south to Watts. At the Watts Junction the pipeline would have split into two pipelines, each leading to a refinery destination. One pipeline would continue to the Chevron Refinery in El Segundo, and the other would continue south to both Texaco's Wilmington refinery and the GATX oil distribution facility. This originally proposed project also included five pump/pressure reduction stations along its route.

A comprehensive EIR was prepared for this originally proposed project. Five workshops and five public hearings were conducted and significant public comments were received on the Draft EIR and incorporated into the Final document. In addition to the comprehensive EIR, an Executive Summary was prepared and made available to the public in both English and Spanish language versions. The Final EIR (FEIR) was Certified by the CPUC in 1993, indicating that in their view, the EIR had adequately identified the potential impacts of the Proposed Project and contained the information required for making their final decision on the project, which would be reached after conducting evidentiary hearings and upon the receipt of staff recommendations. However, due to project changes announced by PPSI after certification, evidentiary hearings were not held, nor was a decision made on the Proposed Project by the CPUC.

In December of 1993, PPSI filed an Amended Application with the CPUC. Later, in early 1994, PPSI also filed this Amended Application with the ANF. This Amendment was based on an Agreement reached by major potential users of the Proposed Pipeline (Santa Barbara offshore producers) and the All American Pipeline Company (AAPL). The producers agreed that the only means of transporting their oil out of Santa Barbara County by pipeline will be through use of the existing AAPL, which can transport all produced oil in this area to Kern County, and ultimately, to Texas, if requested by producers. However, producers have informed agencies and the public that the preferred destination for the majority of their heavy offshore production is the Los Angeles area refineries. Currently there are no existing pipelines with adequate capacity to transfer crude oil from the Southern Kern County to the Los Angeles area.

Thus, PPSI proposed to modify their project to comply with recent agreements and respond to this demand.

The Amendment filed with the ANF differs from the original proposal in the following manner:

■ The origination point of the pipeline would be at an existing Texaco oil facility in Emidio, Kern County, an area adjacent to the All American Pipeline, which would enable the transfer of Santa Barbara offshore crude oil from the AAPL to the Pacific Pipeline.

■ From this origination point a proposed 20-inch pipeline segment will continue for 62 miles to Castaic Junction, at which point, it would join the originally proposed project as applied for by PPSI. The 62-mile pipeline ROW would be generally parallel to I–5, and will traverse through the National Forest System land administered by the ANF. This newly proposed 62 miles from Emidio to Castaic Junction would replace the 104 miles of previously proposed pipeline from the Gaviota Marine Terminal to the Castaic Junction.

■ The replacement of the previously proposed Gaviota to Castaic Junction pipeline with the new 62-mile pipeline would result in the following changes in ancillary facilities:

—five of the pump/pressure reduction stations required previously in Santa Barbara, Ventura, and Los Angles Counties would be replaced by three new pump/pressure reduction stations in Kern and Los Angeles Counties

—the proposed Control Center for the pipeline would be located in Taylor Yard (Los Angeles) instead of Ventura County, as originally proposed.

■ The Amendment also requires consideration of three additional refinery/terminal destinations in Los Angeles County (retaining the previous three destinations). These three destinations are:

—Unocal Refinery in Carson

—Chemoil Terminal in Carson

—Ultramar Refinery in Wilmington.

These newly proposed destinations would require installations of an additional 3.3 miles of 16-inch pipeline that was not considered in the FEIR. Considering these additional connecting lines, the total length of the proposed pipeline would be approximately 132 miles (versus 171 miles for the originally Proposed Project).

The Amended Application also refers to a future scenario in which Mobil would obtain a permit and would produce up to 40,000 bpd of oil at their Santa Barbara Clearview Project. The Applicant suggests that the previously proposed pipeline between Ellwood to Castaic Junction might be reconsidered for this potential scenario.

The cumulative impacts associated with this uncertain scenario were identified in the original FEIR. The EIS/SEIR will consider this potential scenario and alternatives to it in the alternatives analysis section of the document.

Project Alternatives

Possible alternatives to the project would include:

■ No action or not constructing the pipeline.

■ Any reasonable project that can achieve the objectives of the Proposed Action, with lower overall impacts to the environment.

■ Route alternatives identified as a result of project scoping.

Supplementary Information

A number of documents providing general information about the ANF have already been issued. These documents include the ANF Land and Resources Management Plan, FEIS and Record of Decision. These documents allow, under certain conditions, the issuance of special use permits for pipelines.

Because of the magnitude of the changes made to the project and its potential significant impacts on the environment, an initial study was not prepared. The originally submitted and newly amended PEAs provided by PPSI in its Application, as well as the Pacific Pipeline FEIR and Executive Summary were used to determine the need for the EIS. These documents are available for review at the following locations:

California Public Utilities Commission (L.A. Office), 107 South Broadway, Los Angeles, CA, Contact: Public Advisor, (213) 897–3544

U.S. Forest Service, Angeles National Forest, 701 N. Santa Anita Ave., Arcadia, CA, Contact: Rich Borden, (818) 574–5255

Carson Regional Library, 151 East Carson Street, Carson, CA, Contact: Gilbert Acuna, (310) 830–0901

Ray D. Prueter Library, 510 Park Avenue, Port Hueneme, CA, Contact: Lori Karns, (805) 486–5460

Santa Barbara City Library, 40 East Anapamu, Santa Barbara, CA, Contact: Evelyn Rickey, (805) 962–7653

Valencia Library, 23743 Valencia Blvd., Valencia, CA, Contact: Rita Lance, (805) 259–8332

If necessary, responsible Federal agencies may request a copy of PPSI's application and/or PEA by contacting Tom Rooney at: Pacific Pipeline System, Inc., 101 South First Street, Burbank, CA 91502, (818) 556–2744

The EIS/SEIR Process

As indicated in the project description, the newly proposed segment of the pipeline traverses the National Forest System land administered by the ANF. Thus, the Applicant will require right-of-way authorization and special use permits from the ANF. In order to consider issuance of these permits, and based on potential impacts identified in the Applicant's PEA, ANF will prepare an EIS pursuant to NEPA requirements.

The Draft EIS (DEIS) is expected to be filed with the Environmental Protection Agency (EPA) and should be available for public review by November of 1994. At that time, the EPA will publish a notice of availability of the DEIS in the **Federal Register**. The comment period on the DEIS will be 60 days from the date the EPA's notice appears in the **Federal Register**.

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 the DEIS 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 have been raised at the draft stage may be waived if not raised until after completion of the Final EIS (FEIS), *Wisconsin Heritages, Inc.* v. *Harris* 490 F. Supp. 1334 (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 comment period so that the substantive comments and objectives are made available to the Forest Service. This is to ensure that substantive comments and objections are made available when the USFS can meaningfully respond to them in the FEIS. Comments on the DEIS should be specific and should address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of NEPA at 40 CFR 1503.3). It is also helpful if comments refer to specific pages or chapters of the DEIS.

After the end of the DEIS comment period, comments will be analyzed and considered by the USFS in preparing the FEIS. The FEIS is scheduled to be completed by April of 1995. In the FEIS the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official (Mike Rogers, Forest Supervisor, ANF, Arcadia, CA) will consider the comments, responses, environmental consequences discussed in the EIS, and applicable laws, regulations and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal under 36 CFR part 215.

Proposed Scope of the EIS/SEIR

The EIS/SEIR will present the analysis of the environmental impacts of the proposed Pacific Pipeline Project and comparative environmental effects of the alternatives, and will identify mitigation measures for potentially significant impacts. The EIS will address the Project from Emidio to the Ultramar refinery in Wilmington. However, for the segment from Castaic to Texaco's Wilmington refinery the EIS will, primarily, rely on the existing FEIR. The joint document will contain a separate section in which the conclusions stated in the FEIR will be summarized. The potential for construction and operation of the segment of the project which was previously proposed between Santa Barbara and Castaic Junction will be considered in the alternatives analysis section of the document.

The EIS/SEIR will address all issue areas for which potential significant impacts are anticipated. These issue areas include:

■ Air Quality. Construction and operation emissions and effects.

■ Biological Resources. Effects on native habitats that support rare, threatened, or endangered species; impacts on sensitive habitats or species downslope from the ROW as a result of sedimentation or erosion; damage to native plant habitats due to construction; loss of habitat due to vegetation removal; and effects of noise disturbance on nesting and foraging of wildlife species.

■ Cultural Resources. Construction effects on prehistoric sites, structures, regional districts or other physical evidence associated with human activity; disturbance during erosion control program excavation, illicit artifact collection by pipeline workers and construction equipment and oil spill containment encroachment in sensitive areas; Impacts on Native American values.

■ Environmental Contamination. Effects of disturbance from trench excavation to contaminated sites along the ROW on pipeline workers; migration of contaminants via surface ground water runoff; and pipeline passage through oil fields with abandoned wells.

■ Geology. Slope stability and seismic impacts associated with fault rupture and liquefaction/lateral spreading; and damage to above ground structures from earthquake-induced ground shaking.

■ Hydrology. Flood-related impacts due to diversion of stream flows during construction; erosion and scour impacts due to pipeline rupture and oil contamination of streams;

■ Land Use and Public Recreation. Construction effects on agricultural and recreational uses; disruptions to public services and access roads in residential areas; and potential for long-term safety risks to existing or planned uses in project vicinity.

■ Noise. Construction effects on sensitive receptors.

■ Paleonotology. Project impacts on the fossil evidence of inorganic plant

and animal remains over 11,000 years old.

■ Public Services. Effects of project construction and population growth.

■ Public Utilities and Energy. Construction disruption to utilities due to collocation accident.

■ Socioeconomics. Construction disruption to commercial sites; construction and operation effects on employment and population growth; and oil spill effects on local business, temporary housing and tourism.

■ Soils. Effects of soil corrosivity on project design; effects of expansive soils on foundations of above-ground structures; and fugitive dust emissions.

■ System Safety. Oil spill impacts from land-based oil spills, risk of oil spill ignition, and exposure to resulting fire. Impacts to creeks, riverbeds and native habitat; and effects of oil spills on sensitive receptors.

■ Transportation and Traffic. Construction effects on project study area's transportation system, traffic congestion, pedestrian circulation and emergency access.

■ Visual Resources. Construction and operation effects on visual resources resulting from presence of equipment, materials, workers, and above-ground facilities.

■ Cumulative and Growth Inducing Impacts.

Project Scoping Process

The EIS/SEIR on the Proposed Pacific Pipeline Project will focus on significant environmental effects. The process of determining the focus and content of the EIS/SEIR is known as scoping (40 CFR 1501.7). Scoping helps to identify the range of actions, alternatives, environmental effects, and mitigation measures to be analyzed in depth, and eliminates from detailed study those issues that are not pertinent to the final decision on the Proposed Project. The USFS will be seeking information, comments, and assistance from Federal, State, and local agencies, the proponent and other individuals or organizations who may be interested in, or affected by the proposed action. Significant issues may be identified through public and agency comments.

Scoping, however, is not conducted to resolve differences concerning the merits of the project or to anticipate the ultimate decision on the proposal. Rather, the purpose of scoping is to help ensure that a comprehensive and focused EIS/SEIR will be prepared that provides a firm basis for the decision-making process. The scoping process includes:

■ Identifying potential issues.

■ Identifying issues to be analyzed in depth.

■ Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.

■ Exploring additional alternatives.

■ Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).

■ Determining potential cooperating agencies and task assignments.

Public and agency scoping sessions will be held in the following areas:

Vista Del Lago Visitor Center, Vista Del Lago Exit (ten miles north of Castaic Junction), Interstate 5, June 27, 1994, 7 p.m.

Aragon Elementary School, 1118 Aragon Avenue, Los Angeles, CA 90065, June 28, 1994, 7 p.m.

Wilmington Boys and Girls Club, Multi-Purpose Room, 1444 West "Q" Street, Wilmington, CA 90744, June 29, 1994, 7 p.m.

City of San Fernando, Council Chambers, 117 McNeil Street, San Fernando, CA 91340, June 30, 1994, 7 p.m.

Agency Comments

Notice has been sent to responsible Federal Agencies, the State, and the **Federal Register**. Also State responsible and trustee agencies and the State Clearinghouse have been notified. We need to know the views of your agency as to the scope and content of the environmental information which reflects your agency's statutory responsibilities in connection with the proposed project. Once again, responses should identify the issues to be considered in the Draft EIS/SEIR, including significant environmental issues, alternatives, mitigation measures, and whether the responding agency will be responsible State of Federal agency or a state trustee agency.

Due to the time limits mandated by State and Federal Laws, your response must be sent at the earliest possible date but no later than 30 days after publication of this notice. Please send your response to: Richard Borden (ANF), c/o Aspen Environmental Group, 30423 Canwood Street, suite 218, Agoura Hills, CA 91301.

For further information write to: Richard Borden, ANF, 701 North Santa Anita Avenue, Arcadia, CA 91006–2799, (818) 574–5255.

Dated: June 8, 1994.

Mike Wickman,

District Ranger, Saugus Ranger District, Angeles National Forest.

[FR Doc. 94–14501 Filed 6–15–94; 8:45 am]

BILLING CODE 3410–11–M

Joseph Creek Wild and Scenic River Management Plan Environmental Assessment, Wallowa-Whitman National Forest, Wallowa County, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of availability.

SUMMARY: On June 7, 1994, Wallowa-Whitman Forest Supervisor, R.M. Richmond, signed a Decision Notice which adopted into the Forest Plan the Joseph Creek Wild and Scenic River Management Plan which required an amendment to the Wallowa-Whitman Forest Plan.

This management plan outlines use levels, development levels, resource protection measures, and outlines a general management direction for the river corridor. This amendment is necessary to implement the Wild and Scenic Rivers Act which required the Forest Service to develop a management plan for Joseph Creek. Interim direction was identified in the Forest Plan as Management Area 7 (Wild and Scenic Rivers). The environmental assessment documents the analysis of alternatives to managing the Joseph Creek Wild and Scenic River in accordance with the Wild and Scenic Rivers Act.

This decision is subject to appeal pursuant to Forest Service regulations 36 CFR part 217. Appeals must be filed within 45 days from the date of publication in the Baker City Herald. Notices of Appeals must meet the requirement of 36 CFR 217.9.

The environmental assessment for the Joseph Creek Wild and Scenic River Management Plan is available for the public review at the Wallowa-Whitman National Forest Supervisor's Office in Baker City, Oregon.

EFFECTIVE DATE: Implementation of this decision shall not occur within 30 days following publication of the legal notice of the decision in the Baker City Herald.

FOR FURTHER INFORMATION:

For further information, contact Steve Davis, Wallowa-Whitman National Forest, P.O. Box 907, Baker City, Oregon 97814 or phone (503) 523–1316.

Dated: June 7, 1994.

R.M. Richmond,

Forest Supervisor

[FR Doc. 94–14627 Filed 6–15–94; 8:45 am]

BILLING CODE 3410–11–M

Rural Electrification Administration

Municipal Interest Rates for Third Quarter of 1994

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of municipal interest rates on advances from insured electric loans for the third quarter of 1994.

SUMMARY: REA hereby announces the interest rates for advances on municipal rate loans with interest rate terms beginning during the third calendar quarter of 1994.

DATES: These interest rates are effective for interest rate terms that commence during the period beginning July 1, 1994, and ending September 30, 1994.

FOR FURTHER INFORMATION CONTACT: Sue Arnold, Financial Analyst, Program Support Staff, U.S. Department of Agriculture, Rural Electrification Administration, room 2230-s, 14th Street & Independence Avenue SW., Washington, DC 20250–1500. Telephone: 202–720–0736. FAX: 202–720–4120.

SUPPLEMENTARY INFORMATION: Pursuant to REA regulations at 7 CFR 1714.5, the interest rates on advances of funds from municipal rate loans are based on indexes published in the "Bond Buyer" for the four weeks prior to the first Friday of the last month before the beginning of the quarter. In accordance with 7 CFR 1714.5, the interest rates are established as shown in the following table for all interest rate terms that begin any time during the third calendar quarter of 1994.

Interest rate term ends in (year)	Interest rate (0.000 percent)
2015 or later	6.125
2014	6.125
2013	6.125
2012	6.000
2011	6.000
2010	6.000
2009	5.875
2008	5.875
2007	5.750
2006	5.625
2005	5.500
2004	5.375
2003	5.375
2002	5.250
2001	5.125
2000	5.000
1999	4.875
1998	4.750
1997	4.625
1996	4.375
1995	3.750

Dated: June 10, 1994.

Wally Beyer,

Administrator.

[FR Doc. 94–14680 Filed 6–15–94; 8:45 am]

BILLING CODE 3410–15–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Rhode Island Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Rhode Island Advisory Committee to the Commission will be convened at 2 p.m. and adjourn at 6 p.m. on Wednesday, July 13, 1994, at the Marriott Hotel, Washington room, Charles and Orms Streets, Providence, Rhode Island 02904. The purpose of the meeting is to update Committee members on the Commission and to plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Sarah A. Murphy, 401–455–3880 or John I. Binkley, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 8, 1994.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 94–14652 Filed 6–15–94; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 23–94]

Foreign-Trade Zone 172—Oneida County, NY; Application for Subzone Oneida Ltd. (Tableware) Sherrill and Oneida, NY

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the County of Oneida, New York, grantee of FTZ 172, requesting special-purpose subzone status for the manufacturing facilities of Oneida Ltd. in Sherrill and Oneida, New York. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on June 7, 1994.

The Oneida facilities involve three sites in Sherrill (Oneida County) and Oneida (Madison County), New York: Site 1 (116 acres)—Main Plant, East Seneca Street and Route 5, Sherrill; Site 2 (63 acres)—Knife Plant, Kenwood Avenue, Sherrill; and Site 3 (0.5 acres)—warehouse facility (D.J. Warehouse), Wilson Street, Oneida. The facilities (2500 employees) are used to manufacture a full line of stainless steel, silverplated and sterling silver flatware (knives, forks and spoons) as well as certain hollowware (tea services, bowls, trays, cups). The facilities are also used to warehouse/package/distribute porcelain, chinaware, crystal and miscellaneous giftware. Certain finished and semi-finished items, accounting for up to 15 percent of sales, are sourced from abroad to fill out product lines. (Stainless steel mill products are sourced domestically.) Oneida is requesting to use zone procedures only for silverplating of foreign-sourced stainless steel tableware and for warehousing and packaging of finished products.

Zone procedures would exempt Oneida from Customs duty payments on foreign items that are exported. On domestic sales, the company would be able to choose the duty rates that apply to the finished silverplated products (4.5 to 6.0%). The duty rates on foreign-sourced stainless steel tableware items used in the silverplating activity range from 6 to 17 percent. The application indicates that the savings from zone procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is August 15, 1994. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to Tuesday, August 30, 1994).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Port Director, U.S. Customs Service, Syracuse Hancock

International Airport, Air Cargo Building, P.O. Box 7256, Syracuse, NY 13261

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230

Dated: June 7, 1994.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 94–14622 Filed 6–15–94; 8:45 am]

BILLING CODE 3510–25–P

International Trade Administration

[A–570–827]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cased Pencils From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 16, 1994.

FOR FURTHER INFORMATION CONTACT: Cynthia Thirumalai or Kristin Heim, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4087 or (202) 482–3798, respectively.

PRELIMINARY DETERMINATION: We preliminarily determine that certain cased pencils (pencils) from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation on November 29, 1993 (58 FR 64548, December 8, 1993), the following events have occurred.

On December 27, 1993, the U.S. International Trade Commission (ITC) notified us of its preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of pencils from the PRC that are alleged to be sold at less than fair value.

On January 5, 1994, we sent a survey to the PRC's Ministry of Foreign Trade and Economic Cooperation (MOFTEC) and certain companies in the PRC requesting information on production and sales of pencils exported to the United States. The names of the companies were found in the petition and in data supplied by the Port Import-Export Reporting Service (PIERS). We requested MOFTEC's assistance in forwarding the survey to all exporters and producers of pencils and submitting complete responses on their behalf. On January 14, the survey was sent to the Asia Pencil Association.

On January 31, 1994, responses to the survey were received from the China First Pencil Co., Ltd. (China First), an exporter and producer; Shanghai Foreign Trade Corp. (SFTC), an exporter; Shanghai Lansheng Corp. (Shanghai Lansheng), an exporter; Shanghai Machinery & Equipment Import & Export Corp. (Shanghai Machinery), an exporter; and Shanghai Three Star Stationery Industry Corp. (Three Star), a producer and domestic reseller. Shanghai Machinery reported that while it had exported pencils in the past, it did not make any sales to the United States during the POI.

On February 9, 1994, four more companies responded to our survey: Songnan Pencil Factory, a producer; Xinbang Joint Venture Factory, a producer; Guangdong Provincial Stationery & Sporting Goods Import & Export Corp. (Guangdong), an exporter; and Anhui Stationery Company (Anhui), a producer.

On February 16, 17, and 23, 1994, all PRC producers and exporters identified in the course of this proceeding, *i.e.*, through the petition, in PIERS data, in letters of appearance and as provided by MOFTEC, for which we had addresses were sent full questionnaires. During the month of March, in response to our questionnaire, we received letters from a number of companies stating that they either did not export cased pencils to the United States during the POI or acted merely as freight forwarders.

On March 8, 1994, we postponed the preliminary determination in this investigation (see 59 FR 10784, March 8, 1994).

SFTC requested on March 24, 1994, that it not be required to submit sales and factors of production information for certain pencils it exported to the United States during the POI. On April 4, 1994, SFTC amended its request. Because the sales and factor of production information covered a small percentage of SFTC's sales to the United States, we granted SFTC's amended request (see Memorandum from E. Graham to B. Stafford, April 7, 1994, on file in the Central Records Unit in room B–099 of the Main Commerce Building).

On May 10, 11, and 25, 1994, petitioner submitted information concerning the costs of certain raw materials which are used in the production of pencils but that were not specifically addressed in the petition. Petitioner also requested that the Department recalculate the petition margins based on the information in its submission of May 25, 1994.

Between June 3, 1994, and this preliminary determination, respondents submitted updated and additional information. Given the late dates on which this information was provided, we found it administratively infeasible to use this information (with the exception of company-specific conversion factors) in our preliminary determination.

Scope of Investigation

The products covered by this investigation are certain cased pencils of any shape or dimension which are writing and/or drawing instruments that feature cores of graphite or other materials encased in wood and/or man-made materials, whether or not decorated and whether or not tipped (*e.g.*, with erasers, etc.) in any fashion, and either sharpened or unsharpened. The pencils subject to this investigation are classified under subheading 9609.10.00 of the Harmonized Tariff Schedule of the United States ("HTSUS").

Specifically excluded from the scope of this investigation are mechanical pencils, cosmetic pencils, pens, non-cased crayons (wax), pastels, charcoals, or chalks.

Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Class or Kind of Merchandise

At the time of our initiation, we solicited comments from interested parties on whether all cased pencils constitute one class or kind of merchandise. Respondents have argued that raw pencils/pencil blanks and semi-finished pencils constitute a separate class or kind of merchandise apart from finished pencils. Based on the information provided, we find that these products do not constitute a separate class or kind of merchandise. (See memorandum from E. Graham to B. Stafford, April 15, 1994.) In a submission dated June 2, 1994, respondents argued that the merchandise subject to this investigation comprises four separate classes or kinds of merchandise. While this argument was made too late to be considered for our preliminary determination, we will address this in our final determination.

The Asia Pencil Association argued that specialty pencils (*e.g.*, carpenter and art pencils) should constitute a separate class or kind of merchandise. However, the information submitted in support of their claim was insufficient to allow us to make a determination that specialty pencils are a separate class or kind of merchandise.

Period of Investigation

The POI is June 1, 1993, through November 30, 1993.

Separate Rates

China First, Guangdong, SFTC, and Shanghai Lansheng have each requested a separate rate. Guangdong's and SFTC's business licenses each indicate that they are owned "by all the people." As stated in the *Final Determination of Sales at Less than Fair Value: Silicon Carbide from the People's Republic of China* (59 FR 22585, 22586 (May 2, 1994)) ("*Silicon Carbide*") "ownership of a company by all the people does not require the application of a single rate." Accordingly, Guangdong and SFTC are eligible for consideration for separate rates.

Shanghai Lansheng has reported that, for the majority of the POI, it was owned "by all the people" and that it was later reorganized as a shareholding company. It has indicated that its shares are traded on the Shanghai stock exchange. In the *Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Paper Clips from the People's Republic of China* ("*Paper Clips*") (59 FR 25885, 25887, May 18, 1994) the Department stated that "a 'municipal government' owns 70 percent of [Shanghai Lansheng's] shares." There is no evidence on the record that this municipality controls other exporters of cased pencils that made sales to the United States during the POI. We will, however, evaluate this issue carefully during verification.

Since ownership by all the people (the situation applicable to Shanghai Lansheng during the majority of the POI) "does not require the application of a single rate" and there was no central government ownership during the later part of the POI, Shanghai Lansheng is eligible for consideration for a separate rate.

China First has reported that it is a shareholding company and has provided a list of its shareholders. According to China First, the shareholders elect the board of directors which, in turn, appoints the general manager. Its questionnaire response states that there are three types of shares: A shares held by Chinese legal persons, B shares held by non-Chinese legal persons and Enterprise shares. We do not have on the record any information addressing the similarities or differences in rights accruing to the various types of shares.

Based on our examination of the information provided regarding the shareholder identities and the ownership structure of China First, we have determined that we do not have enough information on the record to grant it a separate rate at this time. Due to the proprietary nature of the information, we are not able to discuss the ownership structure of China First in further detail in this notice; however, there is a proprietary decision memorandum regarding this issue on the record (see Decision Memorandum of June 8, 1994). We are assigning China First the PRC country-wide rate for purposes of this preliminary determination.

To establish whether a firm is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China* (56 FR 20588, May 6, 1991) ("*Sparklers*") and amplified in *Silicon Carbide*. Under the separate rates criteria, the Department assigns separate rates only where respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

1. Absence of De Jure Control

Three PRC laws that have been placed on the record in this proceeding indicate that the responsibility for managing enterprises "owned by all of the people" is with the enterprises themselves and not with the government. These are the "Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People," adopted on April 13, 1988 ("*1988 Law*"); "Regulations for Transformation of Operational Mechanism of State-Owned Industrial Enterprises," approved on August 23, 1992 ("*1992 Regulations*"); and the "Temporary Provisions for Administration of Export Commodities," approved on December 21, 1992 ("*Export Provisions*").

The *1988 Law* and *1992 Regulations* shifted control from the government to the enterprises themselves. The *1988 Law* provides that enterprises owned "by the whole people" shall make their own management decisions, be responsible for their own profits and losses, choose their own suppliers and purchase their own goods and materials. The *1988 Law* also has other provisions which indicate that enterprises have management independence from the government. The *1992 Regulations* provide that these same enterprises can, for example, set their own prices (Article IX); make their own production decisions (Article XI); use their own retained foreign exchange (Article XII); allocate profits (Article II); sell their own products without government interference (Article X); make their own investment decisions (Article XIII); dispose of their own assets (Article XV); and hire and fire their employees without government approval (Article XVII).

The *Export Provisions* list those products subject to direct government control. Pencils do not appear on the *Export Provisions* list and are not, therefore, subject to the export constraints.

The existence of these laws indicates Guangdong, SFTC and Shanghai Lansheng are not *de jure* subject to central government control. However, there is some evidence that the provisions of the above-cited laws and regulations have not been implemented uniformly among different sectors and/or jurisdictions in the PRC (see "PRC Government Findings on Enterprise Autonomy," in *Foreign Broadcast Information Service—China-93-133* (July 14, 1993). Therefore, the Department has determined that an analysis of *de facto* control is critical to determining whether respondents are, in fact, subject to governmental control.

2. Absence of De Facto Control

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) Whether the export prices are set by or subject to the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses (*see Silicon Carbide*).

Guangdong, SFTC and Shanghai Lansheng have each asserted that (1) it establishes its own export prices; (2) it negotiates contracts without guidance from any governmental entities or organizations; (3) its management operates with a high degree of autonomy and there is no information on the record that suggests central government

control over selection of management; and (4) it retains the proceeds of its export sales, and has the authority to sell its assets and to obtain loans. In addition, company-specific pricing during the POI does not suggest any coordination among exporters (*i.e.*, the prices for comparable products appear to differ among companies). This information supports a preliminary finding that there is a *de facto* absence of governmental control of export functions.

Consequently, Guangdong, SFTC and Shanghai Lansheng have preliminarily met the criteria for the application of separate rates. We will examine this issue in detail at verification and determine whether the questionnaire responses are supported by verifiable documentation.

There is an additional issue relating to governmental control that we will consider further for purposes of our final determination. Guangdong and SFTC have indicated that the appointments of their general managers are subject to approval by the local Commission on Foreign Trade and Economic Cooperation (COFTEC) office. While the significance of this is unclear, the evidence cited above indicates that the COFTEC offices do not control the key functions of the enterprises. However, we will examine at verification the precise nature of the authority that the COFTEC offices exercise over the enterprises.

Nonmarket Economy

The PRC has been treated as a nonmarket economy (NME) in past antidumping investigations. (See, *e.g.*, *Final Determination of Sales at Less than Fair Value: Sebacic Acid from the People's Republic of China* (54 FR 28053 (May 31, 1994)). No information has been provided in this proceeding that would lead us to overturn our former determinations. Therefore, in accordance with 771(18)(c) of the Act, we have treated the PRC as an NME for purposes of this investigation.

Where the Department is investigating imports from an NME, section 772(c)(1) of the Act directs us to base FMV on the NME producers' factors of production, valued in a comparable market economy that is a significant producer of the merchandise. Section 773(c)(2) of the Act alternatively provides that where available information is inadequate for using the factors of production methodology, FMV may be based on the export prices for comparable merchandise from market economy countries at a comparable level of economic development.

In this investigation, the respondents have urged the Department to make use of the alternative methodology provided in section 773(c)(2) of the Act. In particular, they have argued that the primary input into PRC pencils, lindenwood, cannot be valued elsewhere. Petitioner has also questioned the Department's ability to value certain inputs using publicly available published information (PAPI) from India, as Indian input statistics cover broader product categories. Petitioner does not request that the Department use the alternative methodology for FMV. Instead, it suggests that U.S. producers' costs be used to value these inputs.

For purposes of the preliminary determination, we have relied on the methodology provided by section 773(c)(1) of the Act to determine FMV. The sources of individual factor prices are discussed under the FMV section, below. However, as a result of the comments made by petitioner and respondents on the relevance of factor prices in India, we will be seeking additional data on factor values and on export prices that could also be used under the alternative methodology provided in section 773(c)(2) of the Act for possible use in our final determination.

Surrogate Country

As discussed above, section 773(c)(4) of the Act requires the Department to value the NME producers' factors of production, to the extent possible, in one or more market economy countries that are at a level of economic development comparable to that of the nonmarket economy country, and that are significant producers of comparable merchandise. The Department has determined that India and Pakistan are the countries most comparable to the PRC in terms of overall economic development. (*See* memorandum from the Office of Policy to the file, dated March 18, 1994.) In addition, there is evidence on the record that pencils are produced in India.

Although India is the preferred surrogate country for purposes of valuing the factors of production used in producing the subject merchandise, we have resorted to Pakistan and Indonesia for certain surrogate values where Indian values were either unavailable or significantly outdated. We have obtained and relied upon PAPI wherever possible.

Fair Value Comparisons

To determine whether sales of pencils from the PRC to the United States by Guangdong and Shanghai Lansheng were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

Because all of SFTC's responses were not received in time for consideration in this preliminary determination and, therefore, we had only partial information for calculating FMV, we have based SFTC's margin on the best information available (BIA). (*See* "Best Information Available" section of this notice.)

United States Price

We based USP on purchase price, in accordance with section 772(b) of the Act, because the subject merchandise was sold directly by the Chinese exporters to unrelated parties in the United States prior to importation into the United States.

For those exporters that responded to the Department's questionnaire and were found to be eligible for a separate rate, we calculated purchase price based on packed, FOB foreign-port prices to unrelated purchasers in the United States. We made deductions for containerization, loading, port handling expenses and foreign inland freight valued in a surrogate country.

Foreign Market Value

We calculated FMV based on factors of production reported by the factories which produced the subject merchandise for the three exporters. The factors used to produce pencils include materials, labor, and energy. We made adjustments to materials costs for the resale of scrap materials, where applicable.

In determining which surrogate value to use for valuing each factor of production, we selected, where possible, the PAPI value which was: (1) An average non-export value; (2) representative of a range of prices within the POI if submitted by an interested party, or most contemporaneous with the POI; (3) product-specific; and (4) tax-exclusive.

We used surrogate transportation rates to value inland freight between the source of the production factor and the pencil factories, and between factories, where appropriate. In those cases where a respondent failed to provide any information on transportation distances and modes, we applied, as best information available, the most expensive distance/modes combination (*i.e.*, the longest truck rates) that was available from the surrogate information we had selected. For two modes of transportation (man-drawn carts, inland

water transport), we were unable to obtain PAPI or cable information in time for this preliminary determination. To value these two modes of transportation, we assumed that these forms competed effectively with an alternate form of transportation over similar distances and used the applicable rates for the alternate form.

To value the raw materials and packing materials, we used PAPI. Our sources included: Indian Import Statistics for 1989, 1991 and 1992; and Indonesian Import Statistics for 1989.

To value wood slats, we used the Asian market price for jelutong wood in the sawn form during the POI as reported in the Market News Service Report for Tropical Timber and Timber Products dated November 1993. To value wood logs, we used Indian import statistics for a group of woods in rough form which included jelutong wood. The record in this proceeding shows that jelutong wood is used in pencil production and is similar to lindenwood, the input used by the PRC producers. For ferrules we used Indian import statistics for a basket aluminum category and for paint we used the import statistics category identified by respondents.

To value electricity, we used PAPI from the Asian Development Bank. To value coal and natural gas, we used Indian Import Statistics for 1992 and the Monthly Statistics of Mineral Production, Indian Bureau of Mines dated November 1992, respectively. To value water, we used a public cable from the U.S. consulate in Pakistan which was originally provided in the investigation of *Sulfanilic Acid From the PRC* because we could not locate a value for water in any Indian or Pakistani publication.

For all material and energy prices that were for a period prior to the POI, we adjusted the factor values to account for inflation between the time period in question and the POI using wholesale price indices published in *International Financial Statistics (IFS)* by the International Monetary Fund.

To value labor amounts, we used the International Labor Office's *1993 Yearbook of Labor Statistics*. To determine the number of hours in an Indian workday, we used the *Country Reports: Human Rights Practices for 1990*. We adjusted the factor values to account for inflation between the time period in question and the POI using the consumer price indices published in *IFS*.

To value factory overhead, we calculated percentages based on elements of industry group income statements from *The Reserve Bank of India Bulletin (RBI)*, December 1992. We based our overhead percentage calculations on the RBI data, adjusted to reflect an energy-exclusive overhead percentage. For selling, general and administrative (SG&A) expenses, we calculated percentages based on the RBI data. We used the calculated SG&A percentages because they were greater than the ten percent statutory minimum. We also used the calculated profit percentage because it was greater than the statutory minimum of eight percent of materials, labor, factory overhead, and SG&A expenses.

We made no adjustments for selling expenses. We added surrogate freight costs for the delivery of packing materials to the factories producing pencils.

Best Information Available

Because information has not been presented to the Department to prove otherwise, any PRC companies not participating in this investigation are not entitled to separate dumping margins. Potential exporters identified by the Ministry of Foreign Trade and Economic Cooperation (MOFTEC) have failed to respond to our questionnaire. In the absence of responses from these and other PRC exporters during the POI, we are basing the PRC country-wide rate on BIA. As discussed above, we are also applying BIA to SFTC.

In determining what to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns lower margins to those respondents that cooperated in an investigation and more adverse margins for those respondents which did not cooperate in an investigation. As outlined in the *Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Argentina ("Argentina Steel")*, 58 FR 7066, 7069, 7070 (February 4, 1993), when a company refuses to provide the information requested in the form required, or otherwise significantly impedes the Department's investigation, it is appropriate for the Department to assign to that company the higher of (a) the highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation. Here, since some PRC exporters failed to respond to our questionnaire, we are assigning to them the highest margin in the petition, as recalculated by the Department for the initiation and for this determination using petitioner's updated information submitted May 1994. This rate applies to all exporters other than those responding exporters which have shown their independence from central government control.

Since SFTC has been cooperative in this proceeding, and since we have preliminarily determined it is eligible for a separate rate, we are assigning a margin based on the highest calculated rate for any respondent in the investigation (see *Argentina Steel*).

Verification

As provided in section 776(b) of the Act, we will verify all information determined to be acceptable for use in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of pencils from the PRC that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the FMV exceeds the USP as shown below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
Guangdong	58.34
SFTC	100.98
Shanghai Lansheng	100.98
PRC country-wide rate*	107.63

*Including China first.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than August 8, 1994, and rebuttal briefs, no later than August 12, 1994. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be

held at 10 a.m. on August 15, 1994, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination by August 22, 1994.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: June 8, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–14624 Filed 6–15–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–549–808]

Preliminary Determination of Sales at Less Than Fair Value: Certain Cased Pencils From Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 16, 1994.

FOR FURTHER INFORMATION CONTACT: Vincent Kane or Thomas McGinty, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC, 20230; telephone (202) 482–2815 or 482–5055.

PRELIMINARY DETERMINATION: We preliminarily determine that imports of certain cased pencils from Thailand are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation on November 30, 1993, (58 FR 64548, December 8, 1993), the following events have occurred:

On December 27, 1993, the U.S. International Trade Commission (ITC) issued an affirmative preliminary injury determination in this case (Investigation Nos.–731–TA–669–670 (Preliminary) (Publication 2713).

On January 5, 1994, the Department of Commerce (the Department) delivered antidumping duty questionnaires to Aruna Company, Ltd. (Aruna) and Nan Mee Industry Co., Ltd. (Nan Mee). At the time a questionnaire was sent to Nan Mee, we did not know that Aruna accounted for over 60 percent of exports of the subject merchandise to the United States. On January 14, 1994, Nan Mee informed the Department that it had no sales for export to the United States during the period of investigation (POI). Based on import statistics obtained from the U.S. Customs Service, we determined that Aruna accounted for at least 60 percent of exports of the subject merchandise to the United States during the period of investigation (POI). These statistics also confirmed that Nan Mee had no exports to the United States during the POI. On January 28, 1994, Aruna notified the Department that it would not participate in this investigation. No questionnaire response was filed by Aruna.

On March 29, 1994, at the request of petitioner, the Department postponed the preliminary determination until June 8, 1994, in accordance with section 733 of the Act.

Scope of Investigation

The products covered by these investigation are certain cased pencils of any shape or dimension which are writing and/or drawing instruments that feature cores of graphite or other materials encased in wood and/or man-made materials, whether or not decorated and whether or not tipped (*e.g.*, with erasers, etc.) in any fashion, and either sharpened or unsharpened. The pencils subject to these investigations are classified under subheading 9609.10.00 of the Harmonized Tariff Schedule of the United States ("HTSUS").

Specifically excluded from the scope of this investigation are mechanical pencils, cosmetic pencils, pens, non-cased crayons (wax), pastels, charcoals, or chalks.

Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation is June 1, 1993, through November 30, 1993.

Best Information Available

Because Aruna failed to respond to our questionnaire, we based our preliminary determination on best information available (BIA) in accordance with section 776(c) of the Act. Section 776(c) states that the Department may use BIA where a company has refused to provide information requested in the form required, or has otherwise significantly impeded the Department's investigation.

In determining what rate to use as BIA when a party refuses to provide requested information, the Department follows a two-tiered methodology. *See, Final Determination of Sales at Less than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Belgium*, 58 FR 37083, (July 9, 1993). Under this methodology, the Department uses as BIA the higher of (1) the margin alleged in the petition; or (2) the highest calculated rate of any respondent in the investigation. Since there is no calculated rate in this investigation, we have assigned to Aruna and all other exporters the highest rate contained in the petition with one adjustment. Petitioner based the highest rate on a comparison of average U.S. prices from import statistics with the highest of four home market price quotes as the basis for foreign market value (FMV). Rather than use the highest home market price quote as FMV, we have used an average of the four home market price quotes. We have made this adjustment because the petitioner used an average price derived from import statistics as U.S. price. On this basis we have calculated a BIA rate of 48.3 percent.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of certain cased pencils from Thailand that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margin, as shown below. The suspension of liquidation will remain in effect until further notice.

Producer/Manufacturer/Exporter	Margin percentage
All companies	48.3

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than July 1, 1994, and rebuttal briefs, no later than July 8, 1994. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on July 12, 1994, at 10:00 a.m. at the U.S. Department of Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B–099, within ten days of the publication of this notice. Requests should contain (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination by August 22, 1994.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: June 8, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–14625 Filed 6–15–94; 8:45 am]

BILLLING CODE 3510–DS–P

Travel and Tourism Administration

Travel and Tourism Advisory Board; Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. (App. 1976) notice is hereby given that the Travel and Tourism Advisory Board of the U.S. Department of Commerce will meet on July 19, 1994, at 9 a.m. at the Boston Back Bay Hilton, 40 Dalton Street, Boston, Massachusetts.

Established March 19, 19982, the Travel and Tourism Advisory Board consists of 15 members, representing the major segments of the travel and tourism industry and state tourism interests, and includes one member of a travel labor organization, a consumer advocate, an academician and a financial expert.

Members advise the Secretary of Commerce on matters pertinent to the Department's responsibilities to accomplish the purpose of the International Travel Act, as amended, and provide guidance to the Under Secretary for Travel and Tourism.

Agenda items are as follows:

I. Call to Order
II. Roll Call
III. Administrative Details
IV. Current Legislative Issues
V. Tourism Policy Council and White House Conference on Tourism
VI. USA Marketing Council Report
VII. USTTA Program Planning
VIII. Miscellaneous
IX. Adjournment

A very limited number of seats will be available to observers from the public and the press. To assure adequate seating, individuals intending to attend should notify the Committee Control Officer in advance. The public will be permitted to file written statements with the Committee before or after the public forum and meeting. To the extent time is available, the presentation or oral statements will be allowed.

Karen M. Cardran, Committee Control Officer, United States Travel and Tourism Administration, room 1860, U.S. Department of Commerce, Washington, DC 20230 (telephone 202–482–1904) will respond to public requests for information about the meeting.

Greg Farmer,

Under Secretary of Commerce for Travel and Tourism.

[FR Doc. 94–14667 Filed: 6–15–94; 8:45 am]

BILLING CODE 3510–11–M

International Trade Administration

Brandeis University, et al.; Notice of Consolidated Decision on Application for Duty-Free Entry of Scientific Instrument

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 93–129. *Applicant:* Brandeis University, Waltham, MA 02254-9110. *Instrument:* Safe Start Xenon Arc Lamp, Model HB 4060. *Manufacturer:* Applied Photophysics Ltd., United Kingdom. *Intended Use:* See notice at 58 FR 59012, November 5, 1993. *Advice Received From:* National Institutes of Health, March 31, 1994.

Docket Number: 93–140. *Applicant:* Rutgers University, Piscataway, NJ 08854. *Instrument:* High Intensity Light Source Attachment. *Manufacturer:* Hi-Tech Scientific Limited, United Kingdom. *Intended Use:* See notice at 58 FR 65157, December 13, 1993. *Advice Received From:* National Institutes of Health, April 21, 1994.

Docket Number: 93–156. *Applicant:* University of Arizona, Tucson, AZ 85721. *Instrument:* Automated Microvolume Inlet System. *Manufacturer:* Finnigan MAT GmbH, Germany. *Intended Use:* See notice at 59 FR 5178, February 3, 1994. *Advice Received From:* National Institutes of Health, April 21, 1994.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments, for the purposes for which the instruments are intended to be used, is being manufactured in the United States. *Reasons:* These are compatible accessories for instruments previously imported for the use of the applicants. In each case, the instrument and accessory were made by the same manufacturer. The National Institutes of Health advises that the accessories are pertinent to the intended uses and that it knows of no comparable domestic accessories.

We know of no domestic accessories which can be readily adapted to the previously imported instruments.

Pamela Woods,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 94–14699 Filed 6–15–94; 8:45 am]

BILLING CODE 3510–DS–F

Mount Sinai Medical Center, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and

Constitution Avenue, N.W., Washington, D.C.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 93–136. *Applicant:* Mount Sinai Medical Center, New York, NY 10029. *Instrument:* Cytovision Ultra Analysis System. *Manufacturer:* Applied Imaging International, United Kingdom. *Intended Use:* See notice at 58 FR 63924, December 3, 1993. *Reasons:* The foreign instrument provides: (1) combined automated karyotyping and fluorescence in-situ hybridization (FISH) analysis and (2) high resolution monochrome CCD camera. *Advice Received From:* National Institutes of Health, April 21, 1994.

Docket Number: 94–007. *Applicant:* Occidental College, Los Angeles, CA 90041. *Instrument:* Multi-Mixing Rapid Kinetics Accessory with Pneumatic Attachment, Model SFA-12MX. *Manufacturer:* Hi-Tech, United Kingdom. *Intended Use:* See notice at 59 FR 6621, February 11, 1994. *Reasons:* The foreign instrument provides customized compatibility with the flow cell holder and the data system of a Hitachi F4500 spectrofluorimeter. *Advice Received From:* National Institutes of Health, May 6, 1994.

Docket Number: 94–015. *Applicant:* Rice University, Houston, TX 77005. *Instrument:* Mass Spectrometer, Model MAT 95. *Manufacturer:* Finnigan, Germany. *Intended Use:* See notice at 59 FR 12893, March 18, 1994. *Reasons:* The foreign instrument provides: (1) resolution to 60 000, (2) mass range to 17 500 amu and (3) scan rate to 0.1 second per decade. *Advice Received From:* National Institutes of Health, May 6, 1994.

Docket Number: 94–016. *Applicant:* Penn State University, Hershey, PA 17033. *Instrument:* Rapid Kinetics Spectrometer Accessory, Model RX 1000. *Manufacturer:* Applied Photophysics, United Kingdom. *Intended Use:* See notice at 59 FR 12893, March 18, 1994. *Reasons:* The foreign instrument may be used with a circular dichroism spectrometer. *Advice Received From:* National Institutes of Health, May 6, 1994.

The National Institutes of Health advises in its memoranda that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Pamela Woods,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 94–14698 Filed 6–15–94; 8:45 am]

BILLING CODE 3510–DS–F

USDA-Agricultural Research Service, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 94–001. *Applicant:* USDA-Agricultural Research Service, Prosser, WA 99350. *Instrument:* Electron Microscope, Model JEM-1010. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 59 FR 6621, February 11, 1994. *Order Date:* September 27, 1993.

Docket Number: 94–003. *Applicant:* The Ohio State University, Columbus, OH 43210. *Instrument:* Electron Microscope, Model CM 200 LaB_6. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* See notice at 59 FR 6621, February 11, 1994. *Order Date:* November 13, 1993.

Docket Number: 94–005. *Applicant:* The Pennsylvania State University, University Park, PA 16802. *Instrument:* Electron Microscope, Model JEM-2000EXII/SEG/DP/DP. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 59 FR 6621, February 11, 1994. *Order Date:* October 7, 1993.

Docket Number: 94–011. *Applicant:* Texas Children's Hospital, Houston, TX 77030. *Instrument:* Electron Microscope, Model JEM-1210. *Manufacturer:* JEOL, Japan . *Intended Use:* See notice at 59 FR 9964, March 2, 1994. *Order Date:* May 27, 1993.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. *Reasons:* Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

Pamela Woods,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 94–14697 Filed 6–15–94; 8:45 am]

BILLING CODE 3510–DS–F

Texas A&M University, Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Docket Number: 94–020. *Applicant:* Texas A&M University, College Station, TX 77843. *Instrument:* Isotope Ratio Mass Spectrometer with Accessories, Model MAT 252 GC. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* See notice at 59 FR 12893, March 18, 1994. *Reasons:* The foreign instrument provides: (1) an absolute sensitivity of 1000 molecules CO_2 per mass 44 ion at the collector and (2) an internal precision of 0.005 per mil for 3 bar µl samples of CO_2.

This capability is pertinent to the applicant's intended purpose and we know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Pamela Woods,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 94–14623 Filed 6–15–94; 8:45 am]

BILLING CODE 3510–DS–F

Minority Business Development Agency

Business Development Center Applications; San Jose, CA

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) Program. The total cost of performance for the first budget period (12 months) from November 1, 1994 to October 31, 1995, is estimated at $333,125. The application must include a minimum cost-share of 15% of the total project cost through non-Federal contributions. Cost-sharing contributions may be in the form of cash contributions, clients fees, in-kind contributions or combinations thereof. The MBDC will operate in the San Jose, California Geographic Service Area.

The funding instrument for this project will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program provides business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of management and technical assistance to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the MBDCs may charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of $50 per hour, the MBDC will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

Quarterly reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as an MBDC's performance, the availability of funds and Agency priorities.

DATES: The closing date for applications is July 25, 1994.

Applications must be postmarked on or before July 25, 1994. The mailing address for submission is: San Francisco Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, room 1280, San Francisco, California 94105, 415/744–3001.

A pre-application conference to assist all interested applicants will be held at the following address and time: San Francisco Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, room 1280, San Francisco, California 94105, July 1, 1994 at 10 a.m.

FOR FURTHER INFORMATION CONTACT: Melda Cabrera, Regional Director, San Francisco Regional Office at 415/744–3001.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address.

Pre-Award Costs

Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Outstanding Account Receivable

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, a repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy

All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management, honesty or financial integrity.

Award Termination

The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are unsatisfactory performance of MBDC work requirements, and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements

A false statement on an application for Federal financial assistance is

grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications

All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension

Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug-Free Workplace

Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying

Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to application/bids for grants, cooperative agreements, and contracts for more than $100,000.

Anti-Lobbying Disclosures

Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

Lower Tier Certifications

Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

11.800 Minority Business Development Center

(Catalog of Federal Domestic Assistance)

Dated: June 9, 1994.

Melda Cabrera,

Regional Director, San Francisco Regional Office.

[FR Doc. 94–14584 Filed 6–15–94; 8:45 am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

[I.D. 060994J]

Gulf of Mexico Fishery Management Council; Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting of its Louisiana/Mississippi Habitat Advisory Panel on June 30, 1994, from 9:00 a.m. until 3:00 p.m., to review and discuss a marine fishery habitat model for the Pascagoula River, Mississippi water withdrawals, Louisiana coastal restoration plans, the Bonnet Carre water diversion project, the Corps of Engineers Environmental Impact Statement (EIS) for marsh management, the Terrebonne Parish Flood Control Study, and a wetland restoration project for an oil well blowout in Timbalier Bay.

The meeting will be held at the Ramada Inn Downtown, 1480 Nicholson Drive, Baton Rouge, LA.

FOR FURTHER INFORMATION CONTACT: Richard J. Hoogland, Biologist, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION: The meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Julie Krebs at the above address by June 23, 1994.

Dated: June 10, 1994.

David S. Crestin,

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

[FR Doc. 94–14616 Filed 6–15–94; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 060994I]

Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of change of start time and date for public meeting.

SUMMARY: The meeting date and time of the Pacific Fishery Management Council's Groundfish Permit Review Board, as published June 2, 1994 (59 FR 28512), has been changed from June 17, 1994, to June 16–17, 1994. The meeting will begin at 7:00 p.m. on June 16, convening at the Meeting Plaza at Westgate Plaza, 3800 SW Cedar Hills Boulevard, Beaverton, OR. The meeting will recess late that evening and reconvene on June 17 at 8:00 a.m. in the Conference Room at the NMFS Technical Service Division, 911 NE 11th Avenue, Portland, OR 97232. The purpose of the meeting is to review appeals on denied applications for West Coast groundfish limited entry permits. Appellants affected by the change in start time and date have been directly notified of the change.

FOR FURTHER INFORMATION CONTACT: Peter Fricke, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115; telephone: (206) 526–6140.

Dated: June 10, 1994.

David S. Crestin,

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

[FR Doc. 94–14615 Filed 6–15–94; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 060994H]

Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's Groundfish Management Team will hold a public meeting at the Oregon Department of Fish and Wildlife Building, 2501 SW First Avenue, Director's Conference Room, Fourth Floor, beginning at 1:00 p.m. on July 11, and at 8:00 a.m. on July 12 and July 13, 1994. The meetings on July 11 and 12 will not adjourn until the business for each day is completed. The

Wednesday meeting will adjourn by 3:30 p.m.

The purpose of this meeting is to review groundfish stock assessment documents and preliminary acceptable biological catch recommendations, the sablefish individual quota/trip limit analysis, and the draft groundfish observer/date collection program.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Michelle Perry Sailer at (503) 326–6352 at least 5 days prior to the meeting date.

FOR FURTHER INFORMATION CONTACT: Jim Glock, Groundfish Fishery Management Coordinator, Pacific Fishery Management Council, 2000 SW First Avenue, Suite 420, Portland, OR 97201; telephone: (503) 326–6352.

Dated: June 10, 1994.

David S. Crestin,

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

[FR Doc. 94–14614 Filed 6–15–94; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Indonesia

June 10, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: June 17, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6704. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The United States Government has agreed to increase the Designated Consultation Level for Category 669–P for the current agreement period.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 58 FR 31190, published on June 1, 1993.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Dated: June 13, 1994.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 10, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on May 25, 1993, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the twelve-month period which began on July 1, 1993 and extends through June 30, 1994.

Effective on June 17, 1994, you are directed to amend further the directive dated May 25, 1993 to increase the limit for Category 699–P [1] to 1,250,000 kilograms.[2]

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–14682 Filed 6–15–94; 8:45 am]

BILLING CODE 3510–DR–M

COMMODITY FUTURES TRADING COMMISSION

Financial Products Advisory Committee; Meeting

This is to give notice, pursuant to section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 2 section 10(a) and 41 CFR 101–6.1015(b), that the Commodity Futures Trading Commission's Financial Products Advisory Committee will conduct a public meeting in the Lower Level Hearing Room (B–1) at the Commission's Washington, DC headquarters located at 2033 K Street, NW., Washington, DC 20581, on July 14, 1994, beginning at 1:30 p.m. and lasting until 5 p.m. The agenda will consist of:

Agenda

1. Presentation by GAO staff on the GAO Derivatives Report;

2. Panel Discussion by the staff of the Senate and House Committee on Agriculture of OTC Derivatives Issues and GAO Report;

3. Presentation/Discussion of Financial Accounting Standards Board (FASB) Exposure Draft on Disclosure of Derivative Financial Instruments;

4. Panel Discussion of OTC Derivatives Issues from the Perspective of End-Users; and

5. Wrap-up; discussion of other committee business and future agenda items.

The purpose of this meeting is to solicit the views of the Committee on these agenda matters. The Advisory Committee was created by the Commodity Futures Trading Commission for the purpose of advising the Commission on the assessment of issues concerning individuals and industries interested in or affected by financial markets regulated by the Commission. The purposes and objectives of the Advisory Committee are more fully set forth in the April 23, 1993 Charter of the Advisory Committee.

The meeting is open to the public. The Chairman of the Advisory Committee, CFTC Commissioner Shelia C. Bair, is empowered to conduct the meeting in a fashion that will, in her judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: the Commodity Futures Trading Commission Financial Products Advisory Committee, c/o Kristyn H. Burnett, 2033 K Street NW., Washington, DC 20581, before the meeting. Members of the public who wish to make oral statements should also inform Ms. Burnett in writing at the foregoing address at least three business days before the meeting. Reasonable provision will be made, if time permits, for an oral presentation of no more than five minutes each in duration.

[1] Category 669–P: only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.

[2] The limit has not been adjusted to account for any imports exported after June 30, 1993.

Issued by the Commission in Washington, DC., on June 10, 1994.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–14621 Filed 6–15–94; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Assistance to Local Educational Agencies (LEAs)

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of a program for providing financial assistance to LEAs.

SUMMARY: Pursuant to section 386 of Public Law No. 102–484, as amended by section 373 of Public Law 103–160, the "National Defense Authorization Act for Fiscal Year 1994," November 30, 1993, notice is hereby given of a program to provide financial assistance to eligible LEAs. Section 386(b) of Public Law No. 102–484, as amended, requires DoD to assist an LEA that cannot, without such aid, "provide [its]students . . . with a level of education that is equivalent to the minimum level of education available in schools of the other local educational agencies of the same State," provided that the LEA meets one of the three criteria established by section 386(c). For the purpose of this notice, the term "military dependent student" has the same meaning as in section 386(h)(2) of Public Law 102–484, as amended. In making the necessary determination under section 386(b), the Secretary of Defense must consult the Secretary of Education.

DATES: June 16, 1994.

ADDRESSES: Deputy Assistant Secretary of Defense (Personnel Support, Families & Education), room 3E784, The Pentagon, Washington, DC 20301–4000.

FOR FURTHER INFORMATION CONTACT: Dr. Hector O. Nevarez or Mr. John B. Shaver, Section 6 Schools, 4040 North Fairfax Drive, Arlington, VA 22203–1635; telephone (703) 696–4354 or 4361; facsimile number (703) 696–8920.

SUPPLEMENTARY INFORMATION: During fiscal year (FY) 1994, the Department of Defense shall provide 40 million dollars to assist LEAs that meet criteria in section 386 of Public Law 102–484, as amended. (For the purposes of this program, DoD shall rely on data from the Department of Education).

Pursuant to subsection 386(c)(1) of Public Law No. 102–484, as amended, an LEA is eligible for assistance under this program if it satisfies subsection 386(b) and "at least 30 percent (as rounded to the nearest whole percent) of the students in average daily attendance in the schools of that agency in that fiscal year are military dependent students counted under subsection (a) or (b) of section 3 of the Act of September 30, 1950 (Pub. L. 874, Eighty-first Congress; 20 U.S.C. 238)."

Pursuant to subsection 386(c)(2) of Public Law No. 102–484, as amended, an LEA is eligible for assistance under this program if it satisfies subsection 386(b) and its average daily attendance (ADA) of military dependent students increased by at least 300 or more students from FY 1993 to FY 1994 as a result of "a relocation of Armed Forces personnel or civilian employees of the Department of Defense or as a result of a realignment of one or more military installations." Such 300 or more students must equal an increase in the ADA of military dependent students of at least 10 percent or more from FY 1993 to FY 1994.

An alternate way of achieving eligibility for assistance is prescribed under subsection 386(c)(3) of Public Law No. 102–484, as amended. To qualify, the LEA must satisfy subsection 386(b) and "by reason of consolidation or reorganization of local educational agencies be a successor of [an LEA] that for fiscal year 1992," was eligible to receive payments under DoD Instruction 1342.18, dated June 3, 1991 (32 CFR part 240, 56 FR 28821), and satisfy the requirements in subsection 386(a)(1) or subsection 386(c)(2).

For the purposes of this program, the following definitions are applicable:

(a) Applicant. Any LEA requesting assistance under this notice.

(b) Current Expenditures. "[E]xpenditures for free public education, including expenditures for administration, instruction, attendance and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and expenditures to cover deficits for food services and student body activities. The term does not include expenditures for community services, capital outlay, debt service, or any expenditures made from funds granted for the purpose of chapter 1 and 2 of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2701–2976). An expenditure for the replacement of equipment is considered to be either a current expenditure or capital outlay, whichever is in accordance with State accounting guidelines, law, or practice." 34 CFR § 222.3.

(c) DoD Contribution. The amount of financial assistance an applicant shall receive under this notice.

(d) Federal Property. Real property that because of Federal law, agreement, or policy is exempt from taxation by a State or political subdivision of a State and that the United States owns in fee simple or leases from another party.

(e) Local Education Agency (LEA). A public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools. Such term includes any other public institution or agency having administrative control and direction of a public elementary or secondary school.

(f) Military Dependent Student. A student that is a dependent child of a member of the Armed Forces or a dependent child of a civilian employee of the Department of Defense.

(g) Military Personnel. Members of the Armed Forces serving on active duty.

(h) Military 3(a) Student. A child who attends the school(s) of a LEA that provides free public education and who, while attending such school(s) of the LEA, resides on Federal property and has a parent who is on active duty in the Armed Forces (as defined in section 101(4) of 10 U.S.C.).

(i) Military 3(b) Student. A child who attends the schools of a LEA that provides a free public education and who, while attending such school(s), has a parent who is on active duty in the Armed Forces (as defined in 10 U.S.C. 101(4)) but such child does not reside on Federal property.

(j) Parent. The biological father or mother of a child; a person who, by order of a court of competent jurisdiction, has been declared the father or mother of a child by adoption; the legal guardian of a child; or a person in whose household a child resides, provided that such person stands in loco parentis to that child and contributes at least one-half of the child's support.

(k) Per-Pupil Expenditure (PPE). The average current expenditure for an individual student.

The Department of Defense shall provide 40 million dollars to assist the LEAs that satisfy the requirements of this notice This money shall be used only to supplement funding for the eligible LEAs operating schools that provide free public education to military dependent students for whom:

(1) For the prior and current FYs, the LEA has applied for and received, or shall receive, financial assistance from all regular Federal and State educational aid programs available to it, including the Impact Aid Program (Pub. L. No. 81–874, section 3, as amended); (2) the eligibility of the LEA under State law for State aid for free public education and the amount of that aid are no different than the eligibility and amounts received by LEAs in that State without military dependent students; and (3) the LEA files with the Under Secretary of Defense for Personnel and Readiness (USD(P&R)) a letter of application (see Sample Letter at the end of this notice) and a copy of an independently audited financial report of the applicant LEA for the second preceding FY.

The eligible LEAs under this notice insofar as it implements subsection 386(c)(1) and subsection 386(c)(2) shall receive financial assistance for military dependent students. The eligible LEAs under this notice insofar as it implements subsection 386(c)(3) shall receive financial assistance only for military section 3(a) students. Applications for financial assistance must be received no later than June 30, 1994.

The amount of assistance (the DoD contribution) for the eligible LEAs under this notice may not exceed the amount derived from the following formula:

(1) Of the 40 million dollars available:

(i) Amounts of 27,000,000 dollars shall be obligated for military section 3(a) students to those eligible LEAs whose per-pupil expenditure (PPE) for the second preceding FY was less than the average PPE in the State for the second preceding FY.

(ii) Amounts of 2,250,000 dollars shall be obligated for military section 3(b) students and for those students who are the dependent children of civilian employees of the Department of Defense to those eligible LEAs, whose PPE for the second preceding FY was less than the average PPE in the State for the second preceding FY.

(iii) Amounts of 9,000,000 dollars shall be obligated for military section 3(a) students to those eligible LEAs whose PPE for the second preceding FY was equal to, or greater than the average PPE in the State for the second preceding FY.

(iv) Amounts of 750,000 dollars shall be obligated for military section 3(b) students and for those students who are the dependent children of civilian employees of the Department of Defense to those eligible LEAs whose PPE for the second preceding FY was equal to, or greater than the average PPE in the State for the second preceding FY.

(v) Amounts of 1,000,000 dollars shall be obligated to those eligible LEAs whose ADA of military dependent students increased by 300 or more students from FY 1993 to FY 1994 as a result of "a relocation of Armed Forces personnel or civilian employees of the Department of Defense or as a result of a realignment of one or more military installations."

(2) For military section 3(a) students in those eligible LEAs, whose average PPE for the second preceding FY was less than the average PPE in the State for the second preceding FY, the LEA shall receive an amount, as follows:

(i) Equal to the LEA's military section 3(a) ADA for SY 1993–1994.

(ii) Multiplied by the quotient of the funds available to those LEAs, whose PPE for the second preceding FY was less than the average PPE in the State for the second preceding FY (27,000,000 dollars).

(iii) Divided by the sum of the ADAs for SY 1993–1994 of military section 3(a) students of those same eligible LEAs.

(3) For military section 3(b) students and for those students who are the dependent children of civilian employees of the Department of Defense in those eligible LEAs whose average PPE for the second preceding FY was less than the average PPE in the State for the second preceding FY, the LEA shall receive an amount, as follows:

(i) Equal to the LEA's military section 3(b) and dependent children of a civilian employee of the Department of Defense ADA for SY 1993–1994.

(ii) Multiplied by the quotient of the funds available to those LEAs whose PPE for the second preceding FY was less than the average PPE in the State for the second preceding FY (2,250,000 dollars).

(iii) Divided by the sum of the ADAs for SY 1993–1994 of military section 3(b) and dependent children of civilian employees of the Department of Defense students of those same eligible LEAs.

(4) For military section 3(a) students in those eligible LEAs whose PPE for the second preceding FY was equal to, or greater than the average PPE in the State for the second preceding FY, the LEA shall receive an amount, as follows:

(1) Equal to the LEA's military section 3(a) ADA for SY 1993–1994.

(ii) Multiplied by the quotient of the funds available to those LEAs whose PPE for the second preceding FY was less than the average PPE in the State for the second preceding FY (9,000,000 dollars).

(iii) Divided by the sum of the ADAs for SY 1993–1994 of military section 3(a) students of those same eligible LEAs.

(5) For military section 3(b) students and for the students who are the dependent children of civilian employees of the Department of Defense in those eligible LEAs whose PPE for the second preceding FY was equal to, or greater than the average PPE in the State for the second preceding FY, the LEA shall receive an amount, as follows:

(i) Equal to the LEA's military section 3(b) and dependent children of a civilian employee of the Department of Defense ADA for SY 1993–1994.

(ii) Multiplied by the quotient of the funds available to those LEAs whose PPE for the second preceding FY was less than the average PPE in the State for the second preceding FY (750,000 dollars).

(iii) Divided by the sum of the ADAs for SY 1993–1994 of military section 3(b) students and dependent children of civilian employees of the Department of Defense of those same eligible LEAs.

(6) For those military dependent students in those eligible LEAs whose ADA of military dependent students increased by 300 or more students from FY 1993 to FY 1994 as a result of "a relocation of Armed Forces personnel or civilian employees of the Department of Defense or as a result of a realignment of one or more military installations," the LEA shall receive an amount, as follows:

(i) Equal to the LEA's military dependent student ADA for SY 1993–1994.

(ii) Multiplied by the quotient of the funds available to those LEAs (1,000,000 dollars).

(iii) Divided by the sum of the ADAs for SY 1993–1994 of military dependent students of those same LEAs.

The USD(P&R) shall calculate the proposed contribution. The contribution may be used for all students in the LEA, at the discretion of the appropriate officials in the LEA. The USD(P&R) shall ensure the implementation of these policies and procedures and provide assistance, as required, to the potentially eligible LEAs. The General Counsel of the Department of Defense shall provide legal advice for the implementation of this program.

An applicant requesting assistance under this notice shall submit a letter of application (see sample letter at end of this notice) and a copy of an independently audited financial report of the applicant LEA for the second preceding FY, requesting a DoD contribution and assuring the USD(P&R) that the LEA has applied for, has

received or shall receive all financial assistance from other sources for which it is qualified. Letters of application must be addressed as follows: Under Secretary of Defense (Personnel and Readiness), 4000 Defense Pentagon, Washington, DC 20301–4000.

The applicant shall also file a copy of the letter of application for financial assistance and required supportive information with the State educational agency (SEA). The SEA may submit comments on the LEA's application to the Department of Defense (at the above address) by July 8, 1994. Such comments shall be considered when applications are reviewed by the OSD. The LEA's application and all required supporting information must reach the USD(P&R) no later than June 30, 1994.

Sample Letter of Application for Financial Assistance

Under Secretary of Defense,
(Personnel and Readiness), 4000 Defense Pentagon, Washington, DC 20301–4000.

Dear Mr. Under Secretary: Pursuant to this "Notice of a Program for Providing Financial Assistance to LEAs," _____ **Federal Register** _____ (_____, 1994), the (name of the local educational agency (LEA)) requests financial assistance for the LEA for school year 1993–1994. We certify that the LEA has applied for financial assistance from all sources, including the State/Commonwealth of (name). We understand that funds available for that purpose shall be paid on a per-pupil basis for military section 3(a) and military section 3(b) students and for those students who are the dependent children of civilian employees of the Department of Defense, as these terms are defined in the "Notice of a Program for Providing Financial Assistance to LEAs." Enclosed find a copy of our independent audit "(Title)" prepared by (name of firm or agency). We have submitted a complete and timely application for section 3 impact aid assistance to the Secretary of Education. A copy of this letter, with the above supporting information, is being submitted to the State educational agency.

Sincerely,

(Authorized LEA Official)

Dated: June 13, 1994.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–14665 Filed 6–15–94; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 29 June 1994.

Time of Meeting: 1200–1500 (classified).

Place: Pentagon, Washington, DC.

Agenda: The Threat Team III of the Army Science Board's 1994 Summer Study on "Capabilities Needed to Counter Current and Evolving Threat" will meet to receive an Analytical Efforts Status Report. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., appendix 2, subsection 10(d). The unclassified and classified matters to be discussed are so inextricably intertwined so as to preclude opening all portions of the meeting. The ASB Administrative Officer Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 94–14731 Filed 6–15–94; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 28 June 1994.

Time of Meeting: 0830–1100 (classified).

Place: McLean, VA.

Agenda: The Threat Team I of the Army Science Board's 1994 Summer Study on "Capabilities Needed to Counter Current and Evolving Threat" will meet to receive an Intelligence Support Status Report. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., appendix 2, subsection 10(d). The unclassified and classified matters to be discussed are so inextricably intertwined so as to preclude opening all portions of the meeting. The ASB Administrative Officer Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 94–14729 Filed 6–15–94; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 28–30 June 1994.

Time of Meeting: 0900–1700.

Place: Army Research Office, Raleigh-Durham, NC, (28–29 June), Army Topographic Engineering Ctr., Ft. Belvoir, and Pentagon, Washington, DC, (30 June).

Agenda: The Army Science Board's Ad Hoc Study on "Aided Target Recognition" (ATR) will meet to discuss research efforts aided and automatic target recognition. Also the ATR panel will review military aided target acquisition projects and results, and receive briefings on operational requirements. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., appendix 2, subsection 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening all portions of the meeting. The ASB Administrative Officer Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 94–14732 Filed 6–15–94; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the Proposed Sandstone Project, Carbon County, WY

AGENCY: U.S. Army Corps of Engineers, Omaha District.

SPONSOR: Wyoming Water Development Commission, Cheyenne, Wyoming.

ACTION: Notice of intent to prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: 1. The proposed action is to construct a roller compacted concrete dam on Savery Creek, with a storage capacity of 23,000 acre-feet. The project would provide late season irrigation water to approximately 12,000 acres of lands in the Little Snake River Valley. The project would also provide secondary recreation benefits. The proposed project is located in Carbon County, Wyoming, approximately 10 miles north of Savery, Wyoming.

2. Alternatives being evaluated by the applicant include:

a. Construction of a new reservoir (several alternate sites).

b. Use of groundwater resources.

c. Conservation.

d. No action.

Alternatives available to the Corps of Engineers include:

a. Approve the permit application.

b. Denial of the permit.

c. Approve the permit with some modification.

3. Other applicable and pertinent environmental review and consultation requirements will be undertaken

simultaneously with the NEPA process, including requirements of the National Historic Preservation Act, the Endangered Species Act, the Fish and Wildlife Coordination Act, section 404 of the 1977 Clean Water Act, Clean Air Act, Executive Order 11988 on flood plains, and Executive Order 11990 on wetlands.

4. A public scoping meeting for the DEIS will be held on Wednesday, July 13, 1994, at 7 p.m. at the Little Snake River School at Meeker & High Streets, Baggs, Wyoming. The participation of the public and all interested Government agencies is invited.

5. The Omaha District estimates that the DEIS will be released for public review in June 1995.

ADDRESS: Questions about the proposed action, DEIS, or scoping meetings should be directed to Richard Gorton; Chief, Environmental Analysis Branch; Planning Division, U.S. Army Corps of Engineers, 215 North 17th Street, Omaha, Nebraska 68102–4978. Telephone: 402–221–4598.

Dated: June 7, 1994.

Kenneth S. Cooper,

Chief, Planning Division Omaha District.

[FR Doc. 94–14620 Filed 6–15–94; 8:45 am]

BILLING CODE 3710–62–M

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, June 22, 1994. The hearing will be part of the Commission's regular business meeting which is open to the public and scheduled to begin at 2:00 p.m. in the Flying Bridge Room of the Harbour League Club at 800 Hudson Square, Camden, New Jersey.

The subjects of the hearing will be as follows:

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11, and/or Section 3.8 of the Compact

1. *Delaware County Solid Waste Disposal Authority D–89–18 CP.* An application for construction of an on-site wastewater treatment facility to process up to 0.08 million gallons per day (mgd) of sanitary landfill leachate and non-hazardous liquid waste generated by facilities within the Delaware River Basin. After tertiary treatment, the effluent will be conveyed by pipeline from the existing Colebrookdale Landfill and discharged to Manatawny Creek in Oley Township, Berks County, Pennsylvania. The existing landfill project has no on-site treatment facilities and has been trucking collected leachate off-site for processing and disposal at two municipal sanitary treatment plants. The site is located along Schenkel Road in Earl Township, Berks County, Pennsylvania.

2. *American Telephone and Telegraph (AT&T) D–91–79.* AT&T proposes to expand the rating of its existing 3.0 mgd capacity industrial wastewater treatment plant (IWTP) to handle approximately 3.6 mgd. In addition, AT&T has requested a determination of the allowable limit for the concentration of total dissolved solids in the treated effluent, which will continue to discharge to Spring Run, a tributary of the Lehigh River. The project IWTP serves only the AT&T's electronic components manufacturing operation located at the plant site just north of Union Boulevard and east of the Lehigh River, in the City of Allentown, Lehigh County, Pennsylvania.

3. *Hoffmann-LaRoche Inc. D–93–7.* A project to improve the treatment capability of the applicant's existing 3.0 mgd capacity IWTP by constructing an additional secondary clarifier. The IWTP is located approximately 3000 feet north of the Town of Belvidere in White Township, Warren County, New Jersey. The IWTP will continue to serve the applicant's vitamin production facilities and discharge to the Delaware River via its existing outfall in Water Quality Zone 1D.

4. *Borough of Woodstown D–93–17 CP.* An application for approval of a ground water withdrawal project to supply up to 8.9 million gallons (mg)/30 days of water to the applicant's distribution system from new Well No. 4, and to increase the existing withdrawal limit of 12 mg/30 days from all wells to 18.1 mg/30 days. The project is located in Woodstown Borough, Salem County, New Jersey.

5. *E. I. DuPont deNemours and Company, Inc. D–93–19.* An application for approval of numerous ground water projects and a surface water withdrawal project to supply up to 540.14 mg/30 days of water from 14 production wells and 14 ground water remediation wells, and to supply up to 892.8 mg/30 of water for production purposes from the Salem Canal. The purpose is to consolidate the applicant's numerous existing and new withdrawals from the ground water and the Salem Canal for production and remediation purposes into one comprehensive docket. The project is located in Carneys Point Township, Salem County, New Jersey.

6. *GROWS Inc. D–94–17.* A project to withdraw up to 0.4 mgd on an average monthly basis from the tidal portion of the Delaware River to provide water primarily for dust control at the Eastern Expansion of the applicant's landfill facilities. The withdrawal will be located southeast of the GROWS landfill and across from Newbold Island on the Delaware River in Falls Township, Bucks County, Pennsylvania.

7. *Moyer Packing Co. D–94–20.* An application for approval of an expanded ground water withdrawal project to supply up to 1.51 mg/30 days of water from existing Well No. 1, and 5.4 mg/30 days from existing Well No. 2 to the applicant's Souderton Rendering (Division 1) Facility, and to limit the withdrawal from all wells to 6.57 mg/30 day. The project is located in Franconia Township, Montgomery County, in the Southeastern Pennsylvania Ground Water Protected Area.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Dated: June 7, 1994.

Susan M. Weisman,

Secretary.

[FR Doc. 94–14613 Filed 6–15–94; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Acting Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before July 18, 1994.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., room 3208, New Executive Office Building, Washington, DC 20503.

Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: June 10, 1994.

Mary P. Liggett,

Acting Director, Information Resources Management Service.

Office of Postsecondary Equation

Type of Review: Extension.

Title: Certification of Project Costs for College Facilities Programs.

Frequency: One time.

Affected Public: Non-profit institutions.

Reporting Burden: Responses: 50. *Burden Hours:* 50.

Recordkeeping Burden: Recordkeepers: 0. *Burden Hours:* 0.

Abstract: The collected information is used to determine the eligibility of costs claimed in conjunction with construction projects supported by the various college facilities construction programs. Without this information, the federal government cannot appropriately limit the amount of legitimate costs incurred under these programs. The information is necessary to determine the final approval amount of the loan or grant to protect the federal interest.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: Performance Report for the Robert C. Byrd Honors Scholarship Program.

Frequency: Annually.

Affected Public: State or local governments.

Reporting Burden: Responses: 59. *Burden Hours:* 59.

Recordkeeping Burden: Recordkeepers: 59. *Burden Hours:* 89.

Abstract: This performance report is used by State educational agencies that have participated in the Robert C. Byrd Honors Scholarship Program. The Department will use the information to assess the accomplishments of project goals and objectives and to aid in effective program management.

Office of the Under Secretary

Type of Review: New.

Title: Direct Loan Program Evaluation.

Frequency: Annually.

Affected Public: State or local governments; Non-profit institutions; Small businesses or organizations.

Reporting Burden: Responses: 104. *Burden Hours:* 52.

Recordkeeping Burden: Recordkeepers: 0. *Burden Hours:* 0.

Abstract: This survey will allow for the identification of baseline performance indicators and measures. The Department will use the information to report to Congress.

Office of Bilingual Education and Minority Languages Affairs

Type of Review: Reinstatement.

Title: Application for Continuation Grants Under Bilingual Education Programs.

Frequency: Annually.

Affected Public: State or local governments; Non-profit institutions.

Reporting Burden: Responses: 975. *Burden Hours:* 39,000.

Recordkeeping Burden: Recordkeepers: 0. *Burden Hours:* 0.

Abstract: This form will be used by State Educational agencies to apply for funding under the Bilingual Education Programs. The Department will use the information to make grant awards.

[FR Doc. 94–14595 Filed 6–15–94; 8:45 am]

BILLING CODE 4000–01–M

National Board of the Fund for the Improvement of Postsecondary Education; Meeting

AGENCY: National Board of the Fund for the Improvement of Postsecondary Education, Education.

ACTION: Amendment of notice of partially closed meeting.

SUMMARY: This notice amends the notice published on June 9, 1994, Volume 59, page FR29786. The purpose of this amendment is to open the Board meeting on June 28 from 9 a.m. to 5 p.m. to the public. The location and the agenda are not changed.

DATES AND TIMES: June 27, 1994 from 9 a.m. to 5 p.m. (closed), and on June 28, 1994 from 9 a.m. to 5 p.m. (open).

FOR FURTHER INFORMATION CONTACT: Charles Karelis, Director, Fund for the Improvement of Postsecondary Education, 7th & D Streets, SW., Washington, DC 20202. Telephone: (202) 708–5750.

Dated: June 10, 1994.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 94–14640 Filed 6–15–94; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP94–292–000]

Riverside Gas Storage Co.; Intent To Prepare an Environmental Assessment for the Proposed Riverside Gas Storage Field Project and Request for Comments on Environmental Issues

June 10, 1994.

The staff of the Federal Energy Regulatory Commission (FERC or the Commission) will prepare an environmental assessment (EA) that will discuss environmental impacts of the construction and operation of facilities proposed in the Riverside Gas Storage Field Project.[1] This EA will be used by the Commission in its decision-making process to determine whether an environmental impact statement is necessary and whether or not to approve the project.

Summary of the Proposed Project

Riverside Gas Storage Company (Riverside) wants Commission

[1] Riverside Gas Storage Company's (Riverside) application was filed with the Commission under section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

authorization to construct and operate a new underground natural gas storage field in Greene and Fayette Counties, Pennsylvania. Riverside proposes to convert a nearly depleted gas field to gas storage use. The proposed storage facility would have 5.1 billion cubic feet (BCF) of storage capacity (3.1 BCF working gas capacity). To develop the Riverside Gas Storage Field, Riverside would:

- Recomplete 21 existing wells as injection/withdrawal wells;
- Recomplete one existing well as an observation well;
- Plug and abandon 9 existing gas wells (all remaining wells in field);
- Construct 3.42 miles of 12-inch-diameter gathering pipeline;
- Construct 2.44 miles of 6-inch-diameter pipeline (22 segments of various lengths to attach wells to the gathering pipeline);
- Construct a new 3,150-horsepower compressor station; and
- Construct ancillary facilities at the compressor station including meters, dehydrator trains, storage tanks for oil and glycol, access roads, and water and electric utilities.

The general location of these facilities is shown in appendix 1.[2]

Land Requirements for Construction

Riverside would use 101.3 acres of land for the Riverside Gas Storage Field Project. Of this total, 10 acres would be used for the compressor station, 43.4 acres would be associated with well pads (1.4 acres per well) and 47.9 acres would be associated with the right-of-way for the storage pipelines.

Following completion of construction, approximately 12.6 acres associated with the nine plugged and abandoned wells would be allowed to revert to the land use desired by the property owner.

Riverside proposes to use a an 85-foot-wide construction right-of-way for its 12-inch-diameter pipeline and a 50-foot-wide construction right-of-way for its 6-inch-diameter pipeline. Riverside proposes to use an 85 to 100-foot-wide right-of-way for construction across streams.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are taken into account during the preparation of the EA.

The EA will discuss impacts that *could* occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- Water resources;
- Vegetation and wildlife;
- Pipeline safety;
- Land use;
- Cultural resources;
- Air quality and noise.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we recommend that the Commission approve or not approve the project.

Currently Identified Environmental Issues

We have already identified several environmental issues that we think deserve attention based on a preliminary review of the proposed facilities and the information provided by Riverside. Keep in mind that this is a preliminary list. The list of issues will be added to, subtracted from, or changed based on your comments and our analysis.

The list of environmental issues:

- Riverside would recomplete 22 existing wells in Greene and Fayette Counties, Pennsylvania: one observation well and 21 injection/withdrawal wells. These wells and drilling operations have potential groundwater impacts.
- Riverside may affect up to five wetlands in the project area while constructing its pipelines.
- There may be noise concerns at residences surrounding Riverside's new compressor station.
- There may be federally listed threatened or endangered species in the project area.
- The Pennsylvania State Historic Preservation Officer indicated there is potential cultural resources sites in the project area and requested a survey.
- Existing and future coal mining operations and the Riverside Gas Storage Field Project may affect each other.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be.

Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol St. NE., Washington, DC 20426;
- Reference Docket No. CP94–292–000;
- Send a copy of your letter to: Mr. Steven G. Grape, EA Project Manager, Federal Energy Regulatory Commission, 825 North Capitol St. NE., room 7312, Washington, DC 20426; and
- Mail your comments so that they will be received in Washington, DC on or before July 11, 1994.

If you wish to receive a copy of the EA, you should request one from Mr. Grape at the above address.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an "intervenor". Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a Motion to Intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) attached as appendix 2.

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by Section 385.214(b)(3), why this time limitation

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference Branch, room 3104, 941 North Capitol Street NE., Washington, DC 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your scoping comments considered.

Additional Questions?

Additional information about the proposed project is available from Mr. Steven G. Grape, EA Project Manager, at (202) 208–1046.

Lois D. Cashell,

Secretary.

[FR Doc. 94–14650 Filed 6–15–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP94–329–000, et al.]

El Paso Natural Gas Company, et al.; Natural Gas Certificate Filings

June 9, 1994.

Take notice that the following filings have been made with the Commission:

1. El Paso Natural Gas Company

[Docket No. CP94–329–000]

Take notice that a technical conference has been scheduled in the above-captioned proceeding for 10 a.m. on August 11, 1994, at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC 20426. The purpose of the conference is to discuss matters of interest and concern relating to El Paso Natural Gas Company's (El Paso) proposal to construct and operate the North/South Transfer Project. All interested parties are invited to attend. For additional information, interested parties may call Whit Holden at (202) 208–1118.

2. Natural Gas Pipeline Company of America

[Docket No. CP94–577–000]

Take notice that on June 1, 1994, Natural Gas Pipeline Company of America (Applicant), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP94–577–000 an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act for authorization of the abandonment of facilities, and the construction and operation of new facilities. This proposal is part of Applicant's Amarillo Upgrade program, which began in 1982.

According to applicant the purpose of the Amarillo Upgrade Program is to increase the reliability of Applicant's services and reduce operating costs by eliminating or replacing parts of the system that are obsolete and require high operation and maintenance costs.

Specifically, Applicant requests authority to abandon the following:

(1) 8.57 miles of the original 24-inch Amarillo No. 1 mainline in Hutchinson County, Texas;

(2) One 12,000 HP engine at intermediate Compressor Station 196 in Otoe County, Nebraska;

(3) One 12,000 HP engine at intermediate Compressor Station 198 in Marion County, Iowa.

Applicant also seeks authority to construct and operate the following:

(1) 7.27 miles of 30-inch pipeline loop in Hutchinson County, Texas;

(2) 3.16 miles of 36-inch loop in Edwards County, Kansas;

(3) 10.64 miles of 36-inch pipeline loop in Jefferson County, Nebraska;

(4) One 5,500 HP compressor at Compressor Station 102 in Beaver, County, Oklahoma;

(5) One 14,500 HP compressor (by means of retrofitting an existing 12,000 HP engine to 14,500) at Compressor Station 196;

(6) One 14,500 HP compressor (by means of retrofitting an existing 12,000 HP engine to 14,500 HP at Compressor Station 198.

The total cost of construction is estimated to be $36,657,000. Abandonment is estimated to cost $998,000.

Comment date: June 30, 1994, in accordance with Standard Paragraph F at the end of this notice.

3. National Fuel Gas Supply Corporation

[Docket No. CP94–581–000]

Take notice that on June 2, 1994, National Fuel Gas Supply Corporation (National), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP94–581–000, an application pursuant to section 7(b) of the Natural Gas Act for an order granting permission and approval to abandon certain underground natural gas storage field facilities at two locations in Pennsylvania, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

In its application, National proposes to abandon Well 2314 and its Well Line Q–W2314 located in National's Queen Storage Field in Hickory Township, Forest County, Pennsylvania. National states that after the field was converted to gas storage, Well 2314 was used as a storage observation well and that its present condition is such that it must be reworked or plugged. National proposes to abandon Well 2314 at an estimated total cost of $20,000.

National also proposes to abandon Wells 412–P, 413–P and 415–P, and Well Lines S–W413, S–W415, S–W416 and S–W418, all located in National's Swede Hill Storage Field in Hamilton Township, McKean County, Pennsylvania. National states that these wells and lines are located in a poor deliverability area of the Swede Hill reservoir and are no longer being utilized. National estimates the total cost of this abandonment to be $75,000.

National states that services to its customers and the performance of these storage fields would not be diminished by these abandonments.

Comment date: June 30, 1994, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should, on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be

unnecessary for applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 94–14649 Filed 6–15–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. RP94–284–000]

Algonquin Gas Transmission Company; Proposed Changes in FERC Gas Tariff

June 10, 1994.

Take notice that on June 8, 1994, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheet, with an effective date of July 1, 1994:

First Revised Sheet No. 97A

Algonquin states that the purpose of this filing is to provide for the recovery of certain transition costs associated with upstream capacity retained by Algonquin. Specifically, Algonquin seeks to recover gas supply realignment costs billed to Algonquin by Texas Eastern Transmission Corporation (Texas Eastern). Algonquin requests that the Commission waive § 154.22 of the Commission's regulations to the extent that may be necessary to place the tariff sheet into effect as requested.

Algonquin states that copies of this filing were mailed to all customers of Algonquin and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 and 385.211 1993. All such motions or protests should be filed on or before June 17, 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 becoming 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. 94–14602 Filed 6–15–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–150–000]

ANR Pipeline Company; Technical Conference

June 10, 1994.

In the Commission's order issued on March 30, 1994, in the above-captioned proceeding, the Commission held that the filing raises issues for which a technical conference is to be convened. The conference to address the issues has been scheduled for Thursday, July 7, 1994, at 1:30 p.m. in a room to be designated at the Offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

All interested persons and staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 94–14603 Filed 6–15–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–221–000]

ANR Pipeline Company; Technical Conference

June 10, 1994.

In the Commission's order issued on May 26, 1994, in the above-captioned proceeding, the Commission held that the filing raises issues for which a technical conference is to be convened. The conference to address the issues has been scheduled for Thursday, July 7, 1994, at 9:30 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE. Washington, DC 20426.

All interested persons and staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 94–14604 Filed 6–15–94; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11303–000 Pennsylvania]

Beltzville Hydro Associates; Surrender of Preliminary Permit

June 10, 1994.

Take notice that Beltzville Hydro Associates, permittee for the Beltzville Project No. 11303, located on the Pohopoco Creek, Carbon County, Pennsylvania, has requested that its preliminary permit be terminated. The preliminary permit was issued on October 13, 1992, and would have expired on September 30, 1995. The permittee states that the project would be economically infeasible.

The permittee filed the request on June 7, 1994, and the preliminary permit for Project No. 11303 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 94–14601 Filed 6–15–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER–1319–000]

Delmarva Power & Light Co.; Notice of Filing

June 10, 1994.

Take notice that on May 16, 1994 Delmarva Power & Light Company (Delmarva) tendered for filing a rate schedule providing for Partial Requirements Service to Old Dominion Electric Cooperative (ODEC). Delmarva states that the rate schedule is being filed to accommodate ODEC's termination of full requirements service and its purchase of a portion of its capacity and energy from Public Service Electric and Gas Company (PSE&G). Delmarva states that, consistent with the Settlement Agreement with ODEC in Docket No. ER93–96–000, the non-fuel revenues under the Partial Requirements rate schedule are no greater than the non-fuel revenues under the superseded Full Requirements rate schedules.

Delmarva requests that the Partial Requirements rates become effective on July 15, 1994 and suspended until January 1, 1995, when ODEC is scheduled to begin purchasing power and energy from PSE&G.

Delmarva states that a copy of the filing has been posted as required by the Commission's regulations, and a copy has been mailed to each of the customers affected by the proposed changes and to the Public Service Commissions of the States of Delaware and Maryland and the Virginia State Corporation Commission.

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 June 20, 1994. Protests will be

considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–14651 Filed 6–15–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT94–50–000]

East Tennessee Natural Gas Company; Filing of Refund Report

June 10, 1994.

Take notice that on June 7, 1994 East Tennessee Natural Gas Company (East Tennessee) filed its report of refunds reflecting refunds to jurisdictional customers. East Tennessee states that the purpose of these refunds was to flow through to its jurisdictional customers refunds received from its former upstream supplier, Tennessee Gas Pipeline Company (Tennessee). East Tennessee received on June 3, 1994 from Tennessee a refund of amounts paid under its former CD–1 and SS contracts with Tennessee. Tennessee effectuated the refund pursuant to Article I of the Stipulation and Agreement (Stipulation) filed on June 2, 1993, as approved by the Federal Energy Regulatory Commission's (Commission or FERC) order issued on April 5, 1994 in Docket No. RP91–203 et al.

On June 3, 1994, East Tennessee states that it commenced disbursement of the refunds to its jurisdictional customers totaling $8,233,226.

East Tennessee states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to make any protest with reference to said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All such petitions or protests should be filed on or before June 17, 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 this proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–14605 Filed 6–15–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–283–000]

Gas Research Institute; Annual Application

June 10, 1994.

Take notice that on June 8, 1994, Gas Research Institute (GRI) filed an application requesting advance approval of its 1995–1999 Five-Year Research, Development and Demonstration (RD&D) Plan, 1995–1996 RD&D Program, and the funding of its R&D activities for 1995, pursuant to the Natural Gas Act and the Commission's Regulations, particularly 18 CFR 154.38(d)(5).

In its application, GRI proposes to increase its contract obligations to $210.4 million in 1995, an increase of 4.3% over the authorized 1994 obligations budget. GRI seeks to collect $191,688,000 through jurisdictional rates and charges during the twelve months ending December 31, 1995. This $191.7 million, plus additional funds collected on intrastate transactions, will provide the necessary cash to fund the 1995 RD&D program.

GRI proposes to fund the first year of the 1995–1996 R&D program through the following surcharges: (1) A demand/reservation surcharge on two-part rates of 21.8 cents/Dth-mo. for "high load factor customers"; (2) a demand/reservation surcharge on two-part rates of 13.4 cents/Dth-mo. for "low load factor customers"; (3) a volumetric commodity/usage surcharge of 0.85 cents for firm services involving two-part rates, and for one-part interruptible rates; (4) a special "small customer" surcharge of 2.0 cents/Dth; and (5) a surcharge of 1.57 cents/Dth-mo. for one-part, firm service outside the "small customer" class. GRI asserts that these surcharges comply with the Commission's March 22, 1993 "Order on Contested Settlement" approving, without modification, the "Stipulation and Agreement concerning Post-1993 GRI Funding Mechanism".

The Commission Staff will analyze GRI's application and prepare a Commission Staff Report. This Staff Report will be served on all parties and filed with the Commission as a public document by July 28, 1994. Comments on the Staff Report and GRI's application by all parties, except GRI, must be filed with the Commission on or before August 12, 1994. GRI's reply comments must be filed on or before August 26, 1994.

Any person desiring to be heard or to protest GRI's application, except for GRI members and state regulatory commissions, who are automatically permitted to participate in the instant proceedings as intervenors, 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 the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 24, 1994. All comments and protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Any person wishing to become a party, other than a GRI member or a state regulatory commission, 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. 94–14606 Filed 6–15–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT94–40–000]

Transcontinental Gas Pipe Line Corporation; Refund Report

June 10, 1994.

Take notice that on May 4, 1994, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Refund Report showing a refund received from Penn-York Energy Corporation (Penn-York) and flowed through to its LSS customers in accordance with section 4 of Transco's Rate Schedule LSS. The report states that on April 29, 1994, Transco refunded $65,835.04, including $462.09 in interest, due its LSS customers for the period December 1, 1992 through November 30, 1993. The report summarizes Transco's computation of the refund pursuant to the requirements of Subsection 17.1(c) of Penn-York's FERC Gas Tariff, Third Revised Volume No. 1 dated December 1, 1992 in Docket No. RP91–68–017.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance

with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 17, 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. 94–14607 Filed 6–15–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT94–49–000]

Transcontinental Gas Pipe Line Corporation; Refund Report

June 10, 1994.

Take notice that on May 4, 1994, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Refund Report showing a refund received from Penn-York Energy Corporation (Penn-York) and flowed through to its SS–2 customers in accordance with section 4 of Transco's Rate Schedule SS–2. The report states that on April 29, 1994, Transco refunded $144,130.54, including $1,011.65 in interest, due its SS–2 customers for the period December 1, 1992 through November 30, 1993. The report summarizes Transco's computation of the refund pursuant to the requirements of Subsection 17.1(c) of Penn-York's FERC Gas Tariff, Third Revised Volume No. 1 dated December 1, 1992 in Docket No. RP91–68–017.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 17, 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. 94–14608 Filed 6–15–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–285–000]

Williston Basin Interstate Pipeline Company; Tariff Revisions

June 10, 1994.

Take notice that on June 6, 1994, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets:

First Revised Sheet No. 249
Second Revised Sheet No. 250
Original Sheet No. 250A

Based on its experience since implementing Order No. 636 on its pipeline system, Williston Basin is submitting the above tariff sheets which reflect revised language relaxing the tolerance levels for its variance penalties.

Williston Basin respectfully requests that the above tariff sheets be made effective July 1, 1994.

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 or protests should be filed on or before June 17, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–14609 Filed 6–15–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF94–112–000]

Yale University; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

June 10, 1994.

On June 2, 1994, Yale University (Applicant), of 20 Ashmun Street, New Haven, Connecticut 06520–8297, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the topping-cycle cogeneration facility will be located on the campus of Yale University in New Haven, Connecticut, and will consist of 3 combustion turbine generators and heat recovery boilers, 5 diesel generators and boilers. Steam recovered from the facility will be used in the campus. The primary energy source will be natural gas. The maximum net electric power production capacity of the facility will be approximately 21 MW. Installation of the facility began in July 1, 1993.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed within 30 days after the date of publication of this notice in the **Federal Register** and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–14600 Filed 6–15–94; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 5000–6]

Notice and Open Meeting of the Negotiated Rulemaking Advisory Committee for Small Nonroad Engine Regulations

AGENCY: Environmental Protection Agency.

ACTION: FACA Committee Meeting—Negotiated Rulemaking on Small Nonroad Engine Regulations.

SUMMARY: As required by section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), EPA is giving notice of the next meeting of the Advisory

Committee to negotiate a rule to reduce air emissions from small nonroad engines. The meeting is open to the public without advance registration. Agenda items for the meeting include reports from the 3 task groups and discussions of engine classification, air toxics data, and the small engine industry, and review of a draft "single text" strawman.

DATES: The committee will meet on July 26, 1994, from 11 a.m. to 6 p.m., and on July 27, 1994, from 8 a.m. to 4 p.m.

ADDRESSES: The location of the meeting will be the South Wing Conference Center, Kentucky Fair and Exposition Center, 937 Phillips Lane, Louisville, KY, 40209, (502) 367–5000.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on the substantive matters of the rule should contact Betsy McCabe, National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Rd., Ann Arbor, Michigan 48105, (313) 668–4344. Persons needing further information on committee procedural matters should call Deborah Dalton, Consensus and Dispute Resolution Program, Environmental Protection Agency, 401 M Street SW. Washington, DC 20460, (202) 260–5495, or the Committee's facilitator's, Lucy Moore or John Folk-Williams, Western Network, 616 Don Gaspar, Santa Fe, New Mexico, 87501, (505) 982–9805.

Dated: June 13, 1994.

Deborah Dalton,

Designated Federal Official.

[FR Doc. 94–14670 Filed 6–15–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5000–4]

Risk Assessment and Management Commission

ACTION: Notice of open meetings.

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Risk Assessment and Management Commission, established as a Presidential Advisory Committee under section 303 of the Clean Air Act Amendments of 1990, will meet on the following dates: June 30; July 29; September 9, 1994. The June 30 and July 29 meetings will be held at the Hyatt Regency Hotel at 400 New Jersey Avenue, Washington, DC 20001. For the September 9 meeting location, please call Joanna Foellmer, 202–260–5881. The meetings are open at the public, and will begin at 9 a.m. and end no later than 5:30 p.m. Seating at the meeting will be on a first come basis.

Background

The Risk Assessment and Management Commission held its first meeting on May 16, 1994 (**Federal Register** 59/FR22615/Vol. 59, No. 83, May 2, 1994.) The Commission was established by Congress to make a full investigation of the policy implications and appropriate uses of risk assessment and risk management in regulatory programs under various Federal laws to prevent cancer and other chronic human health effects which may result from exposure to hazardous substances.

It is expected that the Commission members will review and discuss the National Academy of Sciences/National Research Council/Committee on Risk Assessment of Hazardous Air Pollutants report entitled Science and Judgment in Risk Assessment (1994) during the next three meetings. If you would like a copy of this document, please write to Dr. James Reisa at the National Academy of Sciences, 2101 Constitution Avenue, NW., Washington, DC 20007. The Commission will address its scope of work, its relevance to various agencies and statutes, and various organizational matters.

For information about the Commission and copies of the agenda, please call Joanna Foellmer at 202–260–5881.

Dated: June 9, 1994.

Mary D. Nichols,

Assistance Administrator, Office of Air and Radiation.

[FR Doc. 94–14671 Filed 6–15–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4999–7]

Notice of a Final List of Water Quality Limited Waterbodies in the State of Minnesota

AGENCY: Environmental Protection Agency.

ACTION: Notice of a final Clean Water Act section 303(d) list for the State of Minnesota.

SUMMARY: The purpose of this notice is to announce the United States Environmental Protection Agency's (USEPA) final decision with respect to the list required of the State of Minnesota, under section 303(d) of the Clean Water Act (CWA). On December 8, 1993, the USEPA published (58 FR 64584) a proposed list of waterbodies, subsequent to its disapproval, on August 9, 1993, of portions of the list prepared by the State of Minnesota. A total of 72 waterbodies have been identified as appropriate waterbodies for the development of total maximum daily loads (TMDLs), pursuant to section 303(d), 40 CFR part 130, and USEPA guidance, as resources permit. An additional number of waterbodies have been identified, for which implementation of a TMDL will be dependent on a variety of events or actions outside the control of the State of Minnesota. Copies of the lists may be obtained at the address provided in the addresses section.

ADDRESSES: Persons wishing to obtain a copy of the lists may do so by contacting Mr. Robert F. Pepin, U.S. Environmental Protection Agency, Region 5, Water Division, 77 West Jackson Boulevard, Chicago, Illinois 60604, telephone (312) 886–1505; or Mr. Greg Gross, Division of Water Quality, Minnesota Pollution Control Agency, 520 Lafayette Road, St. Paul, Minnesota 55155, telephone (612) 296–7213.

FOR FURTHER INFORMATION CONTACT: Mr. Robert F. Pepin or Mr. Greg Gross at the above addresses or telephone numbers.

SUPPLEMENTARY INFORMATION: Section 303(d) of the CWA requires that the States identify lists of waterbodies for which TMDL development is appropriate. Further, section 303(d) requires that the lists developed by the States be submitted to the USEPA for review and approval or disapproval. To the extent that the USEPA disapproves a State submittal, section 303(d) of the CWA requires that the USEPA develop and publish the list. The USEPA must also assure that public participation in the formulation of a list of waterbodies is consistent with 40 CFR part 25, and may publicly notice a State submittal for that purpose as well.

The State of Minnesota had prepared several lists for the USEPA review, and had submitted and subsequently withdrawn several of these. On July 6, 1993, the USEPA received from Minnesota, a proposed list, which contained some, but not all of the waterbodies which the USEPA believed should be included on the list applicable to the State of Minnesota. As a result, the USEPA issued, on August 9, 1993, a partial approval of the list submitted by the State, approving the list to the extent that it did include waterbodies which were appropriately included on the list, but disapproving the submission in that it did not include all waterbodies which would be subject to the requirements of section 303(d).

Subsequently, USEPA developed a list of additional waterbodies which it believed were subject to the requirements of section 303(d), and published a notice to that effect on December 8, 1993 (58 FR 64584). The USEPA received written comments from

four commenters, including the Minnesota Pollution Control Agency (MPCA). These comments are available for public inspection at the address listed above.

(A) Responses to Comments

In making its final determination, the USEPA has carefully considered all comments received, and has revised its lists accordingly. In particular, changes have been made based upon the following.

(1) The MPCA commented that 23 stream segments were not identified on the proposed list, and should be included.

In alternate years, the State of Minnesota, pursuant to section 305(b) of the CWA, provides a report to Congress, on the health of waters within the State. In its 1992 report, Minnesota had identified the 23 stream segments in question, as impaired, however, the USEPA had not included these segments on its proposed list, believing the data to be old and somewhat unreliable. Upon further review, however, it is apparent that these segments are contiguous with other waterbodies included upon the USEPA's proposed list, and that these other waterbodies are scheduled for TMDL development within the next few years. As MPCA intends to develop these TMDLs for the whole waterbody, the MPCA believes that the 23 segments the USEPA had originally proposed to exclude should also be listed. The USEPA agrees.

(2) The MPCA commented that 65 segments that were identified by the USEPA in the proposed list should not be included because the data used to support listing does not reflect current conditions.

The information provided by the commenter indicates that of the 65 segments, remedial actions have been taken on 51 segments. In addition, exceedences of water quality standards were infrequent for five of the 65 segments, and did not support a conclusion that the waterbodies were impaired. Finally, the impairment determination for nine segments was based on data that were typically five to 10 years of age, and was not thought to be indicative of current conditions. The USEPA agrees that these waterbodies should not be listed pursuant to section 303(d).

(3) The MPCA commented that nine waterbodies that were identified in the proposed list should not be listed because the stated impairment is due to ubiquitous metals, for which there is no evidence, based upon biological sampling, that designated uses are impaired.

For each of these waterbodies, the MPCA provided documentation that the impairments described were based upon one or more of the following: Rare excursions of the water quality standards; ambient levels of the various constituents higher than expected for the ecoregion, but no water quality standards exceedences measured; or misinterpretation by the USEPA of the data provided in the 305(b) report. The USEPA agrees with the MPCA that cause does not exist for listing these waterbodies.

(4) The MPCA commented that approximately 245 segments of waterbodies which were included on the proposed USEPA list, should be excluded for a variety of reasons.

All of the identified segments are segments which were listed because of the presence of a fish consumption advisory for mercury or polychlorinated biphenyls (PCBs). The MPCA commented that the sole, or primary source of mercury or PCBs to these waterbodies is airborne deposition, and that where control of these sources is outside the State, the State is unable to develop a TMDL. These segments, therefore, are not appropriate candidates for TMDL development at this time. The USEPA agrees that technology based standards imposed under the Clean Air Act which affect sources external to the State of Minnesota may obviate the future need for TMDL development in these waterbodies. A separate list of these waterbody segments can be obtained by contacting the USEPA at the address provided above.

It is important to note that not all waterbodies for which fish consumption advisories exist fall into the category discussed above. There are certain waterbodies with fish consumption advisories, and for which TMDLs have been, or can be successfully developed at this time. These are not included in the 245 waterbodies on which the MPCA provided comments.

(5) Two other commenters believed that the proposed list is inadequate because it fails to identify all water quality limited segments within the State of Minnesota. Where the State has failed to do so, one of the commenters stated there is a mandatory duty to identify all water quality-limited segments, and include them on the list of waterbodies for which TMDL development is appropriate.

The USEPA interprets section 303(d) to require the identification of water quality-limited waterbodies for which TMDLs are appropriate. Such identification is to be based on existing and readily available data (40 CFR 130.7(b)(5)); consequently, there are no requirements within the Statute for additional monitoring or analysis. Since 40 CFR 130.7(d)(1) requires the biennial submission of revised section 303(d) lists to the USEPA for approval, this provision recognizes, that information will become available in the future, which can be used to revise and update the decisions made under section 303(d). This provision supports the USEPA's position that current listings should be based on currently available information. The submission every 2 years of a section 303(d) list addresses this issue by allowing changes to the lists to reflect additional identification of impaired waterbodies, and allows for removal of waterbodies once standards are attained or TMDLs developed.

Pursuant to section 305(b) of the CWA, States must prepare, on a biennial basis, a report to Congress which assesses the status of State waters. 40 CFR 130.7(b)(5) explicitly states that the section 305(b) report should be considered when developing the section 303(d) list. In preparation of the December 8, 1993, proposed list, Minnesota's 1992 305(b) report was extensively used. All waterbodies listed as impaired in Appendix 1 of that report were considered for listing. For reasons provided in the December 8, 1992, FR notice, specific comments received in response to that notice, and elsewhere in this notice some waterbodies that were listed as impaired in the Fiscal Year 1992 section 305(b) report were not included in today's list.

(6) One commenter stated that even if the only available data are older than five years, if those data indicate water quality impairments, then the subject waterbodies should be listed on the section 303(d) list.

Throughout its regulations and guidance the USEPA has consistently stated that all information should be used to develop a section 303(d) list. In using available information, however, it is imperative to consider its accuracy in order to assure that technically defensible determinations can be developed. The USEPA believes that data that are older than five years, or impairment assessments based on a subjective analysis, carry a large degree of uncertainty as to whether the impairment is still valid. As such information of this kind must be considered in light of all available information and cannot represent a prima facie basis for listing.

(7) One commenter stated that the USEPA must actively solicit all interested parties for information on which to develop a section 303(d) list.

Regulations governing the solicitation of public comment may be found at 40 CFR part 25. The USEPA believes that the publication of the proposed list in the December 8, 1993, FR notice fulfilled those requirements, and served as adequate solicitation of comment of all interested parties. In response to that publication the USEPA received four comment letters, one by a State agency and three by public interest groups. These comments have been thoroughly considered in the development of the final list.

(8) One commenter stated that the proposed list does not meet the requirements of section 303(d) because it does not contain specific, calculated TMDLs for each waterbody listed.

Section 303(d)(1)(A) requires the development of a list of waterbodies for which technology-based effluent limits are not stringent enough to achieve water quality standards. Section 303(d)(1)(C) requires the development of TMDLs for the waters listed pursuant to section 303(d)(1)(A). The USEPA has interpreted the Act to require the development of the section 303(d) list prior to actually establishing TMDLs. The USEPA believes that to delay listing until the TMDLs are all completed would either lead to deceptively short lists of waterbodies, or would delay the process indefinitely. Because TMDL development can be a complex activity, involving many years of effort particularly in cases where specific stream conditions must be analyzed, or model development and calibration must be achieved, only a few TMDLs can be developed at any particular time. Even so, it is also recognized that remedial actions can take place before a TMDL is developed, therefore the Agency believes that the listing process should go forward as the initial step in order to encourage action even though actual TMDL development may take place later. It is reasonable, therefore, to conclude that development of individual TMDLs must follow list development.

(9) One commenter stated that the proposed list does not contain any schedule for TMDL development for the next two years, and that the criteria by which the USEPA prioritized waters on the proposed list should focus on the protection human health.

The December 8, 1993, **Federal Register** notice announced as being available for public review and comment a proposed section 303(d) list for Minnesota consisting of 447 water quality-limited segments. The notice further provided that the priority for TMDL development reflects that contained in the September 16, 1993, section 303(d) list submitted by the Minnesota Pollution Control Agency. In that submittal, the TMDLs identified for development through April 1994 were the Minnesota River and the Redwood River. These waterbodies continue to be listed as high priority for TMDL development. Because the prioritization of TMDLs as well as the resources and personnel to develop them are largely under the control of the State, the USEPA believes it is appropriate to defer to this State prioritization. It should be noted that these priorities are subject to annual review by the USEPA and the State in the annual program planning process under 40 CFR part 130 and as a result of the biennial updates of the 305(b) lists required under 40 CFR part 131 and section 305(b) of the CWA.

(10) One commenter stated that the Mississippi River from the Minneapolis/St. Paul metropolitan area downstream to the Iowa border should be listed as high priority.

The USEPA agrees that this waterbody is an important resource. In compliance with requirements of an National Pollutant Discharge Elimination System permit issued to the Metropolitan Waste Control Commission (MWCC), studies of phosphorus, the identified pollutant of concern, are being conducted by both the MWCC and the Minnesota Pollution Control Agency on the waterbody to define better the sources of the impairments and to ascertain needed remedial actions. Current information suggests that much of the loading of phosphorus is originating in the Minnesota River basin, which is high priority for TMDL development. It is anticipated that remedial actions in the Minnesota River basin will have significant positive impact on magnitude of impairments in the Mississippi River. It is anticipated that upon the completion of the studies and implementation of additional controls required through the NPDES permit and the results of the TMDL being developed for the Minnesota River, downstream impacts on the Mississippi River will be reduced such that this portion of the River does not meet the requirements for listing under section 303(d). Therefore, this waterbody continues to be listed as low priority on the section 303(d) list.

(11) One commenter questioned why only two waterbodies were listed on the section 303(d) list.

In the December 8, 1993, FR notice, USEPA proposed a list of 447 waterbody segments. This was in addition to the two waterbodies which the State of Minnesota has identified as appropriate for TMDL development. While the USEPA agrees with the State of Minnesota, that those two waterbodies warrant listing pursuant to 303(d), the USEPA also believes, that additional waterbodies should be listed, and for that reason has proceeded with today's notice.

(12) One commenter recommended that the following waterbodies be listed on the section 303(d) list as high priority for TMDL development.

—All Minnesota Outstanding Resource Value Waters
—All Minnesota designated trout streams and trout lakes
—All Minnesota designated canoe trails
—All Federal or Minnesota designated wild, scenic, and recreational rivers
—All waterbodies within any National Wildlife Refuge
—The entire length of the Mississippi River (presumed to include sections both upstream and downstream of the Minneapolis/St. Paul metropolitan area
—Lake Superior

As stated above, the resources and personnel necessary to develop TMDLs are largely under the control of the State. In addition, the State's proximity to its public allows it to evaluate priorities in light of the public need more readily than USEPA. Consequently the USEPA believes it is appropriate to defer to the State in the matter of prioritization of waterbodies for TMDL development.

(B) Revisions to the Proposed Notice

As a result of the public comments received and continuing review of the proposed notice by the USEPA, the following changes have been made to the final identification of the section 303(d) water quality-limited segments for the State of Minnesota:

(1) The final list of waterbodies for which TMDL development would be appropriate has been revised to include the 23 additional steam segments which the State has requested be included on the list, due to proximity to, and influence upon, other waterbodies for which TMDLs are being developed.

(2) Waterbodies for which fish consumption advisories exist, and for which remedial measures lie outside the control of the State of Minnesota have been separately identified.

(3) The final list of waterbodies for which TMDL development is appropriate excludes 65 stream segments included in the proposed list, for which the State has provided documentation that the information leading to the USEPA's decision to include these segments on the proposed

list was not based on the most current information, and the more current information reveals that TMDLs are no longer appropriate.

(4) The final list excludes nine stream segments identified in the State's comments which were described as meeting the designated uses, since the exceedences of numeric water quality criteria noted by the USEPA as the basis for our proposal to include these segments on the 303(d) list were due to naturally occurring background concentrations.

(C) Final Notice

This notice is being issued pursuant to section 303(d)(2) of the CWA. Under this section, the USEPA is required to publish an identification of water quality-limited segments if a state submission is disapproved. The disapproval of the Minnesota submission occurred on August 9, 1993.

This notice identifies 72 water quality limited waterbodies for which TMDL development is appropriate and further identifies three waterbodies for which TMDL development is scheduled to be initiated over the next two years. This notice further identifies 245 waterbodies for which TMDL development is not feasible at this time. This constitutes USEPA's final determination.

Dated: June 2, 1994.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 94–14536 Filed 6–15–94; 8:45 am]

BILLING CODE 6050–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

June 9, 1994.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street NW., Suite 140, Washington, DC 20037, (202) 857–3800. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on these information collections should contact Timothy Fain, Office of Management and Budget, Room 3221 NEOB, Washington, DC 20503, (202) 395–3561.

OMB Number: None.

Title: Section 76.922, Rates for the basic service tier and cable programming services tiers.

Action: Existing collection in use without OMB approval.

Respondents: State or local governments, and businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden: 300 responses; 12 hours average burden per response; 3,600 hours total annual burden.

Needs and Uses: Section 76.922 provides: (1) An eligible small system that elects to use the streamline rate reduction process must implement the required rate reduction and provide written notice of such reductions to local subscribers, the local franchising authority and the Commission; (2) the system must notify the franchising authority and its subscribers in writing that it is electing to set its regulated rates by the streamlined rate reduction process; (3) the system must provide a one month notice; (4) the rates must be implemented within thirty days after the written notification has been provided to subscribers and the local franchising authority; (5) if a complaint has been filed against the small system, they must provide a written notice stating the required rate reductions; and (6) a small system is required to give written notice of, and to implement, the rates that are produced by the streamlined rate reduction process only once. The information will be used by the Commission to determine whether or not small systems are eligible to use the streamlined rate reduction process and if so that they are in compliance with the rules and regulations of the FCC.

OMB Number: None.

Title: Section 76.934(d), Petition for extension of time.

Action: Existing collection in use without an OMB control number.

Respondents: State or local governments, businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden: 100 responses; 4 hours average burden per response; 400 hours total annual burden.

Needs and Uses: Section 76.934(d) states that small systems may obtain an extension of time to establish compliance with rate regulations provided they can demonstrate that timely compliance would result in severe economic hardship. The information will be used by the FCC and local franchise authorities to grant temporary relief to small systems who demonstrate a need for an extension of time to come into compliance with rate regulation.

OMB Number: None.

Title: Section 76.958, Notice to Commission of rate change while complaint pending.

Action: Existing collection in use without an OMB control number.

Respondents: State or local governments, businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden: 2,560 responses; .30 hours average burden per response; 768 hours total annual burden.

Needs and Uses: Section 76.958 states that a regulated cable operator that proposes to change any rate while a cable service tier complaint is pending before the Commission shall provide the Commission at least thirty days notice of the proposed change. The information will be used by FCC staff to determine whether or not a regulated cable operator carried out the correct procedures to propose change in any rate while a cable service their complaint is pending before the Commission.

OMB Number: None.

Title: Section 76.964(b), Notice to subscribers.

Action: Existing collection in use without an OMB control number.

Respondents: State or local governments, businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden: 400 responses; 1 hour average burden per response; 400 hours total annual burden.

Needs and Uses: Section 76.964(b) requires cable systems: (1) To give a thirty day written notice to both subscribers and local franchising authorities before implementing any rate or service change; (2) a notice stating the precise amount of any rate change and briefly explain in readily understandable fashion the cause of the rate change; (3) in addition to or deleting channels, each channel must be separately identified and a notice must be sent to subscribers informing them of their rights to file complaints about changes in cable programming service tier rates and services to the Commission within forty-five days. The information will be used by FCC staff to determine whether or not cable systems

are in compliance with the rules and regulations before implementing any rate or service change.

OMB Number: None.

Title: Section 76.986, "A la carte" offerings.

Action: Existing collection in use without an OMB control number.

Respondents: State or local governments, businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden: 44,800 responses; 1 hour average burden per response; 44,800 hours total annual burden.

Needs and Uses: Section 76.986 (1) that local franchising authorities may make initial decisions addressing whether a collective offering of "a la carte" channels will be treated as an unregulated service or a regulated tier. (2) franchising authority may make this initial decision within the thirty day period established for review of basic cable rates and equipment costs or within the first sixty days of an extended 120 day period; (3) franchising authority shall provide notice of its decision to the cable system and shall provide public notice of its initial decision within seven days pursuant to local procedural rules for public notice and; (4) operators or consumers may make an interlocutory appeal of the initial decision to the Commission within 14 days of the initial decisions. The information will be used by FCC staff and local franchising authorities to determine which channels a cable operator is offering on an individual, unregulated basis.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–14642 Filed 6–15–94; 8:45 am]

BILLING CODE 6712–01–M

Schedule for en banc Hearing Children's Television Programming

June 9, 1994.

The schedule for the Commission's June 28, 1994, *en banc* hearing on Children's Television, MM Docket No. 93–48, is as follows:

The moderator for all of the panels is Linda Ellerbee, host of Nick News.

9:00–9:15 a.m. *Opening Statements By Commissioners*

9:15–10:45 a.m. *Panel 1: Educational & Informational Programming: Will We Know It When We See It?*

Children's Television Workshop—David Britt and Sheldon Turnipseed

Capital Cities/ABC, Inc.—Jeanette Trias

Children Now—James Steyer

Walt Disney Television—Ken Werner and Bill Nye

Fox Children's Network—Margaret Loesch

National Broadcasting Company, Inc.—Dr. Karen Hill-Scott

National Education Association—Dr. Gary Watts

World Africa Network—Phyllis Jackson

National PTA—Catherine Belter

11:00 a.m.–12:30 p.m. *Panel 2: Educational & Informational Programming: How Much Is Enough?*

American Psychological Association—Dr. Dale Kunkle

National Association of Broadcasters—Paul La Camera

Peggy Charren, Founder of ACT

Millicient Green—Correspondent for Children's Express

Interfaith Broadcasting Commission—Dr. Richard McCartney

Maryland Campaign For Kid's TV—Charlene Hughins Uhl

National Association of Television Program Executives—Bruce Johansen

Rushnell Communications and Publishing—Squire Rushnell

12:30–1:45 p.m. Lunch Break

1:45–3:15 p.m. *Panel 3: The Economics Of Providing Educational & Informational Programming For Children*

KIDSNET—Karen Jaffe

CBS, Inc.—Jonathan Rodgers

Center For Media Education—Dr. Kathryn Montgomery

Corporation For Public Broadcasting—Sheila Tate

Hastings College—Dr. Ronald Davis & Dr. James Wiest

Association of Independent Television Stations—Peter Walker

Nickelodeon—Geraldine Laybourne

Shari Lewis—Producer and Entertainer

Univision Network—Jaime Davila

The hearing will take place in the Commission Meeting Room (Room 856), Federal Communications Commission, 1919 M Street NW., Washington, DC 20554, and is open to the public. George Mason University's Microwave Television, "The Capitol Connection," will carry the hearing in its entirety beginning at 9 a.m. The hearing will also be available via satellite on Telestar 302 located at 85 degrees west. The downlink frequency is 4140 MHz and the transponder is 11 horizontal which is channel 22. Further inquiries should be directed to Ms. Julia Morelli, "The Capitol Connection," at (703) 323–3585. For the hearing impaired, an ASL interpreter will translate the hearing and the video feed will be closed captioned. Video tapes and written transcripts of the hearing will be available for a fee.

For further information about the hearing, please contact Larry Miller at (202) 418–1600. The contacts for media coverage are Maureen Peratino and Audrey Spivack at (202) 418–0500.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc 94–14641 Filed 6–15–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Royal Cruise Line Limited and Kloster Cruise Limited, One Maritime Plaza, Suite 1400, San Francisco, California 94111. Vessel: Star Odyssey.

Dated: June 13, 1994.

Joseph C. Polking,

Secretary.

[FR Doc. 94–14637 Filed 6–15–94; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

All-Ways Forwarding Int'l. Inc., Hemisphere Center, Routes 1 & 9 South, Newark, New Jersey 07114, Officers: Solomon Weber, President, Paul Jeka, Vice President

Romi's Express, Inc., 420 South Hindry Ave., Unit F, Inglewood, CA 90301, Officers: Rosalba Gil, President, Isabel C. Montejo, Vice President

Action Cargo International, 2510 Magnet Street, Houston, TX 77054, Bobby (Robert H.) Wayne, Sole Proprietor

A Active Freezone Cargo Inc., 2305 N.W. 107 Ave., Miami, FL 33172, Officers: Carlos de Corral, President, Maria del Carmen del Corral, Director, German Leiva, Sen. V. President, Maria Camila Leiva, Secretary

JoAnn Czop-Alcala, 4705 Bay Point Road, Miami, FL 33137, Sole Proprietor

Southern Cargo Logistics Inc., 3535–3 Baymeadows Road, Ste. 116, Jacksonville, FL 32256, Officers:

Lowell Oswald, Jr., President, Mary C. Oswald, Vice President.

Consolidated Incorporated of Orlando, 701b L.F. Roper Parkway, Ocoee, FL 34761, Officer: Mona El Tagi, President

Manuela Rivadeneira, 601 E. Linden Ave., Linden, NJ 07036, Sole Proprietor

Blasi Forwarders & Services, Inc., 1325 N.W. 93rd Ct., suite B–1112, Miami, FL 33172, Officers: Inaldis E. Sibilla, President, Rebeca Bianaco, Vice President.

Dated: June 13, 1994.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 94–14638 Filed 6–15–94; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

First Alliance Bancorp, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 11, 1994.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. First Alliance Bancorp, Inc., Marietta, Georgia; to acquire 80 percent of Interim Alliance Corporation D/B/A Alliance Finance, Smyrna, Georgia, and thereby engage in consumer finance activities pursuant to § 225.25(b)(1)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 10, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–14632 Filed 6–15–94; 8:45 am]

BILLING CODE 6210–01–F

Thomas Luther Lovett; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than July 6, 1994.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Thomas Luther Lovett, Wrightsville, Georgia; to retain an additional 0.6 percent of the voting shares of Wrightsville Bancshares, Inc., Wrightsville, Georgia, for a total of 13.05 percent, and thereby indirectly acquire Bank of Wrightsville, Wrightsville, Georgia.

Board of Governors of the Federal Reserve System, June 10, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–14631 Filed 6–15–94; 8:45 am]

BILLING CODE 6210–01–F

SouthTrust Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 11, 1994.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. SouthTrust Corporation, Birmingham, Alabama, and SouthTrust of Mississippi, Inc., Birmingham, Alabama; to merge with First Jefferson Corporation, Biloxi, Mississippi, and thereby indirectly acquire The Jefferson Bank, Biloxi, Mississippi.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Citizens State Bank Employee Stock Ownership Plan, Buffalo, Texas; to become a bank holding company by acquiring 38.1 percent of the voting shares of Citizens State Bank, Buffalo, Texas.

Board of Governors of the Federal Reserve System, June 10, 1994

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–14633 Filed 6–15–94; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement 485]

Improving Performance in Physicians' Office Laboratories

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1994 funds for a cooperative agreement to improve the quality of laboratory testing in physicians' office laboratories (POLs). The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Clinical Preventive Services. (For ordering a copy of "Healthy People 2000," see the section "WHERE TO OBTAIN ADDITIONAL INFORMATION.")

Authority

This program is authorized under section 317(k)(2)(D) of the Public Health Service Act [42 U.S.C. 247b(k)(2)(D)], as amended.

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Eligible Applicants

Eligible applicants are limited to non-profit professional clinical or laboratory organizations whose focus is to improve the quality of laboratory testing in POLs. Applicants must be able to demonstrate that:

1. They are laboratory medicine oriented;
2. A goal of their organization is to improve the quality of laboratory testing in POLs;
3. They have a long-standing interest in improving the performance of laboratory testing; and
4. They have a strong, specific interest in providing professional information to private practitioners with laboratories, thereby striving to improve the quality of laboratory testing in POLs

Availability of Funds

Approximately $100,000 is available in FY 1994 to fund one cooperative agreement. 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 three years. Funding estimates may vary and are subject to change. Continuation awards within the project period may be made on the basis of satisfactory progress and the availability of funds.

Purpose

The purpose of this cooperative agreement is to develop and provide professional and technical information and education to private practitioners with POLs, thereby helping improve the quality of laboratory testing available to the American public.

Program Requirements

In conducting the activities to achieve the purpose of the program, the recipient will be responsible for those activities listed under A. (Recipient Activities), and CDC will be responsible for those activities under B. (CDC Activities).

A. Recipient Activities

1. Nationally, provide to POL physicians training that has been designed to improve laboratory performance. In the first budget year develop training modules related to the standards as set forth in the Clinical Laboratory Improvement Amendments (CLIA), designed to train POL staff.
2. Develop and implement mechanisms for communicating information directly to POLs relating to CLIA. These communications will provide accurate, concise, and rapid information that will give physicians access to new and/or revised CLIA regulatory provisions. In the first budget year, using the laboratory test categorization computerized database established by CDC, develop an interactive software program which is user friendly and can be queried by physicians for specific tests.

B. CDC Activities

1. Provide scientific and technical expertise related to distance-based training and provide technical assistance in the development of training modules and courses related to the CLIA standards.
2. Collaborate in the development of mechanisms to communicate current and updated information relating to CLIA to POLs.
3. Provide scientific and technical assistance relating to the test categorization database and laboratory standards, and collaborate in the development of more user friendly and interactive databases for use by POLs.

Evaluation Criteria

The application will be reviewed and evaluated according to the following criteria:

1. Responsiveness to the objectives of the cooperative agreement including: (a) Applicant's understanding of the objectives of the proposed cooperative agreement; and (b) the relevance of the proposal to the stated objectives. (25 points)
2. Ability to provide staff, knowledge, and other resources required to perform the applicant's responsibilities in this project. The qualifications and time allocations of key personnel to be assigned to this project and the facilities, equipment, and other resources available for performance of this project. (25 points)
3. Methods to be used in carrying out the responsibilities of this project. Steps to be taken in planning and implementation of this project. (20 points)
4. Schedule for accomplishing the activities to be carried out in this project and methods for evaluating the accomplishments. (20 points)
5. Percentage of the U.S. POL community that can be reached by the applicant organization. (10 points)
6. Budget evaluation to the extent that it is reasonable, clearly justified, and consistent with the intended use of funds. (Not scored)

Executive Order 12372 Review

This program is not subject to the Executive Order 12372 review.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.283.

Application Submission and Deadline

The original and two copies of the application, PHS Form 5161–1 (Revised 7.92, OMB Control Number 0937–0189), must be submitted to Elizabeth M. Taylor, Grants Management Officer,

Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mailstop E16, Atlanta, Georgia 30305, on or before July 15, 1994.

1. *Deadline:* Applications shall be considered as meeting the deadline if they are:

A. Received on or before the deadline date, or

B. Sent on or before the deadline date and received in time for submission to the independent review committee. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications that do not meet the criteria in 1.A. or 1.B. are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

If you are interested in obtaining additional information regarding this project, please refer to Announcement Number 485 and contact Manuel Lambrinos, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mailstop E16, Atlanta, Georgia 30305, telephone (404) 842–6777, for business management technical assistance. Programmatic technical assistance may be obtained from Katherine A. Kelley, Dr.P.H., Chief, Training Branch, Centers for Disease Control and Prevention (CDC), Public Health Practice Program Office, Division of Laboratory Systems, 4770 Buford Highway, NE., Mailstop A16, Atlanta, Georgia 30341–3724, telephone (404) 488–7675.

A copy of "Healthy People 2000" (Full Report, Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report, Stock No. 017–001–00473–1) referenced in the "Introduction" may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: June 10, 1994.

Ladene H. Newton,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–14628 Filed 6–15–94; 8:45 am]

BILLING CODE 4163–18–P

Food and Drug Administration

Request for Nominations for Voting Members on Public Advisory Panels or Committees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for voting members to serve on certain device panels of the Medical Devices Advisory Committee and on the Technical Electronic Product Radiation Safety Standards Committee in the Center for Devices and Radiological Health. Nominations will be accepted for current vacancies and for those that will or may occur through February 28, 1995.

FDA has a special interest in ensuring that women, minority groups, and individuals with disabilities are adequately represented on advisory committees and, therefore, extends particular encouragement to nominations for appropriately qualified female, minority, and physically disabled candidates.

DATES: Because scheduled vacancies occur on various dates throughout each year, no cutoff date is established for the receipt of nominations. However, when possible, nominations should be received at least 6 months before the date of scheduled vacancies for each year, as indicated in this notice.

ADDRESSES: All nominations and curricula vitae for the panels should be sent to Nancy J. Pluhowski, Center for Devices and Radiological Health (HFZ–400), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850.

All nominations and curricula vitae for the Technical Electronic Product Radiation Safety Standards Committee should be sent to Kay A. Levin (address below).

FOR FURTHER INFORMATION CONTACT: Kay A. Levin, Center for Devices and Radiological Health (HFZ–10), Food and Drug Administration, 12720 Twinbrook Pkwy., Rockville, MD 20857, 301–443–9422.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations of voting members for vacancies listed below.

1. *Anesthesiology and Respiratory Therapy Devices Panel:* Six vacancies immediately, one vacancy occurring November 30, 1994; general anesthesiologists, anesthesiologists with a specialty in regional anesthesia, physicians having expertise in ventilatory support, or nurse anesthetist.

2. *Clinical Chemistry and Clinical Toxicology Devices Panel:* Three vacancies immediately, one vacancy occurring February 28, 1995; doctors of medicine or philosophy with experience in clinical chemistry, clinical toxicology, clinical pathology, clinical laboratory medicine, or oncology.

3. *Dental Products Panel:* One vacancy immediately, two vacancies occurring October 31, 1994; individuals with expertise in lasers for dental use, dental endosseous implants, temporomandibular joint implants, or bone physiology as it applies to the oral and maxillofacial area.

4. *Ear, Nose, and Throat Devices Panel:* One vacancy occurring October 31, 1994; audiologist, otolaryngologist, neurophysiologist, statistician, or electrical or biomedical engineer.

5. *Gastroenterology and Urology Devices Panel:* Three vacancies immediately, one vacancy occurring December 31, 1994; gastroenterologists, nephrologists, or urologists with expertise in pediatrics or lithotripsy, or experience in diagnosis and treatment of impotence, incontinence, and prostatism.

6. *General and Plastic Surgery Devices Panel:* Two vacancies occurring August 31, 1994; general surgeons.

7. *General Hospital and Personal Use Devices Panel:* One vacancy immediately; experts in pediatrics, internal medicine, neonatology, gerontology, infection control, or biomedical engineering.

8. *Hematology and Pathology Devices Panel:* One vacancy immediately, three vacancies occurring February 28, 1995; cytopathologists.

9. *Immunology Devices Panel:* One vacancy immediately, two vacancies occurring February 28, 1995; oncologists, medical or surgical oncologists with experience with tumor markers, or clinical immunologists.

10. *Microbiology Devices Panel:* One vacancy occurring February 28, 1995; an infectious disease clinician or expert in antimicrobial susceptibility testing devices, and/or virology testing devices, and/or biotechnology; or clinical oncologist with experience with tumor markers.

11. *Neurological Devices Panel:* Seven vacancies immediately; neurologists, biomedical engineers, interventional neuroradiologists, neurosurgeons with interest in medical devices, or persons experienced with neurological devices

with a strong background in biostatistics.

12. *Obstetrics and Gynecology Devices Panel*: Four vacancies immediately, two vacancies occurring January 31, 1995; experts in endoscopy, electrosurgery, laser surgery, and assisted reproductive technologies, contraception, and/or instrumentation used during these procedures, or reproductive endocrinology.

13. *Orthopedic and Rehabilitation Devices Panel*: One vacancy occurring August 31, 1994; orthopedic surgeon with expertise in joint structure and function, prosthetic ligament devices, joint biomechanics and implants, or spinal instrumentation; physical therapist with expertise in spinal cord injuries, neurophysiology, electrotherapy, and joint biomechanics; rheumatologist; or biomedical engineer.

14. *Radiological Devices Panel*: Four vacancies immediately, two vacancies occurring January 31, 1995; physicians and scientists with expertise in nuclear medicine, diagnostic or therapeutic radiology, mammography, thermography, transillumination, hyperthermia, bone densitometry, magnetic resonance, computed tomography, or ultrasound.

15. *Technical Electronic Product Radiation Safety Standards Committee*: One vacancy immediately, three vacancies occurring December 31, 1994; employees of governmental agencies, including State or Federal Government.

Functions

Medical Device and Dental Products Panels

The functions of the panels are to: (1) Review and evaluate available data concerning the safety and effectiveness of marketed and investigational devices; (2) advise the Commissioner of Food and Drugs regarding recommended classification of these devices into one of three regulatory categories; (3) recommend the assignment of a priority for the application of regulatory requirements for devices classified in the standards or premarket approval category; (4) advise on any possible risks to health associated with the use of devices; (5) advise on formulation of product development protocols and review premarket approval applications for those devices classified in the premarket approval category; (6) review classification of devices to recommend changes in classification as appropriate; (7) recommend exemption of certain devices from the application of portions of the Federal Food, Drug, and Cosmetic Act; (8) advise on the necessity to ban a device; and (9) respond to requests from the agency to review and make recommendations on specific issues or problems concerning the safety and effectiveness of devices.

The Dental Products Panel will also function at times as a 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 dental 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. The panel also evaluates and recommends whether various prescription drug products should be changed to over-the-counter status. The panel also evaluates data and makes recommendations concerning the approval of new dental drug products for human use.

Technical Electronic Product Radiation Safety Standards Committee

The function of the Technical Electronic Product Radiation Safety Standards Committee is to provide advice and consultation on the technical feasibility, reasonableness, and practicability of performance standards for electronic products to control the emission of radiation from such products. The committee may recommend electronic product radiation safety standards for consideration.

Qualifications

Medical Device and Dental Products Panels

Persons nominated for membership on the panels shall have adequately diversified experience appropriate to the work of the panel in such fields as clinical and administrative medicine, engineering, biological and physical sciences, statistics, and other related professions. The nature of specialized training and experience necessary to qualify the nominee as an expert suitable for appointment may include experience in medical practice, teaching, and/or research relevant to the field of activity of the panel. The particular needs at this time for each panel are shown above. The term of office is up to 4 years, depending on the appointment date.

Technical Electronic Product Radiation Safety Standards Committee

Persons nominated for the Technical Electronic Product Radiation Safety Standards Committee must be technically qualified by training and experience in one or more fields of science or engineering applicable to electronic product radiation safety. The particular needs for this committee are identified above. The term of office is up to 4 years, depending on the appointment date.

Nomination Procedures

Any interested person may nominate one or more qualified persons for membership on one or more of the advisory panels or committees. Self-nominations are also accepted. Nominations shall include a complete curriculum vitae of each nominee, current business address and telephone number, and shall state that the nominee is aware of the nomination, is willing to serve as a member, and appears to have no conflict of interest that would preclude membership. FDA will ask the potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflict of interest.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14 relating to advisory committees.

Dated: June 10, 1994.

Linda A. Suydam,

Interim Deputy Commissioner for Policy.

[FR Doc. 94–14647 Filed 6–15–94; 8:45 am]

BILLING CODE 4160–01–F

Request for Nominations for Representatives of Consumer and Industry Interests on Public Advisory Panels or Committees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for consumer representatives and an industry representative to serve on certain device panels of the Medical Devices Advisory Committee and consumer representatives for the Technical Electronic Product Radiation Safety Standards Committee in the Center for Devices and Radiological Health. Nominations will be accepted for current vacancies and for those that will or may occur through February 28, 1995.

FDA has a special interest in ensuring that women, minority groups, individuals with disabilities, and small businesses are adequately represented on advisory committees and, therefore,

extends particular encouragement to nominations for appropriately qualified female, minority, and physically disabled candidates, and nominations from small businesses that manufacture medical devices subject to the regulations.

DATES: Nominations should be received by August 15, 1994 for vacancies listed in this notice.

ADDRESSES: All nominations and curricula vitae for consumer representatives for the medical device panels should be sent to Susan Meadows (address below).

All nominations and curricula vitae (which includes nominee's office address and telephone number) for the industry representative for the Obstetrics and Gynecology Devices Panel and the consumer representatives for the Technical Electronic Product Radiation Safety Standards Committee should be sent to Kay Levin (address below).

FOR FURTHER INFORMATION CONTACT:

Regarding consumer interests for the medical device panels: Susan K. Meadows, Office of Consumer Affairs (HFE–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5006.

Regarding industry interests for the Obstetrics and Gynecology Devices Panel and the consumer interests for the Technical Electronic Product Radiation Safety Standards Committee: Kay A. Levin, Food and Drug Administration, Center for Devices and Radiological Health (HFZ–10), 12720 Twinbrook Pkwy., Rockville, MD 20857, 301–443–9422.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for members representing consumer and industry interests for the vacancies listed below:

Committee or Panel	Approximate Date Representative is Needed	
	Consumer	Industry
Circulatory System	July 1, 1994	NV
Gastroenterology and Urology	Jan. 1, 1995	NV
General Hospital and Personal Use	Jan. 1, 1995	NV
Immunology	Mar. 1, 1995	NV
Obstetrics and Gynecology	NV	Feb. 1, 1995
Technical Electronic Product Radiation Safety Standards	IMMED (3)	NV
	Jan. 1, 1995 (1)	NV

NV = No vacancy
IMMED = Immediate vacancy

Functions

Medical Device Panels

The functions of the medical device panels are to: (1) Review and evaluate data on the safety and effectiveness of marketed and investigational devices; (2) advise the Commissioner of Food and Drugs regarding recommended classification of these devices into one of three regulatory categories; (3) recommend the assignment of a priority for the application of regulatory requirements for devices classified in the standards or premarket approval category; (4) advise on any possible risks to health associated with the use of devices; (5) advise on formulation of product development protocols and review premarket approval applications for those devices classified in the premarket approval category; (6) review classification of devices to recommend changes in classification as appropriate; (7) recommend exemption to certain devices from the application of portions of the Federal Food, Drug, and Cosmetic Act (the act); (8) advise on the necessity to ban a device; and (9) respond to requests from the agency to review and make recommendations on specific issues or problems concerning the safety and effectiveness of devices.

Technical Electronic Product Radiation Safety Standards Committee

The function of the Technical Electronic Product Radiation Safety Standards Committee is to provide advice and consultation on technical feasibility, reasonableness, and practicability of performance standards for electronic products to control the emission of radiation from such products. The committee may recommend electronic product radiation safety standards for consideration.

Consumer and Industry Representation

Medical Device Panels

Section 513 of the act, as amended by the Medical Device Amendments of 1976 (21 U.S.C. 360c), provides that each medical device panel include as members one nonvoting representative of consumer interests and one nonvoting representative of interests of the medical device manufacturing industry.

Technical Electronic Product Radiation Safety Standards Committee

Section 534(f) of the act, as amended by the Safe Medical Devices Act of 1990 (21 U.S.C. 360kk(f)), provides that the Technical Electronic Product Radiation Safety Standards Committee include five members from governmental agencies, including State or Federal Governments, five members from the affected industries, and five members from the general public, of which at least one shall be a representative of organized labor.

Nomination Procedures

Consumer Representatives

Any interested person may nominate one or more qualified persons as a member of a particular advisory committee or panel to represent consumer interests as identified in this notice. Self-nominations are also accepted. To be eligible for selection, the applicant's experience and/or education will be evaluated against Federal civil service criteria for the position to which the person will be appointed.

Nominations shall include a complete curriculum vitae of each nominee and shall state that the nominee is aware of the nomination, is willing to serve as a member, and appears to have no conflict of interest that would preclude membership. FDA will ask the potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflict of interest. The nomination should state whether the nominee is interested only in a particular advisory committee or panel or in any advisory committee or panel. The term of office

is up to 4 years, depending on the appointment date.

Industry Representative for the Obstetrics and Gynecology Devices Panel

Any organization in the medical device manufacturing industry (industry interests) wishing to participate in the selection of an appropriate member of a particular panel may nominate one or more qualified persons to represent industry interests. Persons who nominate themselves as industrial representatives for the panels will not participate in the selection process. It is, therefore, recommended that all nominations be made by someone with an organization, trade association, or firm who is willing to participate in the selection process.

Nominees shall be full-time employees of firms that manufacture products that would come before the panel, or consulting firms that represent manufacturers. Nominations shall include a complete curriculum vitae of each nominee. The term of office is up to 4 years, depending on the appointment date.

Selection Procedures

Consumer Representatives

Selection of members representing consumer interests is conducted through procedures which include use of a consortium of consumer organizations which has the responsibility for recommending candidates for the agency's selection. Candidates should possess appropriate qualifications to understand and contribute to the committee's work.

Industry Representative for the Obstetrics and Gynecology Devices Panel

Regarding nominations for members representing the interests of industry on the Obstetrics and Gynecology Devices Panel, a letter will be sent to each person that has made a nomination, and to those organizations indicating an interest in participating in the selection process, together with a complete list of all such organizations and the nominees. This letter will state that it is the responsibility of each nominator or organization indicating an interest in participating in the selection process to consult with the others in selecting a single member representing industry interests for the panel within 60 days after receipt of the letter. If no individual is selected within 60 days, the agency will select the nonvoting member representing industry interests.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14 relating to advisory committees.

Dated: June 10, 1994.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 94–14648 Filed 6–15–94; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB) for Clearance

AGENCY: Health Care Financing Administration, HHS.

The Health Care Financing Administration (HCFA), Department of Health and Human Services (HHS), has submitted to OMB the following proposals for the collection of information in compliance with the Paperwork Reduction Act (Pub. L. 96–511).

1. *Type of Request:* New; *Title of Information Collection:* Evaluation of Medicare SELECT Amendments; *Form No.:* HCFA–R–164; *Use:* This is a telephone survey of Medicare beneficiaries in six states, some of whom have purchased Medicare SELECT policies. There is also a mail survey of non-SELECT Medigap insurers in the 15 States where Medicare SELECT policies may be sold; *Frequency:* One time data collection; *Respondents:* Businesses or other for-profit; *Estimated Number of Responses:* 10,288; *Average Hours Per Response:* 15 minutes (telephone interview) 30 minutes (questionnaire); *Total Estimated Burden Hours:* 4035.

2. *Type of Request:* Revision; *Title of Information Collection:* Hospital and Hospital Health Care Complex Cost Report; *Form No.:* HCFA–2552; *Use:* This form is used by Hospital Health Care Complexes to report their Health Care costs to determine amounts reimbursable for the services furnished to Medicare Beneficiaries; *Frequency:* Annually; *Respondents:* Businesses or other for-profit, Nonprofit institutions, Small businesses or organizations; *Estimated Number of Responses:* 380,560; *Average Hours Per Response:* 1 hr; *Total Estimated Burden Hours:* 380,560 (reporting) 4,053,000 (recordkeeping) 4,433,560.

Additional Information or Comments: Call the Reports Clearance Office on (410) 966–5536 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 3001, Washington, DC 20503.

Dated: June 10, 1994.

John A. Streb,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 94–14675 Filed 6–15–94; 8:45 am]

BILLING CODE 4120–03–P

National Institutes of Health

National Institute on Drug Abuse; Notice of Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the review committees of the National Institute on Drug Abuse for July 1994.

These meetings will be open to the public for approximately one-half hour at the beginning of the first day of the meeting for announcements and reports of administrative, legislative, and program development. Attendance by the public will be limited to space available.

As indicated below in accordance with provisions set forth in section 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, these meetings will be closed to the public for the review, discussion, and evaluation of individual grant applications on the dates indicted below. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of the meetings and rosters of committee members may be obtained from: Ms. Camilla L. Holland, NIDA Committee Management Officer, National Institutes of Health, Parklawn Building, room 10–42, 5600 Fishers Lane, Rockville, MD 20857 (Telephone: 301/443–2755).

Substantive program information may be obtained from the contacts whose names, room numbers, and telephone numbers are listed below.

Committee Name: Biobehavioral/Clinical Subcommittee, Drug Abuse AIDS Research Review Committee.

Meeting Date: July 12–13, 1994.

Place; Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, Maryland 20814.

Open: July 12, 9 a.m. to 9:30 a.m.

Closed: 9:30 a.m., July 12, to adjournment on July 13.

Contact: Mary Custer, Ph.D., room 10–42, Parklawn Building, Telephone (301) 443–2620.

Committee Name: Sociobehavioral Subcommittee, Drug Abuse AIDS Research Review Committee.

Meeting Date: July 12–14, 1994.

Place; Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, Maryland 20814.

Open: July 12, 9 a.m. to 9:30 a.m.

Closed: 9:30 a.m., July 12, to adjournment on July 14.

Contact: H. Noble Jones, room 10–22, Parklawn Building, Telephone (301) 443–9042.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contract the contact persons named above in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Numbers: 93.277, Drug Abuse Research Scientist Development and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs)

Dated: June 10, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–14617 Filed 6–15–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Drug Abuse; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Extramural Science Advisory Board, National Institute on Drug Abuse on July 18–19, 1994, from 9 a.m. to 5 p.m. at the Marriott Suites Hotel, 6711 Democracy Blvd., Bethesda, Maryland 20817.

The Extramural Science Advisory Board will discuss NIDA's program areas and extramural programs. This meeting will be open to the public on the dates indicated above; however, attendance by the public will be limited to space available.

A summary of the meeting and a roster of committee members may be obtained from Ms. Camilla L. Holland, NIDA Committee Management Officer, National Institutes of Health, Parklawn Building, room 10–42, 5600 Fishers Lane, Rockville, Maryland 20857 (301/443–2755).

Substantive program information may be obtained from Ms. Jacqueline P. Downing, room 10A–55, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301/443–1056).

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the contact person named above in advance of the meeting.

Dated: June 10, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–14618 Filed 6–15–94; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–94–3791]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: June 6, 1994.

John T. Murphy,

Director, IRM Policy and Management Division.

Submission of Proposed Information Collection to OMB

Proposal: Floodplain Management (FR–865).

Office: Community Planning and Development.

Description of the Need For the Information and Its Proposed Use: 24 CFR part 55 prescribes decisionmaking procedures that applicants and grantees in certain programs must comply with before HUD assistance can be used for projects that may effect floodplains. Records must be kept and maintained by the recipients to document compliance of projects with the Executive Orders.

Form Number: None.

Respondents: State or Local Governments.

Frequency of Submission: Recordkeeping.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Recordkeeping	3,200		1		.40		1,280

Total Estimated Burden Hours: 1,280.
Status: New.
Contact: Truman Goins, HUD, (202) 708–3947, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: June 6, 1994.

[FR Doc. 94–14686 Filed 6–15–94; 8:45 am]
BILLING CODE 4210–01–M

[Docket No. N–94–3792]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.
ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 26, 1994.

John T. Murphy,
Director, IRM Policy and Management Division.

Submission of Proposed Information Collection to OMB

Proposal: Performance Funding System: Energy Conservation Savings (FR–3387).

Office: Public and Indian Housing.

Description of the Need For the Information and Its Proposed Use: The information collection is needed so that Housing Authorizes may apply for increased operating subsidy payments due to: (1) Sharing of energy rate reductions, (2) non-HUD financing of energy conservation, or (3) units lost through combining of units into larger units. The information is needed to calculate the operating subsidies under the Performance Funding System.

Form Number: None.

Respondents: State or Local Governments.

Frequency of Submission: Annually and Recordkeeping.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	200		1		Varies		2,615
Recordkeeping	200		1		4		800

Total Estimated Burden Hours: 3,415.
Status: Reinstatement with changes.
Contact: John Comerford, HUD, (202) 708–1872, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: May 26, 1994.

[FR Doc. 94–14687 Filed 6–15–94; 8:45 am]
BILLING CODE 4210–01–M

[Docket No. N–94–3790]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.
ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comment regarding these proposals. Comments must be received within thirty (30) days from the date of this notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of

an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: June 2, 1994.

John T. Murphy,

Director, IRM Policy and Management Division.

Submission of Proposed Information Collection to OMB

Proposal: Analysis of Proposed Main Construction Contract.

Office: Public and Indian Housing.

Description of the Need For the Information and Its Proposed Use: Form HUD–52396 is a comparison of actual bid cost on a conventionally developed public housing project to the approved pre-bid estimates. The form is prepared by the PHA and submitted to HUD when requesting approval for the award of the construction contract.

Form Number: HUD–52396.

Respondents: State or Local Governments and Non-Profit Institutions.

Frequency of Submission: Annually and Recordkeeping.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Annual Reporting	96		1.15		2		220
Recordkeeping	110		1		.25		28

Total Estimated Burden Hours: 248.

Status: Reinstatement, no changes.

Contact: William C. Thorson, HUD, (202) 708–4703, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: June 2, 1994.

Proposal: HOME Program Evaluation—Round II Data Collection.

Office: Policy Development and Research.

Description of the Need For the Information and Its Proposed Use: The evaluation will identify the effects of the HOME program's requirements on its implementation, including how the program is being administered and which housing units, households, and neighborhoods are being assisted. This second phase of data collection will involve telephone interviews to state and local participating jurisdictions and to non-profit participants, and will focus on the use of Community-based Housing Development Organizations (CHDOs) in the HOME program.

Form Number: None.

Respondents: State or Local Governments and Non-Profit Institutions.

Frequency of Submission: One-Time.

Reporting Burden:

	Number of respondents	×	Freuency of response	×	Hours per response	=	Burden hours
Evaluation	530		1		.75		398

Total Estimated Burden Hours: 398.

Status: New.

Contact: Ruth Alahydoian, HUD, (202) 708–0574, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: June 2, 1994.

Proposal: Characteristics of Good HUD Multifamily Management Agents.

Office: Inspector General.

Deccription of the Need For the Information and Its Proposed Use: HUD seeks to identify measurable or quantifiable characteristics of good multifamily management agents. HUD would use any identified characteristics to approve and monitor agents who manage HUD-insured and HUD held multifamily projects.

Form Number: None.

Respondents: Businesses or Other For-Profit and Small Businesses or Organizations.

Frequency of Submission: One-Time.

Reporting Burden:

	Number of respondents	×	Freuency of response	×	Hours per response	=	Burden hours
Information Collection	80		1		.5		40

Total Estimated Burden Hours: 40.

Status: New.

Contact: Robert G. King, HUD, (602) 379–4681, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: May 27, 1994.

Proposal: Recertification of Family Income and Composition—section 235 (b).

Office: Housing.

Description of the Need For the Information and Its Proposed Use: The forms are submitted by homeowners to mortgagees to determine their continued eligibility for assistance and to determine the amount of assistance a homeowner is to receive. The forms are also used by mortgagees to report statistical and general program data to HUD.

Form Number: HUD–93101 and 93101–A.

Respondents: Individuals or Households and Businesses or Other For-Profit.

Frequency of Submission: On Occasion and Monthly.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–93101	50,000		1.25		1		187,500
HUD–93101–A	962		12		.17		1.962

Total Estimated Burden Hours: 189,462.

Status: Extension, no changes.

Contact: Theodore Green, HUD (202) 708–1719, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: May 27, 1994.

Proposal: Definition of Income, Rents and Recertification of Family Income for the Rent Supplement, section 236 and section 8 Special Allocation Programs.

Office: Housing.

Description of the Need For the Information and Its Proposed Use: The information will be used by the project owners to advise HUD and request approval of new utility allowances when the utility rate change results in a cumulative increase of 10 percent or more. If periodic adjustments to the utility allowance are not made, tenants would be required to pay a larger total tenant payment than is permissible.

Form Number: None.

Respondents: State or Local Governments, Businesses or Other For—Profit, and Non-Profit Institutions.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Periodic requests	1,200		1		0.5		600

Total Estimated Burden Hours: 600.

Status: Extension, no changes.

Contact: James J. Tahash, HUD, (202) 708–3944, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: May 26, 1994.

Proposal: Community Development Block Grants: State's Program.

Office: Community Planning and Development.

Description of the Need for the Information and Its Proposed Use: Section 104 (A) and (D) of the Housing Community Development Act of 1974, as amended, requires states to submit to HUD a final statement and a performance and evaluation report annually concerning the use of funds made available under Section 106 of the Act for HUD to determine statutory compliance.

Form Number: None.

Respondents: State or Local Governments.

Frequency of Submission: Annually and Recordkeeping.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Annual Report	49		2		308		30,184
Recordkeeping	49		1		6,120		299,880

Total Estimated Burden Hours: 330,064.

Status: Revision.

Contact: Richard J. Kennedy, HUD, (202) 708–1322, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: May 23, 1994.

Proposal: Preservation—Sales and Resident Homeownership.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: The form will assist grant recipients in receiving grant funds through the Department's automated Line of Credit System. The form will also assist HUD in reviewing and verifying payment of grant funds.

Form Number: HUD–9739.

Respondents: Non-Profit Institutions.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–9739	25		5		.25		31

Total Estimated Burden Hours: 31.

Status: New.

Contact: Arlene Halfon, HUD, (202) 708–1142, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: May 23, 1994.

Proposal: Previous Participation Certificate Joint HUD and USDA-Farmer's Home Administration Forms.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: The information collected will be used to evaluate the feasibility of applications for multifamily projects with respect to previous track and experience records of the applicants as owners, managers, consultants, general contractors, and nursing home operators and administrators.

Form Number: HUD–2503 and USDA Farmer's Home 1944–37.

Respondents: Individuals or Households and Businesses or Other For-Profit.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	11,250		1		0.6197		6,972

Total Estimated Burden Hours: 6,972.
Status: Extension with changes.
Contact: Thomas H. Hitchcock, HUD, (202) 708–3776, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: May 23, 1994.

Proposal: Transmittal of Form HUD–50058.

Office: Public and Indian Housing.

Description of the Need for the Information and Its Proposed Use: The form HUD–50060 allows the Department to establish appropriate management control procedures to assure complete and accurate reporting of information contained on form HUD–50058 submittals.

Form Number: HUD–50060.

Respondents: State or Local Governments.

Frequency of Submission: Monthly and Quarterly.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–50060	4,500		8.3		.05		1,867

Total Estimated Burden Hours: 1,867.
Status: Reinstatement, no changes.
Contact: Earl Simons, HUD, (202) 708–0744, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: May 23, 1994.

[FR Doc. 94–14685 Filed 6–15–94; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–4230–05–P; AA–6677–A]

Alaska Native Claims Selection; Notice for Publication

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Koniag, Inc., Regional Native Corporation for 140.00 acres. The lands involved are in the vicinity of Larsen Bay, Alaska.

U.S. Survey No. 9458, Alaska

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Kodiak Daily Mirror. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until July 18, 1994, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Terry R. Hassett,
Chief, Branch of Gulf Rim Adjudication.

[FR Doc. 94–14668 Filed 6–15–94; 8:45 am]

BILLING CODE 4310–JA–P

[AZ–020–04–7122–02–5491]

Notice of Intent To Prepare an Environmental Impact Statement

AGENCY: Department of Interior, Bureau of Land Management.

ACTION: Notice of Intent to prepare an environmental impact statement; Cyprus Bagdad Copper Mine, Bagdad, Arizona.

SUMMARY: The Bureau of Land Management, Phoenix District Office, is preparing an Environmental Impact Statement for the construction of a tailings facility expansion and south waste rock disposal facility for the existing open pit copper mine at Cyprus Bagdad. The mine is located near the Town of Bagdad, in Yavapai County, Arizona. Cyprus Bagdad Copper Corporation has submitted a proposed Mine Plan of Operations to the Bureau of Land Management, as required under the Code of Federal Regulations and title V of the Federal Land and Policy Management Act (FLPMA) of 1976. The Bureau of Land Management has responsibility for analysis, review, and approval of the mining plan. Preparation of the Environmental Impact Statement will follow the Code of Federal Regulations, title 40, subpart 1500.

The mine plan proposes the expansion of the existing Mammoth tailings impoundment, the development of the Upper Mammoth tailings impoundment, and the expansion of the south waste rock disposal facility to continue mineral and mining operations at Cyprus Bagdad. The public is invited to participate in the NEPA process beginning with scoping and the identification of issues in July 1994.

DATES: Public Scoping Meetings to identify issues will be held as follows:

Tuesday, July 12 (7–9 p.m.)
Holiday Inn
3100 Andy Devine
Meeting room C
Kingman, AZ

Wednesday, July 13 (7–9 p.m.)
Yavapai College
1100 E. Sheldon St.
Bldg. 3, room 133
Prescott, AZ

Written comments relating to the identification of issues will be accepted until August 13, 1994.

ADDRESSES: Send comments to: Bureau of Land Management, Phoenix District Office, Attn: Mary Johnson, 2015 W. Deer Valley Road, Phoenix, Arizona 85027.

FOR FURTHER INFORMATION CONTACT: Mary Johnson, Project Manager, Bureau of Land Management, Phoenix District Office, 2015 W. Deer Valley Road, Phoenix, Arizona 85027 (Phone: (602) 780–8090).

SUPPLEMENTARY INFORMATION: Cyprus Bagdad Copper Mine is located near the Town of Bagdad, about 60 miles northwest of Wickenburg on State Highway 96. The existing mine is an open pit copper mine with flotation mill

tailings, low grade dump leaching, and a solvent extraction-electro winning plant.

Two tailings facilities currently contain mill wastes. The current tailings facilities are nearing capacity and will need to be closed and expanded in two years.

The expansion of the Mammoth tailings would disturb approximately 410 additional acres. The Upper Mammoth tailings impoundment would disturb approximately 1,440 acres. The south waste rock disposal area would be located in Bevering Gulch and its tributaries, and the south fork of Mineral Creek, and disturb approximately 660 acres. Planned activities would take place on a combination of lands including public and private surface and mineral lands. The proposed action involves a total of approximately 305 acres of federal surface overlying federal minerals lands, and 705 acres of state surface overlying federal minerals lands.

Potential issues include surface and groundwater quality, air quality, cultural resources, biological resources, visual resources, and mine reclamation.

The Environmental Impact Statement (EIS) will be developed by a third party contractor who has been approved by the Bureau of Land Management. The contractor will use an interdisciplinary team to develop the document. The Bureau of Land Management will have the responsibility for the review of the EIS.

Complete records of all phases of the environmental documentation process will be available for public review at the Bureau of Land Management, Phoenix District Office, 2015 W. Deer Valley Road, Phoenix, Arizona 85027, and at the Bureau of Land Management, Kingman Resource Area, 2475 Beverly Ave., Kingman, Arizona 86401.

Dated: June 9, 1994.

David J. Miller,

Acting District Manager.

[FR Doc. 94–14626 Filed 6–15–94; 8:45 am]

BILLING CODE 4310–32–M

[AZ–040–4350–01]

Availability of An Environmental Assessment for the Land Tenure Amendment to the Safford District Resource Management Plan, Safford District, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of environmental assessment.

SUMMARY: The Safford District, United States Department of Interior, Bureau of Land Management has prepared an Environmental Assessment of a proposed amendment to the Safford District Resource Management Plan. The amendment proposes the following changes: 1. Modify the land tenure decisions for public lands within the District made in the Safford District Resource Management Plan. Specifically this amendment will identify additional lands for potential disposal, lands for retention, lands desired for acquisition and delete some lands previously identified for acquisition. 2. Incorporate and/or modify decisions in the Phoenix District Resource Management Plan, pertaining to lands transferred to Safford District, into the Safford District Resource Management Plan. 3. Include land tenure decisions for lands in the proposed Cienega Creek Long Term Management Area. 4. Consolidate and update decisions made in the Safford and Phoenix District RMPs concerning right-of-ways, access, communication sites, utility corridors, public land withdrawals, and hazardous materials.

DATES: Comments on the environmental assessment will be accepted until July 18, 1994.

ADDRESSES: 711 14th Avenue, Safford, Arizona 85546.

FOR FURTHER INFORMATION CONTACT: Mike McQueen, Planning and Environmental Coordinator, Safford District Office, 711 14th Avenue, Safford, Arizona 85546. Telephone (602) 428–4040.

SUPPLEMENTARY INFORMATION: The need for this amendment to the Safford District Resource Management Plan is generated by the creation of a third resource area, changes in District boundaries, adjustment of resource area boundaries, designation of wilderness areas, consideration of rivers and streams for Wild and Scenic designation and tentative proposals by the private sector to acquire or exchange lands within the District.

Dated: June 8, 1994.

Melanie J. Rohrer,

Acting District Manager.

[FR Doc. 94–14654 Filed 6–15–94; 8:45 am]

BILLING CODE 4310–32–M

[WY–920–41–5700; WYW113114]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

June 9, 1994.

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW113114 for lands in Sweetwater County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination. The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of the **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW113114 effective October 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis.

Supervisory Land Law Examiner.

[FR Doc. 94–14655 Filed 6–15–94; 8:45 am]

BILLING CODE 4310–22–M

[CA–010–4212–14, CACA 34312]

Realty Action; Direct Sale of Public Land, Placer County, CA

SUMMARY: The following described public land is being considered for direct sale pursuant to Section 203 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1713):

Placer County, California

T. 14N., R. 10E, M.D.M.,
Sec. 23: all Federal land (includes lots 16, 17, and 18);
Sec 34: lot 4 and all Federal land in N½N½.

Comprising 49-acres, more or less.

The above tracts are a irregularly-shaped remnants of public land that lack public access and are difficult to manage in Federal ownership; they are surrounded entirely by private land and would be sold to adjacent landowner Donald Ryan *et al* at fair market value. An additional $50.00 non-returnable mineral conveyance processing fee is required.

The tract would be transferred subject to a reservation to the United States for a right-of-way for ditches and canals. Also any rights-of-way of record would be identified as prior existing rights. All necessary clearances including clearances for archeology and for rare plants and animals would be completed prior to any conveyance of title by the United States. The proposal is consistent with the Bureau's land use

plans that support the disposal of small difficult to manage tracts.

The above described land is hereby segregated from settlement, location and entry under the public land laws and the mining laws for a period of 270 days from the date of publication of this notice in the **Federal Register**.

ADDRESSES: Interested parties may submit comments to the District Manager, c/o Folsom Resource Area Manager, 63 Natoma Street, Folsom, California 95630; comments must be received within 45 days from publication of this notice in the **Federal Register**.

FOR ADDITIONAL INFORMATION: Contact Mike Kelley at the above address or by phone at (916) 985–4474.

D.K. Swickard,

Area Manager.

[FR Doc. 94–14656 Filed 6–15–94; 8:45 am]

BILLING CODE 4310–40–M

[NV–930–03–4210–05; N–58092]

Notice of Realty Action, Direct Sale of Public Land, Pershing County, NV

SUMMARY: The following described land has been found suitable for direct sale under sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713 and 1719), at not less than fair market value:

Mount Diablo Meridian, Nevada

T. 28 N., R. 38 E.,
Sec. 1, S½S½NE¼, N½N½SE¼, SE¼SE¼NW¼, NE¼NE¼SW¼.
T. 28 N., R. 39 E.,
Sec. 5, Lot 4;
Sec. 6, Lots 8, 13, and 14, SE¼NW¼, S½NW¼NE¼.
T. 29 N., R. 39 E.,
Sec. 32, S½SW¼SW¼, SE¼NW¼SW¼, NE¼SW¼SW¼.

Containing approximately 319.86 acres.

The lands are not required for Federal purposes. Disposal is consistent with the Bureau's planning for this area and would be in the public's interest. This land is being offered by direct sale to Mr. Robert Vesco. It has been determined that the subject parcel contains no known mineral values, except geothermal steam and related geothermal resources and oil and gas. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests having no known value. The applicant will be required to pay a $50.00 non-refundable filing fee for conveyance of the said mineral interests.

The land will not be offered for sale until at least 60 days after publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ken Detweiler, Realty Specialist, 705 East 4th Street, Winnemucca, NV 89445, telephone (702) 623–1500.

SUPPLEMENTARY INFORMATION: The public lands are being offered to Mr. Robert Vesco for agricultural purposes. Part of the subject lands are adjoining Mr. Vesco's private land and the subject lands are contiguous. The soils have been determined to be suitable for agricultural purposes. Mr. Vesco has applied to the State Water Engineer for excess surface water to irrigate the subject parcels.

The above described land is hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above cited statutes, for 270 days from the date of publication of this notice, or until title transfer is completed or the segregation is terminated by publication in the **Federal Register**, whichever occurs first.

A patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (43 U.S.C. 945).
2. The geothermal steam, oil and gas in the land so patented.

And will be subject to:

Those rights for highway purposes granted to Pershing County for Grass Valley Road, N–53032, under the authority of Revised Statute 2477 (43 U.S.C. 932). For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Winnemucca District Office, Bureau of Land Management, 705 East 4th Street, Winnemucca, NV 89445. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Dated: June 7, 1994.

Robert J. Neary,

Acting District Manager.

[FR Doc. 94–14657 Filed 6–15–94; 8:45 am]

BILLING CODE 4310–HC–M

[OR 50847; OR–080–04–4210–04; G4–190]

Reality Action; Proposed Exchange; Oregon

June 7, 1994.

United States Department of the Interior, Bureau of Land Management, Salem District Office, Santiam Resource Area, 1717 Fabry Road SE, Salem, Oregon 97306.

Notice is hereby given that the Bureau of Land Management is considering a proposal to exchange lands pursuant to section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716), as amended. The exchange has been proposed by Seneca Jones Timber Company, P.O. Box 10265, Eugene, OR 97440.

The following-described public lands are being considered for transfer out of Federal ownership (the "Selected Land"):

Tsp.	Rng.	Sec.	Subdivision	Acres
12 S.	3 E.	23	SE¼SW¼, SW¼SE¼	80.00
12 S.	3 E.	27	N½NW¼SE¼, SW¼NW¼SE¼	30.00

In exchange, the United States would acquire the following-described lands from Seneca Jones Timber Company (the "Offered Land"):

Tsp.	Rng.	Sec.	Subdivision	Acres
12 S.	3 E.	33	N½NE¼;	80.00
12 S.	3 E.	34	NW¼ (portion);	50.00

Subject to valid existing rights, the above-described public lands have been segregated from appropriation under the public land laws and mineral laws for a period of five years beginning June 2, 1994.

More detailed information concerning the proposed exchange may be obtained from John Radosta, Realty Specialist,

Bureau of Land Management, Salem District Office, 1717 Fabry Road SE., Salem, OR (telephone: (503) 375-5664).

Interested parties may submit comments concerning the proposed exchange to the Santiam Area Manager at the above address. In order to be considered in the environmental assessment of the proposal, comments must be in writing to the Area Manager and be postmarked or delivered by July 29, 1994.

Paul Jeske,

Santiam Area Manager.

[FR Doc. 94-14610 Filed 6-15-94; 8:45 am]

BILLING CODE 4310-33-M

[OR-943-4210-05; GP4-188; OR-50354 (WASH)]

Withdrawal of Application for the Conveyance of Federally-Owned Mineral Interests; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the voluntary withdrawal of an application filed for the conveyance of the Federally-owned mineral estate by the surface estate owner and terminates the segregative effect as to the mineral interests from appropriation under the public land laws including the mining laws. The application was published in the **Federal Register** on February 25, 1994 (59 FR 9237).

EFFECTIVE DATE: July 22, 1994.

FOR FURTHER INFORMATION CONTACT: Pamela Chappel, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208, 503-280-7170.

SUPPLEMENTARY INFORMATION: Notice is hereby given that Willene E. Minnier, surface owner, Kettle Falls, Washington, has voluntarily withdrawn her application to purchase the Federally-owned mineral estate in the land described below:

Willamette Meridian

T. 33 N., R. 38 E.,
Sec. 7, lots 14-16.

The areas described aggregate 32.10 acres in Stevens County, Washington.

At 8:30 a.m., on July 22, 1994, the mineral interests described above will be open to appropriation under the public land laws including the mining laws.

Dated: June 7, 1994.

Robert D. DeViney, Jr.,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 94-14659 Filed 6-15-94; 8:45 am]

BILLING CODE 4310-33-P

[CA-065-94-4333-04]

Rand Mountains—Fremont Valley Management Plan and Environmental Assessment in the California Desert District—Ridgecrest Resource Area Kern County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of the final approval, availability and implementation of the Rand Mountains—Fremont Valley Management Plan in eastern Kern County, California.

SUMMARY: Notice is hereby given that the Rand Mountains—Fremont Valley Management Plan has been approved by the Bureau of Land Management (BLM), California Department of Fish and Game (CDFG) and U.S. Fish and Wildlife Service (USFWS). This plan covers a 65,020 acre area in eastern Kern County which is important habitat for the federally listed threatened desert tortoise. This plan was necessitated by the requirements of the Endangered Species Act (EPA) to protect a threatened species in an area subject to conflicting uses.

The plan has 88 major management decisions which put restrictions on all uses in the area for the purpose of protecting the native desert tortoise population, its habitat and the area's ecosystem. These plan use restrictions include restricting off-highway vehicle (OHV) use to a maximum of 129 miles of designated vehicular routes, restricting overnight camping to designated campsites, prohibiting all competitive OHV events and restricting use of firearms except for the lawful taking of upland game birds within an area identified for such use. The existing West Rand ACEC area will be expanded by 13,120 acres and changed from a Moderate to a Limited Multiple-Use Class under the California Desert Plan. A total of 32,590 acres of the plan area will be withdrawn from mineral entry. The plan designates 44,800 acres as category 1 desert tortoise habitat. USFWS consultations will be required pursuant to section 7 of the ESA when processing any new project proposals allowed under the plan which could impact the desert tortoise.

This plan covers all public lands in the Rand Mountains-Fremont Valley Management Area which is generally bounded by the community of Randsburg, CA and U.S. Highway 395 on the east, the Garlock and Randsburg-Red Rock Roads on the north, the western edge of Koehn Dry Lake and the Desert Tortoise Natural Area on the west, and private lands encompassed by the incorporated city limites of California City, CA on the south.

ORDER: Notice is hereby given that effective July 18, 1994, the following use restrictions will be in effect on public lands in the Rand Mountains-Fremont Valley Management Area.

1. No person may use, drive or otherwise operate a motorized vehicle except on those designated routes of travel that are identified by open route signs.

2. No person may discharge a firearm at any time except shotguns and then only from September 1 through January 31st for the lawful taking of upland game birds in the upland and mountains portion of the area as identified in the plan.

3. Camping is prohibited except in the eastern portion of the management area at sites identified in the plan.

Exemptions to this order include any otherwise authorized activity or as approved by the California Desert District Manager or the Ridgecrest Area Manager. Maps identifying the plan area, plan use restrictions, and the network of designated vehicular routes of travel are available from the Ridgecrest Resource Area office.

Authority for these plan restrictions is found in 43 CFR 8364.1. Violation of these restrictions is punishable by a fine not to exceed $1,000 and/or 12 months in jail.

SUPPLEMENTARY INFORMATION: The purpose of this plan and use restrictions is to provide increased protection for the desert tortoise populations and its habitat in an important part of its range. The desert tortoise was listed as a threatened species under the ESA in 1989 and is afforded increased protection under terms of the Act and this plan. During the interim while this plan was developed, the Bureau initiated a 14 month temporary closure for the plan area and then reopened the area on November 22, 1990 to restricted use pending approval of the final plan. Since November 22, 1990, Bureau personnel along with a large group of California Off-Road Vehicle Association volunteers have worked to implement the plan decisions on an interim basis as approved through a consultation with the USFWS and January 23, 1991 **Federal Register** notice. This interim FR notice will expire upon publication of this FR notice.

A formal section 7 consultation on this plan was conducted with the USFWS and a non-jeopardy biological opinion was issued on March 10, 1993. This opinion provided additional terms and Conditions which were incorporated into the plan. The opinion

determined that this plan would result in management actions that would greatly reduce the existing magnitude of adverse impacts to the desert tortoise and its habitat.

A 10 member volunteer Technical Review Team (TRT) was instrumental in the development of this plan. Team members represented all primary interest groups, the CDFG and California City. They met regularly for three years to evaluate available data and made management recommendations for the plan. The TRT is continuing to assist in reviewing procedures for implementing the plan decisions and evaluating the plan effectiveness in protecting the plan areas desert tortoise populations.

EFFECTIVE DATE: The decision is effective July 18, 1994. This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained 43 CFR, part 4. If an appeal is taken, your notice must be filed at the Ridgecreat Resource Area office (address below) within 30 days from receipt of this decision. The appellant has the burden of showing that the decision they have appealed is in error.

FOR FURTHER INFORMATION: Copied of the final Rand Mountains-Fremont Valley Management Plan and Environmental Assessment are available from the Bureau of Land Management, Ridgecrest Resource Area, 300 South Richmond Road, Ridgecrest, CA 93555, 619–375–7125. Specific questions concerning this plan should be directed to Staff Chief Steve Smith.

Dated: June 2, 1994.

Henri R. Bisson,

District Manager.

[FR Doc. 94–14611 Filed 6–15–94; 8:45 am]

BILLING CODE 4310–40–M

[CA–940–4210–10; CACA 8046, CALA 0170921, CALA 0165034, CAS 048741, CAS 063413, CAS 070413, CAS 080047]

Notice of Proposed Continuation of Withdrawal; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture, Forest Service, has proposed to continue withdrawals on 4679.48 acres for 20 years and 3400.00 acres for 50 years within the Sierra National Forest. The segregative effect on these withdrawals remains unchanged.

DATES: Comments should be received on or before September 14, 1994.

ADDRESSES: Comments should be sent to the California State Director, BLM, 2800 Cottage Way, Room E–2845, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Marcia Sieckman, BLM California State Office, 916–978–4820.

SUPPLEMENTARY INFORMATION:

1. CACA 8046

The land is described as follows:

Mount Diablo Meridian, T. 6 S., R. 24 E., sec. 28, SW¼NW¼SW¼, NW¼SW¼SW¼; sec. 29, SE¼NE¼SE¼, NE¼SE¼SE¼.

The area described contains 40 acres in Madera County.

The purpose of this withdrawal is to protect the Placer Administrative Site.

2. CALA 0170921

The land is described as follows:

Mount Diablo Meridian, T. 11 S., R. 27 E., sec. 35, S½SE¼SE¼, sec. 36, SW¼. T. 12 S., R. 27 E., sec. 1, lots 3 and 4, N½SE¼NW¼; sec. 2, lot 1.

The area described contains 345.42 acres in Fresno County.

Mount Diablo Meridian, T. 23 S., R. 33 E., sec. 7, lot 4, SE¼SW¼.

The area described contains 80.85 acres in Tulare County.

The purpose of the withdrawal is to protect Kings Cavern Geologic Area.

3. CALA 0165034

The land is described as follows:

Mount Diablo Meridian, T. 11 S., R. 27 E., sec. 15, SW¼; sec. 16, S½NE¼, W½, SE¼; sec. 17, ALL; sec. 20, E½, E½W½, W½NW¼; sec. 21, ALL; sec. 22, W½; sec. 27, N½NW¼; sec. 28, N½N½; sec. 29, N½NE¼.

The area described contains 3200.00 acres in Fresno County.

The purpose of this withdrawal is to protect the Teakettle Experimental Forest.

4. CAS 048741

The land is described as follows:

Mount Diablo Meridian, T. 6 S., R. 22 E., sec. 4, W½SW¼; sec. 5, lots 3 and 4, S½NW¼, S½; sec. 6, lots 1,2, E½ lot 3, S½NE¼, E½SE¼NW¼, E½E½SW¼, SE¼; sec. 7, SE¼NE¼; sec. 8, N½SW¼.

The area described contains 1384.56 acres in Madera County.

Mount Diablo Meridian, T. 8 S., R. 25 E., sec. 12, N½N½, sec. 16, N½SE¼, N½NW¼SW¼SE¼, SW¼NW¼SW¼SE¼, SE¼SW¼SW¼SE¼, S½SE¼SW¼SE¼, E½SE¼SE¼, E½W½SE¼SE¼, SW¼SW¼SE¼SE¼. T. 8 S., R. 26 E., sec. 5, SW¼; sec. 6, lots 6 and 7, E½SW¼, SE¼; sec. 17, ALL; sec. 18, lots 1 to 4 inclusive, E½, E½W½; sec. 19, lots 1 and 2, NE¼, E½NW¼; sec.20, N½.

The area described contains 2,693.65 acres in Fresno County.

The purpose of the withdrawal is to protect campgrounds, mature Giant Sequoia trees, and assorted recreational facilitites.

5. CAS 063413

The land is described as follows:

Mount Diablo Meridian, T. 10 S., R. 26 E., sec. 26, SW¼SE¼; sec. 35, NW¼NE¼, NE¼NW¼, NE¼SW¼, NW¼SE¼.

The area described contains 200.00 acres in Fresno County.

The purpose of the withdrawal is to protect the McKinley Big Tree Grove Recreation Area.

6. CAS 070413

The land is described as follows:

Mount Diablo Meridian, T. 10 S., R. 25 E., sec. 21, SE¼SE¼SE¼; sec. 22, SW¼SW¼SW¼; sec. 27, NW¼NW¼NW¼; sec. 28, NE¼NE¼NE¼.

The area described contains 40.00 acres in Fresno County.

7. CAS 080047

The land is described as follows:

Mount Diablo Meridian, T. 5 S., R. 24 E., sec. 10, SE¼SW¼NE¼, SW¼SE¼NE¼, NW¼NE¼SE¼, NE¼NW¼SE¼.

The area described contains 40.00 acres in Madera County.

Mount Diablo Meridian, T. 38 N., R. 12 W., sec. 9, SE¼NE¼, NE¼NE¼SE¼, N½NW¼NE¼SE¼.

The area described contains 55.00 acres in Siskiyou County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed continuation of withdrawal may present their views in writing to the California State Director of the Bureau of Land Management.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and the Congress, who will determine whether or not the withdrawal will be continued and, if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Nancy J. Alex,

Chief, Lands Section.

[FR Doc. 94–14612 Filed 6–15–94; 8:45 am]

BILLING CODE 4310–40–P

[MT-930-4210-06-P; MTM 924, MTM 27963, MTM 83069]

Proposed Withdrawal; Opportunity for Public Meeting; Extended Comment Period for Previously Proposed Withdrawals; MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to withdraw 1,800.10 acres of National Forest System lands for 20 years to protect the Cave Mountain Research Natural Area (RNA). This notice closes the lands for up to 2 years from location and entry under the United States mining laws. The lands will remain open to all other uses which may be made of National Forest System lands. This notice also provides an additional 60 days in which to comment on previously filed withdrawal applications for Cottonwood Creek RNA, Trapper Creek Charcoal Kilns, and Canyon Creek Charcoal Kilns.

DATES: Comments and requests for a public meeting relating to the Cave Mountain RNA should be received on or before September 14, 1994. Comments and requests for a public meeting relating to Cottonwood Creek RNA, Trapper Creek Charcoal Kilns, and Canyon Creek Charcoal Kilns should be received on or before August 15, 1994.

ADDRESSES: Comments and meeting requests should be sent to the Montana State Director, BLM, P.O. Box 36800, Billings, Montana 59107.

FOR FURTHER INFORMATION CONTACT: Sandra Ward, BLM Montana State Office, 406-255-2949.

SUPPLEMENTARY INFORMATION:

1. On May 27, 1994, the Department of Agriculture filed an application to withdraw the following described National Forest System lands from location and entry under the United States mining laws (30 U.S.C. Ch. 2), subject to valid existing rights:

Principal Meridian, Montana

Beaverhead National Forest—Cave Mountain RNA

T. 10 S., R. 1 W.,
Sec. 31, lots 3 and 4, E½ and S½SW¼;
Sec. 32, NE¼, W½, NE¼SE¼, and W½SE¼.
T. 11 S., R. 1 W.,
Sec. 5, W½NE¼ and NW¼;
Sec. 6, N½ and N½S½.

The areas described aggregate 1,800.10 acres in Madison County.

The purpose of this withdrawal is to protect a study plot for vegetative research.

2. The comment periods are being extended for an additional 60 days for three previously filed Department of Agriculture withdrawal applications for the public lands described in the Notices of Proposed Withdrawal published December 1, 1966, in 31 FR 15098, and April 10, 1974, in 39 FR 13902.

3. For a period of 90 days from the date of publication of this notice for lands described in paragraph 1 and 60 days from the date of publication of this notice for lands described in paragraph 2, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal in may present their views in writing to the Montana State Director of the Bureau of Land Management.

4. Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawals. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Montana State Director within 90 days from the date of publication of this notice for lands described in paragraph 1 and 60 days from the date of publication of this notice for lands described in paragraph 2. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the Federal Register at least 30 days before the scheduled date of the meeting.

5. The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

6. For a period of 2 years from the date of publication of this notice in the Federal Register, the lands described in paragraph 1 will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which will be permitted during this segregative period are those currently allowed on the existing study plot.

Dated: June 7, 1994.

Dee L. Baxter,

Chief, Lands Adjudication Section.

[FR Doc. 94-14658 Filed 6-15-94; 8:45 am]

BILLING CODE 4310-DN-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-706 (Preliminary)]

Canned Pineapple Fruit From Thailand; Import Investigations

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a preliminary antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731-TA-706 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. section 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Thailand of canned pineapple fruit,[1] provided for in subheading 2008.20.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by July 25, 1994.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: June 8, 1994.

FOR FURTHER INFORMATION CONTACT: Brad Hudgens (202-205-3189), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202-205-1895 (N,8,1).

[1] For purposes of this investigation, canned pineapple fruit is defined as pineapple, otherwise prepared or preserved, that is cored and sliced into one of several product forms, including rings, pieces, chunks, tidbits, and crushed, and is packed into metal cans; either pineapple juice or sugar (heavy) syrup is added.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on June 8, 1994, by Maui Pineapple Company, Ltd.; Kahului, Hawaii.

Participation in the Investigation and Public Service List

Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under An Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this preliminary investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on June 29, 1994, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Brad Hudgens (202–205–3189) not later than June 27, 1994, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before July 5, 1994, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII, the Tariff Act of 1930, as amended. This notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: June 13, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–14700 Filed 6–15–94; 8:45 am]

BILLING CODE 7020–02–P

[332–355]

North American Free-Trade Agreement: Probable Economic Effect on U.S. Industries and Consumers of Accelerated Elimination of U.S. Tariffs on Certain Articles From Mexico and Canada

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

SUMMARY: Following receipt on May 26, 1994, of a request from the U.S. Trade Representative (USTR), the Commission instituted investigation No. 332–355 under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) to advise the President, with respect to each dutiable article listed in Annex I of the USTR's notice published in the **Federal Register** of May 23, 1994 (59 FR 26686), as further identified in the supplemental document prepared by USTR, of its judgment as to the probable economic effect of the immediate elimination of the U.S. tariff, under the North American Free-Trade Agreement (NAFTA), on domestic industries producing like or directly competitive articles, and on consumers.

USTR asked that the Commission provide its advice not later than 90 days after the Commission received the request, or in this case by August 24, 1994. USTR has indicated that it may classify all or part of the Commission's report.

EFFECTIVE DATE: June 10, 1994.

FOR FURTHER INFORMATION CONTACT: The project leader, Mr. Carl Seastrum (202–205–3493), Minerals, Metals, and Miscellaneous Manufactures Division, Office of Industries, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. For information on legal aspects of the investigation contact Mr. William Gearhart of the Commission's Office of the General Counsel (202–205–3091). The media should contact Ms. Peg O'Laughlin, Director of Public Affairs (202–205–1819). For information on a product basis, contact the appropriate member of the Commission's Office of Industries, as follows:

(1) Agricultural and forest products, Mr. Rick Rhodes (202–205–3322)
(2) Chemical, energy-related, textile, apparel, and footwear products, Mr. Lee Cook (202–205–3471)
(3) Machinery and transportation, Ms. Kathy Lahey (202–205–3409)
(4) Minerals, metals, and miscellaneous manufactures, Ms. Gail Burns (202–205–2501)
(5) Electronic products, Mr. Andrew Malison (202–205–3391)

Hearing-impaired persons can obtain information on this study by contacting our TDD terminal on (202–205–1810).

Background: The USTR stated in his letter that the Governments of the United States, Mexico, and Canada have agreed to enter into consultations to consider acceleration of the elimination of the import duty on certain articles. The USTR further stated that the President is authorized by section 201(b) of the North American Free Trade Agreement Implementation Act of 1993, subject to the consultation and lay-over requirements of section 103 of the Act, to proclaim any accelerated schedule for duty elimination that may be agreed to by the United States, Mexico, and Canada under Article 302(3) of the NAFTA. One of the requirements set out in section 103 is that the President obtain advice regarding the proposed action from the United States International Trade Commission.

Public Hearing: A public hearing in connection with the investigation will be held in the Commission Hearing Room, 500 E Street SW., Washington,

DC, beginning at 9:30 a.m. on July 27, 1994, and continuing, as required, on July 28. All persons will have the right to appear by counsel or in person, to present information, and to be heard. Persons wishing to appear at the public hearing should file requests to appear not later than July 15, 1994. Prehearing briefs (original and 14 copies) should also be filed with the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436, not later than 5 p.m., July 18, 1994. Any post-hearing briefs must be filed by August 2, 1994.

Written Submissions: Interested persons are invited to submit written statements concerning the investigation. Written statements should be received by the close of business on August 2, 1994. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC.

Issued: June 13, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–14701 Filed 6–15–94; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–6 (Sub-No. 360X)]

Burlington Northern Railroad Company—Abandonment Exemption—in Buffalo County, NE

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904 the abandonment by Burlington Northern Railroad Company of 3.86 miles of rail line extending between milepost 20.53 and milepost 24.39 near Kearney in Buffalo County, NE, subject to standard labor protective conditions and a public use condition. Interim trail use has been approved.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 16, 1994. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by June 24, 1994; petitions to stay must be filed by July 1, 1994; and petitions to reopen must be filed by July 11, 1994.

ADDRESSES: Send pleadings referring to Docket No. AB–6 (Sub-No. 360X) to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and (2) Sarah J. Whitley, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Forth Worth, TX 76102–5384.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 927–5721.)

Decided: June 10, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, Commissioners Simmons and Morgan.

Sidney L. Strickland, Jr.

Secretary.

[FR Doc. 94–14793 Filed 6–15–94; 8:45 am]

BILLING CODE 7035–01–P

[1] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

DEPARTMENT OF JUSTICE

Notice of Consent Judgment Pursuant to the Clean Air Act

In accordance with Departmental Policy, 28 CFR § 50.7, notice is hereby given that a proposed consent decree in *United States* v. *179 South Street Venture, et al.*, (D. N.J.), Civil Action No. 90–4310 (JWB), was lodged with the United States District Court for the District of New Jersey on May 25, 1994. The proposed consent decree requires the Defendants to pay a civil penalty of $74,000 jointly for violations of the Clean Air Act, 42 U.S.C. section 7401 *et seq.* (the "Act") (as amended 1977), and the National Emission Standards for Hazardous Air Pollutants for Asbestos ("Asbestos NESHAP"), 40 CFR part 61, subpart M during the removal of asbestos from pipes and a boiler in an apartment complex in East Orange, N.J. The proposed Consent Decree also provides for the following injunctive requirements: Prior to any future demolition or renovation of facilities owned or operated by Defendants, Defendants must (1) survey any facility to determine the presence of regulated asbestos containing materials ("RACM"); (2) notify EPA of any RACM; (3) establish an internal program to assure compliance with asbestos NESHAP and designate an asbestos control officer for the project; and (4) all contractors and employees who participate in demolition or renovation involving RACM must successfully complete an EPA approved course.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, written comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to United States v. 179 South Street Venture, *et al.*, D.O.J. Ref. No. 90–5–2–1–1494.

The proposed Consent Decree may be examined at the Office of the United States Attorney, District of New Jersey, Federal Building, room 502, 970 Broad Street, Newark, New Jersey 07102 (c/o Susan Handler-Menahem); at the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, room No. 437, New York, New York 10278; and at the Consent Decree Library, 1120 G Street, NW., 4th floor, Washington, DC 20005. A copy of the Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $4.50 (25 cents per page reproduction costs) payable to Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–14660 Filed 6–15–94; 8:45 am]

BILLING CODE 4410–01–M

Notice of Consent Decree in Action Brought Under the Clean Air Act

In accordance with Departmental policy, 28 CFR § 50.7, notice is hereby given that a consent decree in *United States* v. *Lafarge, et al.*, Civil Action No.

4–94CV–356Y, was lodged with the United States District Court for the Northern District of Texas on May 25, 1994. This Consent Decree resolves a Complaint filed by the United States against Lafarge pursuant to section 113 of the Clean Air Act, 42 U.S.C. section 7413.

The United States Department of Justice brought this action on behalf of the U.S. Environmental Protection Agency, seeking to recover a civil penalty against defendant Lafarge for alleged violations of the Clean Air Act and the National Emission Standards for Hazardous Air Pollutants for asbestos ("the asbestos NESHAP") during the 1989 demolition of a mill building at Lafarge's Fort Worth cement manufacturing and distribution facility. As part of the settlement in this case, defendant Lafarge will pay the United States a civil penalty of $10,000 and will conduct future demolition and renovation operations in compliance with the inspection, notification, and work practice requirements of the asbestos NESHAP.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044 and refer to United States v. Lafarge *et al.*, DOJ number 90–5–2–1–1865.

Copies of the proposed Consent Decree may be examined at the Office of the United States Attorney, Northern District of Texas, 801 Cherry Street, suite 1700, Forth Worth, Texas 76102–3697, and at the U.S. Environmental Protection Agency, Office of the Regional Counsel, Region VI, 1445 Ross Avenue, Dallas, Texas 75202. Copies of the proposed Consent Decree may also be obtained from the Consent Decree Library, 1120 G Street, NW., Fourth floor, Washington DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained by mail or in person from the Consent Decree Library. When requesting a copy of the Consent Decree, please enclose a check in the amount of $2.50 (25 cents per page reproduction costs) payable to the Consent Decree Library.

John C. Cruden,

Chief Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–14661 Filed 6–15–94; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Manufacturer of Controlled Substances, Notice of Application Correction—the PF Laboratories, Inc.

In the **Federal Register** (FR Doc. 94–10678) Vol. 59, No. 85 at page 23083, May 4, 1994, the statement after the listing of controlled substances should read, "The firm plans to manufacture the listed bulk substances for its own production of commercial controlled drug products and for other manufacturers," for the PF Laboratories, Inc., 700 Union Blvd., Totowa, New Jersey 07512.

Dated: June 6, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94–14673 Filed 6–15–94; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–29,394]

Martin Marietta Projection Display Products, Syracuse, NY; Notice of Affirmative Determination Regarding Application for Reconsideration

On May 25, 1994, after being granted a filing extension, the company requested administrative reconsideration of the Department's denial notice for workers at the subject firm. The notice was issued on March 30, 1994 and was published in the **Federal Register** on April 13, 1994 (59 FR 17570).

The company indicated that the Department's original survey was inadequate and submitted a supplemental list of bid loss customers accounting for a major portion of its 1993 sales decline.

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 8th day of June 1994.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 94–14695 Filed 6–15–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–28,842]

Thomas Cort, Inc., Philadelphia, PA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 13, 1993, applicable to all workers of the subject firm. The certification notice was published in the **Federal Register** on October 29, 1993 (58 FR 58187).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. A few workers were laid off prior to the Department's impact date of June 24, 1993. The intent of the Department's certification is to include all workers who were adversely affected by increased imports. Accordingly, the Department is amending the certification with a new impact date of January 1, 1993.

The amended notice applicable to TA–W–28,842 is hereby issued as follows:

All workers of Thomas Cort, Inc., Philadelphia, Pennsylvania engaged in the production of women's leather footwear 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 in Washington, DC, this 3rd day of June 1994.

Violet L. Thompson,

Deputy Director, Office of Trade Adjustment Assistance.

[FR Doc. 94–14696 Filed 6–19–94; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL LABOR RELATIONS BOARD

National Labor Relations Board Advisory Committee on Agency Procedure; Meetings

AGENCY: National Labor Relations Board.

ACTION: Notice of meetings.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. app. 2 (1972), and 29 CFR § 102.136 (1993), the National Labor Relations Board has established a National Labor Relations Board Advisory Committee on Agency Procedure, the purpose of which is to provide input and advice to the Board and General Counsel on changes in Agency procedures that will expedite

case processing and improve Agency service to the public. A notice of the establishment of the Advisory Committee was published in the **Federal Register** on May 13, 1994 (59 FR 25128).

As indicated in that notice, the Committee consists of two Panels which will meet separately, one composed of Union-side representatives and the other of Management-side representatives. Pursuant to section 10(a) of FACA, the Agency hereby announces the first meetings of the Advisory Committee Panels on June 27, 1994 (Union-side), and June 29, 1994 (Management-side).

TIME AND PLACE: The meeting of the Union-side Panel of the Advisory Committee will be held at 10 a.m. on Monday, June 27, 1994, at the National Labor Relations Board, 1099 14th Street, NW., Washington, DC, in the Board Hearing Room, room 11000. The meeting of the Management-side Panel of the Advisory Committee will be held at 10 a.m. on June 29, 1994, at the same location.

AGENDA: The agenda at the meetings of both Advisory Committee Panels will be: (1) How the performance of the NLRB Administrative Law Judges can be enhanced; and (2) the issue of postal or mail ballots in NLRB elections.

PUBLIC PARTICIPATION: The meetings will be open to the public. As indicated in the Agency's prior notice, within 30 days of adjournment of the later of the Advisory Committee Panel meetings, any member of the public may present written comments to the Committee on matters considered during the meetings. Written comments should be submitted to the Committee's Management Officer and Designated Federal Official, Miguel A. Gonzalez, Executive Assistant to the Chairman, National Labor Relations Board, 1099 14th Street, NW., suite 11104, Washington, DC 20570–0001; telephone: (202) 273–2864.

FOR FURTHER INFORMATION CONTACT: Advisory Committee Management Officer and Designated Federal Official, Miguel A. Gonzalez, Executive Assistant to the Chairman, National Labor Relations Board, 1099 14th Street, NW., suite 11104, Washington, DC 20570–0001; telephone: (202) 273–2864.

Dated: June 10, 1994.

By direction of the Board.

John C. Truesdale,

Executive Secretary.

[FR Doc. 94–14672 Filed 6–15–94; 8:45 am]

BILLING CODE 7545–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Civil and Mechanical Systems; Notice Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name: Special Emphasis Panel in Civil and Mechanical Systems (#1205).

Date and Time: July 7 & 8 1994; 8:30 a.m. to 5 p.m.

Place: NSF, rm. 530, 4201 Wilson Blvd., Arlington, VA 22230.

Contact: Dr. Oscar W. Dillon/Dr. William A. Spitzig, Program Directors, (703) 306–1361.

Type of Meeting: Closed.

Purpose of Meeting: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: June 13, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–14639 filed 5–15–94; 8:45 am]

BILLING CODE 7555–01–M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Notice of Availability

AGENCY: Office of Management and Budget, Office of Federal Procurement Policy.

ACTION: Notice of availability of the Procurement Regulatory Activity Report, Number 10.

SUMMARY: Subsections 25(g) (1) and (2) of the Office of Federal Procurement Policy (OFPP) Act, as amended by Public Law 100–679, codified at 41 U.S.C. section 421(g), require the Administrator for Federal Procurement Policy to publish a report within six months after the date of enactment and every six months thereafter relating to the development of procurement regulations.

Accordingly, OFPP has prepared this report, which is designed to satisfy all aspects of subsections 25(g) (1) and (2) of the OFPP Act, and includes information on the status of each regulation; a description of those regulations required by statute; a description of the methods by which public comment was sought; regulations, policies, procedures, and forms under review by the OFPP; whether the regulations have paperwork requirements; the progress made in promulgating and implementing the Federal Acquisition Regulation; and such other matters as the Administrator determines to be useful.

ADDRESSES: Those persons interested in obtaining a copy of the Procurement Regulatory Activity Report may contact the Executive Office of the President Publications Service, room 2200, 725 17th Street NW., Washington, DC 20503 or phone 202–395–7332.

ADDITIONAL INFORMATION: For additional information write the Office of Federal Procurement Policy, 725 17th Street NW., Washington, DC 20503 or call 202–395–6803.

Dated: June 13, 1994.

Steven Kelman,

Administrator.

[FR Doc. 94–14662 Filed 6–15–94; 8:45 am]

BILLING CODE 3110–01–M

PRESIDENT'S COUNCIL ON SUSTAINABLE DEVELOPMENT

Comment on Draft Vision, Statement and Principles of Sustainable Development for the United States

SUBJECT: The President's Council on Sustainable Development (PCSD) seeks public comment on draft vision statement and principles of sustainable development for the United States.

SUMMARY: The President's Council on Sustainable Development has released its long-term vision of sustainable development and the working draft of defining principles to the public. The 15 principles are designed to give perspective on how our Nation can couple the development of a healthy economy with the preservation of our cultural and natural resources.

The PCSD is inviting interested individuals and organizations to submit comments and suggestions on the draft vision statement and principles. Public comment would enhance and assist in the process of defining what a sustainable United States will look like in the year 2050 and beyond.

The President's Council on Sustainable Development is a cooperative partnership between industry, labor, government and environmental organizations, not-for-profit groups and civil rights

organizations. To obtain a copy of the draft vision statement and principles and a public comment form, please write to the PCSD at the contact address.

CONTACT: President's Council on Sustainable Development, MS 7456–MIB, 1849 C Street, NW., Washington, DC 20240, attn: Principles.

Molly Harriss Olson,

Executive Director, President's Council on Sustainable Development.

[FR Doc. 94–14105 Filed 6–15–94; 8:45 am]

BILLING CODE DD1100R14–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34179; File No. SR–GSCC–94–03]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Approving Proposed Rule Change Relating to Minimum Financial Standards for Bank Netting System Members

June 8, 1994.

On April 18, 1994, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–GSCC–94–03) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The proposed rule change lowers the minimum shareholders' equity standard for GSCC bank netting system members. The Commission published notice of the proposed rule change in the **Federal Register** on May 9, 1994.[2] No comments were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The proposed rule change allows GSCC to change the minimum shareholders' equity standard for bank netting system members. In 1989, prior to the commencement of GSCC's netting system, a minimum admission and continuance standard of $250 million in shareholders' equity was established for banks or trust companies ("banks") that are, or are applying to become, members of GSCC's netting system.[3] This level was chosen because, at the time, it encompassed roughly the one hundred largest banks in the United States and, thus, reflected GSCC's initial focus on providing its netting and attendant risk protection services to only the largest market participants.

The proposed rule change, however, lowers the minimum shareholders' equity standard for bank netting members to $100 million. This standard will help ensure that each bank netting member, while not necessarily among the largest banks in the country, is still a sizable one.

II. Discussion

The Commission believes that GSCC's proposed rule change is consistent with section 17A of the Act,[4] and in particular, sections 17A(b)(3) (A) and (F) of the Act. Sections 17A(b)(3) (A) and (F) require that a clearing agency be so organized and that its rules be designed to promote the prompt and accurate clearance and settlement of securities transactions for which it is responsible and to safeguard securities and funds in its custody or control or for which it is responsible. The Commission believes that GSCC's proposal is consistent with these goals.

The Commission believes that the proposal will facilitate broader access to the government securities market. Specifically, it will allow a greater number of banks that are active participants in the government securities market to receive the benefits of GSCC's services.

The Commission also believes that GSCC has established reasonable financial and operational requirements for the admission of bank applicants. In addition to the minimum shareholders' equity standard, GSCC will explicitly impose in its rules an additional standard on all bank netting system applicants and members. The capital ratios (*i.e.*, total risk-based ratio, tier 1 risk based ratio, and tier 1 leverage ratio) of all bank netting system applicants and members must meet the minimum levels specified by the applicable bank regulatory agency. In conjunction with this change, each bank netting member would be required to report periodically to GSCC each of its capital ratios for which its appropriate regulatory authority has established standards (or the capital ratios that it would be required to report to the Board of Governors of the Federal Reserve System ("Fed") if it were a Fed member bank).

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the Act, and in particular with section 17A of the Act, and with the rules and regulations thereunder.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[5] that the proposed rule change (File No. SR–GSCC–94–03) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–14663 Filed 6–15–94; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. section 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 33981 (April 28, 1994), 59 FR 23906.

[3] See Securities Exchange Act Release No. 27006 (July 14, 1989), 54 FR 29798.

[4] 15 U.S.C. section 78q–1 (1988).

[5] 15 U.S.C. section 78s(b)(2) (1988).

[6] 17 CFR § 200.30–3(a)(12).

DEPARTMENT OF STATE

Bureau of Intelligence and Research

[Public Notice 2019]

Announcement of FY 1994 Russian, Eurasian and East European Studies Grant Recipients

On March 12, 1994, the U.S. Department of State approved the December 3, 1993, recommendations of the Russian, Eurasian and East European Studies Advisory Committee for awards in the competition which ended October 1, 1993.

1. American Council of Teachers of Russian/American Council for Collaboration in Education and Language Study

Grant: $370,000

Purpose: To provide fellowships for in-country training through the Academic Year and Semester language programs and the Combined Research and Language Training program in Russian, Eurasian and East European languages.

Contact: Dan E. Davidson, Director, ACTR/ACCELS, 1776 Massachusetts Avenue NW., Suite 700, Washington, DC 20036 (202) 833–7522

2. Council on International Educational Exchange

Grant: $160,000

Purpose: To support fellowship programs for in-country advanced Russian; and Russian for Social Science, Business and Science Students.

Contact: Damon B. Smith, Deputy Executive Director, Cooperative Russian Language Program/CIEE, 205 East 42nd Street, New York, NY 10017 (212) 661–1414

3. Hoover Institution on War, Revolution and Peace at Stanford University

Grant: $200,000

Purpose: To support postdoctoral fellowships (6–12 months duration) and summer grants for individual research projects on Russia, Eurasia and East Europe at Hoover.
Contact: Richard F. Staar, Senior Fellow, Hoover Institution, Stanford, CA 94305–6010, (415) 723–1348

4. University of Illinois at Urbana-Champaign

Grant: $174,577
Purpose: To provide partial funding for the University's Summer Research Laboratory, and the Slavic Reference Service.
Contact: Diane P. Koenker, Program Administrator, Russian and East European Center, University of Illinois at Urbana-Champaign, 104 International Studies Building, 910 South Fifth Street, Champaign, IL 61820, (217) 333–1244

5. Institute on International Education

Grant: $150,000
Purpose: To support approximately 12–13 Professional Development Fellowships for one year for advanced graduate students and junior faculty in professional fields for research on policy analysis of East Central Europe and Eurasia.
Contact: Theresa Granza, Institute of International Education, 809 United Nations Plaza, New York, NY 10017–3580, (212) 883–8200, Fax (212) 984–5452

6. International Research and Exchanges Board

Grant: $2,250,000
Purpose: To support a variety of programs facilitating American scholarly access to Russia, Eurasia and East Europe: individual field research exchanges; predeparture orientation; long-term individual research fellowships for American graduate students; short-term travel grants; special projects; research residencies; and dissemination of field results.
Contact: Robert T. Huber, Vice President, IREX, 1616 H Street NW., Washington, DC 20006, (202) 628–8188

7. Joint Committee on Eastern Europe

Grant: $1,200,000
Purpose: To support fellowship for advanced graduate training, dissertation completion, pre- and postdoctoral research; individual and institutional language training grants; US centers in East Europe, research conferences; and the Junior Scholars' Training Seminar.
Contact: Jason Parker, Executive Associate, JCEE/American Council of Learned Societies, 228 East 45th Street, New York, NY 10017–3398 (212) 697–1505 (ext. 134/135)

8. Joint Committee on the Soviet Union and its Successor States

Grant: $1,785,980
Purpose: To support a national fellowship program for graduate training, dissertation completion, and postdoctoral research, including a professional development and retraining program; an annual workshop in underepresented fields; institutional grants for intensive training in Russian and non-Russian languages of the former Soviet Union; a research & development program; and support for the *American Bibliography for Slavic and East European Studies* (ABSEES).
Contact: Susan Bronson, Staff Associate, JCSSS/Social Science Research Council, 605 Third Avenue, New York, NY 10158 (212) 661–0280

9. National Academy of Sciences

Grant: $125,000
Purpose: To support a postdoctoral fellowship program for collaborative research between American specialists and their colleagues in the fields of public policy in the former Soviet Union and Central Europe.
Contact: Gary R. Waxmonsky, Acting Director, Office for Central Europe and Eurasia, National Academy of Sciences/National Research Council, 2101 Constitution Avenue NW., (FO 2014), Washington, DC 20418 (202) 334–2644

10. National Council for Soviet and East European Research

Grant: $2,460,000
Purpose: To conduct a national competition among American institutions of higher education and non-profit corporations in support of postdoctoral research projects on Russia, Eurasia, and East Europe.
Contact: Robert Randolph, Executive Director, NCSEER, 1755 Massachusetts Avenue NW., Suite 304, Washington, DC 20036 (202) 387–0168

11. The Woodrow Wilson Center for International Scholars

Grant: $1,109,443 ($704,440 to Kennan; $405,003 to EES)
Purpose: To support the fellowships, meetings, and publications programs of the Kennan Institute for Advanced Russian Studies and the East European activities of the East and West European Program, including the annual Junior Scholars' Training Seminar.
Contact: Blair Ruble, Director, Kennan Institute or John Lampe, Director, East European Studies, East and West European Program, The Wilson Center, 370 L'Enfant Promenade, Suite 704, Washington, DC 20024–2518 (202) 287–3400.

Dated: May 31, 1994.

Kenneth E. Roberts,

Executive Director, Russian, Eurasian and East European Studies Advisory Committee.

[FR Doc. 94–14619 Filed 6–15–94; 8:45 am]

BILLING CODE 4710–32–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 93–79; Notice 3]

Fisher-Price, Inc.; Notice of Appeal of Denial of Petition for Determination of Inconsequential Noncompliance

Fisher-Price, Inc. (Fisher-Price), of East Aurora, New York, has appealed a decision by the National Highway Traffic Safety Administration (NHTSA) that denied Fisher-Price's petition that its noncompliance with Federal Motor Vehicle Safety Standard (FMVSS) No. 213, "Child Restraint Systems," be deemed inconsequential as it relates to motor vehicle safety (Docket No. 93–79; Notice 2, 59 FR 23253; May 5, 1994).

This notice of receipt of Fisher-Price's appeal is published in accordance with NHTSA regulations (49 CFR 556.7 and 556.8) and does not represent any agency decision or other exercise of judgment concerning the merits of the appeal.

Paragraph S5.7 of FMVSS No. 213 states that "[e]ach material used in a child restraint system shall conform to the requirements of S4 of FMVSS No. 302 ('Flammability of Interior Materials') (571.302)." Paragraph S4.3(a) of FMVSS No. 302 states that "[w]hen tested in accordance with S5, material described in S4.1 and S4.2 shall not burn, nor transmit a flame front across its, surface, at a rate of more than 4 inches per minute."

As noted in Notice 1 (58 FR 59511, November 9, 1993) of Docket No. 93–79, Fisher-Price determined that some of its child safety seats failed to comply with FMVSS No. 213, and filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports." Fisher-Price petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (Act) (15 U.S.C. 1381 *et seq.*) on the basis that the noncompliance is

inconsequential as it relates to motor vehicle safety.

On May 5, 1994, NHTSA published a notice in the **Federal Register** denying Fisher-Price's petition, stating that the petitioner had not met its burden of persuasion that the noncompliance is inconsequential as it relates to motor vehicle safety. The reader is referred to that notice for a further discussion of the noncompliance and the agency's rationale in denying the petition.

On May 6, 1994, Fisher-Price submitted an appeal of the agency's decision to deny its petition. The appeal contains an analysis of the agency's decision, a summary of the supplemental information Fisher-Price submitted (which is described below), and the affidavit of Gail E. McCarthy, Ph.D, P.E., of Failure Analysis Associates (FaAA).

SUPPLEMENTARY INFORMATION: Notice 1 to this docket established a 30-day public comment period, which expired on December 9, 1993. Nevertheless, Fisher-Price submitted additional information related to its petition on three occasions: February 25, 1994, March 17, 1994, and March 24, 1994. Fisher-Price also submitted additional information with its May 6, 1994, appeal. These materials are available for public review in the NHTSA docket.

The March 17, 1994, document contained research conducted by FaAA for Fisher-Price, including burn tests and a search of the literature and accident data regarding child seat fires. The submission also included a calculation of an alleged incremental risk associated with a recall of the noncompliant seats.

The March 24, 1994, document, entitled "Supporting Documentation for Evaluation of the Fire Safety of Fisher-Price, Inc. Child Restraint Shoulder Harness Webbing," contains the detailed data and test results on which the material in the March 17, 1994, document was based.

Fisher-Price's May 6, 1994, appeal raised the following points: (1) In the notice of denial, NHTSA stated that Fisher-Price "determined" that some of its child restraints failed to comply with FMVSS No. 213; Fisher-Price states that it has yet to make this determination. (2) In the notice of denial, NHTSA stated that it believes flammability requirements for child restraints should be strictly adhered to; Fisher-Price believes that NHTSA should not hold child restraints to what it perceives to be a stricter standard than is stated in the Act. (3) Fisher-Price cites the grant by NHTSA of a petition for inconsequentiality filed by PACCAR, Inc. in which tape edging on a mattress had failed FMVSS No. 302 requirements (57 FR 45868; October 5, 1992). The petition was granted by NHTSA based in part on the fact that the tape edging was a very small portion of the mattress. It also cites an appeal to a petition filed by the American Honda Motor Co., Inc. (Honda) (49 FR 15046; April 16, 1984) which was granted. The agency's rationale for granting the appeal was based in part on the fact that Honda had not received any complaints regarding the noncompliance. (4) Fisher-Price claims that the data it submitted in support of its contention that children's clothing poses a much greater risk to safety than the noncompliant webbing were not adequately refuted.

In the affidavit submitted with the appeal, Dr. McCarthy argues that: (1) The shoulder belt webbing should properly be viewed as meeting the requirements of FMVSS No. 302; (2) any noncompliance that might be deemed to exist has no impact on motor vehicle safety; and (3) possible remedial measures would create substantially greater risk of injury to children than that presented by the webbing.

Interested persons are invited to submit written data, views, and arguments on the appeal of Fisher-Price, described above. Comments should refer to the docket and notice number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street SW., Washington, DC 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. All comments received after the closing date will also be filed and will be considered to the extent feasible. When the appeal is granted or denied, notice will be published in the **Federal Register**.

Comment closing date: July 18, 1994.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50)

Issued on: June 10, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94–14676 Filed 6–15–94; 8:45 am]

BILLING CODE 4910–59–M

UNITED STATES INFORMATION AGENCY

Regional Scholar Exchange Program

ACTION: Notice—Request for Proposals (RFP).

SUMMARY: The United States Information Agency (USIA) invites applications from U.S. not-for-profit organizations engaged in international exchange programs to conduct research exchanges in the humanities and social sciences of pre- and/or post-doctoral students and scholars with Armenia, Azerbaijan, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzia, Latvia, Lithuania, Moldova, the Russian Federation, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. Exchange programs must recruit nationally and select participants through an open merit-based competitive process. Only organizations with at least four years of experience in international exchange activities are eligible to apply. Both existing and new projects are eligible. These exchanges are subject to the availability of funding for Fiscal Year 1995.

Support is offered for two categories: Category A, Short-term (defined as being less than six months or the equivalent of one academic year), and/or Long-term (the equivalent of at least six months or one academic year) Research Exchanges with Armenia, Azerbaijan*, Belarus, Georgia, Kazakhstan, Kyrgyzia, Moldova, the Russian Federation, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan; and Category B, Short-term (defined as being less than six months or the equivalent of one academic year), and/or Long-term (the equivalent of at least six months or one academic year) Research Exchanges with Estonia, Latvia and Lithuania.

Each category has separate conditions and requirements which are stated in this announcement. Institutions may address one or both categories, but must submit a separate proposal for each category. Proposals for Category A may include all 12 countries, a regional grouping of countries, or one country. Proposals for Category B may include one, two or three of the listed countries. The goal of the program is to ensure the broadest geographic distribution in the New Independent States, the Baltics, and the U.S. Programs should be for two-way exchanges, although they do not need to be evenly reciprocal. Organizations may request funding for one or both sides of the exchange. Proposals for programs that do not fit into either Category A or B will be considered technically ineligible.

**Please note:* Programs with Azerbaijan are subject to the restrictions of Section 907 of the Freedom Support Act of 1992: Employees of the Government of Azerbaijan or any of its instrumentalities are excluded from participation and no U.S. participant overseas may work for the Government of Azerbaijan or any of its instrumentalities.

In addition, the Government of Azerbaijan and/or its instrumentalities will have no control in the actual selection of participants.

DATES: Deadline for proposals: One original and 9 copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Monday, August 1, 1994. Faxed documents will not be accepted, nor will documents postmarked on August 1, 1994, but received at a later date. It is the responsibility of each grant applicant to ensure that its proposals are received by the above deadline.

Grants awarded to organizations through this competition should begin no earlier than October 1, 1994 and may extend through September 30, 1996, but must be completed by December 31, 1996. Proposals for exchanges ending after December 31, 1996 will be considered technically ineligible.

DURATION: Proposals for both categories must provide for at least three-month programs for participants, but should not exceed one year.

ANNOUNCEMENT NUMBER: E/AEE–95–02. Applications submitted under this RFP must indicate the appropriate program name, category, and the above-referenced number. This announcement number must also appear in any correspondence concerning this application.

ADDRESSES: The original and 9 copies of the completed application, including required forms, should be submitted by the deadline to: U.S. Information Agency, Reference: Regional Scholar Exchange Program, E/AEE–95–02, Grants Management Division, E/XE, room 336, 301 4th Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Mr. Ted Kniker at the U.S. Information Agency, 301 4th Street, SW., Academic Exchanges Division, European Branch, E/AEE, room 246, Washington, DC 20547; telephone (202) 619–5341, to request detailed application packages, which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information.

SUPPLEMENTARY INFORMATION: Overall authority for these exchanges is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87–256 (Fulbright-Hays Act). The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and people of other countries by means of educational and cultural exchange; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic, and peaceful relations between the United States and other countries of the world." Programs shall also "maintain their scholarly integrity and shall meet the highest standards of academic excellence or artistic achievement." Pursuant to the Bureau of Educational and Cultural Affairs' authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life. Diversity should be interpreted in the broadest sense and encompass differences including but not limited to ethnicity, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle throughout the proposed program and within their own operations.

Overview

The Regional Scholar Exchange Program is intended to promote scholarly research by funding U.S. academic exchanges of pre- and postdoctoral students and scholars (including graduate students, junior faculty, and senior scholars) with Armenia, Azerbaijan, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzia, Latvia, Lithuania, Moldova, the Russian Federation, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. Participants must be citizens of the United States, Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzia, Moldova, the Russian Federation, Tajikistan, Turkmenistan, Ukraine, or Uzbekistan (Category A) or citizens of the United States, Estonia, Latvia, or Lithuania (Category B). Within the spirit of the Mutual Education and Cultural Exchange Act of 1961, the purposes of the Regional Scholar Exchange Program are (1) to provide access by U.S. scholars to research sources in the countries listed above, (2) to provide access by scholars from these countries to research sources in the United States, and (3) to encourage scholarly cooperation in the humanities and social sciences.

Guidelines

Language Qualifications

For both categories, foreign participants must have sufficient fluency in English and U.S. participants must have sufficient fluency in the language of the host country to be able to conduct research. Escort-interpreters will not be provided, nor funded by USIA.

Institutional Commitment

Proposals must include documentation of institutional support for the proposed program in the form of signed letters of endorsement from the U.S. and foreign partners' directors, or in the form of a signed agreement by the same persons. Letters of endorsement must describe each institution's or organization's commitment and make specific reference to the proposed program, each institution's activities in support of that program, and each institution's ability to provide access to archival or manuscript repositories. Documentation of support from governmental ministries or academies will be acceptable when appropriate, replacing individual documentation from each foreign educational institution involved. Applicants must submit this documentation as part of the completed application; letters and agreements will not be accepted if sent separately to USIA. Applying institutions are expected to make their own arrangements with the appropriate foreign institutions. National ministries of educational and culture and academies of science are included as eligible foreign partner institutions.

Authorization to work in archives, manuscript repositories, and to use research materials is critical for U.S. scholars. Proposals should include evidence of such authorization.

Proposal Narrative

The proposal narrative describing the program must conform to the Guidelines dated April 1993 and must include any subgrants to be issued. All narratives must describe in detail the abilities of the participating organizations to adapt to the changing exchanges environments in the countries eligible for participation in this program.

Participant Selection

The proposal must include detailed descriptions of the selection processes of participants, both foreign and American. This must include procedures by which selecting officials are named. A goal for this program is to select students and scholars from geographically diverse backgrounds in the home country and place them in wide geographic distribution in the host country.

Categories A and B (Short and Long-term Research Exchange): All scholars, at a minimum, must be Ph.D. candidates and currently enrolled at or affiliated

with a university. Applicants should not have travelled on a similar grant in the last five years, or should have little opportunity to travel unless as a participant of this program. Applying organizations must demonstrate the ability to conduct competitive award programs that are national in scope. Programs must be based on an open, nationwide competition, incorporating peer group review mechanisms.

The selection process for U.S. participants must be merit based. Selection criteria for the U.S. participants must be based on: (1) Academic rigor of the participant's proposed project, including a demonstration of the need to study abroad; (2) feasibility of the participant's proposed project, including time-frame and methodology; (3) language proficiency in the language of the host country by the participant; and (4) a solid foundation of background knowledge and research through general literature available in Western repositories.

The selection process for foreign researchers should be merit based and the result of a country-wide or multi-country wide competition. Selection criteria for the foreign participants should be based on: (1) Academic rigor of the participant's proposed project, including a demonstration of the need to study abroad; (2) feasibility of the participant's proposed project, including time-frame and methodology; (3) English language proficiency by the participant; and (4) a solid foundation of background knowledge and research through general literature available in the repositories of the foreign region. Although not a requirement, preference should be given to junior faculty holding lecturing positions.

Orientation Programs

Participants should be provided with a substantive and comprehensive orientation to the countries of their visits, and proposals should describe these orientation programs, including costs, in detail.

Alumni Activities

USIA recognizes the contributions of alumni to the goals of the program and the goals of the Mutual Educational and Cultural Exchanges Act. Priority will be given to proposals which include detailed and comprehensive alumni tracking and networking plans. Electronic mail access and training may be included in any such plans.

Proposed Budget

Funding anticipated for Category A is estimated at $1,300,000, which includes all program and administrative costs. Funding anticipated for Category B is estimated at $240,000, which includes all program and administrative costs.

The following budgetary guidance applies to both Categories A and B: Project awards to U.S. organizations will be made in a wide range of amounts. The Agency reserves the right to reduce, revise or increase proposal budgets in accordance with the needs of the program. All organizations must submit a comprehensive line-item budget, the details and format of which are contained in the application packet. The budget should list all sources of support for the program fiscal year 1995 including both cash and in-kind contributions.

Allowance Costs

Grant-funded items of expenditure may include, but are not limited to, the following categories:

Categories A and B:

—International Travel (via American flag carrier);
—Domestic travel;
—Maintenance (lodging, meals, incidental expenses, etc.);
—Stipend (not to exceed $250 per month);
—Academic program costs (e.g. book allowance);
—Orientation costs (speaker honoraria are not to exceed $150 per day per speaker);
—Cultural enrichment expenses (admissions, tickets, etc.; limited to $150 per participant);
—Conference and/or other travel and lodging for cultural enrichment (not to exceed $400.00 per participant);
—Administration (salaries, benefits, communications, other direct costs and indirect costs), including administration of tax withholding and reporting as required by federal, state and local authorities and in accordance with relevant tax treaties.*;
—Taxes and visa fees;
—Application should demonstrate substantial cost-sharing (dollar and in-kind) in both program and administrative expenses, including tuition waivers and overseas partner contributions.

**Please Note:* It is required that requested administrative funds, including indirect costs and administrative expenses for orientation, not exceed 20 percent of the total amount requested from USIA; administrative expenses should be cost-shared. (See the accompanying guidelines for complete cost-sharing and auditing requirements.)

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, including the Guidelines for Preparing Proposals. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the appropriate geographic area office, and the budget and contracts offices. Proposals may also be reviewed by the Agency's Office of General Counsel. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant assistance resides with USIA's grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the following criteria:

a. Quality of Program Plan

Including academic rigor and excellence, thorough conception of project, demonstration of meeting participants' needs, contributions to understand the partner country, proposed follow-up, and qualifications of program staff and participants.

b. Reasonable, Feasible, and Flexible Objectives

The capacity of the organization to conduct the program. Proposals should clearly demonstrate how the institution will meet the program objectives and plan.

c. Track Record

Relevant Agency and outside assessments of the organization's experience with international programs; for organizations that have not worked with USIA, the demonstrated potential to achieve program goals will be evaluated.

d. Multiplier Effect/Impact

The positive effect of the program on long-term mutual understanding, the inclusion of maximum sharing of information, and the establishment of long-term institutional and individual linkages.

e. Value of U.S.-Partner Country Relations

The assessment by USIA's geographic area office of the need, potential impact, and significance of the project with the partner country.

f. Cost Effectiveness

Greatest return on each grant dollar, degree of cost-sharing exhibitied.

g. Diversity and Pluralism

Preference will be given to proposals that demonstrate efforts to include participants from diverse regions, and of different socio-economic and ethnic backgrounds, to the extent feasible for the applicant institutions.

h. Adherence

Of proposed activities to the criteria and conditions described above.

i. Institutional Commitment

As demonstrated by financial and other support to the program.

j. Follow-On Activities

Proposals should provide a plan for continued follow-on activity (without USIA support) which insures that USIA supported programs are not isolated events.

k. Evaluation Plan

Proposals should provide a plan for evaluation by the grantee institution.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of this request for proposals 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 in writing of the results of the review process on or about September 23, 1994. All funded proposals will be subject to periodic reporting and evaluation requirements.

Options for Renewal (All Categories)

Subject to the availability of funding for FY 1996 and the satisfactory performance of grant programs, USIA may invite grantee organizations to submit proposals for renewals of awards.

Dated: June 11, 1994.

Barry Fulton,

Deputy Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 94–14690 Filed 6–15–94; 8:45 am]

BILLING CODE 8230–01–M

Undergraduate and Graduate Student Exchanges With the Baltic Countries, the New Independent States, and Central and Eastern Europe

ACTION: Notice—Request for Proposals (RFP).

SUMMARY: The United States Information Agency (USIA) invites applications from U.S. educational, cultural, and other not-for-profit organizations to conduct exchanges of college students with Albania, Armenia, Azerbaijan*, Belarus, Bulgaria, Croatia, the Czech Republic, Estonia, Georgia, Hungary, Kazakhstan, Kyrgyzia, Latvia, Lithuania, Macedonia, Moldova, Poland, the Republic of Slovakia, Romania, the Russian Federation, Slovenia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. These exchanges represent part of the activities of the Presidents' University Student Exchange (the 1000-1000 Student Exchange) and the Samantha Smith Memorial Exchange Program and are subject to the availability of funding. Interested applicants are urged to read the complete **Federal Register** announcement before addressing inquiries to the Office of Academic Programs, Academic Exchanges Division, European Branch or submitting their proposals. After the RFP deadline, the European Branch may not discuss this competition in any way with applicants until the final decisions are made.

Support is offered for three categories of exchange programs:

Category A: The Presidents' University Student Exchange Program (the 1000–1000 Student Exchange) with Armenia, Azerbaijan*, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzia, Latvia, Lithuania, Moldova, the Russian Federation, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan;

Category B: The Samantha Smith Memorial Exchange with Armenia, Azerbaijan*, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzia, Latvia, Lithuania, Moldova, the Russian Federation, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan; and,

Category C: The Samantha Smith Memorial Exchange with Albania, Bulgaria, Croatia, the Czech Republic, Hungary, Macedonia, Poland, the Republic of Slovakia, Romania, and Slovenia.

***Please note:** Programs with Azerbaijan are subject to the restrictions of Section 907 of the Freedom Support Act of 1992: Employees of the Government of Azerbaijan or any of its instrumentalities are excluded from participation and no U.S. participant overseas may work for the Government of Azerbaijan or any of its instrumentalities. In addition, the Government of Azerbaijan and/or its instrumentalities will have no control in the actual selection of participants.

Each category has separate conditions and requirements, which are stated in this announcement. Organizations may compete in one, two or three of the categories, but must submit a separate proposal and budget for each category. If an institution submits proposals in more than one category which appear to be identical or nearly identical in content, the Agency reserves the right to consider only one of the proposals.

Organizations applying under any or all categories must follow the requirements stipulated in this RFP, the application guidelines, and any additional material specific to a given category. Failure to do so may result in a proposal being deemed technically ineligible. Programs and projects must conform with all Agency requirements and guidelines, and are subject to final review by a USIA grants officer. Proposals must be for study programs for which academic credit is given. While programs may include internships, the focus of projects should be classroom work or research. Programs designed specifically for foreign participants to teach their native language or area studies in American institutions are ineligible for support.

Eligible Applicants: Applications under Categories A, B or C for substantive academic exchanges will be accepted from accredited, degree-granting U.S. universities or colleges, including two-year community colleges, university systems, and not-for-profit organizations engaged in international educational exchange programs.

DATES: Deadline for proposals: September 28, 1994. All copies of proposals for Categories A, B and C must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on September 28, 1994. Faxed documents will not be accepted nor will documents postmarked on September 28, 1994, but received at a later date. It is the responsibility of each grant applicant to ensure that its proposals are received by the appropriate deadline. No funds may be expended until the grant agreement is signed with USIA's Office of Contracts.

Announcement Number: E/AEE–95–01. Applications submitted under this RFP must indicate the appropriate program name, category, and the above-referenced number. This announcement number must also appear in any correspondence concerning this application.

ADDRESSES: The original and nine (9) complete copies of the application,

including required forms, should be addressed as follows:

U.S. Information Agency,
Reference: _____
(Program Title)

Category _____
(A, B or C)

Announcement number: E/AEE–95–01, Office of Grants Management, E/XE Room 336, 301 4th Street SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Ms. Effie Wingate or Mr. Ted Kniker, U.S. Information Agency, 301 4th Street SW., European Branch, Academic Exchanges Division, E/AEE Room 246, Washington, DC 20547; telephone (202) 205–0525. To request detailed application packages, which include award criteria additional to this announcement, all necessary forms, formats, guidelines for preparing proposals, and for other technical information please call (202) 619–5341. The application package will be mailed to you via regular mail. USIA will not fax the application packet or send it via express mail, nor will USIA staff accept requests to send application packets via express carriers using non-USIA account numbers.

SUPPLEMENTARY INFORMATION: Overall authority for these exchanges is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87–256 (Fulbright-Hays Act). The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and people of other countries by means of educational and cultural exchanges; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic, and peaceful relations between the United States and other countries of the world." Programs shall also "maintain their scholarly integrity and shall meet the highest standards of academic excellence or artistic achievement." Pursuant to the Bureau of Educational and Cultural Affairs authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life. It should be noted that a greater emphasis is being placed on promoting diversity in Bureau programs. Diversity should be interpreted in the broadest sense and encompass differences including but not limited to ethnicity, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle throughout the proposed program and within their own operations.

Application Notice (All Categories)

Please be advised: Proposals submitted by the same institution under Categories A, B, and C for this or previous years' competitions may not be duplicative or identical. If an organization submits more than one proposal, each proposal must sponsor different students and employ separate budgets. If organizations have been funded under previous competitions, the new proposal(s) may not be identically written to previous submissions, but should include the most recent program information. Proposals not adhering to these restrictions will be deemed technically ineligible and will not be reviewed for funding. Organizations applying for exchanges with the New Independent States are encouraged to submit only under one category, A or B.

General Requirements (All Categories)

(1) Institutional Commitment

Proposals must include documentation of institutional support for the proposed program in the form of signed letters of endorsement from the U.S. and foreign institutions' directors, or in the form of a signed agreement by the same persons. Letters of endorsement must describe each institution's or organization's commitment and make specific reference to the proposed program and each institution's activities in support of that program. Documentation of support from governmental ministries or academies will be acceptable when appropriate, replacing individual documentation from each foreign educational institution involved. Applicants must submit this documentation as part of the completed application. Applying institutions are expected to make their own arrangements with the appropriate foreign institutions.

(2) Orientation Programs

Participating students should be provided with a substantive and comprehensive orientation to the country where they will be studying, and proposals should describe these programs, including cost, in detail.

(3) Visas

All foreign participants must be sponsored under an Exchange Visitor Program on a J visa. Programs must comply with J visa regulations and should reference this adherence in the proposal narrative. Applicants should demonstrate tax regulation adherence in the proposal narrative and budget notes.

(4) Taxes

Administration of the grant awards must be in compliance with reporting and withholding regulations for federal, state, or local taxes as applicable. Recipient organizations should demonstrate tax regulation adherence in the proposal narrative and budget.

(5) Participant Tracking

Proposals should provide a plan showing how organizations will track participants after their return to their home countries upon completion of the program. Organizations should chart the progress of the program's alumni in their academic and professional careers and establish a system for distributing periodic updates of such information among both current participants and alumni of the program.

(6) Budget

All organizations must submit a comprehensive line item budget, the details and format of which are contained in the application package. The Agency reserves the right to increase, decrease or revise proposal budgets in accordance with the needs of the program. Grant-funded items of expenditure may include, but are not limited to, the following categories:

Program Costs

—Round trip travel to and from their home city to international point of departure (if applicable);
—International Travel (via American flag carrier);
—Domestic travel to and from host institution;
—Excursionary travel and lodging for cultural enrichment (not to exceed $200.00 per participant);
—Maintenance and per diem;
—Academic program costs (e.g. tuition, book allowance);
—ESL training (if necessary);
—Travel and maintenance costs for accompanying faculty or resident directors; for no more than one program supervisor per ten students;
—Participant recruitment costs;
—Orientation costs (speaker honoraria are not to exceed $150 per day per speaker);
—Cultural enrichment expenses (admissions, tickets, etc., limited to $150 per participant);
—Medical insurance for participants (participants are covered by the

Agency's self-insurance policy when USIA is funding over fifty percent of the total cost of the projects);
—Withholding for taxes; and
—Visa fees.

Administrative Costs—Not To Exceed 20% of the Requested Budget

—Salaries and benefits;
—Communications (e.g. fax, telephone, postage);
—Office Supplies;
—Administration of tax withholding and reporting as required by Federal, State and local authorities and in accordance with relevant tax treaties; recipient organization should demonstrate tax regulation adherence in the proposal narrative and budget;
—Other Direct Costs;
—All Indirect Costs.

Please note: It is required that requested administrative funds, including indirect costs and administrative expenses for orientation, not exceed 20 percent of the total amount requested from USIA; administrative expenses should be cost-shared.

Applications should demonstrate substantial cost-sharing (dollar and in-kind) in both program and administrative expenses, including tuition waivers and overseas partner contributions. (See the accompanying guidelines for complete cost-sharing and auditing requirements.)

Additional Criteria for Category A

President's University Student Exchange Program (the 1000–1000 Student Exchange) With the Baltic Countries and the New Independent States

Grant funding under this category is intended to enhance and expand the scope of U.S. academic exchanges with undergraduate and graduate students from Armenia, Azerbaijan, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyia, Latvia, Lithuania, Moldova, the Russian Federation, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. For accident year 1995–96 the intention is to exchange 1,000 students in each direction. Priority will be given to applications from international exchange organizations and consortia of universities that have a demonstrated ability to exchange students from multiple countries in the former USSR. Preference will then be given to applications from single institutions for programs outside the Russian Federation. For projects in the Russian Federation, preference will be given to applications involving multiple foreign partner institutions, especially outside of Moscow and St. Petersburg. Both existing and new projects are eligible.

(1) Awards

Project awards to U.S. organizations will be made in a wide range of amounts. The Agency reserves the right to reduce, revise or increase proposal budgets in accordance with the needs of the program. For organizations with less than four years of experience in international exchange activities, grants will be limited to a maximum of $60,000, and proposed budgets should not exceed this amount.

(2) Participants

Participants must be citizens either of the U.S. or of the host country. Undergraduate students are defined as students who have not received their baccalaureates prior to participation in this program. Graduate students for this program should be studying at the equivalent of the Master's degree level. Doctoral candidates are not eligible. Students in all academic fields are eligible; students of agricultural are especially encouraged to apply (please note special conditions for agricultural programs below). Projects that include graduate students must delineate between the number of graduate and undergraduate participants, separately describe the academic programs, and include for each a separate line item in the budget. All projects must include undergraduate students. It is important that the selection process ensure equal opportunities for both male and female students.

(3) Language Qualifications

Students should have sufficient fluency in the institutional language of the host country to be able to pursue university study in that language and to be able to converse with the citizens of the country without the aid of interpreters. Generally, the equivalent of two years of college-level study is considered the minimum.

(4) Duration

Applications will be accepted for projects with durations of at least eight weeks to no more than one year, including programs lasting an academic quarter, trimester, or semester. Exchanges of less than eight weeks duration or more than one year will be considered technically ineligible. Although grant awards may begin earlier, the actual exchange of participants may not begin before February 1, 1995, and must be completed by December 31, 1996. Programs for exchanges in subsequent academic years will be considered technically eligible.

(5) Preference Factors

a. Preference will be given to proposals in which incoming students study in the U.S. for a full academic year.

b. Preference will be given to programs that reflect wide geographic distributions in recruitment of participants.

c. Preference will be given to programs that recruit foreign and U.S. participants through merit-based, open competition.

(6) Reciprocity

Proposals should be reciprocal, but not necessarily equal in numbers. In cases where political or practical circumstances do not allow for the placement of U.S. students, one-way programs will be considered. The proposal should provide detailed information on the activities in both the U.S. and the partner country.

(7) Internships

While programs may include internships, the focus of projects should be classroom work or research. If internships are included in the exchange experience, students should have completed at least one semester of classroom work. The duration of the internship should not exceed the duration of the classroom work. Institutions are encouraged to grant academic credit for the internship experience.

(8) Special Allowances for Agriculture Programs

In order to give added encouragement to the participation of students of agriculture as provided for in the bilateral agreement, language standards may be modified for participating students of agriculture. Programs including agriculture students need not exchange agriculture students in both directions.

Additional Criteria for Categories B and C

Category B: Samantha Smith Memorial Exchange With the Baltic Countries and the New Independent States

Grant funding is intended to enhance and expand the scope of academic exchanges with Armenia, Azerbaijan, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzia, Latvia, Lithuania, Moldova, the Russian Federation, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan for undergraduate students under the age of 26. Participants must be citizens either of the U.S. or of the host country. Programs designed specifically for foreign participants to teach their native

language or area studies in American institutions are ineligible for support.

Priority for Category B

For FY 1995 priority will be given to applications from community colleges, two-year colleges, non-profit organizations working specifically with community colleges and/or two-year colleges, and institutions that have not received funding under this program in previous competitions.

Category C: Samantha Smith Memorial Exchange With Central and Eastern Europe

Grant funding under this category is intended to enhance and expand the scope of academic exchanges with Albania, Bulgaria, Croatia, the Czech Republic, Hungary, Macedonia, Poland, the Republic of Slovakia, Romania, and Slovenia for undergraduate students under the age of 26. Participants must be citizens either of the U.S. or of the partner country. Programs designed specifically for foreign participants to teach their native language or area of studies in American institutions are ineligible for support.

(1) Language Qualification

It is desirable, but not required, that exchange students have sufficient fluency in the language of the country to be visited for the pursuit of university study in the language and to converse with citizens of the country without the aid of interpreters. Generally, the equivalent of two years of college-level language study is considered the minimum. The two-year language minimum will be waived for community colleges, two-year colleges, and non-profit organizations working specifically with community colleges and/or two-year colleges in order to encourage their participation.

(2) Duration

Applications will be accepted for projects with duration of at least eight weeks including programs lasting one academic quarter, trimester, semester or a full year. Projects of less than eight weeks duration will be considered technically ineligible. Grants generally will be made for exchanges occurring within a 12-month period, but requests for two-year programs will be considered. Proposals for two-year programs should submit one budget that covers the entire two-year period. The total award (one-or two-year) may not exceed $80,000.

(3) Reciprocity

It is desirable, but not required, that programs are reciprocal and the number of U.S. and foreign participants be nearly equal. The proposal should provide detailed information on the activities in both the U.S. and the partner country.

(4) Awards

Project awards will be made in a wide range of amounts up to $80,000. The Agency reserves the right to reduce, revise or increase proposal budgets in accordance with the needs of the program. For organizations with less than four years of experience in international exchange activities, grants will be limited to a maximum of $60,000 and proposed budgets should not exceed this amount. All organizations must submit a comprehensive line item budget, the details and format of which are contained in the application packet.

(5) Preference Factors

a. Preference will be given to programs in which U.S. participants will have had a minimum of two years of relevant language study.

b. Preference will be given to proposals in which incoming students study in the U.S. for a full academic year.

c. Preference will be given to reciprocal exchanges.

Review Process (All Categories)

USIA will acknowledge receipt of all proposals and will review them for technical eligibility.

Please note: Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the Application Package, including the Guidelines for Preparing Proposals.

Eligible Proposals

Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the appropriate geographic area office, and the budget and contracts office. 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 (All Categories)

Technically eligible applications will be competitively reviewed according to the following criteria:

a. Quality of Program Plan

Academic rigor, thorough conception of project, demonstration of meeting student needs, contributions to understanding the partner country, proposed follow-up, and qualifications of program staff and participants.

b. Feasibility of the Program Plan

Capacity of the organization to conduct the exchange. Proposals should clearly demonstrate how the institution will meet the program objectives and plan.

c. Track Record

Revelant Agency and outside assessments of the organization's experience with international exchanges; for organizations that have not worked with USIA before, the demonstrated potential to achieve program goals will be evaluated.

d. Multiplier Effect/Impact

The impact of the exchange activity on the wider community and on the development of continuing ties, as well as the contribution of the proposed activity in promoting mutual understanding.

e. Value of U.S.—Partner Country Relations

The assessment by USIA's geographic area office of the need, potential impact, and significance of the project with the partner country.

f. Cost-Effectiveness

Greatest return on each grant dollar. A key measure of cost-effectiveness is the unit cost to the Agency. This is the total request of USIA monies divided by the number of exchangees (people moved). The Agency also reviews the ratio of cost-sharing exhibited. Cost-sharing through other financial support as well as institutional direct and in kind funding contributions is strongly encouraged.

g. Diversity and Pluralism (for Student Programs)

Preference will be given to proposals that demonstrate efforts to provide for the participation of students with a variety of major disciplines, from diverse regions, and of different socio-economic and ethnic backgrounds, to the extent feasible for the applicant institutions.

h. Adherence of Proposed Activities

To the criteria and conditions described above.

i. Institutional Commitment

Demonstrated by financial and other support to the program, including the provision for adequate and appropriate personnel and institutional resources to achieve the program goals.

j. Follow-on Activities

Proposals should provide a plan for continued follow-on activity (without

USIA support) which insures that USIA-supported programs are not isolated events.

k. Evaluation Plan

Proposals should provide a plan for evaluation by the grantee institution to determine the success of the project.

1. Geographic Diversity

The Agency will seek to achieve maximum geographic diversity in selection and placement of participants through its award of grants.

Application Disclaimer (All Categories)

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of this request for proposals 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 for Categories A, B, and C will be notified in writing of the results of the review process on or about February 1, 1995. All funded proposals will be subject to periodic reporting and evaluation requirements.

Options for Renewal (All Categories)

Subject to the availability of funding for FY 1995 and the satisfactory performance of grant programs, USIA may invite grantee organizations to submit proposals for renewals of awards.

Dated: June 11, 1994.

Barry Fulton,

Deputy Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 94–14691 Filed 6–15–94; 8:45 am]

BILLING CODE 8230–01–M

International Creative Arts Exchanges for Public and Private Non-Profit Organizations

ACTION: Request for proposals.

SUMMARY: The Creative Arts Exchanges Division of the U.S. Information Agency's [USIA] Office of Arts America announces a program of awards to private, non-profit organizations to support projects for artists and arts administrators. These will consist of residencies and/or study tours in which artists from the United States and other countries work and learn together. Interested applicants are invited to request and read the complete **Federal Register** announcement before submitting their proposals.

DATES: This action is effective from the publication date of this notice through September 21, 1994, for projects whose activities will begin between February 1, 1995, and June 30, 1995. All applications must be received at the U.S. Information Agency by 5 p.m. Washington DC time on Wednesday, September 21, 1994. Faxed documents will not be accepted, nor will documents postmarked on September 21, 1994, but received at a later date.

For projects that begin after June 30, 1995, competition details will be announced in the **Federal Register** on or about December 1, 1994. Inquiries concerning technical requirements are welcome prior to submission of applications.

ADDRESSES: The original and 14 copies of the completed application, including required forms, should be submitted by the deadline to: U.S. Information Agency, REF: E/DE Discretionary Grant Competition, Grants Management Division (E/XE), E/DE–95–01, room 336, 301 4th Street, SW., Washington, DC 20547. Awards are contingent upon the availability of funds.

FOR FURTHER INFORMATION AND APPLICATION PACKAGES, CONTACT: The Creative Arts Exchanges Division of the U.S. Information Agency's Office of Arts America, 301 4th Street, SW., Washington, DC 20547; telephone (202) 619–5338.

SUPPLEMENTARY INFORMATION: The Creative Arts Exchanges Division works with U.S. non-profit organizations on cooperative international group projects that introduce American and foreign participants to each other's cultural and artistic life and traditions. It supports international projects in the United States or overseas involving composers, choreographers, filmmakers [see guidance below], playwrights, theater designers, writers and poets, visual artists, museum professionals [see guidance below], managers and administrators of arts institutions and organizations [see guidance below].

We particularly seek projects with organizations with expertise in the arts as well as broad outreach and networking capabilities into American arts activities nationwide. On its side USIA offers prospective applicants its network of U.S. Information Service [USIS] posts located in American embassies, consulates and cultural centers around the world. Proposals making imaginative and substantive use of this USIS network will have a decided advantage in the competition. Proposed projects should support the USIA mission to increase mutual understanding between the United States and other countries and to promote international cooperation in educational and cultural fields. USIS' role in such projects should be integral and not purely facilitative.

Common Provisions

Projects supported by these awards share some or all of the following features:

1. An international exchange of professionals in the fields listed above.
2. The development of institutional linkages between American organizations and their counterparts in other countries.
3. Travel to or from the United States, preferably in both directions.
4. Competition in which USIS posts nominate foreign candidates for awards, while the American arts organizations select the award-winners.
5. Assurances of quality, fairness, balance and openness in the selection of American project participants.
6. A non-political character reflective of the diversity of American political, social and cultural life.

Special Conditions

1. Proposals should involve more than one country. However, single-country projects that have strong USIS-post support and clearly demonstrate the potential for creating and strengthening linkages between foreign and U.S. institutions are also welcome.
2. Proposals are subject to review and comment by the USIS posts in the relevant countries.
3. Proposals involving foreign organizations should identify them and clearly define their role in the project. Prospective applicants would do well to consult with USIS posts regarding such organizations prior to submitting their proposals.
4. Proposals centering on films or videos must deal with the creative aspects of film or video making. Projects should be written for professional partners, not for amateur or student groups. Projects may include story development, other aspects of the creative processes, or management issues like funding and distribution. They should not include film or video festivals, installations, seminars, competitions, full scale film production or distribution, or any other type of project prohibited in this announcement.
5. Proposals centering on arts presenters, administrators, and managers should feature exchanges

involving these professionals exclusively.

6. Arts America is the major supporter of the American Association of Museums [AAM] International Partnerships Among Museums [IPAM] program. Museums interested in international projects should address queries to the Office of International Programs, American Association of Museums, 1225 Eye Street, NW., Washington, DC 20005; telephone: [202] 289–1818; FAX: [202] 289–6578. We will not accept direct applications from museums for international projects [see Program Exclusions, below].

7. Proposals for projects in Eastern Europe and/or the Newly Independent States of the ex-Soviet Union should focus on the exchange of arts administrators or professionals dealing in theatrical arts. Proposals should clearly demonstrate knowledge of host country environment and its institutional partner in that country and provide evidence of long-term commitment to project goals.

Program Exclusions

1. Projects should be artistic, intellectual, and cultural, not technical. Vocational and technical training projects are ineligible for support.

2. Scholarship programs or proposals for long-term academic study or training are ineligible for support.

3. Speaking tours, conferences or seminars, research projects, research for project development purposes, youth or youth-related activities (participants' age under 25), publications, student and/or faculty exchanges, or projects for the exchange of amateurs or semi-professionals are all ineligible.

4. Arts America does not accept proposals to support performing arts productions or tours, film or video festivals, film/video installations, full-scale film production or distribution, international arts competitions, community-level arts presentations or festivals for general audiences, visual arts exhibits, museum projects except for those under the AAM/IPAM program [see above], or projects in the fields of historical and cultural conservation and preservation.

5. USIA is a major supporter of Sister Cities International and Partners of the Americas. It has agreed to fund administrative expenses of these organizations' national offices, but will not fund projects arising from sister city and partner state relationships once they are established.

Budgetary Requirements

1 There must be minimum of 33% cost sharing of the project cost. Cost sharing may be in the form of allowable direct or indirect costs. The recipient must maintain written records to support all allowable costs which are claimed to be its contribution to cost participation, as well as costs to be paid by the Federal Government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, Attachment E—Cost Sharing and Matching—and should be described in the proposal. In the event the recipient does not provide a minimum of 33% cost sharing following the award, the Agency's contribution will be reduced in proportion to the recipient's contribution.

2. Administrative costs must be no more than 20% of the total amount requested from USIA.

3. Awards are limited to $200,000. We will consider requests for $100,000 or more only for projects that are internationally regional, multi-regional or worldwide in scope. Awards are limited to $60,000 for organizations with less than four years' experience in conducting international exchange programs.

4. Allowable costs are those defined in the application package, which is available upon request.

5. To calculate the costs per participant, divide the project total by the number of participants who will be funded under the terms of the award.

Definition of Administrative Costs

Administrative costs are defined as salaries, benefits and other direct and indirect costs incurred. Important note for universities: The U.S. Information Agency defines American faculty salaries as an administrative expense, regardless of how the faculty time is to be used.

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 in the application package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the appropriate USIA geographic area officers, and budget and contract offices. Proposals may also be reviewed by the Agency's General Counsel. Review criteria are listed in the application package, which is available upon request. Funding decisions are at the discretion of USIA's Associate Director for Educational and Cultural Affairs. Final technical authority for awards resides with USIA's contracting officer.

Review Criteria

Proposals are reviewed for adherence to legal and budgetary requirements by USIA offices responsible for these functions and for artistic/organizational rigor, program content and cost-effectiveness.

Technically eligible applications will be competitively reviewed according to the following criteria:

a. Quality of Program Plan

Which includes how your project would meet the Creative Arts Exchanges Program goals, artistic/organizational planning of the highest caliber, why the participants would be appropriate for this project, how the project would contribute to a higher awareness of other countries, a proposed followup, and the qualifications of program staff and participants.

b. Feasibility of the Program Plan

And the capacity of the organization to conduct the exchange. Proposals should clearly demonstrate how the institution will meet the program objectives and plan.

c. Track Record

Included are the past successes of the organization in previous USIA programs and assessments of the organization's experience with international exchanges. For organizations that have not worked with USIA, they will be evaluated by their demonstrated potential to achieve their program goals.

d. Multiplier Effect/Impact

The ability of the organization to affect the wider community as well as developing continuing ties in the country. The proposal must also promote mutual understanding between the two groups.

e. Value to U.S.—Partner Country Relations

The Agency assesses the need, the potential impact, and the significance of the project with the partner country.

f. Cost-Effectiveness

The organization should exhibit a wise budgetary policy including cost-sharing. A key measure of cost-effectiveness is the cost per participant.

g. Diversity and Pluralism

Preference will be given to proposals that demonstrate efforts to provide for the participation of artists from diverse regions, socio-economic and ethnic backgrounds; but only to the extent feasible for the applicant institutions

h. Institutional Commitment

As demonstrated through use of personnel, resources and funding.

i. Follow-up Activities

Proposals should provide a plan for later continuation of contact (without USIA support), which ensures that USIA-supported programs are not isolated events.

j. Evaluation Plan

Proposals should provide a plan for your own evaluation of the project.

Technical Requirements

Proposals can only be accepted for review when they are fully in accord with the terms of this request for proposals, as well as with requirements stipulated in the application package.

Notice

The terms and conditions published in the request for proposals are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of request for proposals does not constitute an award commitment on the part of the Government. Final awards 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 January 4, 1995. Awards will be subject to periodic reporting and evaluation requirements.

Dated: June 10, 1994.

John P. Loiello,

Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc 94–14692 Filed 6–15–94; 8:45 am]

BILLING CODE 8230–01–M

International Educational and Cultural Activities Discretionary Grant Program

ACTION: Notice—Request for proposals.

SUMMARY: The Office of Citizen Exchanges (E/P) of the United States Information Agency's Bureau of Education and Cultural Affairs announces an open competition for an assistance award program. Public or private non-profit organizations meeting the provisions described in IRS regulation 501 (c) (3) may apply to develop projects that link their international exchange interests with counterpart institutions/groups in ways supportive of the aims of the Bureau of Educational and Cultural Affairs.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87–256, also known as the Fulbright Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries. . .; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations.* * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." Programs and projects must conform with Agency requirements and guidelines outlined in the Application Package. USIA projects and programs are subject to the availability of funds.

Interested applications should read the complete **Federal Register** announcement before addressing inquiries to the Office of Citizen Exchanges or submitting their proposals. Once the RFP deadline has passed, the Office of Citizen Exchanges may not discuss this competition in any way with applicants until after the Bureau program and project review process has been completed.

ANNOUNCEMENT NUMBER: All communications concerning this announcement should refer to the Fall Discretionary Grant Program. The announcement number is E/P–95–1. Please refer to title and number in all correspondence or telephone calls to USIA.

DATES: Deadline for Proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on Friday, September 16, 1994. Faxed documents will not be accepted, nor will documents postmarked on September 16, 1994, but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline. This action is effective from the publication date of this notice through September 16, 1994, for projects where activities will begin between January 1, 1995 and June 30, 1995.

FOR FURTHER INFORMATION CONTACT: Interested organizations/institutions must contact the Office of Citizen Exchanges, E/PL, room 216, United States Information Agency, 301 4th Street, SW., Washington, DC 20547, (202) 619–5326, to request detailed application packets, which include award criteria, all application forms; and guidelines for preparing proposals, include specific criteria for preparation of the proposal budget. Please specify the USIA Program Officer Laverne Johnson on all inquiries and correspondences.

ADDRESSES: Applicants must follow all instruction given in the Application Package and send only complete applications to: U.S. Information Agency, REF: E/P–95–1 Fall Discretionary Grant Competition, Grants Management Division (E/XS), 301 4th Street, SW., room 336, Washington, DC 20547.

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorizing legislation, programs must maintain a non political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including but not limited to race, gender, religion, geographic location, socio-economic status, and physical challenges, Applicants are strongly encouraged to adhere to the advancement of this principle.

Overview: The Office of Citizen Exchanges works with U.S. private sector non-profit organizations on cooperative international group projects that introduce American and foreign participants to each others' social, economic, and political structures; and international interests. The Office supports international projects in the United States or overseas involving leaders or potential leaders in the following fields and professions: Urban planners, jurists, specialized journalists (specialists in economics, business, political analysis, international affairs), business professionals, NGO leaders, environmental specialists, parliamentarians, educators, economics planning, and other government officials.

Guidelines: Applicants should carefully note the following restrictions/recommendations for proposals in specific geographical areas:

The Newly Independent States: USIA and other agencies of the U.S. government have numerous programs in the countries of the NIS (Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan). As such, the amount of funds for that part of the world in this competition will be extremely limited. Proposals which would normally be considered for other USIA grant competitions will not be

accepted. E/P encourages organizations to seek clarification on these points before presenting a proposal.

Europe, Eastern Europe, and the Baltics (EU): Projects are encouraged involving Western Europe. Due to the fact that the office has or is in the process of conducting specific competitions in Eastern Europe and the Baltics, we will not accept proposals for youth exchange programs or for programs in the following thematic areas: public administration, business management, independent media development, journalism training, and local government administration and municipal management. Priority will be given to projects relating to conflict resolution, tolerance, and diversity.

East Asia and the Pacific (EA): Priority consideration will be given to the following: (1) Projects for journalists (print or electronic). Priorities are projects for Hong Kong and Singapore combined or for Thailand on press freedom, the press/government relationship, and the role of a free press in society. Other projects for journalists include regional/subregional projects that focus on APEC-related economic and trade issues and policies or regional/subregional projects that focus on security issues. The projects may consist of but are not limited to workshops, site tours, seminars and discussions and internships. (2) Projects concerned with the strengthening of democracy in Cambodia, with priority given to projects that focus on education and representative government. (3) Projects concerned with the organization, management, and administration of citizen action groups or other non-governmental organizations in the Peoples' Republic of China and Southeast Asian countries. Priority will be given to subject areas, such as grass roots democracy, the environment, and human rights.

American Republics (AR): Priority will be given to projects in the following areas: Good governance, public administration, decentralization of government, judicial reform, and the protection/promotion of minority and indigenous rights.

Africa (AF): While proposals in all fields are encouraged, emphasis will be given to proposals which focus on strengthening democratic institutions. Proposals involving South Africa are encouraged.

North Africa, Near East and South Asia (NEA): Priority will be given to projects which promote democratization, economic reform, free markets, tolerance and pluralism, conflict resolution, and Israeli and Palestinian understanding. The Office of Citizen Exchanges strongly encourages the coordination of activities with respected universities, professional associations, and major cultural institutions in the U.S. and abroad, but particularly in the U.S. Projects should be intellectual and cultural, not technical. Vocational training (an occupation other than one requiring a baccalaureate or higher academic degree; i.e., clerical work, auto maintenance, etc. and other occupations requiring less than two years of higher education) and technical training (special and practical knowledge of a mechanical or a scientific subject which enhances mechanical, narrowly scientific, or semi-skilled capabilities) are ineligible for support. In addition, scholarship programs are ineligible for support.

The Office does not support proposals limited to conferences or seminars (i.e., one to fourteen-day programs with plenary sessions, main speakers, panels, and a passive audience). It will support conferences only insofar as they are part of a larger project in duration and scope which is receiving USIA funding from this competition. USIA-supported projects may include internships; study tours; short-term, non-technical training; and extended, intensive workshops taking place in the United States or overseas.

The themes addressed in exchange programs must be of long-term importance rather than focused exclusively on current events or short-term issues. In every case, a substantial rationale must be presented as part of the proposal, one that clearly indicates the distinctive and important contribution of the overall project, including where applicable the expected yield of any associated conference.

No funding is available exclusively to send U.S. citizens to conferences or conference-type seminars overseas; neither is funding available for bringing foreign nationals to conferences or to routine professional association meetings in the United States.

Projects that duplicate what is routinely carried out by private sector and/or public sector operations will not be considered. The Office of Citizen Exchanges strongly recommends that applicants consult with host country USIS post, prior to submitting proposals.

Section of Participants

All grant proposals should clearly describe the type of persons who will participate in the program as well as the process by which participants will be selected. It is recommended that programs in support of U.S. internships include letters tentatively committing host institutions to support the internships.

In the selection of foreign participants, USIA and USIS posts retain the right to nominate all participants and to accept or deny participants recommended by grantee institutions. However, grantee institutions are often asked by USIA to suggest names of potential participants. The grantee institution will also provide the names of American participants and brief (two pages) biographical data on each American participant to the Office of Citizen Exchanges for information purposes. Priority will be given to foreign participants who have not previously travelled to the United States.

Additional Guidance

The Office of Citizen Exchanges offers the following additional guidance to prospective applicants:

1. The Office of Citizen Exchanges encourages project proposals involving more than one country. Pertinent rationale which links countries in multi-country projects should be included in the submission. Single-country projects that are clearly defined and possess the potential for creating and strengthening continuing linkages between foreign and U.S. institutions are also welcome.

2. Proposals for bilateral programs are subject to review and comment by the USIS post in the relevant country, and pre-selected participants will also be subject to USIS post review.

3. Bilateral programs should clearly identify the counterpart organization and provide evidence of the organization's participation.

4. The Office of Citizen Exchanges will consider proposals for activities which take place exclusively in other countries when USIS posts are consulted in the design of the proposed program and in the choice of the most suitable venues for such programs.

5. Office of Citizen Exchanges grants are not given to support projects whose focus is limited to technical or vocational subjects, or for research projects, for publications funding, for student and/or teacher/faculty exchanges, for sports and/or sports related programs. Nor does this office provide scholarships or support for long-term (a semester or more) academic studies. Competitions sponsored by other Bureau offices are also announced in the **Federal Register**.

For projects that would begin after July 1, 1995, competition details will be announced in the **Federal Register** on or about December 1, 1994. Inquiries

concerning technical requirements are welcome prior to submission of applications.

Funding

Although no set funding limit exists, proposals for less than $150,000 will receive preference. Organizations with less than four years of successful experience in managing international exchange programs are limited to $60,000. Applicants are invited to provide both an all-inclusive budget as well as separate sub-budgets for each program component, phase, location, or activity in order to facilitate USIA decisions on funding. While an all-inclusive budget must be provided with each proposal, separate component budgets are optional. Competition for USIA funding support is keen.

The selection of grantee institutions will depend on program substance, cross-cultural sensitivity, and ability to carry out the program successfully. Since USIA grant assistance constitutes only a portion of total project funding, proposals should list and provide evidence of other anticipated sources of financial and in-kind support.

The Recipient must provide a minimum of 33 percent cost sharing of the total project cost. Cost sharing may be in the form of allowable direct or indirect costs. The Recipient must maintain written records to support all allowable costs which are claimed as being its contribution to cost participation, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, Attachment E-Cost Sharing and Matching and should be described in the proposal. In the event the Recipient does not provide a minimum of 33 percent cost sharing, the Agency's contribution will be reduced in proportion to the Recipient's contribution. Proposals with cost sharing of less than 33 percent of the total project cost will be considered ineligible. The recipient's proposal shall include the cost of an audit that: (1) Complies with the requirements of OMB Circular No. A–133, Audits of Institutions of Higher Education and Other Nonprofit Institutions; (2) complies with the requirements of American Institute of Certified Public Accountants (AICPA) Statement of Position (SOP) No. 92–9; and (3) includes review by the recipient's independent auditor of a recipient-prepared supplemental schedule of indirect cost rate computation, if such a rate is being proposed. The audit costs shall be identified separately for: (1) Preparation of basic financial statements and other accounting services; and (2) preparation of the supplemental reports and schedules required by OMB Circular No. A–133, AICPA SOP 92–9, and the review of the supplemental schedule of indirect cost rate computation. The following project costs are eligible for consideration for funding:

1. International and domestic air fares; visas; transit costs; ground transportation costs.

2. Per Diem. For the U.S. program, organizations have the option of using a flat $140/day for program participants or the published U.S. Federal per diem rates for individual American cities. For activities outside the U.S., the published Federal per diem rates must be used. NOTE: U.S. escorting staff must use the published Federal per diem rates, not the flat rate.

3. Interpreters: If needed, interpreters for the U.S. program are provided by the U.S. State Department Language Services Division. Typically, a pair of simultaneous interpreters is provided for every four visitors who need interpretation. USIA grants do not pay for foreign interpreters to accompany delegations from their home country. Grant proposal budgets should contain a flat $140/day per diem for each Department of State interpreter, as well as home-program-home air transportation of $400 per interpreter plus any U.S. travel expenses during the program. Salary expenses are covered centrally and should not be part of an applicant's proposed budget.

4. Book and cultural allowance: Participants are entitled to and escorts are reimbursed a one-time cultural allowance of $150 per person, plus a participant book allowance of $50. U.S. staff do not get these benefits.

5. Consultants. May be used to provide specialized expertise or to make presentations. Daily honoraria generally do not exceed $250 per day. Subcontracting organizations may also be used, in which case the written agreement between the prospective grantee and subcontractor should be included in the proposal.

6. Room rental, which generally should not exceed $250 per day.

7. Materials development. Proposals may contain costs to purchase, develop, and translate materials for participants.

8. One working meal per project. Per capita costs may not exceed $5–$8 for a lunch and $14–$20 for a dinner; excluding room rental. The number of invited guests may not exceed participants by more than a factor of two to one.

9. A return travel allowance of $70 for each participant which is to be used for incidental expenditures incurred during international travel.

10. All USIA-funded delegates will be covered under the terms of a USIA-sponsored health insurance policy. The premium is paid by USIA directly to the insurance company.

11. Other costs necessary for the effective administration of the program, including salaries for grant organization employees, benefits, and other direct and indirect costs per detailed instructions in the application package. Note: the 20 percent limitation of "administrative costs" included in previous announcements does not apply to this RFP. Please refer to the Application Package for complete budget guidelines.

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 Packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the budget and contract offices, as well as the USIA geographic regional office and the USIS post overseas, where appropriate. Proposals may also be reviewed by the USIA's Office of General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

Review Criteria

USIA will consider proposals based on their conformance with the objectives and considerations already stated in this RFP, as well as the following criteria:

1. *Quality of Program Idea:* Proposals should exhibit originality, substance, precision, and relevance to the Agency mission.

2. *Program Planning:* Detailed agenda and relevant work plan should demonstrate substance undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. *Ability to Achieve Program Objectives:* Objectives should be reasonable, feasible, and flexible. Proposal should clearly demonstrate how the institution will meet the program objectives and plan.

4. *Multiplier Effect:* Proposed programs should strengthen long-term

mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. *Value to U.S.—Partner Country Relations:* Proposed projects should receive positive assessments by USIA's geographic area desk and overseas officers of program need, potential impact, and significance in the partner.

6. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goal.

7. *Institution Reputation/Ability:* Proposal should demonstrate an institutional record of successful 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. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. *Follow-on Activities:* Proposals should provide a plan for continued follow-on activity (without USIA support) which ensures that USIA supported programs are not isolated events.

9. *Evaluation Plan:* Proposals should provide a plan for a thorough and objective evaluation of the program/project by the grantee institution.

10. *Cost-Effectiveness:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

11. *Cost-Sharing:* Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

12. *Support of Diversity:* Proposal should demonstrate the recipients' 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 their organization and their activities.

Notice

The need of the program may require the award to reduced, revised, or increased. The terms and conditions published in the RFP are binding and may not be modified by any USIA representative. Explanatory information provided by USIA 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 awards cannot be made until funds have been fully appropriated by the Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about December 1, 1994. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: June 8, 1994.

John P. Loiello,

Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 94–14510 Filed 6–15–94; 8:45 am]

BILLING CODE 8230–01–M

Public and Private Nonprofit Organizations in Support of International Educational and Cultural Activities—Professional Development in English Language Teaching: Israel, et al.

ACTION: Notice—request for proposals.

SUMMARY: The Office of Citizen Exchanges (E/P) of the United States Information Agency's Bureau of Educational and Cultural Affairs announces a competitive grant program for nonprofit organizations to conduct a project for enhancing professional development in English language teaching at the secondary level in Israel (both Arab and Jewish communities), Gaza, and the West Bank. Participants will be professionals responsible for developing effective English language teaching programs; emphasis will be on curriculum development, teaching methodology, production of classroom-appropriate material, and organizing professional associations and networks.

A second, underlying, agenda of this project is to convene, on an egalitarian basis and on neutral territory, a group of Israeli Jews, Israeli Arabs, and Palestinians who will work together within a professional discipline—in this case, English language teaching—and who will, upon returning to their own communities, both maintain professional, mutually supportive contact and represent, within those communities, the feasibility of collegial relationships between Jews, Israeli Arabs, and Palestinians.

The program will be conducted in English.

Interested applicants are urged to read the complete **Federal Register** announcement before addressing inquiries to the Office of Citizen Exchanges or submitting their proposals. After the RFP deadline, the Office of Citizen Exchanges may not discuss this competition in any way with applicants until the final decisions are made.

ANNOUNCEMENT NAME AND NUMBER: All communications with USIA concerning this announcement should refer to the above title and reference number E/P–94–31.

DATES: Deadline for Proposals: All copies must be received at the U.S. Information Agency by 5 p.m., Washington, DC time on August 2, 1994. Faxed documents will not be accepted, nor will documents postmarked August 2, 1994 but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by this deadline.

ADDRESSES: The original and 14 copies of the completed application and required forms should be submitted by the deadline to: U.S. Information Agency, Ref: E/P–94–31, Office of Grants Management (E/XE), 301 Fourth Street SW.—room 336, Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested organizations/institutions should contact the Office of Citizen Exchanges (E/P), room 224, USIA, 301 Fourth Street SW., Washington, DC 20547, fax (202) 619–4350, tel. (202) 619–5319, to request detailed application packages which include all necessary forms and guidelines for proposals, including specific budget preparation. Please specify the name of USIA Program Specialist Thomas Johnston on all inquiries and correspondence.

Background/Objectives of This Program

There is a strong need and desire among educational professionals in Gaza, the West Bank, Israeli Arab communities, and selected Israeli Jewish communities for assistance in the development of an effective, comprehensive program of English language teaching at the secondary level. Concomitantly, there is an even greater imperative for members of the diverse communities within Israel and for Palestinians from both Gaza and the West Bank to meet and work together in a professional, non-politically charged context.

One goal of this project is to prepare Israeli and Palestinian participants—individuals active in setting the agenda for high school and/or community-based English Language teaching programs—to implement state-of-the-art TESOL curriculum design, teaching methodology, and material/text

development in an effort to enhance English teaching and learning in their respective communities.

The second goal is to develop a situation in which professionals from the diverse communities may meet and work together in an egalitarian, mutually supportive way.

American organizations are invited to submit proposals for a project to bring 12 English teaching professionals to the United States for a period of four or five weeks.

Participants should become thoroughly conversant with state-of-the-art theory and practice of teaching English as a second language. They should observe and participate in classroom and language lab instruction, become involved in the complexities of curriculum development, and produce guidelines for and examples of classroom-appropriate teaching material. In addition, they should be introduced to professional associations and networks of teachers, curriculum developers, and education officials, providing them models of professional cooperation and information exchange which will be useful in establishing cross-cultural professional linkages in the region.

The second phase of the project should take place over a period of approximately six months and should entail the travel at approximately eight-to-ten-week intervals, of four American specialists/consultants. Each specialist will conduct a series of two-to-three-day workshops on one or more of the key issues addressed in the initial phase of the exchange (e.g., curriculum development; teaching methodology; in-service training), in each of the locations in Israel, Gaza, and the West Bank from which participants in the original phase were drawn.

Participants

Participants' professional titles will vary from community to community, given the independent development of educational supervisory/oversight institutions in Israel, Gaza, and the West Bank. They might be drawn from the Ministry of Education, the ranks of consultants to the educational establishment, teachers' unions, professional committees, or teacher training institutions. All will be responsible, in some capacity, for the development of effective English language teaching programs. Participants will be selected by United States Information Service officers (The United States Information Agency's overseas contingent is officially called the United States Information Service) serving in the American Embassy in Tel Aviv and the American Consulate in Jerusalem. Individuals may also be recommended for participation by the grantee institution, but selection will be made only in close consultation with USIS officers. American consultants who will travel abroad during the second phase of this exchange program will be selected by the grantee institution in consultation with USIA.

USIA officers in participating countries will facilitate the issuance of visas and other program-related material.

Programmatice Considerations

Thematically, the project should:

—Consider the current status of English Language instruction in the communities represented by the participants and determine, in conjunction with USIS posts in Israel and Jerusalem and with the educators selected as participants, the needs to be addressed by the project;

—Provide the participants both a general and specific overview of English Language education—focussing specifically on teaching English as a second language—as it is practiced in the United States, in the context of a socially diverse country;

—Be organized, to the extent possible, around open seminar/discussions, participant observation, and hands-on, experiential learning;

—Introduce participants to the organization and workings of professional associations of educators and other means of information exchange, such as internet, which would provide continued access to diverse ideas, publications, etc.;

—And include, if feasible, attendance at the TESOL international convention in Long Beach, California, March 28–April 1, 1995.

Pursuant to the legislation authorizing the Bureau of Educational and Cultural Affairs, programs must maintain a nonpolitical character and should be balanced and representative of the diversity of American political, social, and cultural life.

Beyond the immediate goals of this program, USIA is interested in supporting programs which will lay the groundwork for new and continuing links among American, Israeli, and Palestinian institutions and professional organizations and which will encourage the further growth and development of democratic structures.

The grantee will be responsible for most arrangements associated with this program. These include organizing a coherent progression of activities, providing international and domestic travel arrangements for all participants, making lodging and local transportation arrangements for visitors, orienting and debriefing participants, preparing any necessary support material, and working with host institutions and individuals to achieve maximum program effectiveness.

To prepare the foreign educators for this project prior to their arrival in the United States, E/P encourages the grantee organization to develop material that would be sent to USIS offices overseas for distribution to participants. This material might include a tentative project outline and suggested goals and objectives, relevant background information, and information about American institutions and individuals involved in the project.

At the beginning of the program, the grantee organization should conduct an orientation session for the visiting participants which addresses administrative details of the program and provides general information about American society and culture which will facilitate the participants' understanding of and adjustment to daily life in the United States.

At the conclusion of the program, the group should meet in a symposium to review what has been presented to and experienced by the participants and to consider how that which has been learned can most effectively be applied upon the participants' return to their home countries.

Additional Guidelines

Program monitoring and oversight will be provided by appropriate USIA elements. Per Diem support from host institutions during an internship component is strongly encouraged. However, for all programs which include internships, a nonprofit grantee institution which receives funds from corporate or other co-sponsors should then use those funds to provide food, lodging, and pocket money for the participants. In no case could the intern receive a wage or "be hired" by the sponsoring institution.

Internships should also have an American studies/values orientation component at the beginning of the program. The American grantee institutions should try to maximize cost-sharing in all facets of the program, and to stimulate U.S. private sector (foundation and corporate) support.

Proposals incorporating internships will be more competitive if letters committing prospective host institutions to support these efforts are provided.

Funding

Competition for USIA funding support is keen. The final selection of a

grantee institution will depend on assessment of proposals according to the review criteria delineated below.

The amount requested from USIA for this program should not exceed $135,000. However, organizations with less than four years of successful experience in managing international exchange programs are limited to $60,000.

While applicants must provide an all-inclusive budget with the proposal, they are also encouraged to include separate sub-budgets for each program component, phase, location or activity.

The recipient's proposal shall include the cost of an audit that: (1) Complies with the requirements of OMB Circular No. A–133, Audits of Institutions of Higher Education and Other Nonprofit Institutions; (2) complies with the requirements of American Institute of Certified Public Accountants (AICPA) Statement of Position (SOP) No. 92–9; and (3) includes review by the recipient's independent auditor of a recipient-prepared supplemental schedule of indirect cost rate computation, if such a rate is being proposed.

The audit costs shall be identified separately for: (1) Preparation of basic financial statements and other accounting services; and (2) preparation of the supplemental reports and schedules required by OMB Circular No. A–133, AICPA SOP 92–9, and the review of the supplemental schedule of indirect cost rate computation.

USIA will consider funding the following project costs:

1. International and domestic air fares; visas; transit costs (e.g., airport taxes); ground transportation costs.

2. *Per diem*: For the U.S. program, organizations have the option of using a flat $140/day for international participants or the published Federal Travel Regulations per diem rates for individual American cities.

Note: U.S. escorting staff must use the published federal per diem rates, not the flat rate. For activities in the Middle East the Standard Government Travel Regulations per diem rates must be used.

3. *Book and cultural allowance*: Participants are entitled to a one-time cultural allowance of $150 per person, plus a participant book allowance of $50. Escorts are reimbursed for actual expenses up to $150. U.S. staff do not get these benefits.

4. *Consultants*: May be used to provide specialized expertise or to make presentations. Honoraria should not exceed $250 per day. Subcontracting organizations may also be used, in which case the written contract(s) must be included in the proposal.

5. *Room rental (for meeting or conference rooms)*: Generally should not exceed $250 per day.

6. *Material development*: Proposals may contain costs to purchase, develop and translate material for participants. USIA reserves the rights to this material for future use.

7. *One working meal per project*: Per capita cost may not exceed $5–8 per lunch and $14–20 per dinner, excluding room rental. The number of invited guests may not exceed the number of participants by a factor of more than two to one.

8. *Return travel allowance*: $70 for each participant which is to be used for incidental expenditures incurred during international travel.

9. Other costs necessary for the effective administration of the program, including salaries for grant organization employees, benefits, and other direct and indirect costs per detailed instructions in application package.

Note: the 22% limitation of "administrative costs" included in previous announcements does NOT apply to this RFP.

E/P encourages cost-sharing, which may be in the form of allowable direct or indirect costs. E/P would be especially interested in proposals which demonstrate a program vision which goes well beyond that which can be supported by the requested USIA grant and which would try to use a USIA grant to leverage additional funding from other sources to support elements of the broader program plan.

The Recipient must maintain written records to support all allowable costs which are claimed as being its contribution to cost participation, as well as costs to be paid by the Federal Government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, Attachment E, "Cost-sharing and Matching," and should be described in the proposal. In the event the Recipient does not meet the minimum amount of cost-sharing as stipulated in the Recipient's budget, the Agency's contribution will be reduced in proportion to the Recipient's contribution.

Please Note all delegates will be covered under the terms of a USIA-sponsored health insurance policy. The premium is paid by USIA directly to the insurance company.

Application Requirements

Proposals must be structured in accordance with the instructions contained in the Application Package. Confirmation letters from U.S. and foreign co-sponsors noting their intention to participate in the program will enhance a proposal.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the Application Package.

Eligible proposals will be forwarded to panels of USIA officers for advisory review. Proposals will be reviewed by USIS posts and by USIA's Office of Near Eastern, North African, and South Asian Affairs. Proposals may also be reviewed by the Office of the General Counsel or other Agency elements. Funding is at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for granting awards resides with USIA's contracting officer. The awarding of any grant is subject to availability of funds.

The U.S. Government reserves the right to reject any or all applications received. USIA will not pay for design and development costs associated with submitting a proposal. Applications are submitted at the risk of the applicant; should circumstances prevent the awarding of a grant, all preparation and submission costs are at the applicant's expense. USIA will not award funds for activities conducted prior to the actual grant award.

Review Criteria

USIA will consider proposals based on the following criteria:

1. Quality of Program Idea

Proposals should exhibit substance, originality, rigor, and relevance to the Agency mission. They should demonstrate the matching of U.S. resources to a clearly defined need.

2. Institutional Reputation/Ability

Institutions should demonstrate their potential for effective program design and implementation and provide, if available, evidence of having conducted successful programs. If an applicant has previously received a USIA grant, responsible fiscal management and full compliance with all reporting requirements for past Agency grants, as determined by USIA's Office of Contracts (M/KG), will be considered. Evaluations of previous projects may also be considered in this assessment.

3. Project Personnel

Information provided regarding the thematic and logistical expertise of project personnel should be relevant to the proposal at hand. In addition to English teaching specialists, applicants

for this grant should have involved, on a consultative basis, individuals with Middle Eastern and conflict resolution expertise. Resumes or C.V.s should be summaries appropriate to the specific proposal and should not exceed two pages each.

4. Program Planning

A detailed agenda and relevant work plan should demonstrate substantive rigor and logistical capacity.

5. Thematic Expertise

The proposal should demonstrate the organization's expertise in the subject area and its ability to share information effectively.

6. Cross-Cultural Sensitivity/Area Expertise

Evidence should be provided of sensitivity to historical, linguistic, religious, and other cross-cultural factors, as well as relevant knowledge of the target geographic area/country.

7. Ability To Achieve Program Objectives

Objectives should be realistic and feasible. The proposal should clearly demonstrate how the grantee institution will meet program objectives.

8. Multiplier Effect

Proposed programs should strengthen mutual understanding and should contribute to maximum sharing of information and the establishment of long-term institutional and individual ties.

9. Cost-Effectiveness

Costs to USIA per exchange participant (American and foreign) should be kept to a minimum, and all items proposed for USIA funding should be necessary and appropriate to achieve the program's objectives.

10. Cost-Sharing

Proposals should maximize cost-sharing through private sector support as well as through direct funding contributions and/or in-kind support from the prospective grantee organization and its partners.

11. Follow-On Activities

Proposals should provide a plan for continued exchange activity (without USIA support) which ensures that USIA-supported programs are not isolated events.

12. Project Evaluation

Proposals should include a plan to evaluate the project. USIA recommends that the applicant discuss the evaluation methodology chosen and the techniques which will be employed to assess the effectiveness of the project and the correspondence between observable outcomes and original project objectives. Grantees will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative.

Explanatory information provided by the Agency which contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the American Government. Awards cannot be made until funds have been fully appropriated by Congress and allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about September 16, 1994. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: June 11, 1994.

Barry Fulton,

Deputy Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 94–14693 Filed 6–15–94; 8:45 am]

BILLING CODE 8230–01–M

Freedom Support Act—Secondary School Initiative for Short Term Exchange Projects

ACTION NOTICE: Request for proposals.

SUMMARY: The United States Information Agency (USIA) invites applications from U.S. educational, cultural, and other not-for-profit institutions to conduct exchanges of young persons between the ages of 14 and 17 years of age with the twelve Newly Independent States (NIS) of the former Soviet Union; viz., Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. These exchanges represent part of the activities of the Secondary School Student Exchange Initiative as included in the FREEDOM Support Act of 1992 and are subject to the availability of funding for the Fiscal Year 1995 program. This is a request for proposals for short term thematic exchanges. Requests for proposals in support of other programs under the aegis of the FREEDOM Support Act are being published separately.

DATES: Deadline for proposals: All copies must be received at the U.S. Information Agency in Washington, DC by 5 p.m. on Friday, September 2, 1994. Faxed documents will not be accepted, nor will documents postmarked on or before September 2, but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline. Subject to availability of funds, notification of awards will be announced on or after February 1, 1995 for exchanges to begin on or after May 1, 1995.

ANNOUNCEMENT NUMBER: This Announcement number is E/P–95–02. Please refer to this number in all correspondence or telephone calls to USIA.

ADDRESSES: The original, plus three fully tabbed copies and 10 partial copies (Tabs A–D) of the completed application, including required forms, should be submitted in the format described in the Bureau's application package and mailed to: U.S. Information Agency, Ref: F.S.A. E/P–95–02, Division of Grants Management, E/XE, 301 4th St. SW., room 336, Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested organizations and institutions should contact Steven Lauterbach, NIS Youth Exchange, U.S. Information Agency, room 314, Washington, DC 20547, (202) 619–6299, FAX (202) 619–5311, to request detailed application packages which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget information.

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. Overall authority for these programs is contained in the Mutual Education and Cultural Exchange Act of 1961, as amended, Public Law 87–256 (Fulbright-Hays Act).

Overview:

Grant funding is intended to promote the exchange of secondary school students, from 14 to 17 years of age, between the United States and the NIS (Newly Independent States) of Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. Limited funding is also available to support leadership development and training for adults in NIS non-governmental

organizations who work with youth, when such an activity is coupled with a youth exchange program. The Agency's main objectives are to foster interaction between American and foreign youth, to promote democratic values and the development of democratic institutions, and to build sustainable partnerships between organizations in the United States and organizations in the former Soviet Union. It is important that all projects make interaction between the American and NIS participants a central focus of their activities. Proposals should demonstrate how American and foreign participants will interact in a substantive way that encourages the exchange of ideas, culture, values, and information.

Four different program designs will be utilized in the NIS Secondary School Initiative: (A) An academic year program, (B) a semester exchange program (C) a school-to-school linkage program, and (D) a short-term exchange program. This RFP describes the short-term program. Other RFPs will be published separately soliciting proposals for the other three programs.

Guidelines for Short-Term Exchanges

Grants will be awarded to support programs of a three to eight week duration. Programs should have a thematic focus. Proposals which address civics education and the American political system are encouraged. Other eligible foci may include, but are not limited to: The arts; language and culture; science; computer technology; leadership training; conservation and the environment; journalism; social and economic issues; agriculture; business administration/management (including enterprise promotion); and homestay programs under the title "American Community Experience," which should include local programming in such areas as state and municipal government, regional culture, etc. Proposals should provide detailed information on activities planned in both the U.S. and the partner country. It is important for program activities to be of a substantive nature. These may include excursions, cultural activities, and opportunities to experience community life. It is very desirable for each group of NIS students to have a segment of their program in Washington, DC or a state capital. Care should be taken to avoid proposing a program which is too heavily weighted toward "touristic" activities.

One-for-one reciprocity is not a requirement, but is encouraged. Proposals should also provide written evidence that the U.S. organization has the commitment of a reliable counterpart organization in the partner country willing and able to engage in the proposed activities. Homestays are desirable. The minimum stay in country for all programs is three weeks.

The core of the proposal narrative should articulate the purposes of the project, as they relate to the objectives stated above in the "Overview," and should describe the program elements. Guidelines for preparing the narrative are available from USIA (address and telephone number provided above).

Projects requesting support for tours of performing arts groups or sports teams are eligible only if the primary purpose of the program is mutual education and there is extensive structured interaction and cultural exchange between international participants and their hosts. Tours of performing arts groups or sports groups for whom the primary activity is performance or competition will not be eligible. Outdoor camping projects must have a thematic focus. Proposals must include a plan for evaluating the program in terms of its value to the participants. Unless there are extenuating circumstances, programs should maintain a ratio of not more than one adult per every ten young people. (If fewer than ten students are being sent on either side of an exchange, those students are entitled to one adult escort). Programs requesting an exception to the 1/10 ratio must provide a justification. One justifiable exception would be for those projects that include leadership development and training for adult leaders. Organizations wishing to pay for additional escorts from their own funds are free to do so.

Grantee organizations are responsible for developing a sustainable partnership with an organization in the NIS; designing and implementing the components of the exchange; managing all travel arrangements, logistics, insurance coverage, passports, visas, etc; and disbursing and accounting for funds.

Budget

The organization must submit a comprehensive line item budget. Costs for US and NIS students are to be listed separately. Details are available in the application packet. Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000. Organizations should be familiar with grant regulations described in OMB circulars A110, A122, and A133.

Cost sharing is encouraged. Cost sharing may be in the form of allowable direct or indirect costs. The grant recipient must maintain written records to support all allowable costs which are claimed as being its contribution to cost participation, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A110, Attachment E—Cost Sharing and Matching should be described in the proposal. In the event the recipient does not provide the minimum amount of cost sharing as stipulated will be reduced in proportion to the recipient's contribution.

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 packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the appropriate geographical office of the U.S. Information Agency, and the Agency's budget and contract offices. Proposals may also be reviewed by the Agency's Office of the General Counsel. Funding decisions are at the discretion of the Associate Director of Education and Cultural Affairs. Final technical authority for grant awards resides with the Agency's Office of Contracts.

Review Criteria

Technically eligible applications will be competitively reviewed according to the following criteria:

1. Quality of the Program Idea

Proposals should exhibit originality, substance, rigor, and adherence to the criteria and conditions described above.

2. Reasonable, Feasible, and Flexible Objectives

Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

3. Multiplier Effect/Impact

Proposed programs should strengthen long-term mutual understanding, to include maximum sharing of information and establishment of long-term institutional and individual linkages. A program is also considered to have a strong "multiplier effect" if it affects a significant number of persons in addition to the actual program participants. For example, a group of high school students may have

extensive interaction with community groups.

4. Value to U.S.—Partner Country Relations

Assessments by USIA's geographic area desk, and USIS officers overseas of the need, potential, impact, and significance in the partner country(ies), as demonstrated by a sustainable partnership with an organization in the former Soviet Union.

5. Cost Effectiveness

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. Proposals should to the extent possible maximize cost-sharing through other private sector support as well as institutional direct funding contributions. Other things being equal, a proposal with a low cost per participant and/or a low cost per participant program day will have a competitive advantage.

6. Institutional Capacity

The proposed personnel and institutional resources of both the U.S. applicant and the NIS partner organization should be adequate and appropriate to achieve the program or project's goals.

7. Proposals Should Demonstrate Potential for Program Excellence and/or Track Record of Applicant Institution

The Agency will consider the past performance of prior grantees and the demonstrated potential of new applicants. A documented record of successful exchange programs, whether USIA financed or not, is one way in which an applicant may demonstrate strength in this area.

8. Follow-On Activities

In accordance with the stated objective of a sustainable partnership with an organization in the former Soviet Union, proposals should provide a plan for continued follow-on activity which ensures that USIA supported programs are not isolated events.

9. Evaluation Plan

Proposals should provide a thoughtful and comprehensive description of how the project will be evaluated in terms of meeting the objectives listed above and how such an evaluation would present quantitative data on participants, contacts, interactions, activities, achievements, etc., as well as qualitative appraisals of successes and shortcomings and suggestions for program improvement.

10. Selection Process

All participants must be between the ages of 14 and 17 at the time they begin the program. In all cases, selection should be merit-based. Selection criteria should include actual or potential leadership qualities, and may also include some or all of the following: Maturity, academic achievement, interest in the program, motivation, recommendations of teachers, and language ability, although no participant should be chosen solely on the basis of his or her language ability. As far as possible, participants should reflect the diversity of the communities from which they come. Ability to pay should not be a determining factor for either American or foreign participants.

11. Geographic Diversity

To the extent possible, the Agency will seek to fund programs from different geographic areas within the former Soviet Union and within the United States.

12. Participant Diversity

Programs should strive for a diversity of participants and include members of underrepresented groups; e.g., racial and ethnic minorities and persons with disabilities.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. A 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 March 1, 1995. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: June 8, 1994.

John P. Loiello,

Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 94–14511 Filed 6–15–94; 8:45 am]

BILLING CODE 8230–01–M

Samantha Smith Memorial Exchange Program—Youth Exchanges

ACTION: Request for proposals.

SUMMARY: The United States Information Agency (USIA) invites applications from U.S. educational, cultural, and other not-for-profit institutions to conduct exchanges of youth under the age of 21 with Central and Eastern Europe: Albania, Croatia, Slovenia, Bosnia-Hercegovina, Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, and The Former Yugoslav Republic of Macdeonia, or the Newly Independent States (NIS) of Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. Proposals may address more than one country in each area but cannot combine NIS countries with those of Central and Eastern Europe. However, organizations may submit two different proposals for these two geographic areas. These exchanges represent part of the activities of the Samantha Smith Memorial Exchange Program and are subject to the availability of funding for the Fiscal Year 1995 program. A request for proposals in support of exchanges of college and university undergraduate students under the AEGIS of the Samantha Smith program will be published separately by the office of Academic Exchanges.

DATES: Deadline for proposals: All copies must be received at the U.S. Information Agency in Washington, DC by 5 p.m. EST on Friday, September 2, 1994. Faxed documents will not be accepted, nor will documents postmarked on a September 2 but received at a later date. It is the responsibility of each grant applicant to ensure that complete proposals are received by the above deadline. Grant funds are unlikely to be available before February 1, 1995.

ANNOUNCEMENT NUMBER: This Announcement number is E/P–95–03. Please refer to this number in all correspondence or telephone calls to USIA.

ADDRESSES: One complete signed original, three complete, fully tabbed copies, and ten partial copies (parts A through D only), not bound, must be submitted before the deadline to: U.S. Information Agency, Ref: E/P–95–03, Office of Grants Management, E/XE, room 336, 301 4th St. SW., Washington, DC, 20547.

FOR FURTHER INFORMATION CONTACT: Interested organizations and institutions should write or fax: U.S. Information Agency, Office of Citizen Exchanges, E/PY, room 314, 301 4th St., SW., Washington, DC 20547, FAX for NIS (202) 619–5311, for Central and Eastern Europe FAX (202) 619–4350 to request

detailed application packages, which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information. Questions may be directed to E/PY (202) 619–6299 (NIS) or E/PN (202) 619–5348 (Central and Eastern Europe).

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. Overall authority for these programs is contained in the Mutual Education and Cultural Exchanges Act of 1961, as amended, Public Law 87–256 (Fulbright-Hays Act).

Overview

Grant funding is intended to promote the exchange of young people 21 years of age or younger between the U.S. and the Newly Independent States (NIS) or Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan, and the Central and Eastern European countries of Albania, Bosnia-Hercegovina, Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, Slovenia, and the Former Yugoslav Republic of Macedonia. Proposals may address more than one country in each area, for example, a project with Bulgaria, Latvia, and Slovenia, or Belarus, Moldova, and Kyrgyzstan. Proposals cannot combine NIS countries with those of Central and Eastern Europe. The Agency's main objective is to foster interaction between American and foreign youth. Consequently, extensive interaction is a requirement. Proposals should demonstrate how American and foreign youth will interact in a way that encourages the exchange of ideas, values, culture, and information.

This competition will give priority consideration to projects taking place in Russia in areas other than Moscow and St. Petersburg, and to projects taking place outside of capital cities in all the eligible countries.

Twenty-five percent (25%) of the available funds will be reserved for organizations that have not received Samantha Smith grants in the past year. Grants are awarded to expand or enhance existing exchange programs or to encourage the development of new exchanges. Programs may involve the U.S. organization in a partnership with organizations in one or more countries. The minimum length of stay in country for a project should be three weeks.

Two categories of grants are being offered.

Category A—School-to-School Exchanges

A school-to-school exchange is one that involves a direct linkage between a U.S. and a Central and Eastern European or NIS elementary, middle, or high school, or a two-year college. (4-year colleges and universities are not eligible under this competition). An applicant must be a school, school district, or two-year college. The maximum grant for this category is $15,000. The exchange program activity should be reciprocal and permit students to live in each other's countries during the academic year when schools are in session. (This would include officially-sponsored summer school sessions). The proposal should provide detailed information on the classroom and other activities in both the U.S. and the partner country. The duration of the projects may be one academic year, one semester, or short-term (generally understood to mean three to eight weeks). Organizations which are receiving funding under other USIA grants for youth exchanges must insure that proposals submitted under this solicitation do not duplicate or overlap with programs already being funded by USIA.

Category B—General Youth Exchange

This category includes all other projects, which will be eligible for grants of up to $75,000. Semester and year-long high school or two-year college study programs conducted by exchange organizations may fall within this category, as may projects involving the annual exchange of groups of students and teachers among several linked schools for short-term stays during the academic year. (4-year colleges and universities are not eligible under this competition). For short-term (3–8 weeks) exchanges, preference is given to projects with a thematic focus. Eligible foci may include, but are not limited to: The arts (theater, dance, music, fine arts, literature, folklore, and film/video); language and culture; science, technology, and mathematics; conservation and the environment; historic preservation; museum training; social, political, and economic issues; agriculture; business and administration/management (including enterprise promotion). While a thematic focus is not an absolute requirement, care should be taken to avoid proposing a program which is too heavily weighted toward "touristic" activities and lacking in substance. Projects requesting support for tours of performing arts groups or sports teams are eligible if the primary purpose of the program is interaction among international participants and their hosts. Tours of performing arts groups or sports groups where the primary activity is performance or competition are not eligible.

Reciprocity is not a requirement for this category, but in general, USIA gives preference to proposals for reciprocal exchanges. The proposal should provide detailed information on the activities in both the U.S. and the partner country. The number of U.S. and foreign participants should be roughly equal. Such proposals must provide written evidence of the commitment of a counterpart organization in the partner country willing and able to engage in the proposed activities. In most cases the counterpart organization should assume a significant portion of the cost of hosting the American participants in the reciprocal portion of the program.

Guidelines

All categories of proposals must include: Participant selection criteria and a description of the selection process. All participants must be under the age of 21 at the time they begin the program. In all cases, selection should be merit-based. Selection criteria should include actual or potential leadership qualities, and may also include some or all of the following: maturity, academic achievement, interest in the program, motivation, recommendations of teachers, and language ability, although no participant should be chosen solely on the basis of language ability. As far as possible, participants should reflect the diversity of the communities from which they come. Ability to pay should not be a determining factor for either American or foreign participants.

Description of Orientation Programs

There should be ample introduction to the program theme, administrative procedures, basic historical, cultural, and social information, and substantive issues likely to be raised by their U.S. or foreign counterparts. The orientation program should help minimize the "culture shock" of the participants when they are in the partner country.

Information Concerning Stays in the Host Country

Preference is generally given to longer stays in-country. The proposal should describe in detail the selection and orientation processes for both U.S. and host families and institutions. Consideration will be given to those projects which for reasons or requirements of the partner country(ies) are of short duration, but the length of

stay in country should be a minimum of three weeks.

Information Concerning Language Qualifications

Speaking ability in the language of the host country for both American and foreign participants is preferred, but not required. It is recognized that relatively few American young people will speak the languages of the host countries, given the fact that relatively few American schools teach these languages. Ideally, some participants in each incoming delegation should be conversant in English, and some participants in each outgoing delegation should be conversant in the host country language. However, no participant should be selected solely on the basis of his or her language ability.

Details on Planning

The proposal should show evidence of adequate lead/planning time to ensure a successful exchange program. A proposed time frame should also be included, as should provisions for monitoring and evaluating the program.

Proposed Budget

Organizations must submit a comprehensive line item budget for which specific details are available in the application packet.

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000. Organizations should be familiar with grant regulations described in OMB circulars A110, A122, and A133.

Cost sharing is encouraged. Cost sharing may be in the form of allowable direct or indirect costs. The grant recipient must maintain written records to support all allowable costs which are claimed as being its contribution to cost participation, as well as cost to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A110, Attachment E—Cost Sharing and Matching, and should be described in the proposal. In the event the recipient does not provide the minimum amount of cost sharing as stipulated in the recipient's budget, the Agency's contribution will be reduced in proportion to the recipient's contribution.

Allowable Costs

Grant-funded expenditures will generally be limited to the following categories:

—In-country travel and per diem; i.e., lodging, meals, clothing, maintenance, and incidentals, or stipends.

—Orientation, honoraria, or preparation costs; briefing materials. Honoraria is limited to $150/day/speaker.

—Educational and cultural enrichment activities up to a limit of $150 per program youth participant.

—Tuition, conference/seminar registration fees, and other program admission fees.

—International travel, normally limited to partial support for Americans traveling to the NIS, Baltic Republics, or Central and East Europe, and Central and East Europeans traveling to the U.S. The American participants and/or the American organization should be encouraged to fund a portion of the Americans' travel costs, although full funding of participants from economically disadvantaged backgrounds is encouraged. The NIS partner organizations should also be encouraged to make a contribution toward international travel, but in this regard one should avoid a situation in which participants are chosen largely or wholly on the basis of their ability to pay, thus creating an unrepresentative group. In some cases 100% of the travel costs for NIS participants will be paid from USIA funds.

—Proposals should demonstrate substantial cost sharing in both program and administrative expenses.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not adhere to the guidelines established herein and in the application package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the appropriate geographic area office, and the budget and contracts offices. Proposals may also be reviewed by the Agency's Office of General Counsel. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with the USIA's grants officer.

Review Criteria

Technically eligible applications will be reviewed according to the following criteria in addition to what has been outlined already in this RFP:

1. Quality of Program Idea

Quality of the program plan and adherence of proposed activities to the criteria and conditions described above.

2. Reasonable, Feasible, and Flexible Objectives

Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

3. Multiplier Effect/Impact

Proposed programs should strengthen long-term mutual understanding, to include maximum sharing of information and establishment of long-term institutional and individual linkages. A program is also considered to have a strong "multiplier effect" if it affects a significant number of persons in addition to the actual program participants. For example, a group of high school students may have extensive interaction with community groups.

4. Value to U.S.—Partner Country Relations

Assessments by USIA's geographic area desk, and overseas officers of the need, potential, impact, and significance in the partner country(ies).

5. Cost Effectiveness

The overhead and administrative components of grants, as well as salaries and honoraria, should be kept as low as possible. Proposals which utilize grant funds for program rather than administrative costs will, in general, be more favorably reviewed. All other items should be necessary and appropriate. Proposals should to the extent possible maximize cost-sharing through other private sector support as well as institutional direct funding contributions. Other things being equal, a proposal with a low cost per participant and/or a low cost per participant program day will have an advantage.

6. Institutional Capacity

Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

7. Institution's Track Record/Ability

Proposals should demonstrate potential for program excellence and/or the track record of applicant institution. The Agency will consider the past performance of prior grantees and the demonstrated potential of new applicants. A documented record of successful exchange programs, whether USIA financed or not, is one way in

which an applicant may demonstrate strength in this area.

8. Follow-on Activities

Proposals should provide a plan for continued follow-on activity (without USIA support) which insures that USIA supported programs are not isolated events.

9. Evaluation Plan

Proposals should provide a plan for evaluation of the program by the grantee institution.

10. Participant Diversity

Programs should strive for a diversity among participants and include members of underrepresented groups; e.g., racial and ethnic minorities and persons with disabilities.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final awards 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 by February, 1995. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: June 8, 1994.

John P. Loiello,

Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 94–14512 Filed 6–15–94; 8:45 am]

BILLING CODE 8230–01–M

Freedom Support Act—Youth With Disabilities

ACTION: Request for proposals.

SUMMARY: The United States Information Agency (USIA) invites applications from U.S. educational, cultural and other not-for-profit institutions to provide materials, training and facilitative support on programming for youth with disabilities for USIA grantee organizations administering international exchanges. This program is sponsored under the Secondary School Exchange Initiative as originally authorized under the Freedom Support Act of 1992. Funding for this program is subject to the availability of a Congressional authorization and appropriation.

DATES: Deadlines for proposals: All copies of proposals for grants under this request must be received at the U.S. Information Agency in Washington, DC, by 5 PM EST, on September 30, 1994.

Faxed documents will not be accepted, nor will documents postmarked by 30 September but received at a later date. It is the responsibility of each grant applicant to ensure that its proposal is received by the above deadline. Grant funding should be available after 1 February, 1995 for a grant program beginning in May, 1995.

ANNOUNCEMENT NUMBER: This announcement number is E/P–95–04. Please refer to this number in all correspondence or telephone calls to USIA.

ADDRESSES: The original, 3 fully tabbed copies and 10 copies (Tabs A–D) of the completed application, including required forms, should be submitted in the format described in the Bureau's application package and mailed to: U.S. Information Agency, Ref: E/P–95–04, Grants Management, E/XE, 301 4th Street rm. 336, Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested organizations/institutions should contact Robert Persiko, Secondary School Initiative, E/PY, rm. 314 (202) 619–6299; Fax (202) 619–5311, to request detailed application packets, which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific preparation information.

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life. Overall authority for NIS Secondary School exchanges is contained in the Freedom Support Act (Pub. L. 102–391).

Overview

Grant funding is intended to assist one organization over a one-year period to provide training, materials and facilitative support about programming of people with disabilities for organizations funded by the NIS Secondary School Initiative. The purpose of the training is to promote access to Initiative programs for youth with disabilities. Materials should support the training and supplement this goal where training is unfeasible. Facilitative support should foster connections between secondary school exchange organizations in the US with organizations serving persons with disabilities; also promote links with similar organizations in the following countries with organizations recruiting students for NIS–US exchange programs: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kryrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan. This grant is not intended to sponsor the actual exchange of students.

Students selected for exchanges under the NIS Secondary School Initiative are aged 14 to 17 years old. Proposals should focus on increasing access to exchange opportunities by participants within this age range.

A maximum of one grant will be awarded for this project.

Guidelines

The components of this program and their respective purposes are:

(1) Training

To enlighten organizations that recruit, select, place and educate students supported under the Freedom Support Act Secondary School Exchange Program about the importance of integration of participants with disabilities into their programs; to train these organizations in the logistics of handling the needs of a participant with a disability and provide supporting materials needed for training; to provide materials needed for continued training within organizations.

(2) Materials

To provide reference materials for organizations which do not participant in the above-mentioned training; to compile information about accessible educational facilities abroad, and;

(3) Facilitative Assistance

To facilitate connections between organizations to the NIS which provide support for persons with disabilities and the organizations which recruit, select and place students participating in NIS–US exchange programs; to facilitate connections between organizations in the US that provide support for persons with disabilities and organizations in the US which recruit, select, and place students participating in US–NIS exchange programs.

The following factors should be considered in preparing proposals.

—The Secondary School Initiative funds programs administered by over 50 different organizations in the United States. It is anticipated that this training will involve many, but not all, of these organizations. The final number of trainees is subject to the

availability of funding. Budgets should outline both general costs associated with development of training and materials and specific costs for these services on a per-organization basis.

—Interested organizations must submit a proposal to administer all components of this program.

—Proposals under the facilitative assistance component of this program must demonstrate the organization's connections to U.S. and NIS based organizations in support of people with disabilities.

Proposals should include a description of the process your organization would use to train organizations about the need to integrate persons with disabilities in programs and the type of logistical education necessary to facilitate integration.

The grantee organization should describe the process by which the information about accessible educational facilities in the NIS will be gathered, organized and distributed.

The grantee organizations should also demonstrate a plan for connecting US based organizations in support of disabled persons and US organizations administering grant money for student exchange. In addition, the organization should describe a culturally-sensitive plan for linking NIS organizations in support of persons with disabilities to secondary school exchange organizations.

Proposed Budget

Organizations must submit a comprehensive line item budget. Details are available in the application packet. Organizations should be familiar with OMB circulars A110, A122, and A133 on cost accounting principles.

Cost sharing is encouraged. Cost sharing may be in the form of allowable direct or indirect costs. The recipient must maintain written records to support all allowable costs which are claimed as being its contribution to cost participation, as well as costs to be paid by the federal government. Such records are subject to audit.

The basis for determining the value of cash and in-kind contributions must be in accordance with OMB circular A110, Attachment E. Cost sharing and Matching should be described in the proposal. In the event the organization does not provide the minimum amount of cost sharing as stipulated in the recipient's budget, the Agency's contribution will be reduced in proportion to the participant's contribution.

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 packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the appropriate geographic area office, and the budget and contracts office. Proposals may also be reviewed by the Agency's Office of General Counsel.

Funding decisions are at the discretion of the Associate Director of Educational and Cultural Affairs.

Final technical authority to grant awards resides with the Agency's Office of Contracts.

Review Criteria

Technically eligible applications will be competitively reviewed according to the following criteria:

1. Quality of the Program Idea

Proposals should exhibit originality, substance, rigor, and relevance to Agency mission and adherence to the criteria and conditions described above and in application packet guidelines.

2. Reasonable, Feasible, and Flexible Objectives

Proposals should clearly demonstrate how the institution will meet the program's purposes as outlined in this RFP.

3. Multiplier Effect

Proposals should demonstrate how the programs will encourage continuation of the training objectives beyond the training period and beyond the training population.

4. Cost Effectiveness

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.

5. Institutional Capacity and Track Record

The organization should have demonstrated experience in the aspects of the program which they propose to administer. Proposals benefit by displaying a record of successful programs, including responsible fiscal management and full compliance with past Agency grants.

6. Follow-Up Activities

Proposals should present a plan to track the effectiveness of the training on following year exchange programs.

7. Evaluation Plan

Proposals should provide a plan for evaluation of the program by the grantee institution.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final award cannot be made until the 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 15 December 1993. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: June 11, 1994.

Barry Fulton,

Deputy Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 94–14694 Filed 6–15–94; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 115
Thursday, June 16, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: June 28, 1994, 2:00 p.m. (Eastern Time).

PLACE: Conference Room on the Ninth Floor of the EEOC Office Building, 1801 "L" Street, NW, Washington, DC. 20507.

STATUS: Part of the Meeting will be open to the public and part of the Meeting will be closed.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Votes.
2. Proposed Enforcement Guidance on *Hazen Paper Co.* v. *Biggins.*
3. Proposed Guide on Communicating & Interacting with People who have Disabilities.

Closed Session

Litigation Authorization: General Counsel Recommendations.

Note: Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.) Please telephone (202) 663–7100 (voice) and (202) 663–4077 (TTD) at any time for information on these meetings.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 663–4070.

This Notice Issued June 14, 1994.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 94–14866 Filed 6–14–94; 3:24 pm]

BILLING CODE 6750–06–M

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 94–14152.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, June 16, 1994, 10 a.m. Meeting Open to the Public.

The following item was deleted from the agenda:

Advisory Opinion 1994–14: Scott Lehman of Tsakanikas for U.S. Congress

DATE AND TIME: Wednesday, June 22, 1994 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

DATE AND TIME: Thursday, June 23, 1994 at 2 p.m.

PLACE: 999 E Street, NW., Washington, DC. (Ninth Floor.)

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Advisory Opinion 1994–4: Judith K. Richmond on behalf of the U.S. Chamber of Commerce
Advisory Opinion 1994–15: The Honorable Leslie L. Byrne
Advisory Opinion 1994–16: Carlyle C. Ring, Jr. on behalf of the Atlantic Research Corporation PAC
Advisory Opinion 1994–14: Scott Lehman on behalf of Tsakanikas for U.S. Congress Committee (tentative only)
Announcement of Effective Date for the Final Rule on Special Fundraising Projects and Other Use of Candidate Names by Unauthorized Committees (11 CFR 102.14)
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Ron Harris, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 94–14861 Filed 6–14–94; 3:05 pm]

BILLING CODE 6715–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, June 16, 1994.

PLACE: Room 600, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Basin Resources, Inc.*, Docket No WEST 92–340, etc. (Issues include whether Basin Resources violated 30 C.F.R. § 75.316 in two instances, whether the violations were of substantial nature and the result of Basin's unwarrantable failure, and whether a mine manager violated Section 110(c) of the Mine Act).

2. In re: *Contests of Respirable Dust Sample Alteration Citation*, Master Docket 91–1. (Consideration of issue concerning stay of proceedings).

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 C.F.R. § 2706.150(a)(3) and § 2706.160(d)

CONTACT PERSON FOR MORE INFO: Jean Ellen, (202) 653–5629/(202) 708–9300 for TDD Relay/800–877–8339 Toll Free.

Dated: June 9, 1994.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 94–14799 Filed 6–14–94; 1:07 pm]

BILLING CODE 6735–01–M

FOREIGN CLAIMS SETTLEMENT COMMISSION

F.C.S.C. Meeting Notice No. 9–94

Announcement in Regard to Commission Meetings and Hearings

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date, Time, and Subject Matter

Wed., June 29, 1994 at 10:30 a.m.—Consideration of Proposed Decisions on claims against Iran

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe a meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6029, Washington, DC 20579. Telephone: (202) 616–6988.

Dated at Washington, DC on June 14, 1994.

Judith H. Lock,

Administrative Officer.

[FR Doc. 94–14837 Filed 6–14–94; 2:18 pm]

BILLING CODE 4410–01–M

federal register

Thursday
June 16, 1994

Part II

Department of the Interior

Bureau of Indian Affairs

Environmental Impact Statement, Rosebud and Cheyenne River Sioux Reservations, SD; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Draft Environmental Impact Statement (DEIS) for Livestock Grazing and Prairie Dog Management for the Rosebud and Cheyenne River Sioux Reservations in South Dakota

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that a Draft Environmental Impact Statement (DEIS) is available for public review and that public hearings will be held regarding this document. This proposal is for the development of a plan to manage prairie dogs and livestock grazing on the Rosebud and Cheyenne River Reservations.

DATES: Two public hearings on the DEIS will be held. The first hearing will be held on Wednesday, July 20, 1994, at 7:00 p.m. The second hearing will be held on Thursday, July 21, 1994, at 7:00 p.m. Written comments should be received on or before August 22, 1994, at the address listed below.

ADDRESSES: Comments and participation at the public hearing are invited. Written comments should be directed to Mr. Donald Whitener, Acting Area Director, Bureau of Indian Affairs, Aberdeen Area Office, 115 4th Avenue, SE, Aberdeen, South Dakota, 57401, Phone: (605) 226–7343, Fax: (605) 226–7446. The first public hearing will be held Wednesday, July 20, 1994, at 7:00 p.m. at the Rosebud Sioux Tribal Council Chambers, Rosebud, South Dakota, 57570. The second public hearing will be held Thursday, July 21, 1994, at 7:00 p.m. at the Cheyenne River Sioux Tribal Council Chambers, Eagle Butte, South Dakota, 57625.

Copies of the DEIS and/or Summary of the DEIS have been sent to all agencies and individuals who participated in the scoping process and to all others who have already requested copies of the document. Persons wishing copies of this DEIS should immediately contact Ken Parr at the address below.

FOR FURTHER INFORMATION CONTACT: Ken Parr, Bureau of Indian Affairs, Aberdeen Area Office, 115 4th Avenue SE, Aberdeen, South Dakota, 57401, Phone: (605) 226–7621, Fax: (605) 226–7358.

SUPPLEMENTAL INFORMATION: This DEIS includes two proposals, one for each reservation. The proposals are for developing grazing management systems and for implementing varying levels of prairie dog poisoning on trust lands within the reservations. The proposals are intended to maintain or improve range condition to appropriate levels to sustain reservation carrying capacities for livestock grazing. This notice is required by the National Environmental Policy Act (NEPA) Regulations (40 CFR part 1503) to obtain comments on the DEIS from agencies and the public.

The Bureau of Indian Affairs (BIA), Department of the Interior, in cooperation with the Rosebud and Cheyenne River Sioux Tribes, has prepared a DEIS on the proposed management of prairie dogs and livestock grazing on trust lands on the Rosebud and Cheyenne River Sioux Reservations. The alternatives for each reservation include varying levels of prairie dog poisoning and grazing management systems.

The purpose and need for these actions is to maintain or improve range condition to meet tribal objectives to sustain reservation carrying capacities for livestock grazing and, therefore, increase tribal income. The Tribal Councils feel that some grazing lands are degraded and many perceive that prairie dogs compete with livestock for forage, causing economic losses to the tribes and tribal members.

The preferred alternative (Alternative 3) for the Rosebud Reservation would implement extensive range improvements and conduct chemical treatment of prairie dogs on all trust lands outside the 7,400-acre Corn Creek Management Area (CCMA, located on the western boundary of the reservation). This alternative would meet tribal grazing objectives and maintain the untreated CCMA for ecosystem biodiversity. Other alternatives considered were: continuing current grazing management program with no prairie dog treatment; implementing extensive range improvements and treating prairie dogs on all trust lands, with follow-up treatment for at least 90 percent control; and implementing extensive range improvements and treating prairie dogs on all trust lands once, with follow-up treatments only on trust lands outside the CCMA.

The preferred alternative for the Cheyenne River Reservation is the Prairie Management Plan (Alternative 2) developed by the Tribe in May 1992. The plan proposes extensive range improvements with prairie dog treatment conducted only under limited circumstances, such as in cemeteries and on powwow grounds. This alternative would meet tribal grazing objectives and maintain ecosystem biodiversity. Other alternatives considered were: continuing the current grazing management program with no prairie dog treatment on trust lands; implementing extensive range improvements on trust lands, conducting no prairie dog treatment within the 10,000 acre prairie dog complex along the Morcau River, conducting prairie dog treatment on varying proportion of the remaining trust lands (25 percent treatment to 100 percent treatment); and conducting treatment of prairie dogs on 50 percent of all trust lands, including those within the prairie dog complex along the Morcau River.

Agencies and individuals are urged to provide comments on this DEIS as soon as possible. All comments received by the dates given above will be considered in preparation of the final EIS. Comments made at the public hearings will not be considered comments on the DEIS unless they are submitted in writing.

This notice is published pursuant to Sec. 1503.1 of the Council on Environmental Quality Regulations (40 CFR Parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.); Department of the Interior Manual (516 DM 1–7); and the Bureau of Indian Affairs guidelines (30 BIAM Supplements 1, 2, and 3.)

Dated: June 9, 1994.

John W. Tippiconnic,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 94–14596 Filed 6–15–94; 8:45 am]

BILLING CODE 4310–02–P

federal register

Thursday
June 16, 1994

Part III

Federal Communications Commission

47 CFR Parts 0 and 1

Implementation of Section 9 of the Communications Act—Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year and Amendment of the Schedule of Application Fees; Rules

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 1

[MD Docket No. 94–19; FCC 94–140]

Implementation of Section 9 of the Communications Act—Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted rules to implement section 9 of the Communications Act of 1934 to provide for the annual assessment and collection of regulatory fees. For fiscal year 1994, the Commission is required to utilize the Schedule of Regulatory Fees that Congress established in section 9(g) of the Act. The implementation of regulatory fees will further the National Performance Review goals of reinventing Government by requiring beneficiaries of Commission services to pay for such services.

EFFECTIVE DATE: July 18, 1994.

FOR FURTHER INFORMATION CONTACT: H. Walker Feaster, Office of Managing Director at (202) 632–0923.

SUPPLEMENTARY INFORMATION:

Report and Order

Adopted: June 3, 1994.
Released: June 8, 1994.

By the Commission: Commissioner Quello issuing a statement; Commissioners Ness and Chong not participating.

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I. Introduction

1. By this *Report and Order*, the Commission adopts rules to implement section 9 of the Communications Act, as amended, 47 U.S.C. 159, providing for the annual assessment and collection of regulatory fees by the Commission.[1] The *Report and Order* establishes the amounts of the regulatory fees for Fiscal Year (FY) 1994 and the rules for the payment of such fees for fiscal years 1994 and thereafter.[2] Also, we are amending several of the rules governing the collection of the fees to be filed with applications and other filings pursuant to section 8 of the Communications Act, as amended, 47 U.S.C. 158.[3]

2. The rules we adopt below are designed to ensure that (1) collection of fees does not adversely affect the Commission's regulatory activities, (2) the most effective means possible are employed in the collection and deposit of fees, and (3) the paperwork (and financial burden) on the public resulting from our collection process is kept to an absolute minimum. The accomplish this goal, we have, to the extent possible, modeled our regulatory fee rules upon the rules that we previously established to govern the collection of fees filed with applications and other filings. See 47 CFR 1.1101 *et seq.* Moreover, in the course of fashioning rules to govern regulatory fees, we have revised several rules in order to improve the collection process related to these fees and, wherever possible, to ease the burden on those entities subject to the payment of these fees. Implementation of rules governing the collection of regulatory fees also furthers the National Performance Review goals of reinventing government by requiring beneficiaries of the Commission's services to pay the costs associated with these activities.

II. Background

3. Section 9(a) of the Communications Act requires the Commission to collect regulatory fees to recover the annual cost of its enforcement activities, policy and rulemaking activities, user information services, and international activities. 47 U.S.C. 159(a). 47 U.S.C. 159(b)(1)(A). The Schedule of Regulatory Charges sets forth in section 9(g) the categories of regulated entities subject initially to the regulatory fee requirement and designates the fees to be collected for each subject category of regulatee. 47 U.S.C. 159(g). The Schedule of Fees sets forth annual regulatory fees for specific categories of regulatees in Private Radio, Mass Media, Common Carrier and Cable Services.[4]

4. Section 9(f)(1) requires the Commission to adopt rules to implement the assessment and collection of the annual regulatory fees. 47 U.S.C. 159(f)(1). On March 4, 1994, we adopted a *Notice of Proposed Rulemaking* ("*NPRM*") to implement section 9 of the Act.[5] In the *NPRM*, we concluded that Congress intended the Commission to rely upon the Schedule of Regulatory Fees enacted in section 9(g) to recover costs for FY 1994.

5. In addition, the *NPRM* proposed rules providing for: (1) Exemptions from

[1] Section 9 of the Act was added by section 6002(a) of the Omnibus Budget Reconciliation Act of 1993 (hereinafter "1993 Budget Act"). See Pub. L. No. 103–66, Title VI, 6002(a), 107 Stat. 397 (approved August 10, 1993). Section 9 is codified at 47 U.S.C. section 159.

[2] As discussed below, we will establish the accounting systems necessary to make adjustments in the Schedule of Regulatory Fees required for the assessment of fees in future years in a subsequent and separate rulemaking proceeding. See 47 U.S.C. 159(b)(3), (i).

[3] 47 U.S.C. § 158. See generally 47 CFR part 1, subpart G; *Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, 2 FCC Rcd 947 (1987) (hereinafter "*Fees 1*"), *recon. granted in part*, 3 FCC Rcd 5987 (1988) (hereinafter "*Fees 1 Reconsideration*"); *Establishment of a Fee Collection Program to Implement the Provisions of the Omnibus Budget Reconciliation Act of 1989*, 5 FCC Rcd 3558 (1990) (hereinafter "*Fees II*"), *recon. granted in part*, 6 FCC Rcd 5919 (1991) (hereinafter "*Fees II Reconsideration*"). See also section 6003(a)(2) of the 1993 Budget Act, Pub. L. 103–66, Title VI, § 6003(a)(2), 107 Stat. 401 (1993) (making conforming amendments to section 8).

[4] Congress included the regulatory fees for cable services in the Schedule of Regulatory Fees as a subpart of the fees established to recover appropriations related to the regulation of mass media services. 47 U.S.C. 159(g). Because we recently established a Cable Services Bureau to administer the regulation of cable television operations, we have amended our rules to set forth separately the regulatory fees applicable to cable services. See section 1.1155, 47 CFR 1.1155.

[5] *See Notice of Proposed Rulemaking in the Implementation of Section 9 of the Communication Act*, FCC 94–46, released March 11, 1994.

the regulatory fee requirements for governmental entities, nonprofit entities, amateur licensees, noncommercial educational broadcasters, and licensees in the public safety services, (2) standards for waiver, reduction and deferment of regulatory fees, (3) procedures for the payment of regulatory fees, including the timing and method of payments, and the location for submission of payments, and (4) procedures to assure timely payment of regulatory fees, including announcements in the **Federal Register** of the filing times for the fee payments, and penalties for late payment and nonpayment of fees.

III. Discussion

A. Assessment of Regulatory Fees for FY 1994

6. The *NPRM* proposed that for FY 1994, the Commission would utilize the Schedule of Regulatory Fees established by Congress in section 9(g) of the Act. 47 U.S.C. 159(g). In response to this proposal, several commenters suggest that we amend the Schedule of Fees for FY 1994. They contend that fees in the Schedule are too high, that the schedule provides the wrong mechanism for assessing fees, and that additional services should be included in the fee schedule.

7. In particular, Fireweed Communications Corp.[6] (Fireweed) argues that the regulatory fees impose an unfair and confiscatory financial burden on broadcast stations in small markets, and impinge on the constitutional right of freedom of speech of Fireweed and its listeners. Fireweed contends that the financial burden imposed by the regulatory fee would cause it to reduce its programming or even to cease its operations. The Joint Commenters, consisting of several cable television interests,[7] argue that we have authority to modify the Fee Schedule for FY 1994, to add classes of services that Congress did not include in section 9(g)'s fee schedule. In addition, the Joint Commenters assert that the Commission is authorized to modify the fee schedule for FY 1994 because section 9(b)(3), which governs permissive adjustments to the fee schedule, including addition of services to the schedule, does not restrict our authority for making changes to fiscal years after 1994. In particular, the Joint Commenters contend that Direct Broadcast Satellite, if available later this fiscal year, Instructional Television Fixed Service, if used for commercial purposes, and Multi-channel Multipoint Distribution Services, because it is not expressly enumerated as a service subject to the fee requirement, should be added to the fee schedule and assessed a fee for FY 1994. The Joint Commenters also assert that adopting a fee requirement for these services in this proceeding will avoid the necessity for immediately initiating a new rulemaking to include these services in the fee schedule for FY 1995 and thereafter.

8. Other parties including Sprint, the Cellular Telephone Industry Association (CTIA), Comsat, and the Utilities Telecommunications Counsel (UTC), support our conclusion in the *NPRM* that Congress intended that the Schedule set forth in section 9(g) would govern the assessment and collection of fees for FY 1994. UTC states that Congress' inclusion in section 9(g) of the fee schedule, as well as other language in the Act, clearly demonstrates that Congress did not intend that the Commission revise the fee schedule so soon after its enactment.

9. We are not persuaded by the arguments urging a reduction in the statutory fees or amendment of the service categories subject to the regulatory fees. In the *NPRM*, we concluded that Congress did not intend that we change the amounts or the services established by the statutory fee schedule for 1994. Our conclusion is supported by the Conference Report, which states that we have authority to review and adjust the fees after one year.[8] Congress also enacted the fee schedule after reviewing information that we provided concerning the services subject to the fees. We do not believe that Congress would have enacted section 9(g) intending that we immediately amend the service classifications or fee amounts in its schedule.

10. In addition, other provisions of section 9 support our interpretation. Section 9(i) requires that, before making adjustments to the services included in the fee schedule, we must develop accounting systems and provide an opportunity for public comments on proposed cost allocations. *NPRM* para. 9. Section 9(b)(4)(B) requires that any amendment to the services contained in the statutory fee schedule not be effective until 90 days after Congress is notified of those revisions. See 47 U.S.C. 159. As a practical matter, the Commission could not possibly meet these requirements in time to permit section 9 fee collections in FY 1994. Given these statutory requirements, we conclude that Congress did not intend that we make any changes to the services subjected to the regulatory fee requirement or the amounts contained in the schedule for FY94.[9]

11. Also, we do not agree with Joint Commenters that this is the appropriate proceeding to amend the Schedule of Fees for future years. Such amendments would be premature because we do not now have the information necessary to establish regulatory fees for FY 1995. As we stated in the *NPRM*, we intend to commence a separate proceeding in connection with the assessment of fees for FY 1995. We will seek in that proceeding comment concerning the allocation of costs of our enforcement, policy and rulemaking, information services, and international services, including any necessary adjustments to the classes of services set forth in section 9(g)'s fee schedule. See 47 U.S.C. ¶ 159(i).

12. Therefore, as we proposed in the *NPRM*, in order to meet the congressional directive to implement the collection of regulatory fees in Fiscal Year 1994, we are adopting without modification the Schedule of Regulatory Fees enacted by Congress in section 9(g). See 47 U.S.C. 159(b)(1)(C). The Schedule provides a listing of the specific categories of regulatees in the Private Radio, Mass Media, Common Carrier and Cable services that are required to pay a regulatory fee. We have incorporated the schedule into our rules and we have established separate sections of the rules to provide the payment schedules for the Private Radio

[6] Fireweed filed its comments late. It argues that the Commission failed to provide proper notice to interested parties and asserts that we failed to publish the *NPRM* "in publications likely to be obtained by small entities" or to "conduct open conferences and public meetings" concerning our proposals as provided in 5 U.S.C. § 609 (2) and (4). However, section 609 requires only that we "assure that small entities have been given an opportunity to participate in the rulemaking" through means "such as" those enumerated in section 609. 5 U.S.C. § 609. We have met that requirement. The *NPRM* was published and distributed pursuant to section 1.412 of our rules and was distributed to over 100 members of the trade press, newspapers, wire services, broadcasters, and magazines, including those dealing with consumer, minority and small business issues. In addition, the Commission's Daily Digest, which included notice of the *NPRM*, was published on Internet. We will also accept and give full consideration to the arguments in Fireweed's comments even though they were untimely filed. Further, we will accept the late filed comments of MCI Telecommunications Corporation.

[7] The Joint Commenters are Blade Communications, Inc., Cablevision Industries Corp., Crown Media, Inc., Multivision Cable TV Corp., Parcable, Inc., Providence Journal Company, Sammons Communications, Inc., and Star Cable Associates.

[8] H.R. Rep. No. 213, 103 Cong., 1st Sess. 499 (1993) (Conference Report).

[9] In view of our conclusion that Congress did not intend us to make any changes to its Schedule of Fees for FY 1994, we will not at this time assess fees on lifetime restricted radiotelephone and radio operator applicants and permittees.

Services (§ 1.1152), Mass Media Services (§ 1.1153), Common Carrier Services (§ 1.1154) and Cable Services (§ 1.1155). In Appendix A of this *Report and Order*, we have included guidelines for the payment of fees for each service subject to the regulatory fee requirement.

B. Exemptions From Regulatory Fees

13. In the *NPRM*, we proposed to exempt certain discrete categories of regulatees from the requirement of file annual regulatory fees. Section 9(h) explicitly provides and exemption from the fees for governmental entities, nonprofit entities and amateur radio licensees. 47 U.S.C. 159(h). We concluded that Congress also intended to exempt all public safety licensees and noncommercial educational broadcasters from the regulatory fee requirements. In the paragraphs below, we review each of these categories and consider the comments that address each exemption.

1. Governmental Entities

14. As provided in section 9(h) and proposed in the *NPRM*, governmental entities will exempt from the regulatory fee requirement. As proposed, our rule implementing the governmental exemption will conform to existing § 1.1112(f) of the rules, which provides an exemption for governmental entities from the fee requirements for applications and other filing fees. See 47 CFR 1.1112(f); see *also* 47 U.S.C. 158(d)(1) (A), (B). Section 1.1112(f) broadly defines the term "governmental entity" to include "any state, possession, city, county, town, village, municipal corporation or similar political organization or subpart controlled by publicly elected officials exercising sovereign direction and control over their respective communities or programs." The comments generally support our proposals with regard to the exemption for governmental entities.

15. Cellular Communications of Puerto Rico (CCPR) contends that we should limit the government exemption so that only usual and customary governmental functions would be exempt. In particular, CCPR argues that the Puerto Rico Telephone Company (PRTC) which is controlled by the Commonwealth of Puerto Rico and operates a cellular telephone system, should be required to pay a regulatory fee to the extent that it engages in for profit or competitive operations. Further, CCPR argues that exempting PRTC from the regulatory fees for cellular telephone systems would give PRTC an unfair competitive advantage. In opposition, PRTC argues that Congress did not distinguish between different activities, and that as a result all of its operations are subject to the governmental exemption.

16. The governmental exemption is mandated by Congress. Congress did not distinguish between various governmental functions, nor did it restrict the exemption's availability for any specific governmental entities. Therefore, we do not accept CCPR's proposal.

2. Nonprofit Entities

17. Section 9(h) also exempts nonprofit entities from the requirement to file regulatory fees. In the NPRM, we tentatively found that Congress intended its exemption for nonprofit entities to cover any entity possessing nonprofit, tax exempt status pursuant to section 501 of the Internal Revenue Code, 26 U.S.C. 501. Congress' exemption of nonprofit entities from regulatory fees is substantially broader than the limited exemption from the payment of application filing fees that Congress afforded in section 8(d)(1) to nonprofit entities licensed in the Public Safety Radio Services and tax exempt under section 501(c)(3). See 47 U.S.C. 158(d)(1); see also 47 CFR 1.1112(b). The comments generally support our interpretation of the exemption, and we will adopt the exemption as proposed in the *NPRM*. The nonprofit exemption will be available only to those licensees who have established their nonprofit status under section 501.

3. Amateur Licensees

18. Pursuant to section 9(h), we proposed to establish an exemption from regulatory fees for amateur radio operators licensed under part 97 of our rules. However, Congress included in the Schedule of Fees an annual regulatory fee covering vanity call signs, and we proposed to establish a fee for amateur vanity call signs. We proposed that this fee would be assessed if our proposed rules to establish vanity call signs become effective. See *Notice of Proposed Rulemaking*, 9 FCC Rd 105 (1993).

19. We will adopt the exemption for amateur licensees as set forth in *NPRM*. If our proposal to issue vanity calls signs is adopted, we will also assess a regulatory fee in FY 1994 upon persons filing applications, pursuant to the charges listed in Congress' fee schedule.[10]

4. Noncommercial Educational Broadcasters

20. In the NPRM, we concluded that regulatory fees are not applicable to noncommercial educational broadcasters. Congress included commercial television and AM and FM radio broadcast licensees and permittees in its Schedule of Fees. In contrast, Congress omitted the noncommercial educational stations from the category of stations subject to the regulatory fee. In addition, and consistent with existing section 1.1112(d) of the rules governing application fees, we proposed to exempt from the regulatory fee requirement any secondary and auxiliary broadcast services, such as low power television ("LPTV") stations, television translators and boosters, remote pickup stations and intercity relay stations and other Mass Media, Common Carrier, and Private Radio facility authorizations used with noncommercial radio, television and instructional services qualifying for the exemption. See 47 CFR 1.1112(d). The comments supported the exemption for nonprofit educational broadcast stations and we will adopt the exemption as set forth in the *NPRM*.

21. Further, we affirm the tentative conclusion of the *NPRM* that noncommercial international short-wave will be subject to the regulatory fees. Congress did not provide an express exemption for these stations and none of the commenters urged us to exempt the international short-wave stations. In addition, unlike noncommercial LPTV and translator stations, the government does not provide financial support to noncommercial international short wave stations through the Corporation for Public Broadcasting (CPB) or the National Telecommunications and Information Administration (NTIA). Thus, the considerations that led us to conclude that Congress intended to exempt noncommercial educational LPTV and translator stations are not present with respect to international short-wave stations. See *Fee Collection Program*, 6 FCC Rcd 5919, 5925 (1991).

5. Public Safety Services

22. We have received no comments opposing our proposal to exempt all licensees in the Special Emergency Radio and Public Safety Radio services from regulatory fees even where the licensee does not qualify for an exemption as a governmental or nonprofit entity. In the *NPRM*, we noted that the legislative history states that

[10] The American Radio Relay League, Incorporated asserts that it has requested Congress to change the vanity call sign annual regulatory fee to a one time application fee. We, of course, will modify our fee schedule to be consistent with any congressional amendment of the fees.

Congress intended to exempt public safety licensees from regulatory fees. APCO, in supporting our proposal, urges that we limit the public safety exemption to entities eligible for Public Safety Radio Service licenses pursuant to the provisions of part 90, subpart B, and not exempt licensees merely because they are authorized to operate on a public safety channel. We agree with APCO that only entities eligible to operate as public safety licensees should be entitled to an exemption. Therefore, we will restrict the public safety exemption to entities eligible to operate in the Special Emergency Radio or Public Safety Radio Services.[11] Under this definition, the fact that a licensee is authorized to use a frequency allocated to these services is insufficient to gain an exemption as a public safety entity.

6. Certification of Exempt Status

23. In order to implement our congressional mandate concerning exemptions, the *NPRM* asked the parties to comment on the appropriate method for establishing exemptions from regulatory fees. Our goal is to minimize the burden on applicants and licensees seeking exemption from the regulatory fees. See *NPRM* at ¶¶ 13, 16, and 21. The commenters supported our efforts and urged reporting and exemption certifications designed to minimize their paperwork burdens.

24. Forest Industries Telecommunications (FIT) proposed that the Commission allow nonprofit entities to establish their exempt status by submitting a Determination Letter issued by the Internal Revenue Service (IRS) stating that the applicant has qualified for tax exempt status under Section 501 of the Internal Revenue Act. The Utilities Telecommunications Council (UTC) urges that we reduce the burden on entities seeking to obtain a nonprofit exemption by requiring only that they file their employer identification numbers (EINs). UCC asserts that EINs are sufficient to permit verification of an entity's nonprofit status. The National Telephone Cooperative Association (NTCA) urges that we also exempt entities that have applied for IRS Determination Letters so that IRS administrative delays do not result in the denial of exemption from the regulatory fee requirement. NTCA requests that our determination of nonprofit status remain effective until a change in such status is determined by the IRS.

25. PRTC urges us to rely upon existing exemptions from application fee payments held by governmental entities rather than require these entities to provide additional certifications to obtain exemptions from the regulatory fee requirement. Similarly, UCC contends that no additional certification of exempt status should be required from governmental applicants in the Private Radio services since applications for these services require information disclosing their exempt status.

26. We agree with PRTC and UCC that we can rely on the data in private radio service applications and in the Commission's files to determine a regulatee's exempt status. Further, licensees and other regulatees for whom we have such data will not be required to file documentation to support their exempt status. If, after reviewing the information already on file, we are unable to determine a regulatee's exempt status we will issue a request that an applicant or licensee further document its claim of exempt status. With respect to amateur, noncommercial educational broadcast stations and public safety licensees, we do not anticipate any problem in establishing their eligibility for exempt status because their exempt status is based on the nature of their licenses.

27. When our records contain no evidence of a governmental entity's exempt status, we will accept a certification of its governmental status. Nonprofit licensees may submit section 501 Determination Letters. Because these documents are readily available in the files of nonprofit entities, we decline at this time to establish a mechanism to verify nonprofit status through EINs. We will also require that an entity with a pending request for an IRS Determination Letter submit a regulatory fee because the IRS may deny the request for tax exempt status. However, we will refund the fee for the period covered by a subsequently issued Determination Letter.[12]

28. We caution that we expect regulatees to act in good faith. In any instance in which payment is overdue, and the licensee or permittee cannot establish its entitlement to an exemption, we will assess a 25 percent penalty for late payment as authorized by Congress.

C. Waivers, Reductions and Deferments

29. Section 9(d) provides that "[t]he Commission may waive, reduce, or defer payment of a fee in any specific instance for good cause shown, where such action would promote the public interest." 47 U.S.C. 159(d). Section 9(d) is similar to, if not identical with section 8(d)(2) of the Act related to waivers and deferments of application fees. 47 U.S.C. 158(d)(2). Pursuant to section 8(d)(2), we have permitted waivers only on a case-by-case basis following a demonstration that the public interest clearly overrides the private interest of the requester. Thus, in our *NPRM*, we proposed to restrict similarly waivers to encompass only those requests unambiguously articulating "extraordinary and compelling circumstances" outweighing the public interest in recouping the cost of the Commission's regulatory services from a particular regulatee.

30. For those entities required to file regulatory fees with their applications, such as licensees in the private radio service, we proposed procedures for filing waiver, deferral and reduction requests similar to those we have fashioned for application fee waiver requests. See 47 CFR 1.1115(e). Persons seeking waiver or reduction of a regulatory fee would submit the required fees and forms along with their requests for waiver or reduction. We noted that this procedure assures efficient collection of necessary fees and avoids the possible imposition of a late fee in the event that the licensee's request for waiver or reduction is denied. In the case of standard regulatory fees, we further proposed that the required fee accompany any request for waiver or reduction. In either case, we proposed to return or modify the tendered fee upon grant of the waiver or reduction request. Finally, we proposed that a request for deferred payment of the required fee should be submitted 60 days in advance of the date established for the payment of the fee in order to permit review and action prior to the fee's due date.

31. Several state broadcasting associations (State Broadcasters) in their joint comments, suggest that the public interest would be served by granting permanent or temporary waivers or reduction or deferment of fees to Mass Media licensees who can demonstrate that payment of the fees would impair their service to the public. The State Broadcasters contend that our authority to waive, reduce or defer fee payments

[11] Moreover, we will not assess a regulatory fee upon Emergency Broadcast Service (EBS) licenses for auxiliary service facilities that use government-provided equipment because these stations are dedicated for EBS and are used solely for public safety purposes.

[12] To obtain a refund a regulatee must demonstrate that the period covered by the Determination Letter's finding of tax exempt status includes the date that we established for the calculation of its fee in the fiscal year for which the refund is requested. Further, an entity will be subject to a regulatory fee for the fiscal year that the IRS terminates its tax exempt status if the termination is made prior to the date for calculating its fees.

in such cases is clear if a showing is made that payment of the fee would result in degradation of service to the public, citing *NBC* v. *United States*, 319 U.S. 190 (1943); *FCC* v. *Sanders Bros. Radio Station*, 309 U.S. 470 (1940). In order to demonstrate financial hardship, the State Broadcasters urge that they be allowed to submit any relevant evidence, including tax records, unaudited balance sheets or any other financial statements. Further, the State Broadcasters argue that the fee should be automatically waived if a Mass Media licensee is in bankruptcy, receivership or trusteeship because this status is a clear signal of financial hardship.

32. The Broadcasters, joined by the National Association of Broadcasters (NAB), contend further that the requirement to file the regulatory fee payment with a request for waiver is irrational where the basis for the waiver request is the financial hardship of the licensee. Further, the NAB states that it will be impossible to dispose of waiver requests before the fee payments are due for FY 1994 because of the short period between the completion of this proceeding and the date for submission of fees. Moreover, the NAB stresses that Congress contemplated that there would be situations where the financial burden imposed by the fee requirement would be so onerous that payment should be waived. According to the NAB, if Congress' purpose in providing for waiver, reduction or deferment is to have any practical effect, according to NAB, we should not require applicants requesting waivers for financial hardship to suffer additional financial burden that they cannot afford.

33. We are not persuaded that we should modify our proposal to generally require the filing of the regulatory fee with each waiver or reduction request. Rather, we continue to believe that our current procedure will help ensure efficient collections.

34. Nevertheless, we recognize that there may be exceptional instances in which requiring payment of the regulatory fee along with a waiver or reduction request could result in the reduction of service to a community or other financial hardship to the licensee or other regulatee. In those instances, the licensee should submit, together with its waiver request, a petition to defer payment until the waiver request is resolved. In order to reduce the burden on regulatees, we will accept petitions for waiver, reduction and deferment so long as they are filed no later than by the date payment is due. The filing of the deferment request will toll the requirement to pay the regulatory fee until disposition of the deferment request.[13]

35. Petitioners seeking a waiver, deferral or reduction of a regulatory fee based upon financial hardship may submit any relevant information in support of their request. We will review the supporting documents and base our ruling upon the information submitted and any additional information available in our records. If a petitioner presents a compelling case of financial hardship, no payment of the regulatory fee will be due. If the supporting materials do not present sufficient evidence of hardship, we will deny the petition. If the fee has not already been submitted, the petitioner will then have 30 days to file its regulatory fee in order to avoid the assessment of penalty charges and the invocation of any other available remedy. The filing of a petition for reconsideration will not toll this 30-day period.

D. Procedures for Payment

1. Categories of Payors

36. Pursuant to section 9(f), we proposed to establish three classes of regulatory fee payments, standard, small and large, based upon the size of the payment required by the Schedule. The time for submitting the fee would be determined by the class of fee payment. Persons making "large" fee payments for Fiscal Year 1994 would be eligible to complete their fee payment in two installments. Moreover, we stated that consideration would be given to allowing four installment payments for Fiscal Year 1995 and thereafter. We proposed, however, that small fee payments be remitted when an application for a license of a facility subject to the fee is filed and the payment amount is the fee due for the entire term of the license or other authorization. We proposed that regulatees subject to a standard fee are to submit the fee in a single, annual payment. The specific date for the payment of a standard fee would be announced by public notice and published in the **Federal Register** well before the payment's due date.[14]

37. Brown and Schwaninger (B&S) states that Congress intended to establish only two, not three, categories of regulatory fees—large fees and small fees—because section 9(f) enumerates only two such categories of fee payments. B&S contends that Congress would have included in section 9 explicit authority to establish a third category if it had intended to provide such authority. In the absence of any language in section 9 indicative of a third category, B&S contend that we are precluded from adopting a standard fee category and collecting standard fees. Instead, B&S reasons that our authority under section 9 is limited to determining that a particular fee is either large, and establishing an installment plan, or the fee is small and collecting it in advance for a number of years not to exceed the term of the license.

38. We reject B&S's interpretation of section 9(f). In section 9(a), the general authority provision, Congress broadly empowered us "to assess and collect regulatory fees. . . ." Subsection 9(f) requires only that our rules include specific provisions providing for advance payments in the case of small fees and installment payments for larger ones. Nothing in that section, or in logic, compels a conclusion that every fee must necessarily fall within a category of either "large" or "small." Section 9(f) is simply silent regarding any other substantive aspect of our fee collection system, including whether other categories of fee payments may be established. Moreover, our conclusion that some regulatees are subject to payment of neither large nor small fees and, consequently, are only subject to a single annual regulatory "standard" fee payment, in no way conflicts with Congress' directive to include specific consideration of those payors of large and small fees. Therefore, we adopt our proposal to establish three categories of regulatory fees.

2. Installment Payments

39. In the NPRM, we proposed that some fees would be classified as "large" fees and, therefore, eligible for payment by installment. For FY 1994, we identified the following fee amounts in the specified categories as eligible for payment on the installment plan.

Regulatory fee category	Large fee
VHF and UHF Commercial Television Station.	Above $12,000.
Cable Television System .	Above $18,500.

[13] We deny NABER's request that we modify the fee that Congress required for filing a petition for waiver of a private radio service rule. Section 8 of the Communications Act empowers us only to adjust fees for applications and other filings based upon changes in the Consumer Price Index.

[14] GTE has urged that we allow licensees that transfer or assign licenses during FY 1994 to prorate their fee payments for the subject licenses on the basis of the amount of time the license was held by each party. The law authorizing section 9 was enacted in August 1993 and we believe that the negotiation between the parties to a transfer or assignment that occurred this fiscal year would ordinarily have included consideration of expenses related to the payment of regulatory fees. The party holding the license on the date the fees are due will be the party responsible for its payment.

Regulatory fee category	Large fee
Inter-Exchange Carrier	Above $500,000.
Local Exchange Carrier ...	Above $700,000.

40. Several parties urge that we expand significantly our proposed installment payment eligibility standards. GTE and Sprint request that we establish an installment fee benchmark of $250,000 for all classes of services that are not allowed to make installment payments under our proposal. The Broadcasting Association argues that all mass media licensees should be eligible for installment payments and the New Jersey Broadcasting Association (New Jersey Association) argues that all radio broadcasting licensees, or in the alternative, licensees encountering financial hardship should be permitted to make installment payments. GE American Communications, Inc. contends that licensees of satellite space stations should be afforded installment payment eligibility.

41. For FY 1994, we intend to permit installment payments by a reasonable number of regulatees whose fees greatly exceed the average fee in a particular service category. Through this means we can ensure that we are able to structure a fee collection system that can be fairly and efficiently administered, given our available resources and our relative inexperience with the regulatory fee program and its installment component.[15]

42. Since little time is left in which to collect fees for FY 1994, the practical impact of permitting licensees to make installment payments this year should be minimal in any event. In these circumstances, we thus find it both fair and prudent to decline to expand significantly installment payment eligibility for FY 1994. Also, we decline to permit installment payments for radio licensees, since no fee greater than $900.00 is imposed on these licensees.

43. As we gain experience with the regulatory fee program and, in particular, with its installment payment component, we will consider increasing eligibility to make installment payments. Therefore, with a limited exception, we will adopt our proposed installment fee standards. As discussed above, if a licensee concludes that payment of a fee in its entirety would constitute a financial hardship or if it cannot otherwise submit a full payment, the licensee may submit a partial payment of the fee with a petition to defer payment of the remaining portion of the fee. Interested parties may renew their arguments for increased installment opportunities in their comments concerning the assessment and collection of regulatory fees for 1995.

44. Notwithstanding our decision not to expand significantly installment payment eligibility this year, we have decided to permit space station and system licensees to submit their fees in installments. These licensees are relatively few in number, and the uniform fee structure for this service does not lend itself to the mechanism we used to establish installment payments in categories of services with progressive fee structures. Thus, we will permit licensees of geosynchronous satellite space stations and low earth orbit satellite systems to file their fee payments in installments.

45. As proposed, regulatees qualifying for installment payments for FY 1994 may make their fee payments in two separate and equally divided payments with the first payment due on the date set for paying standard annual fees. The date for each installment will be announced by Public Notice and in the **Federal Register**. For future fiscal years, we plan to permit four installments annually. We have decided not to impose an administrative fee with each installment payment. However, any late filed installment payment will be subject to a 25 percent late fee and the payment of interest for the delinquent amount. Further, any regulatee paying its fees by installment will automatically lose its eligibility to pay by installments if it fails to make any of its payments in a timely fashion.

3. Advance Payments

46. FIT and UTC support our proposal to require that regulatory fee payments in the Private Radio services be made in advance. We will require that full payment for Private Radio service regulatory fees due over the entire term of the authorization be submitted at the time an applicant in the Private Radio service submits its new, renewal or reinstatement application.[16] For example, regulatees in the private, shared use services would submit a one time regulatory fee of $35.00 per license to cover the entire five-year term of their license or authorization. Moreover until expiration of that authorization, we will not subject regulatees submitting advance fee payments to submit another (supplementary) fee payment for the same authorization until expiration of that authorization, notwithstanding any subsequent increase in the applicable annual fee. In instances in which a license is transferred to another service and, therefore, becomes subject to a different annual fee, as in the case of Private Radio licensees as they become Commercial Mobile Radio Service licensees, we have generally decided to apply any advance payment to the new annual fee requirement resulting from that reclassification. Thus, the licensee would become subject to payment of the difference between its initial fee payment and the amount required under the fee schedule for its new service.

47. For FY 1994, no Mass Media or Common Carrier regulatory fees will be subject to collection as small fees. However, in future years, we may decide to collect advance payments of fees in these services in the event that we conclude that the fee required is small and our experience shows that it is inefficient to collect the fee on an annual basis.

4. Timing of Payment

48. As noted, the date for payment of standard fees will be announced by public notice and published in the **Federal Register**. For licensees, permittees and holders of other authorizations in the Common Carrier, Mass Media and Cable Services whose fees are not based on a subscriber, line or circuit count, fees should be submitted for any authorization held as of October 1, 1993. We have selected October 1 as the date for calculating these fees since October 1 is the first day of the fiscal year and, therefore, current licensees subject to the fees would have benefited from out regulatory activities since the beginning of the period covered by their payment.[17]

49. In the case of regulatees whose fee payments are based upon a subscriber, line or circuit count, we have decided that the number of a regulatee's subscribers, lines or circuits on December 31, 1993 will be used to calculate the fee. We have selected the last date of the calendar year because many of these entities file reports with us as of that date. Others calculate their subscriber numbers as of the last day of the calendar year for internal purposes. Therefore, calculation of the subscriber fee as of that date will facilitate both an entity's computation of its fee payment

[15] Because our fee collection program is not yet capable of accounting for installment payments aggregated on other than a single service basis, regulatees must pay their fee payments on a service by service basis.

[16] Regulatory fee payments submitted with applications that are subsequently dismissed or denied will be returned upon request.

[17] In light of this decision, the comments by Orbital Communications Corporation, GE American Communications, Inc. and Starsys Global Positioning, Inc. concerning appropriate payments for satellites that became operational after commencement of the fiscal year are moot.

and our verification that the correct fee payment has been submitted. Cable systems should calculate their FY 1994 regulatory fees using the subscriber data that was provided to the Commission for the 1993 Annual Report of Cable Television Systems (FCC Form 325A) submission. Accordingly, the number of subscribers will not necessarily be based on December 31, 1993, but rather on "a typical day in the last full week of December 1993." (*See* FCC Form 325 Instructions at page 1). Finally, since entities in the Private Radio services pay their fees when applying for an new, renewal or reinstatement license, we will require Private Radio applicants to submit a regulatory fee with new, renewal and reinstatement applications filed following the effective date of these rules.

5. Method and Location of Payment

50. We proposed to adopt generally the same methods of payment for regulatory fees as we established for application fees. See 47 CFR 1.1108(a). In addition, we proposed to establish a process to permit the electronic filing of fee payments, initially on an experimental basis. Further, we proposed to permit payment of fees by credit card (VISA and Mastercard) in some circumstances subject to the requirement that, when a credit card payment is made, the entire fee payment must be made in a single credit card transaction.

51. Several parties have requested clarification of our requirements for multiple fee payments by Private Radio licensees.[18] Other parties support our proposals concerning payment methods, particularly our decision to accept credit cards and electronic payments.[19]

52. We have designed FCC Forms 159 (Remittance Advice) and 159–C (Continuation sheet) to replace Form 155. We are satisfied that the forms, and our rules, provide sufficient clarification of our requirements concerning multiple fee payments. These forms are to be submitted with any regulatory fee payment in the mass media, common carrier and cable services. Payors, in the Private Radio services making a single regulatory fee payment, other than by electronic means or credit card, are not required to file a Form 159 as long as their accompanying application form provides the information necessary to accomplish the payment.

6. Multiple Payments

53. Generally, we will permit any entity, including licensees in the private radio services, to make multiple section 9 regulatory (and section 8 application) fee payments within the same lockbox, including, where applicable, installment payments. Under this procedure, a single payment form and a single instrument of payment may be used to cover multiple regulatory fee payments.[20] A multiple regulatory fee payment also may cover payments by more than a single regulatee. Regulatees making combined payments of regulatory fees and application fees within the same lockbox for the Private Radio services may make payment with a single payment instrument and are to submit with the multiple payment a Form 159 and, if needed, a Form 159–C. Also, any regulatee making payment by credit card, including licensees in the private radio services, must submit a Form 159. See the specific instructions concerning the use of Forms 159 and 159–C. A copy of the forms and instructions may be obtained from the Federal Communications Commission, Forms Distribution Center, 2803 52d Avenue, Hyattsville, MD 20781.

54. Each regulatee will remain solely responsible for assuring that its applications and authorizations are properly accounted for and listed, and for submitting the full, cumulative payment covering each of its licenses and authorizations.[21] As described below, payment deficiencies could lead to penalty charges, dismissal of applications and revocation of authorizations.

55. As proposed in our *NPRM*, we are establishing a single lockbox at our lockbox bank for the receipt of mass media, common carrier and cable regulatory fees. The single lockbox will accept Mass Media, Common Carrier and Cable Services regulatory fee payments, and will enable regulatees to submit fee payments for these services to the same lockbox and to combine their fee payments for these service categories. However, Private Radio fees will not be accepted at this lockbox and, instead, should be submitted to the lockbox designated for application fees covering the category of license or authorization for which the payment is made. See sections 1.1152 through 1.1155 for the address, including lockbox number regarding payment of regulatory fees for the specific categories of service.

7. Electronic Payments

56. We have decided to proceed cautiously with our implementation of electronic fee payments. We require that regulatees intending to make fee payments electronically submit a written request to the Managing Director and obtain his written authorization or that of his designee prior to making their initial electronic payment.[22] Following authorization by the Office of the Managing Director, a payor may either instruct its bank to make payment of a regulatory fee directly to our lockbox bank or authorize us to direct our lockbox bank to withdraw funds directly from the payor's bank account. It is the responsibility of the entity subject to the regulatory fee payment to assure compliance with our electronic payment procedures. We will announce specific procedures for electronic payment by public notice. Failure to comply with these procedures will result in the return of the fee payment and a penalty of 25 percent if the subsequent refiling of the payment is late. Any late payment resulting from a failure to comply with our electronic fee payment procedures will also subject the payor to the penalties set forth in § 1.1163 of the rules.

57. Credit card payments may be made only with Mastercard and Visa since at this time these are the only credit cards authorized for payments to the United States Treasury. Credit card payments must be accompanied by a Form 159. Failure to accurately enter an authorized signature and the credit card name, number and date of expiration in blocks 22 and 23 of Form 159 will result in the return of the credit card payment and any associated filing.

E. Enforcement

58. As provided in section 9(c) of the Act, we proposed to enforce payment of regulatory fees by: (1) Assessing monetary penalties for late payment, (2) dismissal of applications and, (3) in egregious cases, revocation of existing licenses and authorizations. 47 U.S.C. 159(c). In addition, we proposed to pursue delinquent regulatees under the Debt Collection Act, 31 U.S.C. 3711 *et seq.*, and related statutory provisions.

[18] See comments filed by FIT, Naber and UTC.

[19] See comments filed by SWB and Bell Atlantic.

[20] Payors of regulatory fees for vanity call signs must submit a Form 159 with their applications.

[21] Payment of a regulatory fee may be made by a third party, as NABER and NECA request. However, the entity subject to the requirement to pay the fee will remain responsible for ensuring correct and timely payment.

[22] NYNEX has suggested that responsibility for recommending rules and procedures relating to the electronic payment of regulatory fees by common carriers be given to the proposed advisory committee that would be established to assist the Common Carrier Bureau in the development and implementation of an electronic filing system. See Public Notice, 9 FCC Rcd 1293 (1994). Since our system for the electronic payment of fees will soon be operational, we decline to combine these tasks into a single project. However, the Commission staff involved in these undertakings will closely coordinate their activities.

1. Penalties for Late Payment

59. Any regulatee that fails timely to pay its regulatory fee or make an installment payment shall be assessed a 25 percent penalty. See 47 U.S.C. 159(c)(1). A regulatory fee is untimely paid when it is not received at the lockbox bank by the date we establish for payment.[23] A fee payment is also considered late filed if an instrument of payment is not collectible. A 25 percent penalty will be assessed against any outstanding amount due on a fee, including any amount past due on an installment payment.

2. Dismissal of Application

60. We will dismiss any application, group of applications or other filings in the private radio services when a regulatee fails timely to submit any regulatory fee or associated penalty. 47 U.S.C. 159(c)(2). A fee payment will be considered to be late filed if a timely filed instrument of payment is uncollectible and the deficiency is not the result of bank error.[24] Thus, an application required to be submitted with a regulatory fee will be returned without action if the fee is not filed with the application. Moreover, if the returned application is mutually exclusive and must be filed by a date certain (or is required to be filed by a date certain for any other reason), the application will be dismissed as untimely if resubmitted subsequent to the filing deadline.[25]

3. Revocation

61. Section 9(c)(3) provides the Commission with authority to revoke an existing license or other authorization for nonpayment of a regulatory fee. 47 U.S.C. 159(c)(3). We proposed to reserve our revocation remedy for egregious cases of nonpayment. Section (9)(c)(3) does not require a finding of "willful or repeated" failure to make payment before a license or authorization may be revoked. Further, the section affords the right to a hearing only if a regulatee's response to our notice of revocation presents a "substantial and material question of fact."

62. Consistent with the statutory framework for revocation, any revocation hearing will be resolved by written evidence only and the burden of proceeding and the burden of proof will be on the respondent. As proposed, we will provide a period of 60 days for a regulatee to respond to our notice of revocation in order to assure that the subject regulatee will have a full opportunity to obtain the funds needed to make payment and to prepare its case. Further, we will assess the regulatee for the costs for the conduct of any revocation proceeding unless the regulatee "substantially" prevails at the hearing. 47 U.S.C. 159(c)(3). Finally, pursuant to section 9(c)(3), an order of revocation will not become final until the respondent regulatee has had an opportunity to exhaust its rights to judicial review under section 402(b)(5) of the Act. 47 U.S.C. 402(b)(5).

63. MCI recognizes that we should use our authority to revoke licenses and assess penalties as tools to enforce payment of fees. However, MCI urges that we restrict their use to cases where a licensee "willfully" has acted in bad faith in not paying the required fee. MCI states that this is particularly important for licensees with large and complex operations in services where licensing information currently is not included in our records since licensees with numerous authorizations may have no other way to confirm existing licenses. In these instances, according to MCI, we should attempt to resolve nonpayment issues informally since most fee payment disputes should be quickly and easily resolved.

64. We agree with MCI that our revocation powers should not be lightly invoked. We stated in the NPRM that we would reserve the right to revoke licenses held by a delinquent regulatee, but that we did not foresee the need for revocation, except in egregious circumstances. We will not consider a failed payment to be egregious as long as the regulatee demonstrates that its deficiency was not due to gross neglect in maintaining its records or in preparing to meet its obligation to make the fee payments. However, we intend to automatically assess delinquent payors a 25 percent penalty for late or missing payments, and such assessments will be strictly enforced.

4. Debt Collection Act Remedies

65. In addition to those specific remedies for nonpayment or untimely payment of regulatory fees provided in section 9, we will invoke our powers under the Debt Collection Act against any regulatee failing to pay a regulatory fee. See 31 U.S.C. 3711 *et seq.* We will afford a regulatee a 30-day period to respond to our notice of delinquency before invoking the procedures provided in the Debt Collection Act. Moreover, when necessary, we will refer outstanding debts of delinquent regulatees to the Internal Revenue Service for offset. See 31 U.S.C. 3720A. Included in the recovery of any delinquent fee will be an assessment of interest on the debt due, a penalty for nonpayment, and the allowable cost incurred due to the federal government in the collection process. See 31 U.S.C. 3717.

IV. Regulatory Fee Categories

66. In our NPRM, we provided an explanation of the regulatory fee categories subject to the payment of a fee under the schedule established by Congress. 47 U.S.C. 159(g). Where a regulatory fee category required additional interpretation or clarification, we relied on the legislative history of section 9 and our experience in establishing and regulating the various services. The categories and amounts set out in the schedule may, by the next fiscal year and in subsequent fiscal years, be amended, adjusted, or modified to reflect changes in our appropriations, costs and changes in the nature of our regulated services. See 447 U.S.C. 159(b) (2), (3).

67. Several parties have submitted comments regarding the regulatory fee categories. Generally, the comments addressed issues concerning possible adjustment of the required fees, the absence of certain services from the fee schedule, and definitions of terms important to payment of the fees. We address these comments below. In certain instances, we have clarified our explanation of a fee category based upon the comments of the parties. See Appendix B.

A. Private Radio Services

68. The two basic levels of statutory fees allocated for Private Radio Services, exclusive use and shared use services, were established on the premise that those licensees who generally receive a higher quality communications channel, due to exclusive or lightly shared frequency assignments, will pay a higher fee than those who share

[23] The NAB and the Society of Broadcast Engineers have proposed that we consider a regulatory fee payment to be timely submitted if the payment is postmarked by the date it is due. At least for FY 1994, we have decided to continue our practice of requiring fee submissions to be received by the date due. We believe retention of this practice for regulatory fee payments for FY 1994 is necessary to enable us to process these payments efficiently.

[24] As noted in the NNPRM, we will not accept instruments of payment other than cashier's checks for payors who are notified that payment will not be accepted by other payment methods. Of course, while we discourage the use of cash for the payment of fees generally, payment by cash is permissible. See 31 U.S.C. 5193. We will not be responsible for cash lost or stolen in the process of delivery to our lockbox bank.

[25] In any case in which a fee payor believes that a monetary or other penalty has been wrongfully imposed, the fee payor may file a petition requesting that the penalty be set aside.

channels of marginal quality.[26] *House Report* at 17. In addition, because of the relatively small fee amounts levied in the Private Radio Services, as we proposed in the Notice, applicants for new licenses, reinstatement and renewal licenses will be required to pay a regulatory fee covering an entire license term. Applications for modification or assignment of an existing authorization do not require payment of a regulatory fee since the expiration date of modified or assigned licenses will not reflect a new license term.

1. Exclusive Use

69. B&S disputes our interpretation of the fee schedule's requirement for Private Radio Service fees. Essentially, B&S contends that the term "shared use services," as it appears in the Schedule of Regulatory Fees, applies to systems that share use of their licensed facilities with others. According to B&S, an 800 MHz Specialized Mobile Radio Service licensee providing service to end users is an example of a shared use service because the SMRs customers are sharing the same base station facility. B&S argues that their analysis is consistent with 47 CFR 90.179 and precedent interpreting that provision of our rules. According to B&S, it follows that "exclusive use services" are comprised of licensed facilities that are used only by the licensee. An example of what B&S considers an exclusive use service is a licensee in the Taxicab Radio service that operates an internal communications system in the 470–512 MHz band.

70. B&S confuses the concept of shared use of a particular licensed facility with that of shared channel assignments. Under 47 CFR 90.179, a licensee or group of licensees may choose to share base station facilities on a non-profit or not-for-profit basis. In contrast, shared channel assignments require licensees to be licensed for the same channel for the same geographic area, and it is this latter concept that the Schedule of regulatory fees clearly addresses. As we have recently explained in our *Notice of Proposed Rulemaking* in PR Docket No. 92–235,[27] the private land mobile radio services licensed below 470 MHz[28] do not enjoy exclusive use of their channel assignments in a particular geographic area, and must accept a greater degree of co-channel interference.[29] In contrast, channel assignments above 470 MHz, including the SMR service, are granted on either an exclusive basis, with no other co-channel use authorized in a geographic area, or are licensed on an "earned exclusivity" basis, where co-channel use is capped. Thus, licensees of services above 470 MHz enjoy a lesser degree of interference than those below 470 MHz, and, accordingly, are required to pay the higher regulatory fee. To accept B&S's interpretation would ignore the established demarcation point between "shared" and "exclusive" channel assignments that 470 MHz represents.

71. RAM Mobile Data USA Limited Partnership (RMD) states that 900 MHz SMR licensees should be required to pay a fee based upon their total number of licensed Designated Filing Areas (DFA) rather than their number of base station and frequencies individually licensed with a DFA. RMD contends that an assessment based upon total DFAs licensed is more consistent with Congress' intention that regulatory fees be "reasonably related to the benefits provided to the payor of the fee by the Commission's activities." 47 U.S.C. 159(b)(1)(A). Further, RMD states that section 9(g)'s fee requirements will compel a consolidation of its licenses in order to minimize its fee payments. Similarly, the Utilities Telecommunications Council (UTC) objects to the requirement that 220 MHz licensees submit fees on a per license basis.

72. We decline to consider amending the section 9(g) fee schedule for FY 1994. As we have stated, Congress did not intend that we adjust any aspect of the fee schedule for FY 1994. RMD and UTC may submit their proposals for amending the fee schedule in our proceeding to establish regulatory fees for FY 1995.[30]

Of course, RMD and any other licensee may surrender or modify their licenses and other authorizations in order to minimize their regulatory fee burden.

2. Marine (Coast and Ship Stations)

73. Numerous formal and informal commenters, including the United States Coast Guard, raise concerns about our proposal to collect a regulatory fee from licensees in the marine service, including licensees using radio equipment voluntarily installed on small vessels, such as recreational boats.[31] These parties contend that a waiver, or exemption, for vessels that voluntarily carry radio equipment would enhance maritime safety and promote the public interest. As support, the parties state that marine radio provides a vital link between recreational boaters and emergency safety entities, as well as an important source for weather and navigational information. Further, they contend that the regulatory fee, added to the existing application fee, will act as a substantial disincentive for recreational boaters to carry, maintain and operate marine communications equipment.

74. We recognize that radio communication between recreational boaters and various emergency safety entities provides an important public service. However, our authority to waive a fee requirement is limited to "narrow" and "compelling circumstances." 2 FCC Rcd 947, 961 (1987); H.R. 3128, H.R. Rep. No. 453, 99th Cong., 1st Sess. 39–42, 423 (1985). In view of this strict Congressional limitation, we do not believe that a "blanket waiver" granted to boaters operating marine radios is permissible, absent legislative amendment.

3. General Mobile Radio Service

75. The Personal Radio Steering Group (PRSG) requests that we lower the annual fee for licensees in the General Mobile Radio Service (GMRS). PRSG states that, because the Schedule of Regulatory Fees does not explicitly include a fee for GMRS, we have authority to reduce its fee. Moreover, PRSG contends that the service should be subject to a lower fee than that for other shared use services because it is intended primarily for personal communications, similar to the Amateur Radio Service.

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[26] As noted, for FY 1994, we will not impose a regulatory fee upon applicants for lifetime restricted radiotelephone permits and radio operator licenses.

[27] 8 FCC Rcd 8105, paras 11–13 (1992).

[28] The 220–222 MHz band is the sole exception, where we have created exclusive use channels below 470 MHz.

[29] While there may be rare instances where a particular licensee below 470 MHz does not share its channel assignment with other licensees in a geographic area, these licensees have no ability to preclude new licensees from requesting the same channel assignment.

[30] RMD asks that we waive our requirement that SMR licensees pay their fees in advance and, instead, permit them to submit these fees on an annual basis. RMD contends that the overall fees that may be imposed on SMR systems are not "small" and, therefore, fall outside the category of fees that Congress authorized us to collect in advance. We decline to allow RMD to pay its fees on an annual basis because Congress specifically indicated that fees for private radio services licensees, including licensees of SMR systems, would be considered small and subject to the payment of fees in advance. See H.R. Rep. No. 207, 102d Cong., 1st Sess. 11 (1991).

[31] In addition to the USCG, the commenters include the National Marine Electronics Association, Radio Technical Commission for Maritime Services, State of Nevada, Division of Wildlife and the United States Power Squadrons. We also received and considered informal comments filed by numerous parties concerned about the regulatory fee required from recreational boaters.

76. We agree with PRSG that section 9(g)'s fee schedule contains no explicit terms regarding the GMRS. However, that section does require the payment of a fee by "shared use" services in the private radio service. GMRS is within that category of service and was explicitly mentioned in the House Report as a service that would be subject to a fee. Therefore, we conclude that GMRS licensees are subject to a $7.00 fee for each year of the license term, payable in advance upon the filing of a GMRS application. We decline to rule on the merits of PRSG's argument that its fees should be lowered because, as discussed above, we conclude that Congress for FY 1994 intended us to assess fees in accordance with its Schedule.

B. Mass Media Services

1. Broadcast Stations

77. The regulatory fees in the Schedule for Mass Media services generally include broadcast licensees, permittees and other regulatees. As discussed above, we have exempted noncommercial educational broadcasters from regulatory fees. To the extent possible, we intend to use the Bureau's computer data bases to verify the identity of regulatees subject to regulatory fees in the Mass Media services.

78. Several commenters contend that the statutory fee schedule is unfair to certain categories of licensees in the Mass Media services and complain that the schedule fails to impose a fee on other categories of regulatees. De La Hunt Broadcasting Corporation and the Broadcasting Associations believe that radio broadcaster licensees should be assessed regulatory fees on a market-size basis, in a manner similar to the fees mandated for television stations. The NAB urges that we adjust the schedule for radio broadcast licensees when we consider appropriate fees for future years. Further, the Broadcasting Associations contends that we should not include a television station as being in a major market unless that station serves the metropolitan area of that particular market.

79. We decline to consider any adjustments to the schedule for FY 1994 for radio and television stations. As we explained above, we believe that Congress did not intend that we adjust any aspect of the fee schedule it established for FY 1994. Interested parties may submit comments, however, addressed to modifying the method for assessment of radio and television broadcasting fees at the time we issue our proposed schedule of fees for FY 1995.

2. Television Stations

80. Section (9)(g) provides that the regulatory fee charged a television licensee will be determined by the size of its market. We recognized in our *NPRM* that Arbitron no longer provides television rating information. However, no party has proposed that we rely on another mechanism for determining market size. Therefore, we will utilize Arbitron's ADI rankings for 1993–1994 for the determination of television markets for assessing our FY 1994 regulatory fees since it appears, at this time, that these are the most familiar and readily available tools for determining the relative ranking of television markets.

81. KBS License L.P. (KBS) and the NAB argue that satellite television stations should not be subject to the same regulatory fee payment as fully powered television stations. The NAB contends that satellite television stations should be assessed as if they were television translator stations. KBS argues that our proposal to assess fees for satellite stations at the same level as full powered stations is inconsistent with section 9. First, in KBS's view, Congress established regulatory fees for commercial television stations, and did not set any fee requirement for satellite television stations. Second, according to KBS, Congress intended the Commission to charge licensees fees based on the regulatory burden they impose, yet satellite stations require much less regulatory oversight than full powered stations. Also, KBS contends that the fee would place an unfair and illogical burden on small market licensees who use satellite television stations to reach remote areas in their markets.

82. Section 9(g)'s fee schedule establishes specific fees for commercial television stations. These fees are to be assessed against a licensee solely on the basis of the market in which the station operates. The text of the schedule makes no distinction between commercial stations that are fully operational and those that are satellite stations. It is also clear that these satellite stations are not "translator stations," which are also listed in the schedule. TV translator stations are low-powered facilities that rebroadcast the signals of a full service television broadcast station, including a satellite station, and are afforded secondary status vis-a-vis full service television stations. Also, unlike satellite stations, they are not subject to the technical, operational and program service obligations that are imposed on all full service broadcast stations, including satellite stations.[32] Consequently, we find that in establishing fees for commercial stations, Congress assessed the same fee for both commercial fully operational and commercial satellite television stations. We therefore reject KBS's argument that Congress failed to establish a fee for television satellite stations. However, there are anomalies concerning the treatment of satellite stations that are a matter of concern to us and that we believe would be appropriate for consideration on a case-by-case basis. First, where a licensee would be required under the fee schedule to pay a higher fee for its satellite station than for the parent station, we will entertain petitions to reduce the satellite station's fee to the same amount as the fee due for the parent station. In such a case, the licensee would be required to submit with its request an amount no greater than the fee due from the parent station. Second, in any situation in which payment of the fee would cause a diminishment of a licensees ability to continue to serve the public, we will entertain requests for waiver or reduction of the fee upon an appropriate showing. In this instance, the licensee would not be obligated to pay the fee until resolution of its waiver request.

83. KBS and the NAB may submit comments in our future proceeding to establish regulatory fees for FY 1995, supporting their positions concerning the need to distinguish between satellite and fully operational stations when assessing regulatory fees. As explained above, for FY 1994, we shall make no adjustments to Congress' fee schedule pursuant to section 9(b).

3. Broadcast Auxiliary Stations

84. The Society of Broadcast Engineers, Inc. (SBE) believes that broadcast auxiliary facilities, such as remote pick-up stations, and aural, television and low power auxiliary stations, should not be subject to any regulatory fee. SBE explains that there is no justification to apply a regulatory fee to these facilities since they are essentially self-regulating and impose little burden on our resources. As indicated above, we shall not modify any of section 9(g)'s fee requirements for FY 1994, but SBE may raise these issues in future proceedings.

[32] Unlike other full service television broadcast stations, satellite stations have not been subject to the Commission's multiple ownership restrictions. However, that distinction is currently under review in our *Second Further Notice of Proposed Rulemaking* in MM Docket No. 87–8, 6 FCC Rcd 5010 (1991).

4. ITFS and DBS

85. Finally, the Joint Parties contend that we should amend the fee schedule to add several services not subject to fees for FY 1994. These services include the commercial offering of Instructional Television Fixed Services (ITFS) and Direct Broadcast Satellite Service (DBS). We decline the Joint Parties' request to add these services to the schedule for 1994 since Congress did not provide us the authority to add any service to the schedule for FY 1994. Moreover, we are aware that ITFS is a predominantly nonprofit service with limited commercial use and, further, that DBS is not expected to become operational prior to the time for calculating fee payments for FY 1994.[33] To the extent that the Joint Parties wish to renew their arguments concerning the inclusion of these services for future years, they may do so when we consider our fee payment schedule for FY 1995.

C. Common Carrier Bureau

86. Most common carrier regulatory fees are based on the size of a regulatee's communications operation as determined by its number of stations, subscribers, access lines, or antennas. We intend to rely upon the Common Carrier Bureau's licensing data bases to confirm the identity and fee amount for most radio common carriers to the extent possible. We also intend to perform periodic, random audits to determine whether individual regulatees have reported the correct multiplier.

1. Cellular and Public Mobile Licensees

87. The Personal Communications Industry Association (PCIA) states that we should define the term "subscriber" as it applies to Part 22 and personal communications services licensees. PCIA suggests that we require Part 22 licensees to pay their fees based on the number of customers on their billing lists and urges that we permit Part 22 licensees to submit their fee payments pursuant to systemwide aggregations of subscribers. Also, PCIA contends that we should permit paging licensees to calculate their fees by aggregating their total subscribers, rather determining their fee payments by call sign, as required by section 9(g), and to submit one instrument of payment per carrier system.[34]

88. Our rules do not define a mobile service subscriber. For purposes of calculating regulatory fees, we will define a subscriber to a mobile service as an individual or entity authorized by the mobile service provider to operate under its blanket license in exchange for monetary consideration. Further, any Part 22 licensee may submit a single, aggregate payment to cover the regulatory fees due for each of its individual systems. However, each individual system and service should be clearly enumerated on the payor's FCC Form 159 accompanying the fee payment. PCIA may submit its proposal to modify the method for calculating fee payments by paging licensees in our proceeding for establishing fees for FY 1995.

2. Air-Ground Radiotelephone Service

89. Claircom Communications Group, L.P., GTE and In-Flight Phone Corporation request clarification of the definition of "subscriber" in section 9(g) when applied to the payment of regulatory fees for the Air-Ground Telephone Service. Unlike conventional telephone service, subscribers to that service, usually operators of commercial aircraft, lease their service for the purpose of making it available to their own customers. There is no contractual relationship between the air-ground service operator and the end user of its service. Consequently, as suggested by the parties, we will treat the operator of an aircraft in which its service is installed as the subscriber to the service and charge the fee based upon the number of transceivers leased by the operator. Similarly, licensees in the air-ground service should include in their total fee a payment on a transceiver basis for service they provide to users other than commercial aircraft, such as private aircraft.

3. Space Stations

90. Comsat General Corporation (Comsat), GE American Communications, Inc. (GE American), Orbital Communications Corporation (Orbital), PanAmSat, L.P. (Panamsat) and Starsys Global Postioning, Inc. (Starsys) have submitted comments addressed to our proposals concerning the requirements of satellite licensees to submit regulatory fees. Comsat and GTE state that the regulatory fee for a geosynchronous orbit space station is excessive. Comsat argues that the fee requirement should be lowered for FY 1994 because these systems no longer require the regulatory attention they received in their earlier developmental stage. It argues that the fee also is a disincentive to maintaining older and underutilized satellites in orbit for back-up purposes and is anticompetitive and anticonsumer. As we have stated earlier, we shall not adjust the schedule of fees that Congress has enacted for the assessment of fees for FY 1994. Comsat may submit its comments in the future proceeding that we will initiate in order to establish appropriate fees for FY 1995.

91. We also received comments from Orbital and a reply comment from Starsys concerning when a satellite space station becomes subject to the fee requirement. Section 9(g) requires that the payment of a regulatory fee by the operator of any "operational" space station in geosynchronous orbit. We agree with the commenters that a satellite does not become "operational" immediately upon its launch. Therefore, as proposed by the commenters, we will consider a space station in geosynchronous orbit to be subject to the fee when it has been certified by its operator to be operational in accordance with section 25.120(d) of the rules. This certification indicates that the satellite has been placed in its authorized orbit and is operating in the authorized frequency bands at the authorized power levels. Similarly, a space station or system will be considered to have terminated its operation when its licensee certifies to us that the satellite has ceased to operate.

92. Also, we will consider a space system in low earth orbit (LEO) subject to the fee payment when its first satellite becomes operational even though all its space stations are not yet operational. Similar to our treatment of geosynchronous satellites, the system will become subject to a fee payment upon the certification by the licensee that the operations of the first satellite in its system conform to the terms and conditions of its authorization pursuant to 47 CFR 25.120(d).

4. Earth Stations

93. AMSC Subsidiary Corporation contends that no payment of regulatory fees for earth stations and mobile terminals should be required until their related satellite system is operational.[35] However, we observe that the licensing

[33] The Joint Parties point out that the fee schedule contains no explicit fee requirement for Multipoint Distribution Service (MMDS). However, our schedule, modeled on the schedule contained in section 9(g) of the Act, explicitly requires the payment of a regulatory fee by Domestic Public Fixed licensees, operating under Part 21 of our rules. Since MMDS is a Part 21 service, it is fully subject to the regulatory fee prescribed for Part 21 licensees.

[34] PCIA also requests that we recalculate the regulatory fee for CMRS for FY 1995. PCIA may submit its comments regarding the fee for CMRS in the proceeding we establish to prescribe fees for FY 1995.

[35] AMSC states that its satellite will be launched in December 1995, but that its earth and mobile stations will likely be licensed before September 1994.

of satellite earth stations is entirely separate from the licensing of space stations and that fixed-satellite earth stations are generally licensed to operate with any and all domestic satellite systems located in that portion of the geostationary orbit for which the earth station has been frequency coordinated. It is common practice for a satellite system to provide preliminary service via unrelated space stations before its own stations are launched and operational.

94. We will require the licensee of an earth station to pay a fee once it has certified that the earth station's construction is completed. However, in those rare instances in which a license limits an earth station's operational authority to a particular satellite system and that system is not operational on the date for calculating the fee, the fee will not be due until the first satellite of the related system becomes "operational" within the meaning of our fee rules.

5. Interexchange and Local Exchange Services

95. Generally, the comments of local exchange carriers (LECs) and interexchange carriers (IXCs) raise issues concerning the basis upon which they are to calculate their fee payments, the need for a definition of the term "subscriber," and a date for calculating their fee payments.[36]

96. We will adopt our proposal to permit the holding company of local exchange carriers to aggregate fee payments due by its operating companies and submit a single payment to cover the fee requirements of its subsidiaries.[37] We have considered the proposals of several commenters, including Ameritech, Nynex and SWB, that LECs submit fees based upon ARMIS data. However, ARMIS data is required from comparatively few LECs and we would still need a mechanism to calculate the fees due from the vast majority of LECs. Therefore, we have decided that all LECs are to calculate the amount of their regulatory fees based upon the number of working loops as described in section 36.611 of our rules, governing the submission of Information to the National Exchange Carrier Association (NECA).[38] We believe that this definition will be simple to administer since the LECs currently compile subscriber loop data, and it will provide a consistent formulation for the assessment of fees from all LECs.[39] As noted, for FY 1994, we will require LECs to calculate their fee payments for FY 1994 as of December 31, 1993.[40]

97. In the *NPRM*, we invited comments concerning section 9(g)'s assessment of regulatory fees from IXCs on a subscriber basis. In response, AT&T, opposed by Wiltel, Inc., argues that fee payments by IXCs should be based on gross revenues, not by the number of a carrier's subscribers. We decline to reach the merits of AT&T's argument at this time because, as indicated above, we shall not adjust the fee schedule for FY 1994. Any reformulation of the basis upon which IXCs are to base their fee payments would constitute a substantial adjustment to the fee schedule that Congress enacted. IXCs shall file fees based on the total number of common lines presubscribed to that IXC as determined pursuant to section 69.116 of the rules. 47 C.F.R. § 69.116. AT&T may submit its views concerning the appropriate method of assessing fees from IXCs in our proceeding to establish regulatory fees for FY 1995.

6. International Bearer Circuits

98. Panamsat requests clarification concerning the assessment of regulatory fees for international circuits. Section 9(g)'s Schedule provides that the fee is to be computed "per 100 active 64 KB circuits or equivalent." The fee is to be paid by the facilities-based common carrier activating the circuit in any transmission facility for the provision of service to an end user or resale carrier. Private submarine cable operators also are to pay fees for circuits sold on an indefeasable right of use (IRU) basis or leased in their private submarine cables to any customer of the private cable operator. In the *NPRM*, we stated that the fee would be based upon active 64 KB circuits, or equivalent circuits. Under this formulation, 64 KB circuits or their equivalent will be assessed a fee. Equivalent circuits include the 64 KB circuit equivalent of larger bit stream circuits. For example, the 64 KB circuit equivalent of a 2.048 MB circuit is 30 64 KB circuits. Analog circuits such as 3 and 4 KHz circuits used for international services are also included as equivalent 64 KB circuits. However, circuits derived from 64 KB circuits such as circuits derived by the use of digital circuit multiplication systems are not equivalent 64 KB circuits. Such circuits are not subject to fees. Only the 64 KB circuit from which they have been derived will be subject to payment of a fee.

For analog television channels we will assess fees as follows:

Analog television channel size in MHz	Number of equivalent 64 KB circuits
36	630
24	288
18	240

D. Cable Services

99. Several commenters contend that the fee prescribed for cable television services should be paid on an exact per subscriber count rather than per 1,000 subscribers, as we proposed.[41] These commenters argue that the latter formulation would cause small cable systems to pay a disproportionately high regulatory fee. For example, a cable system with 100 subscribers would be subject to the same fee as a system with 1,000 subscribers.

100. The text of section 9(g)'s fee schedule provides for the assessment of a fee for cable television systems at the rate of $370.00 per 1,000 subscribers. Upon further consideration, we agree with the commenters that Congress did

[36] Allnet and MCI point out that resellers and pay telephone operators are not among those regulatees listed in the fee schedule. We will review whether these entities should be directly subject to a fee payment in the course of our proceeding to determine regulatory fees for FY 1995.

[37] We agree with Allnet that entities operating as both LECs and IXCs are subject to a regulatory fee for both categories of service. However, as GTE suggests, we will require a carrier to submit only a single payment when a single commonly-owned line serves as both a presubscribed line and an access line.

[38] NECA has proposed to process regulatory fees on behalf of its pooling exchange carriers and to submit their consolidated fees to our lockbox bank in a single instrument of payment. We have no objection to NECA's submission of the fee on behalf of its pooling exchange carriers or others. However, we remind entities subject to the payment of a regulatory fee that the regulatee, not an agent, such as NECA, is responsible for ensuring that the payment is made that it is subject to penalty for failure to submit the entire fee due in a timely manner. LECs will be expected to pay their fees based upon the number of access lines as determined by NECA. In case of a dispute between a carrier and NECA concerning the carrier's line count as of December 31, 1993, NECA will certify its calculation of the carrier's line count and the basis for its calculation.

[39] We expect competitive access providers (CAPs) to submit fee payments based upon their line count as required under section 9(g). Ameritech, GTE and other interested parties may submit their views on the proper method of assessing regulatory fees for CAPs in our proceeding to establish fees for FY 1995.

[40] Several LECs, including Ameritech, GTE, NYNEX and Bell South, opposed by Allnet, contend that their regulatory fee payments qualify for exogenous treatment under the price cap rules and ask that we allow their regulatory fee expense to be charged directly to their subscribers. Their request is beyond the scope of this proceeding. LECs seeking to charge their regulatory fees directly to subscribers should petition for a waiver of the Commission's rules.

[41] These commenters include the United States Small Business Administration, Cable Services, Inc., the Cable Telecommunications Association, the National Cable Television Associations, Nationwide Communications, Inc. and the Small Cable Business Association.

not intend that this provision required that a system pay its fee as if it served 1,000 subscribers when in fact it provides services to fewer than 1,000 subscribers.[42] Following this formulation to its logical extreme would impose on small cable systems a disproportionate burden of the aggregate cable service regulatory fee since it would result in the assessment of larger fees upon small systems, particularly those with fewer than 1,000 subscribers. Thus, we believe Congress' purpose was to require cable systems to formulate their fee based on the schedule's assessment of $370.00 per 1000 subscribers, but to pay the fee on an exact per subscriber count. Payment of the cable fee on the basis of the exact count of a system's subscribers will eliminate the inequity perceived by the commenters.

101. NCTA and Nationwide support our proposal to permit cable systems to submit their regulatory fees on the basis of the aggregate fee payable by commonly owned systems.[43] Therefore, we will permit commonly-owned cable systems to combine their fee payments for submission to our lockbox bank. Finally, for purposes of calculating the fee due from cable operators, we will adopt the definition of a cable subscriber, including bulk rate subscriber, used for FCC Form 325. See FCC Form 325 Instructions (Page 3).

V. Amendments to Application Fee Rules

102. In addition to the new rules for regulatory fees, we are revising several sections of our rules governing fees associated with applications and other filings. Filing fees are required pursuant to section 8 of the Communications Act and are administered separately from the regulatory fees authorized under section 9.[44]

A. Fees for Resubmitted Applications

103. We have amended § 1.1107(d) of the rules, as proposed. Section 1.1107(d) governs fee payments relating to applications and other filings when resubmitted in the appropriate timeframe following a staff request for additional or corrected information. We have amended § 1.1107(d) to require persons submitting applications or other filings that have been returned for additional information or corrections and that do not require any additional fees to submit these applications and other filings directly to the Bureau/Office making the request. Applications requiring additional fees must be filed at our lockbox bank with the remittance for the entire additional amount due. In the event that the staff discovers, within 30 days after the resubmission, that the additional fee payment was not submitted, the application or other filing will be dismissed as deficient and the previously submitted section 8 fee payment will be retained under this proposal. A new fee payment (covering the entire amount of the revised fee) will be required with any future filing of the application or other filing. However, if the staff discovers the fee payment deficiency more than thirty days subsequent to the resubmission, the application or other filing will be retained, but a 25 percent late fee will be assessed on the deficient amount even if we have completed our action on the application or other filing involved.

B. Stale Checks

104. Our lockbox bank will not process a personal or business check dated more than six months prior to its submission. Therefore, we have revised § 1.1108(a) of the rules to make clear that these "stale" checks will not be accepted as fee payments. Under this revision, we will not accept any instrument of payment dated more than six months prior to the date of its filing with the lockbox bank, and we will return to the filer any application or other filing submitted with a stale payment instrument. Further, we will not accept any third party checks (*i.e.*, checks with the name of any third party as the maker or endorser).

C. Receipts

105. Our practice with regard to stamped receipts for application fee payments is to furnish receipts only upon specific request of the submitter rather than to provide receipts automatically for all fee payments received. We are clarifying these procedures by amending § 1.1108 of the rules. In order to obtain a receipt for a fee payment, section 1.1108 will require that the application and fee package include a copy of the first page of the application or other filing, clearly marked "copy," submitted expressly for the purpose of serving as a receipt of the filing. The copy should be the top document in the fee payment package. The staff will date-stamp the copy immediately and provide it to the bearer of the submission, if hand delivered. For submissions by mail, the receipt copy will be provided through return mail if the filer has attached to the receipt copy a stamped self-addressed envelope of sufficient size to contain the date-stamped copy of the application. We will provide a receipt for regulatory fee payments, upon request, if we are furnished with a copy of Form 159 or the first page of an application in the private radio services accompanying the fee payment and the request otherwise conforms with the procedures we have adopted for receipts of application fees.

D. Electronic Application Fee Payments

106. We are adopting rules regarding the submission of regulatory fee payments by electronic means. Revised §§ 1.1107 and 1.1108 of the rules allow the payment of application and other filing fees by electronic means, although our system for electronic payment is not yet fully in place. In our *NPRM*, we stated our concern about matching electronically paid fees with submitted hard-copy applications.[45] If a party chooses to pay its application filing fee electronically, we will require that the entity follow existing procedures for filing its application at the lockbox bank. However, in lieu of the current payment methods, the party will indicate on its remittance advice (FCC Form 159 or the underlying application form with fee information incorporated therein) that payment is being sent to the bank electronically. The electronic payment must be made on or before the day the application is filed. Upon receipt of an application, the bank will confirm that a fee payment has been received electronically. If the electronic payment is not received on the filing date, the application or request will be returned without processing. We believe these procedures are necessary to ensure the most efficient processing of electronic fee payments (when authorized) and applications or other filings. Finally, during the pilot phase of our electronic payment program, regulatees will be required to obtain our prior authorization before making

[42] We reject the Joint Commenters' argument that the regulatory fee for cable systems be reduced when any of a system's channels are made available to competitors pursuant to 47 U.S.C. § 532. Congress has based the regulatory fee for cable systems upon the number of subscribers served, not the number of a system's channels available for the system's direct use.

[43] NCTA, the Joint Commenters and Continental request authority for cable systems to pass through their regulatory fees to cable television subscribers as extenal costs. Only those items currently itemized in the rule as external costs may be passed through to cable subscribers. Regulatory fees are not among the enumerated items and the pass through process is not the subject of this proceeding. Therefore, this matter should be addressed separately.

[44] We will publish in the FCC Record actions, including actions taken on delegated authority, related to the application and regulatory fee rules that have precedential value.

[45] We note that some parts of the Commission are currently experimenting with electronic filing of applications.

electronic fee payments. (See paragraphs 56 and 57, above.)

E. One Check/One Application Rule

107. We are modifying our rules to allow the use of a single payment instrument or method to cover multiple applications for the same or different applicants, so long as all the applications are filed at the same time at the same lockbox. Any applicant desiring to pay for multiple regulatory/application filings in the same lockbox with a single payment instrument, or when paying by credit card, must also complete FCC Form 159, FCC Remittance Advice. Each item must be listed separately on the form with its own Payment Type Code. If another space is needed for multiple filings, the applicant must use FCC Form 159–C, FCC Remittance Advice Continuation Sheet.[46]

F. Payment by Cashier's Check

108. To ensure that payment instruments will result in a final payment being made to the Commission, we believe that our cashier's check safeguard should be strengthened. Accordingly, as proposed, when a person or organization has, on one or more occasions, submitted a payment instrument on which final payment is not received (and is not excused by bank error), we will immediately notify the party that future fee payments must be made by cashier's check until further notice. If, subsequent to such notice, payment is not made by a cashier's check (or cash), that party's other payment instrument will not be accepted and its application or other filing will be returned. 47 CFR 1.1108(d)(1)(i); see also 47 CFR 1.1110(a).

G. Filing Locations for Petitions and Applications for Review

109. We have revised §§ 1.1109(a)(3) and 1.1115 to clarify that any petition for reconsideration, application for review, and any petition for waiver or deferral of a fee payment, accompanied by an application or regulatory fee payment, must be submitted to our lockbox bank. If no fee payment is required and the matter is within the scope of either the application or regulatory fee rules, the request should be filed with the Secretary and clearly marked to the attention of the Managing Director.

[46] All non-private radio section 9 regulatory fee payors must use FCC Form 159/159C when submitting single or multiple regulatory fees.

VI. Confidentiality

110. The Cellular Telecommunications Industry Association, GTE and Southwestern Bell Corporation urge that we amend § 0.457 of our rules to safeguard the confidentiality of data submitted with regulatory fees, including fee amounts that are calculated on a per line or subscriber basis. 47 CFR 0.457. At this time, we will not amend our rules to include a provision affording automatic confidentiality for information submitted with regulatory fees. Generally, regulatees are required to submit very little data with their fee payments and it is premature for us to determine whether the disclosure of any information submitted, including the fee amounts calculated on a per subscriber basis, will warrant the protection afforded by § 0.457. Payments of regulatory fees may be accompanied by requests for confidentiality pursuant to § 0.459 of the Commission's rules. 47 CFR 0.459.

VII. Final Regulatory Analysis

111. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

A. Need and Purpose of This Action

112. This *Report and Order* adopts the Schedule of Regulatory Fees enacted by Congress for the assessment and collection of the Commission's regulatory fees for FY 1994 and adopts rules to govern the assessment and collection of regulatory fees for FY 1994 and future years. The rules, as required by Congress, include provisions for the advance payment of small fees, the payment of large fees by installment, and procedures for waiver, reduction and deferral of fees by regulatees that demonstrate that payment of the fee would be a financial hardship, as well as penalties for late or nonpayment of fees.

B. Summary of Comments Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis

113. The Chief Counsel for Advocacy of the United States Small Business Administration (SBA) filed comments urging that cable television system operators be permitted to pay their fees on a per subscriber basis ($.37) rather than in increments of 1,000 subscribers ($370.00) or any portion thereof. The *Report and Order* adopts the SBA's proposal.

C. Significant Alternatives Considered

114. The *Notice of Proposed Rulemaking* in this proceeding offered many proposals, including reliance on the Schedule of Regulatory Fees as established by Congress in section 9(g) of the Communications Act, 47 U.S.C. 159(g), exemptions from regulatory fees, installment payments for large fees, advance payments for small fees, payment procedures, including payment by electronic transfer and credit card, procedures for waiver, reduction and deferment of fees, and penalties for late or nonpayment of fees. Our proposals to adopt the service categories and fee amounts in Congress' fee schedule and for waiver, reduction and deferment of fees were discussed by many commenters. Fireweed and the Joint Commenters urged that we amend the fee schedule to reduce the fees and add services subject to a fee payment. NAB and the State Broadcasters urged that we modify our proposed procedures for requesting a waiver, reduction or deferment of a fee payment. Upon review, we affirmed that Congress intended that we utilize section 9(g)'s fee schedule for FY 1994. However, we adopted more flexible procedures for obtaining a waiver, reduction or deferment of the fees in order to afford more regulatees the opportunity to obtain a waiver, reduction or deferment of the fees and we clarified the showing required for adjustment of a fee based on financial hardship.

VIII. Ordering Clauses

115. Accordingly, *it is ordered* that the rule changes as specified below *are adopted.*

116. *It is further ordered* that the rule changes made herein will become effective 30 days after publication in the **Federal Register.** This action is taken pursuant to sections 4(i), 4(j), 8, 9, and 303(r) or the Communications Act, as amended, 47 U.S.C. §§ 154(i) 154(j), 158, 159, 303(r).

List of Subjects

47 CFR Part 0

Authority delegations (Government agencies), Freedom of information, Government publications, Reporting and recordkeeping requirements.

47 CFR Part 1

Administrative practice and procedure, Communications common carriers, Investigations, Penalties, Radio, Reporting and recordkeeping requirements, Telecommunications, Television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

47 CFR Parts 0 and 1 are amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for Part 0 continues to read:

Authority: Sec. 5, 48 Stat. 1068, as amended, 47 U.S.C. 155, 225, unless otherwise noted.

2. Section 0.231 is amended by revising paragraph (a) to read as follows:

§ 0.231 Authority delegated.

(a) The Managing Director, or his designee, upon securing concurrence of the General Counsel, is delegated authority to act upon requests for waiver, reduction or deferment of fees, establish payment dates, and issue notices proposing amendments or adjustments to the fee schedules established under part 1, subpart G, of this chapter.

* * * * *

3. Section 0.406 is amended by revising paragraph (b)(2) to read as follows:

§ 0.406 The rules and regulations.

* * * * *

(b) * * *

(2) *Part 1 of this chapter, practice and procedure.* Part 1, subpart A, of this chapter contains the general rules of practice and procedure. Except as expressly provided to the contrary, these rules are applicable in all Commission proceedings and should be of interest to all persons having business with the Commission. Part 1, subpart A of this chapter also contains certain other miscellaneous provisions. Part 1, subpart B, of this chapter contains the procedures applicable in formal hearing proceedings (see § 1.201 of this chapter). Part 1, subpart C, of this chapter contains the procedures followed in making or revising the rule or regulations. Part 1, subpart D, of this chapter contains rules applicable to applications for licenses in the Broadcast Radio Services, including the forms to be used, the filing requirements, the procedures for processing and acting upon such applications, and certain other matters. Part 1, subpart E, of this chapter contains general rules and procedures applicable to common carriers. Additional procedures applicable to certain common carriers by radio are set forth in Part 21 of this chapter. Part 1, subpart F, of this chapter contains rules applicable to applications for licenses in the Private Radio Services, including the forms to be used, the filing requirements, the procedures for processing and acting on such applications, and certain other matters. Part 1, subpart G, of this chapter contains rules pertaining to the application processing fees established by the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99–272, 100 Stat. 82 (1986)) and also contains rules pertaining to the regulatory fees established by the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66, 107 Stat. 397 (1993)). Part 1, subpart H, of this chapter, concerning ex parte presentations, sets forth standards governing communications with commission personnel in hearing proceedings and contested application proceedings. Part 1, subparts G and H, of this chapter will be of interest to all regulatees, and Part 1, subpart H, of this chapter will, in addition, be of interest to all persons involved in hearing proceedings.

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PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154, 303, and 309(j), unless otherwise noted.

5. Section 1.742 is revised to read as follows:

§ 1.742 Place of filing, fees and number of copies.

All applications which do not require a fee shall be filed at the Commission's main office in Washington, DC., Attention: Office of the Secretary. Hand-delivered applications will be dated by the Secretary upon receipt (mailed applications will be dated by the Mail Branch) and then forwarded to the Common Carrier Bureau. All applications accompanied by a fee payment should be filed with the Commission's lockbox bank in accordance with § 1.1105, Schedule of Fees. The number of copies required for each application and the nonrefundable processing fees and any applicable regulatory fees (see subpart G of this part) which must accompany each application in order to qualify it for acceptance for filing and consideration are set forth in the rules in this Chapter relating to various types of applications. However, if any application is not of the type covered by this Chapter, an original and two copies of each such application shall be submitted.

5a. Sections 1.1106 through 1.1117 are redesignated as §§ 1.1107 through 1.1118, respectively.

5b. In the list below, for each newly designated section indicated in the left column, remove the reference indicated in the middle column everywhere it appears, and add the reference indicated in the right column:

Section	Remove	Add
1.1107	§ 1.1105	§ 1.1106.
1.1107	§ 1.1111	§ 1.1112.
1.1113 introductory text.	§ 1.1105	§ 1.1106.
1.1113(d) and (e) introductory text.	§ 1.1112(c)	Paragraph (c) of this section.
1.1113(e)(3)	§ 1.1112(e)(2)	Paragraph (e)(2) of this section.
1.1114(a)	§ 1.1105	§ 1.1106.
1.1115(a)	§ 1.1107(b)	§ 1.1108(b).
1.1116(e)	§ 1.1107	§ 1.1108.
1.1118(b)	§ 1.1110	§ 1.1111.

6. Newly designated § 1.1108 is amended by revising paragraphs (a) through (d) to read as follows:

§ 1.1108 Payment of charges.

(a) Electronic fee payments do not require the use of a FCC Form 159, Remittance Advice. An electronic fee payment must be made on or before the day the application and appropriate processing form are filed.

(b) The schedule of fees for applications and other filings lists those applications and other filings that must be accompanied by a FCC Form 159, Remittance Advice. A separate FCC Form 159 will not be required once the information requirements of that form (payor information) is incorporated into the underlying application form.

(c) Applications and other filings that are not submitted in accordance with these instructions will be returned as unprocessable.

Note: This requirement for the simultaneous submission of fee forms with applications or other filings does not apply to the payment of fees for which the Commission has established a billing process. See § 1.1118 of this subpart.

(d) Applications returned to applicants for additional information or corrections will not require an additional fee when resubmitted, unless the additional information results in an increase of the original fee amount. Those applications not requiring an additional fee should be resubmitted directly to the Bureau/Office requesting the additional information. The original fee will be forfeited if the additional information or corrections are not resubmitted to the appropriate Bureau/

Office by the prescribed deadline. If an additional fee is required, the original fee will be returned and the application must be resubmitted with a new remittance in the amount of the required fee to the Commission's lockbox bank. Applicants should attach a copy of the Commission request for additional or corrected information to their resubmission.

(1) If the Bureau/Office staff discovers within 30 days after the resubmission that the required fee was not submitted, the application will be dismissed.

(2) If after 30 days the Bureau/Office staff discovers the required fee has not been paid, the application will be retained and a 25 percent late fee will be assessed on the deficient amount even if the Commission has completed its action on the application. Any Commission actions taken prior to timely payment of these charges are contingent and subject to recession.

* * * * *

7. Newly designated § 1.1109 is amended by revising paragraphs (a), (d) and (f) to read as follows:

§ 1.1109 Form of payment.

(a) Fee payments should be in the form of a check, bank draft, on money order denominated in U.S. dollars and drawn on a United States financial institution and made payable to the Federal Communications Commission or by a Visa or MasterCard credit card. No other credit card is acceptable. Fees for applications and other filings paid by credit card will not be accepted unless the credit card section of FCC Form 159 is completed in full. The Commission discourages applicants from submitting cash and will not be responsible for cash sent through the mail. Personal or corporate checks dated more than six months prior to their submission to the Commission's lockbox bank and postdated checks will not be accepted and will be returned as deficient. Third party checks (*i.e.*, checks with a third party as maker or endorser) will not be accepted.

(1) Specific procedures for electronic payment will be announced by Public Notice. Applicants must submit a written request to the Commission for authorization to make electronic payments of a fee for applications and other filings, as follows.

(2) No electronic payment of an application fee will be accepted unless the payor has obtained the written authorization of the Commission to submit application fees electronically. It is the responsibility of the payor to insure that any electronic payment is made in the manner required by the Commission. Failure to comply with the Commission's procedures will result in the return of the application or other filing and the fee payment.

(3) Payments by wire transfer will be accepted. Prior to making a payment by wire, the payor shall obtain the approval of the Managing Director or his designee. A completed FCC Form 159 shall be submitted to the Managing Director or his designee prior to initiating the wire transfer.

* * * * *

(d) The Commission may require payment of fees with a cashier's check upon notification to an applicant or filer or prospective group of applicants under the conditions set forth below in paragraphs (d) (1) and (2) of this section.

(1) Payment by cashier's check may be required when a person or organization has made payment, on one or more occasions with a payment instrument on which the Commission does not receive final payment and such failure is not excused by bank error.

(2) The Commission will notify the party in writing that future payments must be made by cashier's check until further notice. If, subsequent to such notice, payment is not made by cashier's check, the party's payment will not be accepted and its application or other filing will be returned.

* * * * *

(f) The Commission will furnish a stamped receipt of an application only upon request. In order to obtain a stamped receipt for an application (or other filing), the application package must include a copy of the first page of the application, clearly marked "copy", submitted expressly for the purpose of serving as a receipt of the filing. The copy should be the top document in the package. The copy will be date-stamped immediately and provided to the bearer of the submission, if hand delivered. For submissions by mail, the receipt copy will be provided through return mail if the filer has attached to the receipt copy a stamped self-addressed envelope of sufficient size to contain the date stamped copy of the application. No remittance receipt copies will be furnished.

8. Newly designated § 1.1110 is amended by revising paragraph (a) to read as follows:

§ 1.1110 Filing locations.

(a) Except as noted in this section applications and other filings, with attached fees and FCC Form 159, must be submitted to the locations and addresses set forth in §§ 1.1102 through 1.1106.

(1) Tariff filings shall be filed with the Secretary, Federal Communications Commission, Washington, DC 20554. On the same day, the filer should submit a copy of the cover letter, the FCC Form 159, and the appropriate fee to the Commission's lockbox bank at the address established in § 1.1105.

(2) Bills for collection will be paid at the Commission's lockbox bank at the address for the appropriate service as established in §§ 1.1102 through 1.1106, as set forth on the bill sent by the Commission. Payments must be accompanied by the bill and a FCC Form 159 to ensure proper credit.

(3) Petitions for reconsideration or applications for review of fee decisions pursuant to § 1.1117(b) of this subpart must be accompanied by the required fee for the application or other filing being considered or reviewed.

(4) Applicants claiming an exemption from a fee requirement for an application or other filing under 47 U.S.C. 158(d)(1) or § 1.1113 of this subpart shall file their applications in the appropriate location as set forth in the rules for the service for which they are applying, except that request for waiver accompanied by a tentative fee payment should be filed at the Commission's lockbox bank at the address for the appropriate service set forth in §§ 1.1102 through 1.1105.

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9. Newly designated § 1.1116 is amended by revising the section heading and paragraph (c) to read as follows:

§ 1.1116 Petitions and applications for review.

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(c) Petitions for waivers, deferrals, fee determinations, reconsideration and applications for review will be acted upon by the Managing Director. Petitions and applications for review submitted with a fee must be submitted to the Commission's lockbox bank at the address for the appropriate service set forth in §§ 1.1102 through 1.1105. If no fee payment is required, and the matter is within the scope of the fee rules in this subpart, the petition or application for review should be filed with the Commission's Secretary and clearly marked to the attention of the Managing Director. Requests for deferral of a fee payment for financial hardship must be accompanied by supporting documentation.

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10. Section 1.1151 is added to read as follows:

§ 1.1151 Authority to prescribe and collect regulatory fees.

Authority to impose and collect regulatory fees is contained in title VI,

section 6002(a) of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66, 107 Stat. 397), enacting section 9 of the Communications Act, 47 U.S.C. 159, which directs the Commission to prescribe and collect annual regulatory fees from designated regulatees in order to recover the costs of certain of its regulatory activities in the private radio, mass media, common carrier, and cable television services.

11. Section 1.1152 is added to read as follows:

§ 1.1152 Schedule of annual regulatory fees and filing locations for private radio service.

Services	Fee amount	Address
Exclusive use services (per license)		
1. Land Mobile (Above 470 MHZ, Base Station and SMRS) (47 CFR Part 90).	$16.00	FCC, Land Mobile, P.O. Box ____ [1] Pittsburgh, PA 15251–5——
2. Microwave (47 CFR Part 94).	16.00	FCC, Microwave, P.O. Box ____ [1] Pittsburgh, PA 15251–5——
3. Interactive Video Data Service.	16.00	FCC, IVDS, P.O. Box ____ [1] Pittsburgh, PA 15251–5——
Shared Use Services.	7.00	FCC, Shared Use Services, P.O. Box ____ [1] Pittsburgh, PA 15251–5——
Amateur Vanity Call Signs.	7.00	FCC, Amateur Vanity Call Signs, P.O. Box ____ [1] Pittsburgh, PA 15251–5——

Note 1: Refer to Private Radio Service Fee Filing Guide for appropriate Post Office Box. Fee Filing Guides may be obtained by writing to the Federal Communications Commission, Public Service Division, room 254, Washington, DC 20554.

12. Section 1.1153 is added to read as follows:

§ 1.1153 Schedule of annual regulatory fees and filing locations for mass media services.

Services	Fee amount	Address
AM Radio (47 CFR Part 73):		
1. Class D Daytime.	$250.00	FCC, AM Branch, P.O. Box 358835, Pittsburgh, PA 15251–5835.
2. Class A Fulltime.	900.00	
3. Class B Fulltime.	500.00	
4. Class C Fulltime.	200.00	
5. Construction Permits.	100.00	
FM Radio (47 CFR Part 73):		
1. Classes C, C1, C2, B.	900.00	FCC, FM Branch, P.O. Box 358835, Pittsburgh, PA 15252–5835.
2. Classes A, B1, C3.	600.00	
3. Construction Permits.	500.00	
TV (47 CFR Part 73) VHF Commercial:		
1. Markets 1 thru 10.	18,000	FCC, TV Branch, P.O. Box 358835, Pittsburgh, PA 15251–5835.
2. Markets 11 thru 25.	16,000	
3. Markets 26 thru 50.	12,000	
4. Markets 51 thru 100.	8,000	
5. Remaining Markets.	5,000	
6. Construction Permits.	4,000	
UHF Commercial:		
1. Markets 1 thru 10.	14,400	FCC, UHF Commercial, P.O. Box 358835, Pittsburgh, PA 15251–5835.
2. Markets 11 thru 25.	12,800	
3. Markets 26 thru 50.	9,600	
4. Markets 51 thru 100.	6,400	
5. Remaining Markets.	4,000	
6. Construction Permits.	3,200	
Low Power TV, TV Translator, and TV Booster (47 CFR Part 74).	135	FCC, Low Power, P.O. Box 358835, Pittsburgh, PA 15251–5835.
Broadcast Auxiliary.	25	FCC, Auxiliary, P.O. Box 358835, Pittsburgh, PA 15251–5835.
International (HF) Broadcast.	200	FCC, International, P.O. Box 358835, Pittsburgh, PA 15251–5835.

13. Sec. 1.1154 is added to read as follows:

§ 1.1154 Schedule of annual regulatory charges and filing locations for common carrier services.

Services	Fee amount	Address
Radio Facilities:		
1. Cellular Radio (per 1,000 subscribers).	$60	FCC, Cellular, P.O. Box 358835, Pittsburgh, PA 15251–5835.
2. Personal Communications.	60	
3. Space Station (geo orbit).	65,000	
4. Space Station (low earth).	90,000	
5. Public Mobile (per 1,000 subscribers).	60	
6. Domestic Public Fixed.	55	
7. International Public Fixed.	110	
Earth Stations:		
1. VSAT and Equivalent C-Band antennas (per 100 antennas).	6	FCC, Earth Station, P.O. Box 358835, Pittsburgh, PA 15251–5835.
2. Mobile Satellite Earth Stations (per 100 antennas).	6	
3. Less than 9 meters (per 100 antennas).	6	

Services	Fee amount	Address
4. 9 Meters or More Transmit/ Receive and Transmit Only (per meter).	85	
Receive Only (per meter).	55	
Carriers:		
1. Inter-Exchange Carrier (per 1,000 presubscribed lines).	60	FCC, Carriers, P.O. Box 358835, Pittsburgh, PA 15251–5835.
2. Local Exchange Carrier (per 1,000 access lines).	60	
3. Competitive Access Provider (per 1,000 subscribers).	60	
4. International Circuits (per 100 active 64 KB circuit or equivalent).	220	

14. Sec. 1.1155 is added to read as follows:

§ 1.1155 Schedule of regulatory fees and filing locations for cable television services

Services	Fee amount	Address
1. Cable Antenna Relay Service.	$220	FCC, Cable, P.O. Box 358835, Pittsburgh, PA 15251–5835.
2. Cable TV System (per 1,000 subscribers).	370	

15. Section 1.1156 is added to read as follows:

§ 1.1156 Payment of charges for regulatory fees.

Payment of a regulatory fee, required under §§ 1.1152 through 1.1155, shall be filed in the following manner:

(a) Payments of regulatory fees shall be submitted with the filing of any application for a new, renewal or reinstatement of a license or other authorization in the private radio services.

(1) Any regulatory fee submitted with an application in the private radio services shall include an advance payment of the total annual regulatory fee payment due for the entire term of the license or other authorization. The amount of the regulatory fee payment due with any application in the private radio service shall be the multiple of the number of years in the entire term of the requested license or other authorization multiplied by the annual fee payment required in the Schedule of Regulatory Fees, effective at the time the application is filed. Except as set forth in § 1.1159, advance payments shall be final and shall not be readjusted during the term of the license or authorization, notwithstanding any subsequent increase or decrease in the annual amount of a fee required under the Schedule of Regulatory Fees.

(2) Failure to file the appropriate regulatory fee with an application in the private radio service will result in the return of the accompanying application, including an application for which the Commission has assigned a specific filing deadline.

(b)(1) Payments of standard regulatory fees, applicable to mass media, common carrier and cable services, shall be filed in full on an annual basis at a time announced by the Commission or the Managing Director, pursuant to delegated authority, and published in the **Federal Register.**

(2) Large regulatory fees, as annually defined by the Commission, may be submitted in installment payments.

(i) For Fiscal Year 1994, large regulatory fees may be submitted in two (2) equal installment payments at times announced by the Commission or the Managing Director, pursuant to delegated authority, and published in the **Federal Register.**

(ii) For Fiscal Year 1994, installment payments may be submitted for:

(A) VHF and UHF Commercial Television Stations with a fee requirement above $12,000;

(B) Cable Television Systems whose community units' fee payments total more than $18,500;

(C) Inter-Exchange Carriers with a fee requirement above $500,000;

(D) Local Exchange Carriers or Holding Companies with a fee requirement above $700,000; and

(E) Space Stations with a fee of $65,000 or above.

(iii) Beginning in Fiscal Year 1995, payors of a large standard regulatory fee, as annually defined by the Commission, may submit their fee payments in four (4) equal installments at times to be announced by the Commission or by the Managing Director, pursuant to delegated authority, and published in the **Federal Register.**

(c) Standard regulatory fee payments, as well as any installment payment, must be filed with a FCC Form 159, FCC Remittance Advice, and a FCC Form 159C, Remittance Advice Continuation Sheet, if additional space is needed. Failure to submit a copy of FCC Form 159 with a standard regulatory fee payment, or an installment payment, will result the return of the submission and a 25 percent penalty if the payment is resubmitted after the date the Commission establishes for the payment of standard regulatory fees and for any installment payment.

(1) Any late filed regulatory fee payment will be subject to the penalties set forth in § 1.1163.

(2) If one or more installment payments are untimely submitted or not submitted at all, the eligibility of the subject regulatee to submit installment payments may be cancelled and the regulatee required to pay its fee in a single annual payment.

16. Section 1.1157 is added to read as follows:

§ 1.1157 Form of payment for regulatory fees.

Any regulatory fee payment must be submitted in the form of a check, bank draft or money order denominated in U.S. dollars and drawn on a United States financial institution and made payable to the Federal Communications Commission or by Visa or Mastercard credit cards only. The Commission discourages applicants from submitting cash payments and will not be responsible for cash sent through the mail. Personal or corporate checks dated more than six months prior to their submission to the Commission's lockbox bank and postdated checks will not be accepted and will be returned as deficient.

(a) Upon authorization from the Commission following a written request, electronic payment of a regulatory fee may be made as follows:

(1)(i) The payor may instruct its bank to make payment of the regulatory fee directly to the Commission's lockbox bank; or

(ii) The payor may authorize the Commission to direct its lockbox bank to withdraw funds directly from the payor's bank account.

(2) No electronic payment of a regulatory fee will be accepted unless the payor has obtained the written authorization of the Commission to submit regulatory fees electronically. Procedures for electronic payment of regulatory fees will be announced by Public Notice. It is the responsibility of the payor to insure that any electronic payment is made in the manner required by the Commission. Failure to comply with the Commission's

procedures for electronic fee payment will result in the return of the fee payment, and a penalty fee of 25 percent if the subsequent refiling of the fee payment is late. Failure to comply will also subject the payor to the penalties set forth in section 1.1163.

(b) Multiple payment instruments for a single regulatory fee are not permitted, except that the Commission will accept multiple money orders in payment of any fee where the fee exceeds the maximum amount for a money order established by the issuing entity and the use of multiple money orders is the only practicable means available for payment.

(c) Payment of multiple standard regulatory fees (including an installment payment) due on the same date, may be made with a single payment instrument and cover mass media, common carrier and cable service fee payments. Each regulatee is solely responsible for accurately accounting for and listing each license or authorization and the number of subscribers, access lines, or other relevant units on the accompanying FCC Form 159 and, if needed, FCC Form 159C and for making full payment for every regulatory fee listed on the accompanying form. Any omission or payment deficiency of a regulatory fee will result in a 25 percent penalty of the amount due and unpaid.

(d) Any regulatory fee payment (including a regulatory fee payment submitted with an application in the private radio service) made by credit card or money order must be submitted with a completed FCC Form 159. Failure to accurately enter the credit card number and date of expiration and the payor's signature in blocks number 22 and 23 of FCC Form 159 will result in rejection of the credit card payment.

17. Section 1.1158 is added to read as follows:

§ 1.1158 Filing locations and receipts for regulatory fees.

(a) Regulatory fee payments must be directed to the location and address set forth in sections 1.1152 through 1.1155 for the specific category of fee involved. Any regulatory fee required to be submitted with an application must be filed as a part of the application package accompanying the application. The Commission will not take responsibility for matching fees, forms and applications submitted at different times or locations.

(b) Petitions for reconsideration or applications for review of fee decisions submitted with a standard regulatory fee payment pursuant to §§ 1.1153 through 1.1155 are to be filed with the Commission's lockbox bank in the manner set forth in §§ 1.1153 through 1.1155 for payment of the fee subject to the petition for reconsideration or the application for review. Petitions for reconsideration and applications for review that are submitted with no accompanying payment should be filed with the Secretary, Federal Communications Commission, Attention: Managing Director, Washington, DC 20554.

(c) Any request for exemption from a regulatory fee shall be filed with the Secretary, Federal Communications Commission, Attention: Managing Director, Washington, DC 20554, except that requests for exemption accompanied by a tentative fee payment shall be filed at the lockbox set forth for the appropriate service in §§ 1.1152 through 1.1155.

(d) The Commission will furnish a receipt for a regulatory fee payment only upon request. In order to obtain a receipt for a regulatory fee payment, the package must include an extra copy of the Form FCC 159 or, if a Form 159 is not required with the payment, a copy of the first page of the application or other filing submitted with the regulatory fee payment, submitted expressly for the purpose of serving as a receipt for the regulatory fee payment and application fee payment, if required. The document should be clearly marked "copy" and should be the top document in the package. The copy will be date stamped immediately and provided to the bearer of the submission, if hand delivered. For submissions by mail, the receipt copy will be provided through return mail if the filer has attached to the receipt copy a stamped self-addressed envelope of sufficient size to contain the receipt document.

18. Section 1.1159 is added to read as follows:

§ 1.1159 Refunds of regulatory fees.

(a) Regulatory fees will be refunded, upon request, only in the following instances:

(1) When no regulatory fee is required or an excessive fee has been paid. In the case of an overpayment, the refund amount will be based on the applicants', permittees', or licensees' entire submission. All refunds will be issued to the payor named in Block Number 3 of the FCC Form 159.

(2) In the case of advance payment of regulatory fees, subject to § 1.1152, a refund will be issued based on unexpired full years:

(i) When the Commission adopts new rules that nullify a license or other authorization, or a new law or treaty renders a license or other authorization useless;

(ii) When a licensee in the private radio service surrenders the license or other authorization subject to a fee payment to the Commission; or

(iii) When the Commission declines to grant an application submitted with a regulatory fee payment.

(3) When a waiver is granted in accordance with § 1.1165 of this subpart.

(b) No pro-rata refund of an annual fee will be issued.

(c) No refunds will be issued based on unexpired partial years.

(d) No refunds will be processed without a written request from the applicant, permittee, licensee or agent.

19. Section 1.1160 is added to read as follows:

§ 1.1160 Conditional license grants and delegated authorizations.

(a) Grant of any application or an instrument of authorization or other filing, for which a regulatory fee is required to accompany the application or filing, will be conditioned upon final payment of the regulatory fee. Final payment shall mean receipt by the U.S. Treasury of funds cleared by the financial institution on which the check, bank draft, money order, credit card, wire or electronic payment is drawn.

(1) If, prior to a grant of an instrument of authorization, the Commission is notified that final payment of the regulatory fee has not been made, the application or filing:

(i) Will be dismissed and returned;

(ii) Shall lose its place in the processing line; and

(iii) Will not be treated as timely filed if resubmitted after the relevant filing deadline.

(2) If, subsequent to a grant of an instrument of authorization or other filing, the Commission is notified that final payment has not been made, the Commission will:

(i) Automatically rescind that instrument of authorization;

(ii) Notify the grantee of this action; and

(iii) Treat as late filed any application resubmitted after the original deadline for filing the application.

(3) Upon receipt of a notification of rescission of the authorization, the grantee will immediately cease operations initiated pursuant to the authorization.

(b) In those instances where the Commission has granted a request for deferred payment of a regulatory fee, further processing of the application or filing or the grant of authority shall be

conditioned upon final payment of the regulatory fee and any required penalties for late payment prescribed by the deferral decision. Failure to comply with the terms of the deferral decision shall result in the automatic dismissal of the submission or rescission of the Commission authorization. Further, the Commission shall:

(1) Notify the grantee that the authorization has been rescinded. Upon such notification, the grantee will immediately cease operations initiated pursuant to the authorization; and

(2) Treat as late filed any application resubmitted after the original deadline for filing the application.

(c) Where the procedures described in paragraphs (a) and (b) of this section would not provide a meaningful incentive to pay a regulatory fee that is due or would not be a meaningful sanction for failure to pay such a fee, the Commission may, in its discretion, whether the regulatory fee is required to be paid with an application for an instrument of authorization or otherwise, withhold processing and/or grant of any application or filing made by a person or organization who has failed to make full payment of any regulatory fee due.

(1) Before taking such action, the staff will make a written request for the fee, together with any penalties that may be rendered under this subpart. Such request shall inform the regulatee that failure to pay may result in the Commission withholding action on any application or request filed by the applicant. The staff shall also inform the regulatee of the procedures for seeking Commission review of the staff's fee determination.

(2) If, after final determination that the fee is due, payment is not made in a timely manner, the staff may terminate processing and/or withhold any grant or petition requested by the person or organization subject to the fee payment requirement, until the matter is resolved.

20. Section 1.1161 is added to read as follows:

§ 1.1161 General exemptions from regulatory fees.

No regulatory fee established in §§ 1.1152 through 1.1155 of this subpart, unless otherwise qualified in this section shall be required for:

(a) Applicants, permittees or licensees in the Amateur Radio Service, except that any person requesting a vanity call-sign, following July 18, 1994 shall be subject to the payment of a regulatory fee, as prescribed in § 1.1152 of this Subpart.

(b) Applicants, permittees, or licensees who qualify as government entities. For purposes of this exemption, a government entity is defined as any state, possession, city, county, town, village, municipal corporation, or similar political organization or subpart thereof controlled by publicly elected or duly appointed public officials exercising sovereign direction and control over their respective communities or programs.

(c) Applicants, permittees or licensees who qualify as nonprofit entities. For purposes of this exemption, a nonprofit entity is defined as an organization possessing nonprofit, tax exempt status under section 501 of the Internal Revenue Code, 26 U.S.C. 501.

(d) Applicants, permittees or licensees in the Special Emergency Radio and Public Safety Radio services.

(e) Applicants, permittees or licensees of noncommercial educational broadcast stations in the FM or TV services, as well as AM applicants permittees or licensees operating in accordance with § 73.503 of this chapter.

(f) Applicants, permittees or licensees qualifying under § 1.1161(e) requesting Commission authorization in any other mass media radio service (except the international broadcast (HF) service), private radio service, or common carrier communications service requiring payment of a regulatory fee, if the service is used in conjunction with their noncommercial educational broadcast station on a noncommercial educational basis.

(g) Other applicants, permittees or licensees providing, or proposing to provide, a noncommercial educational or instructional service, but not qualifying under § 1.1161(e), may be exempt from regulatory fees, or be entitled to a refund, in the following circumstances:

(1) The applicant, permittee or licensee is an organization that, like the Public Broadcasting Service or National Public Radio, receives funding directly or indirectly through the Public Broadcasting Fund, 47 U.S.C. 396(k), distributed by the Corporation for Public Broadcasting, where the authorization requested will be used in conjunction with the organization on a noncommercial educational basis;

(2) An applicant, permittee or licensee of a translator or low power television station operating proposing a noncommercial educational service who, after grant, provides proof that it has received funding for the construction of the station through the National Telecommunications and Information Administration (NTIA) or other showings as required by the Commission; or

(3) An applicant, permittee, or licensee provided a fee refund under § 1.1159 and operating as a noncommercial education station, is exempt from fees for broadcast auxiliary stations (Part 74, Subparts D, E, and F, of this chapter) or stations in the private radio or common carrier services where such authorization is to be used in conjunction with the noncommercial educational translator or low power station.

(h) An applicant, permittee or licensee that is the licensee of an instructional television fixed station is exempt from regulatory fees where the authorization requested will be used by the applicant in conjunction with the provision of the instructional service.

(i) Applications filed in the private radio service for the sole purpose of modifying an existing authorization (or a pending application for authorization). However, if the applicant also requests a renewal or reinstatement of its license or other authorization for which the submission of a regulatory fee is required, the appropriate regulatory fee for such additional request must accompany the application.

21. Section 1.1162 is added to read as follows:

§ 1.1162 Adjustments to regulatory fees.

(a) For Fiscal Year 1994, the amounts assessed for regulatory fees are set forth in §§ 1.1152 through 1.1155.

(b) For Fiscal Year 1995 and thereafter, the Schedule of Regulatory Fees, contained in §§ 1.1152 through 1.1155, may be adjusted annually by the Commission pursuant to section 9 of the Communications Act. 47 U.S.C. 159. Adjustments to the fees established for any category of regulatory fee payment shall include of projected cost increases or decreases of the in volume of licensees or units upon which the regulatory fee is calculated.

(c) The fees assessed shall:

(1) Be derived by determining the full-time equivalent number of employees performing enforcement activities, policy and rulemaking activities, user information services, and international activities within the Private Radio Bureau, Mass Media Bureau, Common Carrier bureau, Cable Services Bureau and other offices of the Commission, adjusted to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities, including such factors as service coverage area, shared use versus exclusive use, and other factors that the Commission determines are necessary in the public interest;

(2) Be established at amounts that will result in collection, during each fiscal year, of an amount that can reasonably be expected to equal the amount appropriated for such fiscal year for the performance of the activities described in paragraph (c)(1) of this section.

(d) The Commission shall by rule amend the Schedule of Regulatory Fees by proportionate increases or decreases that reflect, in accordance with paragraph (c)(2) of this section changes in the amount appropriated for the performance of the activities described in paragraph (c)(1) of this section for such fiscal year. Such proportionate increases or decreases shall be adjusted to reflect unexpected increases or decreases in the number of licensees or units subject to payment of such fees and result in collection of an aggregate amount of fees that will approximately equal the amount appropriated for the subject regulatory activities.

(e) The Commission shall, by rule, amend the Schedule of Regulatory Fees if the Commission determines that the Schedule requires amendment to comply with the requirements of paragraph (c)(1) of this section. In making such amendments, the Commission shall add, delete or reclassify services in the Schedule to reflect additional deletions or changes in the nature of its services as a consequence of Commission rulemaking proceedings or changes in law.

(f) In making adjustments to regulatory fees, the Commission will round such fees to the nearest $5.00 in the case of fees under $1,000.00, or to the nearest $25.00 in the case of fees of $1,000.00 or more.

22. Section 1.1163 is added to read as follows:

§ 1.1163 Penalties for late or insufficient regulatory fee payments.

Any late payment or insufficient payment of a regulatory fee, not excused by bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee or installment payment which was not paid in a timely manner. A timely fee payment or installment payment is one received at the Commission's lockbox bank by the due date specified by the Commission or by the Managing Director. A payment will also be considered late filed if the payment instrument (check, money order, bank draft or credit card) is uncollectible.

(a) The Commission may, in its discretion, following one or more late filed installment payments, require a regulatee to pay the entire balance of its regulatory fee by a date certain, in addition to assessing a 25 percent penalty.

(b) In cases where a fee payment fails due to error by the payor's bank, as evidenced by an affidavit of an officer of the bank, the date of the original submission will be considered the date of filing.

(c) If a regulatory fee is not paid in a timely manner, the regulatee will be notified of its deficiency. This notice will automatically assess a 25 percent penalty, subject the delinquent payor's pending applications to dismissal, and may require a delinquent payor to show cause why its existing instruments of authorization should not be subject to rescission.

(d)(1) Where a regulatee's new, renewal or reinstatement application is required to be filed with a regulatory fee (as is the case with private radio services), the application will be dismissed if the regulatory fee is not included with the application package. In the case of a renewal or reinstatement application, the application may not be refiled unless the appropriate regulatory fee plus the 25 percent penalty charge accompanies the refiled application.

(2) If the application that must be accompanied by a regulatory fee is a mutually exclusive application with a filing deadline, or any other application that must be filed by a date certain, the application will be dismissed if not accompanied by the proper regulatory fee and will be treated as late filed if resubmitted after the original date for filing the application.

(e) Any pending or subsequently filed application submitted by a party will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee or an installment payment. The application may be resubmitted only if accompanied by the required regulatory fee and by any assessed penalty payment.

(f) In instances where the Commission may revoke an existing instrument of authorization for failure to file a regulatory fee, the Commission will provide prior notice to the regulatee of such action and shall allow the licensee no less than 60 days to either pay the fee or show cause why the payment assessed is inapplicable or should otherwise be waived or deferred.

(1) An adjudicatory hearing will not be designated unless the response by the regulatee to the Order to Show Cause presents a substantial and material question of fact.

(2) Disposition of the proceeding shall be based upon written evidence only and the burden of proceeding with the introduction of evidence and the burden of proof shall be on the respondent regulatee.

(3) Unless the regulatee substantially prevails in the hearing, the Commission may assess costs for the conduct of the proceeding against the respondent regulatee. See 47 U.S.C. 402(b)(5).

(4) Any regulatee failing to submit a regulatory fee, following notice to the regulatee of failure to submit the required fee, is subject to collection of the fee, including interest thereon, any associated penalties, and the full cost of collection to the Federal government pursuant to section 3720A of the Internal Revenue Code, 31 U.S.C. 3720A and to the provisions of the Debt Collection Act, 31 U.S.C. 3711. See 47 CFR 1.1901–1.1952. The debt collection processes described may proceed concurrently with any other sanction in this section.

23. Section 1.1164 is added to read as follows:

§ 1.1164 Payment by cashier's check for regulatory fees.

Payment by cashier's check may be required when a person or organization makes payment, on one or more occasions, with a payment instrument on which the Commission does not receive final payment and such error is not excused by bank error.

24. Section 1.1165 is added to read as follows:

§ 1.1165 Waivers, reductions and deferrals of regulatory fees.

The fees established by §§ 1.1152 through 1.1155 of this subpart may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest. Requests for waivers, reductions or deferrals of regulatory fees for entire categories of payors will not be considered.

(a) Requests for waivers, reductions or deferrals will be acted upon by the Managing Director with the concurrence of the General Counsel. If the request for waiver, reduction or deferral is accompanied by a fee payment, the request must be submitted to the Commission's lockbox bank at the address for the appropriate service set forth in § 1.1152 through 1.1155 of this subpart. If no fee payment is submitted and the matter is within the scope of the fee rules in this subpart the request should be filed with the Commission's Secretary and clearly marked to the attention of the Managing Director.

(b) Deferrals of fees will be granted for a period of six months following the date that the fee is initially due.

(c) Petitions for waiver of a regulatory fee must be accompanied by the

required fee and FCC Form 159. Submitted fees will be returned if a waiver is granted. Waiver requests that do not include the required fees or forms will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship.

(d) Petitions for reduction of a fee must be accompanied by the full fee payment less the amount of the requested reduction and FCC Form 159. Petitions for reduction accompanied by a fee payment must be addressed to the Federal Communications Commission, Post Office Box 358835, Pittsburgh, Pennsylvania, 15251–5835.

25. Section 1.1166 is added to read as follows:

§ 1.1166 Error claims related to regulatory fees.

(a) Challenges to determinations of an insufficient regulatory fee payment should be made in writing. Challenges submitted with a fee payment must be submitted to the same location as the original fee payment, marked "Attention: Fee Supervisor". Challenges not accompanied by a fee payment should be filed with the Commission's Secretary and clearly marked to the attention of the Managing Director.

(b) The filing of a petition for reconsideration or an application for review of a fee determination will not toll the requirement that full and proper payment of the underlying fee payment be submitted, as required by the Commission's action, or delegated action, on a request for waiver, reduction or deferment. Petitions for reconsideration and applications for review submitted with a fee payment must be submitted to the same location as the original fee payment. Petitions for reconsideration and applications for review not accompanied by a fee payment should be filed with the Commission's Secretary and clearly marked to the attention of the Managing Director.

(1) Failure to submit the fee by the date required will result in the assessment of a 25 percent penalty.

(2) If the fee payment should fail while the Commission is considering the matter, the petition for reconsideration or application for review will be dismissed.

Note: These appendices will not appear in the Code of Federal Regulations

Appendix A

Guidelines for Regulatory Fee Categories

1. The guidelines below provide an explanation of regulatory fee categories established by the Schedule of Regulatory Fees in section 9(g) of the Communications Act. 47 U.S.C. 159(g). Where regulatory fee categories need interpretation or clarification, we have relied on the legislative history of Section 9, our own experience in establishing and regulating the various services subject to a fee requirement and the comments of the parties in our proceeding to adopt fees for Fiscal Year 1994 and establish rules to implement the regulatory fee program. The categories and amounts set out in the schedule might, by the next fiscal year and in subsequent fiscal years, be amended, adjusted, or modified to reflect changes in the Commission's appropriations, our costs of providing the regulatory services to be recovered by the fee program, and additions, reductions and changes in the services subject to the fee requirement. See 47 U.S.C. 159(b) (2), (3).

1. Private Radio Bureau

2. The two levels of statutory fees for Private Radio services, exclusive use service and shared use services, were established on the basis that those licensees who generally receive a higher quality communications channel, due to exclusive or lightly shared frequency assignments, will pay a higher fee than those who share marginal quality channels. House Report at 17. In addition, because of the relatively small annual fee amounts in the Private Radio Services, applicants for new licenses and reinstatements and for renewal of their current licenses will be required to pay a regulatory fee covering an entire license term, with only a percentage of all licensees paying a regulatory fee in any one year.

3. Applications for modification or assignment of an existing authorization do not require payment of a regulatory fee. The expiration date of these authorizations will not reflect a new license term when either modifications or assignments are processed. In an effort to reduce public confusion, the Commission has provided separate post office box addresses for these actions.

a. Exclusive Use Services

4. *Land Mobile.* Regulatees covered under this category include those authorized under Part 90 of the Commission's Rules to provide limited access private radio service that allows high quality voice or digital communications between vehicles or to fixed stations to further the business activities of the licensee. These services, using the 220–222 MHz band and frequencies at 470 MHz and above, may be offered on a private carrier basis in the Specialized Mobile Radio Services (SMRS). These land mobile licensees are subject to a regulatory fee of $16 per license per year. They will pay either a $80 or $160 regulatory fee (depending whether their license term is 5 or 10 years).[1]

5. *Microwave.* Private microwave systems, authorized under part 94 of the Commission's Rules, provide telecommunications services between fixed points and are often used to relay data and to control railroad, pipeline and utility equipment. Microwave licensees are required to pay the total regulatory fee for the entire term of their license when filing their initial or renewal application. The annual fee is $16 for a total of $80 to be filed with the application.

6. *Interactive Video Data Service (IVDS).* IVDS is a two-way point-to-multi-point radio service which provides information about products and services, and allows subscribers to respond through their television sets. IVDS is offered on a private carrier basis and is authorized under Part 95, Subpart F of the Commission's Rules. IVDS licensees will be assessed a regulatory fee of $80 per license to cover each five year license term ($16 per year).

b. Shared Use Services and Other Authorizations

7. The specific categories of shared-use services listed below are not on the statutory schedule but were listed in the House Report. As discussed above, we propose that emergency and public safety services would be exempted from regulatory fees.

8. *Aviation (Aircraft and Ground Stations).* The aircraft radio service provides communications between aircraft or from aircraft to ground stations and includes frequencies used to communicate with air traffic control facilities. See generally 47 CFR Part 87. Aviation aircraft transceiver stations are subject to a regulatory fee of $7 per year per station (the total fee of $70 per station for ten year license term is to be paid at the time a renewal or new application is filed). Aviation ground stations provide communications to aircraft for weather or landing information, or for logistical support to aircraft operations. These stations are subject to a regulatory fee of $7 per year per license (the total fee of $35 per license for five year license term is to be paid at the time a renewal or new application is filed).

9. *Marine (Coast and Ship Stations).* Marine coast stations are land-based stations in the maritime services, authorized under Part 80 of our rules, which provide communications services to ships and other watercraft in coastal and inland waterways. Coast stations are subject to a $35 regulatory fee for each license, covering the five year license term ($7 per year). Marine ship stations, also authorized under Part 80, provide telecommunications between watercraft or between watercraft and shore-based stations. Shipboard radio installations are required by domestic and international law for large passenger or cargo vessels. Radio equipment may be voluntarily installed on smaller vessels, such as recreational boats. Ship stations are assessed a $70 regulatory fee per station, covering the ten year license term ($7 per year) and is to be paid at the same time a license renewal application or new application is filed.

10. *General Mobile Radio Service (GMRS).* GMRS, authorized under Part 95 of the Rules, is a land mobile radio service that provides personal and limited business communications between vehicles or to fixed stations for short-range, two-way communications. Each GMRS license is subject to a $35 regulatory fee, which covers the five year license term ($7 per year) and is to be paid at the same time a license

[1] Some of these services may be reclassified when the Commission implements the recent amendments to section 332 governing the provision of mobile radio services. See n. 11.

renewal application or new application is filed.

11. *Other Land Mobile.* Licensees in the land mobile services not covered in the exclusive use category provide one or two way communications between vehicles, persons or to fixed stations on a shared basis. These services, authorized under Part 90 of the Rules, include radiolocation services, private carrier paging, industrial radio services and land transportation radio services. Regulatory fees will be assessed on a per license basis with the $35 fee covering the five year license term ($7 per year) and is to be paid at the same time a license renewal application or new application is filed.

c. Amateur Vanity Call-Signs

12. If Part 97 of the Rules is amended by the Commission to authorize the use of vanity call-signs, amateur radio operators would be able to request a specific call-sign. *See Notice of Proposed Rule Making* in PR Docket No. 93–305, 9 FCC Rcd 105 (1993). Each amateur licensee with a vanity call-sign will be assessed a regulatory fee of $7 per year. The total fee of $70 will cover the ten year license term during which the call sign will be in use. The first 10-year fee must be paid at the time a request for a vanity call-sign(s) is made. If a requested vanity call-sign is not available or otherwise cannot be issued to the requestor, the regulatory fee will be refunded since amateurs are expressly exempt under the statute from regulatory fees, unless they have received their vanity call-sign.

2. Mass Media Bureau

13. The regulatory fees for Mass Media services generally apply to broadcast licensees and permittees and to other regulatees.[2] We have exempted noncommercial educational broadcasters from regulatory fees.

a. AM Radio Stations

14. *Class A.* Class A AM radio stations are unlimited time stations operating on a clear channel and designed to render primary and secondary service over an extended service area and at relatively long distances from their transmitters. Class A stations' primary service areas are protected from objectionable interference from other stations on the same and adjacent channels, with secondary service areas protected from interference from other stations on the same channel. The operating power shall not be less than 10 kW nor more than 50 kW. For FY 1994, each licensee of a Class A AM station will be assessed a $900 annual regulatory fee.[3]

15. *Class B.* Class B AM radio stations are unlimited time stations rendering service only over a primary service area. These stations are authorized to operate with a minimum power of 0.25 kW (or, if less than 0.25 kW, an equivalent RMS antenna field of at least 141 mV/m at 1 km) and a maximum power of 50 kW (or 10kW for stations that are authorized to operate in the 1605–1705 kHz band). For FY 1994, each licensee of a Class B AM station will be assessed a $500 annual regulatory fee.

16. *Class C.* Class C AM radio stations operate on local channels and are designed to render service only over a primary service area that may be reduced as a consequence of interference. These stations are authorized to operate at not less than 0.25 kW, nor more than 1 kW. Class C stations that were previously licensed to operate with 0.1 kW may continue to do so under our rules. For FY 1994, each licensee of a Class C AM station will be assessed a $200 annual regulatory fee.

17. *Class D.* Class D AM radio stations operate either daytime, limited time or unlimited time with nighttime power less than 0.25 kW and an equivalent RMS antenna field of less than 141 mV/m at one km. Class D stations operate with daytime powers not less than 0.25 kW nor more than 50 kW. Nighttime operations of Class D stations are not afforded protection and must protect all Class A and Class B operations during nighttime hours. For FY 1994, each licensee of a Class D AM station will be assessed a $250 annual regulatory fee.

18. *AM Construction Permits.* For FY 1994, persons holding a construction permit for a any class of a new am station are subject to a $100 annual regulatory fee for each outstanding permit. Upon issuance of an operating license to cover the construction permit, this fee is no longer applicable. Instead, licensees will pay a regulatory fee amount based upon the designated class of the licensed station, as described above, as of the date the regulatory fee payment is due.

b. FM Radio Stations

19. *Licensed Stations.* FM radio stations must meet the location, power and antenna height requirements for stations designated as Classes C, C1, C2, or B, as set forth in sections 73.205, 73.210 and 73.211 of the Commission's Rules. For FY 1994, each commercial licensee of a Class C, C1, C2, or B FM station will be assessed a $900 annual regulatory fee per license. FM radio stations meeting the location, power and antenna height requirements for stations designated as Classes A, B1, or C3, as set forth in the Commission's rules, have a smaller coverage area. Thus, for FY 1994, each commercial licensee for a Class A, B1, or C3 FM Station will be assessed a $600 annual regulatory fee per license.

20. *FM Construction Permits.* Persons holding a construction permit for any class of a new FM station, except Class D, are subject to a $500 annual regulatory fee per outstanding permit in FY 1994. Upon issuance of an operating license to cover the construction permit, this fee is no longer applicable. Instead licensees will pay a regulatory fee based upon the designated class of the licensed station, as described above, as of the regulatory fee payment is determined.

c. Television Stations

21. *VHF and UHF Commercial Licenses.* Commercial VHF and UHF television licensees, including licensees of satellite stations, will be assessed a regulatory fee amount based on the ranking of the station's market. Specifically, for FY 1994 these annual regulatory fees are as follows:

VHF Commercial:	
Markets 1 through 10	$18,000.00
Markets 11 through 25	16,000.00
Markets 26 through 50	12,000.00
Markets 51 through 100 ..	8,000.00
Remaining Markets	5,000.00
UHF Commercial:	
Markets 1 through 10	14,400.00
Markets 11 through 25	12,800.00
Markets 26 through 50	9,600.00
Markets 51 through 100 ..	6,400.00
Remaining Markets	4,000.00

Stations authorized as "satellite" television stations pursuant to note 5 of Section 73.3555 of the Commission's Rules (47 CFR 73.3555 note 5) will be assessed a fee on the same basis as other full power stations in the same market.

23. Television licensees subject to a regulatory fee above $12,000 will be automatically eligible to make two equal installment payments.

24. We have decided to rely upon the latest Arbitron market data to determine a television station's market ranking for purposes of assessing regulatory fees. These rankings may be found in the Television and Cable Factbook published by Warren Publishing. Changes in market rankings may affect regulatory fee amounts for the following fiscal year.

25. *Television Construction Permits.* For FY 1994, persons holding a construction permit for a new VHF television station, in any size market, are subject to a $4,000 annual regulatory fee per outstanding permit. UHF construction permits for stations in any size market will be assessed a $3,200 annual regulatory fee. Upon issuance of an operating license to cover the construction permit, this construction permit fee is no longer applicable. Instead, licensees will pay a regulatory fee amount based upon the licensed station's market ranking, as described above.

d. Low Power TV, TV Translator, and TV Booster Stations

26. Under Part 74 of the Commission's Rules, low power UHF and VHF TV stations operate with a transmitter power output limited to 0.01kw for a UHF facility and, generally, 1kw for a VHF facility, and may retransmit the programs and signals of a full-power TV broadcast station, originate

[2] We note that some Mass Media services, such as the direct broadcast satellite service ("DBS"), the Instructional Television Fixed Service ("ITFS"), and FM translators and boosters were not specifically listed in the statutory schedule. We believe that ITFS was excluded because of its general educational noncommercial status. We also believe that the omission of DBS and FM translators and boosters was inadvertent and that Congress did not intend to exempt all DBS permittees and licensees and licensees of FM translators and boosters from regulatory fees as these services result in the Commission incurring costs for necessary regulatory functions. Since these services are not on the statutory schedule, we have not assessed fees for these services during the 1994 fiscal year. However, pursuant to our authority in section 9(b)(3) to modify the schedule, we intend to add regulatory fee categories for DBS licenses and for FM translators and boosters to be assessed and collected during the 1995 fiscal year.

[3] Regulatees are to pay the fee to which their facility is subject on the date the fee is due.

programming, and/or operate as a subscription service. TV translator stations are authorized to retransmit the programs and signals of TV broadcast stations without significantly altering the characteristic of the original signal other than its frequency and amplitude, for the purpose of providing TV reception to the general public.

27. TV booster stations are operated by the licensee of a full service TV broadcast station to retransmit the programs and signals of the licensee's station by amplifying and reradiating such signals, without significantly altering the characteristics of the original signal other than its amplitude. For FY 1994, licensees of these secondary television broadcast stations will be assessed a $135 annual regulatory fee per license.

e. Broadcast Auxiliary Stations

28. Licensees of remote pickup stations, aural broadcast auxiliary stations, television broadcast auxiliary stations, and low power auxiliary stations, authorized under Part 74 of the Commission's Rules, will be assessed a $25 per license annual regulatory fee for FY 1994. These auxiliary stations are associated with a particular television or radio broadcast station. Hence, those licensees will be required to pay the required regulatory fees for each auxiliary license they hold. Individual users under 47 CFR subpart D, F and H will similarly have to pay the required regulatory fee for each auxiliary license they hold.

f. International (HF) Broadcast Stations

International broadcast stations are licensed to operate on frequencies in the 5,950 khz to 26,100 khz band to provide service to the general public in foreign countries. For FY 1994, each international broadcast licensee will be assessed an annual regulatory fee of $200 per license.

3. Cable Services Bureau

a. Cable Antenna Relay Service

30. Cable television antenna relay service ("CARS") stations are used to transmit television and related audio signals, signals of AM and FM broadcast stations and cablecasting from the point of reception to a terminal point from where the signals are distributed to the public by cable television systems. *See* 47 C.F.R. Part 78. For FY 1994, each CARS licensee will be assessed an annual regulatory fee of $220 per license.

b. Cable Television Systems

31. For FY 1994, each cable television system, as that term is defined in section 76.5 of our rules, will be assessed an annual regulatory fee of $.37 per subscriber.[4]

32. We will allow installment payments for these regulatory fees if the annual fee of a cable television system or a group of commonly owned systems aggregating their regulatory fees exceeds $18,500.

4. Common Carrier Bureau

32. Most common carrier regulatory fees are based on the size of a regulatee's communication operation as determined by number of stations, subscribers, access lines, or antennas.

[4] The term "subscriber" is defined in § 76.5 of the Commission's Rules. 47 CFR 76.5.

a. Mobile Services

33. *Cellular and Public Mobile Licensees.* Under Part 22 of our rules, common carriers are authorized to offer land-based or air-to-ground mobile telephone or paging services to the public. In addition to cellular telephone service, these services include those using radio to provide telephone services at fixed locations, such as Basic Exchange Telecommunications Radio Services, Rural Radio and Offshore Radio. For FY 1994, each common carrier license authorized under Part 22 will be assessed an annual regulatory fee of $.06 per subscriber.

34. *Personal Communications Services.* Licensed personal communications services ("PCS") will consist of a wide variety of commercial or private mobile communications services, including advanced paging, microcellular telephone communications, portable facsimile and other video and data transmission services. See generally, *First Report and Order*, Gen. Docket No. 90–314 and ET Docket No. 92–100, 8 FCC Rcd 7162 (1993) (narrowband PCS); *Second Report and Order*, Gen. Docket No. 90–314, 8 FCC Rcd 7700 (1993) (broadband PCS). The statutory Schedule of Regulatory Fees enacted in the 1993 Budget Act established an annual fee of $60 per 1,000 subscribers for PCS licensees. At the same time, the 1993 Budget Act recognized that PCS licenses have not yet been issued. In particular, Congress directed the Commission to conclude its PCS rulemaking proceedings (Gen. Docket No. 90–314 and ET Docket No. 92–100) by February 6, 1994, and to commence the PCS licensing process by May 7, 1994.[5] In addition, our new PCS service rules provide licensees five years to meet minimum construction requirements.[6] Accordingly, since it is unlikely that any PCS licensee will have a significant number of subscribers in the immediate future, no regulatory fees will be collected from PCS licensees during the 1994 fiscal year. We intend to begin assessing and collecting regulatory fees for PCS in the 1995 fiscal year.

b. Space Stations

35. *Space Stations in Geosynchronous Orbit.* Domestic and international satellites, positioned in orbit to remain approximately fixed relative to the earth, are authorized to provide communications between satellites and earth stations on a common carrier and/or private carrier basis. For FY 1994, entities authorized to operate these space stations in accordance with § 25.120(d), will be assessed an annual regulatory fee of $65,000 for each operational station in geosynchronous orbit on the date for calculating fees. 47 CFR 25.120(d). Payment may be made in two installments.

36. *Space Stations in Low-Earth Orbit.* Domestic and international non-geostationary satellites, positioned in a low-earth orbit ("LEO"), may be authorized to transmit to satellites and fixed or mobile earth stations.

[5] Section 6002(d)(2), 1993 Budget Act. See *Second Report and Order* in Docket 93–252, FCC–94–31, adopted February 3, 1994.

[6] See *First Report and Order*, at ¶ 37; *Second Report and Order*, at ¶ 134 (petitions for reconsideration pending).

These services include the new non-voice, non-geostationary mobile-satellite service, see *Report and Order*, CC Docket No. 92–76, 8 FCC Rcd 8450 (1993). Entities authorized to operate LEO systems will be assessed an annual regulatory fee of $90,000 for each such system. For purposes of assessing regulatory fees, a LEO operator is required to submit its annual regulatory fees in the fiscal year in which it commences operating its first satellite, pursuant to § 25.120(d), even though all the space stations specified in its application or instrument of authorization have not become operational. 47 CFR 25.120(d). While it appears unlikely that a LEO system will be operational by the date for calculating fees for the 1994 fiscal year,[7] should a LEO system be operational on the date for calculating fees during that period, we will require payment of a regulatory fee for such operational systems. The entire annual fee amount will be required. Payment may be made in two installments.

c. Public Fixed Radio Services

37. *Domestic Public Fixed Services.* Licensees in the Domestic Public Fixed Services are authorized to use microwave frequencies for video and data distribution communications within the United States. These services, authorized under Part 21 of the Rules, include the Point-to-Point Microwave Radio Service, Local Television Transmission Radio Service, Multipoint Distribution Service (single-channel and multichannel) and Digital Electronic Message Service. For FY 1994, these licensees will be assessed an annual regulatory fee of $55 per call-sign.

38. *International Public Fixed Service.* Licensees in the International Public Fixed Service are authorized as common carriers to provide radio communications between the United States and a foreign point via microwave, HF, troposcatter systems (other than satellites and satellite earth stations). This does not include service between the United States and Mexico and the United States and Canada using frequencies above 72 MHz. See 47 CFR part 23. For FY 1994, these licensees will be assessed an annual regulatory fee of $110 per call-sign.

d. Earth Stations

39. *VSAT and Equivalent C-Band Antennas.* Earth station systems comprising very small aperture terminals make up authorized networks operating in the 12 and 14 GHz bands and provide a variety of communications services to other stations in the network. Each system, authorized pursuant to blanket licensing procedures in Part 25 of the Rules, consists of a network of technically-identical small fixed-satellite earth stations which often includes a larger hub station. For FY 1994, entities holding VSAT authorizations will be assessed an annual regulatory fee of $.06 per antenna. Entities with less than 100 antennas will be subject to a minimum $6 fee.

40. *Mobile Satellite Earth Stations.* Under Part 25 of the Rules, mobile satellite service

[7] See *Report and Order*, at ¶ 18 (a permittee must begin construction of its first two satellites of its system within one year of grant of its construction permit).

providers operate under blanket licenses for mobile antennas (transceivers), which are smaller than one meter and provide voice or data communications, including position location information, for mobile platforms such as cars, buses or trucks. For FY 1994, licensees will be assessed an annual regulatory fee of $.06 per antenna. Entities with fewer than 100 antennas will be subject to a minimum $6 fee.

41. *Earth Station Antennas Less Than 9 Meters.* Persons authorized or registered under Part 25 to operate fixed-satellite earth station antennas that are less than 9 meters in diameter are private and public carriers that provide telephone, television, data, and other forms of communications. This category includes antennas used to transmit and receive, transmit only, or receive only. Also included in this category are telemetry, tracking and control (TT&C) earth stations. For FY 1994, we will assess an annual regulatory fee of $.06 per antenna. Entities with less than 100 antennas will be subject to a minimum $6 fee.

42. *Earth Station Antennas 9 Meters or Greater.* This category covers fixed-satellite earth station antennas authorized under Part 25 that are equal to or greater than 9 meters in diameter. These earth stations are operated by private carriers and common carriers to provide telephone, television, data, and other forms of communications. Included in this category are telemetry, tracking, and control (TT&C) earth stations equal to or greater than 9 meters in diameter. For FY 1994, persons authorized to operate transmit/receive and transmit-only antennas will be assessed an annual regulatory fee of $85 per meter; receive-only antennas will be assessed a regulatory fee of $55 per meter. All measurements will be to the tenth of a meter.

e. Interexchange and Local Exchange Carriers

43. For FY 1994, interexchange carriers (long distance telephone companies) ("IXCs") will be assessed an annual regulatory fee of $.06 per presubscribed line. Similarly, local exchange carriers (local telephone operating companies) ("LECs") will be assessed an annual regulatory fee of $.06 per access line. A holding company may combine the fee payments of its operating companies and pay their fees for a particular service in a single combined payment or by installments, if the aggregate of their fees in a single service qualifies the holding company to make installment payments. For IXCs we have identified regulatory fee payment amounts greater than $500,000 as large. For LECs, we have identified $700,000 as a large amount. Thus, we will permit IXCs whose annual regulatory fee exceeds $500,000 and LECs whose fee payments exceed $700,000 to make installment payments.

f. Competitive Access Providers

44. Competitive access providers ("CAPs") are companies, other than the traditional local telephone companies, that provide interstate access services to long distance carriers and other companies. For FY 1994, each CAP will be assessed an annual regulatory fee of $.06 per subscriber.

g. International Bearer Circuits

45. The Schedule of Regulatory Fees provides that the fee for international bearer circuits is to be computed "per 100 active 64 KB circuits or equivalent." The fee is to be paid by the facilities-based common carrier activating the circuit in any transmission facility for the provision of service to an end user or resale carrier. Private submarine cable operators also are to pay fees for circuits sold on an indefeasible right of use (IRU) basis or leased in their private submarine cables to any customer of the private cable operator. The fee is based upon active 64 KB circuits, or equivalent circuits. Under this formulation, 64 KB circuits or their equivalent will be assessed a fee. Equivalent circuits include the 64 KB circuit of larger bit stream circuits. For example, the 64 KB circuit equivalent of a 2.048 MB circuit is 30 64 KB circuits. Analog circuits such as 3 and 4 KHz circuits used for international service are also included as equivalent 64 KB circuits. However, circuits derived from 64 KB circuits by the use of digital circuit multiplication systems are not equivalent 64 KB circuits. Such circuits are not subject to fees. Only the 64 KB circuit from which they have been derived will be subject to payment of a fee. For analog television channels we will assess fees as follows:

Analog television channel size in MHz	No. of equivalent 64 KB circuits
36	630
24	288
18	240

Appendix B

Formal Comments[1] were filed by:

Government Agencies

United States Coast Guard
Small Business Administration

Private Radio Parties

Association of American Railroads
Association of Public-Safety Communications Officials-International, Inc.
American Radio Relay League, Incorporated
Dennis C. Brown and Robert H. Schwaninger
Forest Industries Telecommunications
Industrial Telecommunications Association, Inc.
National Association of Business and Educational Radio, Inc.
State of Nevada, Division of Wildlife
National Marine Electronics Association
National Marine Manufacturers
Personal Communications Industry Association
Personal Radio Steering Group, Inc.
Radio Technical Commission for Maritime Services
Ram Mobile Data USA
Utilities Telecommunications Council

Mass Media Parties

Association of America's Public Television Stations
Carnegie-Mellon Student Government Corporation
De La Hunt Broadcasting Corporation
Fireweed Communications Corp.
KBS License, L.P.
National Association of Broadcasters
New Jersey Broadcasters Association
Society of Broadcast Engineers
Joint Filing by Named State Broadcasters Associations

Cable Service Parties

Joint Filing by Blade Communications, Inc., Cablevision
Industries Corp, Crown Media, Inc., Multivision Cable TV
Corp., Parcable, Inc., Providence Journal Company, Sammons
Communications, Inc., and Star Cable Associates
Cable Services, Inc.
Cable Telecommunications Association
Continental Cablevision, Inc.
Leonard Communications
Nationwide Communications, Inc.
National Cable Television Association
Pepper & Corrazzini
Small Cable Business Association

Common Carrier Parties

Allnet Communications Services, Inc.
American Telephone and Telegraph Company
Ameritech
AMSC Subsidiary Corporation
Bell Atlantic
BellSouth Telecommunications, Inc.
Claircom Communications Group
Cellular Communications of Puerto Rico
Cellular Telecommunications Industry Association
Comsat General Corporation
GE American Communications, Inc.
GTE Service Corporation
In-Flight Phone Corporation
MCI Telecommunications Corporation
National Exchange Carriers Association, Inc.
National Telephone Cooperative Association
NYNEX Corporation
Orbital Communications Corporation
PanAmSat, L.P.
Puerto Rico Telephone Company
Southern Bell Corporation
Sprint Corporation

Formal Reply Comments were filed by:

Ameritech
GTE Service Corporation
McCaw Cellular Communications, Inc.
MCI Telecommunications Corporation
National Telephone Cooperative Association
Puerto Rico Telephone Company
RAM Mobile Data USA
Southwestern Bell Corporation
Sprint Corporation
STARSYS Global Positioning, Inc.
Wireless Cable Association International, Inc.
Wiltel, Inc.
Young & Jatlow

[1] Numerous informal comments were also filed. Although the informal commenters have not been listed, full consideration has been given to their filings.

[FR Doc. 94–14210 Filed 6–13–94; 10:48 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[Gen. Docket 86-285; FCC 94-141]

Amendment of the Schedule of Application Fees

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has amended its Schedule of Application Fees to adjust the fees for processing applications and other filings. Section 8(b) of the Communications Act requires the Commission to adjust its application fees every two years after October 1, 1991 to reflect the net change in the Consumer Price Index for all Urban Consumers (CPI-U). The increased fees reflect the net change in the CPI-U of 14.8 percent, calculated from December 1989 through August 1993.

EFFECTIVE DATE: July 18, 1994.

FOR FURTHER INFORMATION CONTACT: Regina Dorsey, Office of Managing Director at (202) 632-0241.

SUPPLEMENTARY INFORMATION:

Order

In the Matter of: Amendment of the Schedule of Application Fees Set Forth in Sections 1.1102 through 1.1105 of the Commission's Rules.

Adopted: June 6, 1994;
Released: June 8, 1994.

By the Commission: Commissioners Ness and Chong not participating.

1. By this action, the Commission amends its Schedule of Application Fees, 47 CFR 1.1102 *et seq.*, to adjust the fees for processing applications and other filings. Section 8(b) of the Communications Act requires that the Commission adjust its application fees every two years after October 1, 1991. 47 U.S.C. 158(b). The increased fees reflect the net change in the Consumer Price Index for all Urban Consumers (CPI-U) of 14.8 percent, calculated from December 1989 through August 1993. The adjustments to the fee schedule comport with the statutory formula set forth in section 8(b). Consistent with section 8(b), the Commission transmitted to Congress notification of the fee adjustments on December 23, 1993. Congress has interposed no objection to the increases in the fees.

2. Accordingly, it is ordered, That the Schedule of Application Fees, 47 CFR 1.1102 *et seq.*, is amended as set forth below, effective thirty days after publication in the **Federal Register**.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Communications common carriers, Investigations, Penalties, Radio, Reporting and recordkeeping requirements, Telecommunications, Television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

46 CFR Part 1 is amended as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154, 303, and 309(j) unless otherwise noted.

2. Section 1.1102 is revised to read as follows:

§ 1.1102 Schedule of charges for applications and other filings in the private radio services.

Action	FCC form No.	Fee amount	Fee type code	Address
1. Land Transportation:				
a. New, Renewal, Reinstatement	574	80	PALR	Federal Communications Commission, Land Transportation, P.O. Box 358215, Pittsburgh, PA 15251-5215.
b. Modification, Assignment, Nonprofit	574	45	PALM	Federal Communications Commission, Land Transportation, P.O. Box 358730, Pittsburgh, PA 15251-5730.
2. Business:				
a. New, Renewal, Reinstatement	574	80	PALR	Federal Communications Commission, Business, P.O. Box 358220, Pittsburgh, PA 15251-5220.
b. Modification, Assignment, Non-profit	574	45	PALM	Federal Communications Commission, Business, P.O. Box 358735, Pittsburgh, PA 15251-5735.
3. Other Industrial:				
a. New, Renewal, Reinstatement	574	80	PALR	Federal Communications Commission, Other Industrial, P.O. Box 358225, Pittsburgh, PA 15251-5225.
b. Modification, Assignment, Non-profit	574	45	PALM	Federal Communications Commission, Other Industrial, P.O. Box 358740, Pittsburgh, PA 15251-5740.
4. GMRS:				
a. New, Renewal, Reinstatement	574	80	PALR	Federal Communications Commission, GMRS, P.O. Box 358230, Pittsburgh, PA 15251-5230.
b. Modification	574	45	PALM	Federal Communications Commission, GMRS, P.O. Box 358745, Pittsburgh, PA 15251-5745.
5. 800 MHz:				
a. New, Renewal, Reinstatement	574	125	PALS	Federal Communications Commission, 800 MHz, P.O. Box 358235, Pittsburgh, PA 15251-5235.

Action	FCC form No.	Fee amount	Fee type code	Address
b. Modification, Assignment, non-profit	574	45	PALM	Federal Communications Commission, 800 MHz, P.O. Box 358750, Pittsburgh, PA 15251–5750.
6. 900 MHz:				
a. New, Renewal, Reinstatement	574	125	PALS	Federal Communications Commission, 900 MHz, P.O. Box 358240, Pittsburgh, PA 15251–5240.
b. Modification, Assignment, Non-profit	574	45	PALM	Federal Communications Commission, 900 MHz, P.O. Box 358755, Pittsburgh, PA 15251–5755.
7. BUS, OI, LT, GMRS, PS/SE, 470–512, 800, 900, 220, 220 NAT (Renewal) Renewal (Non-Profit).	574R or 405A	45	PALM	Federal Communications Commission, BUS, OI, LT, GMRS, P.O. Box 358245, Pittsburgh, PA 15251–5245.
8. IVDS (Renewal) Renewal (Non-Profit)	574 or 405A	45	PAIM	Federal Communications Commission, IVDS, P.O. Box 358245, Pittsburgh, PA 15251–5245.
9. BUS, OI, LT, GMRS, (Renewal) Renewal	574 or 405A	80	PALR	Federal Communications Commission, BUS, OI, LT, GMRS P.O. Box 358245, Pittsburgh, PA 15251–5245.
10. 470–512, 800, 900, 220 (Renewal) Renewal.	574 or 405A	125	PALS	Federal Communications Commission, 470–512, 800, 900, 220, P.O. Box 358245, Pittsburgh, PA 15251–5245.
11. 220 Nationwide (Renewal) Renewal	574R or 405A	205	PALT	Federal Communications Commission, 220 Nationwide, (Renewal) P.O. Box 358245, Pittsburgh, PA 15251–5245.
12. IVDS (Renewal) Renewal	574R or 405A	125	PAIR	Federal Communications Commission, IVDS, P.O. Box 358245, Pittsburgh, PA 15251–5245.
13. Microwave:				
a. New, Renewal	402	260	PEOR	Federal Communications Commission, Microwave, P.O. Box 358250, Pittsburgh, PA 15251–5250.
b. Modification, Assignment, Non-profit	402	180	PEOM	Federal Communications Commission, Microwave, P.O. Box 358760, Pittsburgh, PA 15251–5760.
14. Microwave (Renewal):				
a. Renewal	402R	260	PEOR	Federal Communications Commission, Microwave (Renewal), P.O. Box 358255, Pittsburgh, PA 15251–5255.
b. Renewal (Non-profit)	402R	180	PEOM	Federal Communications Commission, Microwave (Renewal), P.O. Box 358255, Pittsburgh, PA 15251–5255.
15. Ground:				
a. New, Renewal, Reinstatement	406	120	PBVR	Federal Communications Commission, Ground, P.O. Box 358260, Pittsburgh, PA 15251–5260.
b. Modification, Assignment, Non-Profit	406	85	PBVM	Federal Communications Commission, Ground, P.O. Box 358765, Pittsburgh, PA 15251–5765.
c. Ground (Renewal) Non-Profit	452R	85	PBVM	Federal Communications Commission, Ground, P.O. Box 358270, Pittsburgh, PA 15251–5270.
d. Ground (Renewal) Non-Profit	452R	120	PBVR	Federal Communications Commission, Ground, P.O. Box 358270, Pittsburgh, PA 15251–5270.
16. Coast:				
a. New, Renewal, Reinstatement	503	120	PBMR	Federal Communications Commission, Coast, P.O. Box 358265, Pittsburgh, PA 15251–5265.
b. Modification, Assignment	503	85	PBMM	Federal Communications Commission, Coast, P.O. Box 358770, Pittsburgh, PA 15251–5770.
c. Renewal (Non-Profit)	452R	85	PBMM	Federal Communications Commission, Coast (Renewal), P.O. Box 358270, Pittsburgh, PA 15251–5270.
d. Renewal	452R	120	PBMR	Federal Communications Commission, Coast (Renewal), P.O. Box 358270, Pittsburgh, PA 15251–5270.
17. Ship:				
a. New, Renewal	506	115	PASR	Federal Communications Commission, Ship, P.O. Box 358275, Pittsburgh, PA 15251–5275.

Action	FCC form No.	Fee amount	Fee type code	Address
b. Modification, Non-Profit	506	45	PASM	Federal Communications Commission, Ship, P.O. Box 358775, Pittsburgh, PA 15251–5775.
c. Ship (Renewal) Non-Profit	405B	45	PASM	Federal Communications Commission, Ship, P.O. Box 358290, Pittsburgh, PA 15251–5290.
d. Ship (Renewal)	405B	115	PASR	Federal Communications Commission, Ship, P.O. Box 358290, Pittsburgh, PA 15251–5290.
18. Aircraft:				
a. New, Renewal	404	115	PAAR	Federal Communications Commission, Aircraft, P.O. Box 358280, Pittsburgh, PA 15251–5280.
b. Modification, Non-Profit	404	45	PAAM	Federal Communications Commission, Aircraft, P.O. Box 358780, Pittsburgh, PA 15251–5780.
c. Aircraft (Renewal) Non-Profit	405B	45	PAAM	Federal Communications Commission, Aircraft, (Renewal), P.O. Box 358290, Pittsburgh, PA 15251–5290.
d. Aircraft (Renewal)	405B	115	PAAR	Federal Communications Commission, Aircraft, (Renewal), P.O. Box 358290, Pittsburgh, PA 15251–5290.
19. Public Safety & Special Emergency	574	45	PALM	Federal Communications Commission, Public Safety, P.O. Box 358285, Pittsburgh, PA 15251–5285.
20. Restricted Permit	753	150	PARR	Federal Communications Commission, RP, P.O. Box 358295, Pittsburgh, PA 15251–5295.
21. Waiver	Corr & 159	125	PDWM	Federal Communications Commission, Waiver, P.O. Box 358300, Pittsburgh, PA 15251–5300.
22. Correspondence (Finders Preference)	Corr & 159	125	PDXM	Federal Communications Commission, FP, P.O. Box 358305, Pittsburgh, PA 15251–5305.
23. STA (Common Carrier)	Corr & 159	85	CEP	Federal Communications Commission, STA, P.O. Box 358305, Pittsburgh, PA 15251–5305.
24. STA (Common Carrier)	Corr & 159	85	CEL	Federal Communications Commission, STA, P.O. Box 358305, Pittsburgh, PA 15251–5305.
25. STA (BAPS)	Corr & 159	115	MGA	Federal Communications Commission, STA, P.O. Box 358305, Pittsburgh, PA 15251–5305.
26. STA (IVDS)	Corr & 159	45	PAIM	Federal Communications Commission, STA, P.O. Box 358305, Pittsburgh, PA 15251–5305.
27. STA (Coast)	Corr & 159	115	PCMM	Federal Communications Commission, STA, P.O. Box 358305, Pittsburgh, PA 15251–5305.
28. STA (Ground	Corr & 159	115	PCVM	Federal Communications Commission, STA, P.O. Box 358305, Pittsburgh, PA 15251–5305.
29. STA (Microwave)	Corr & 159	45	PAOM	Federal Communications Commission, STA, P.O. Box 358305, Pittsburgh, PA 15251–5305.
30. STA (LM, GMRS)	Corr & 159	45	PALM	Federal Communications Commission, STA, P.O. Box, 358305, Pittsburgh, PA 15251–5305.
31. Corres (Duplicate)	Corr & 159, 753, 755, 756.	45	PADM	Federal Communications Commission, Duplicate, P.O. Box 358305, Pittsburgh, PA 15251–5305.
32. Corres (Hearing)	Corr & 159	7,765	PFHM	Federal Communications Commission, Hearing, P.O. Box 358305, Pittsburgh, PA 15251–5305.
33. Corres (Wait List)	Corr & 159	45	PAWM	Federal Communications Commission, Wait List, P.O. Box 358305, Pittsburgh, PA 15251–5305.
34. Corres (Blanket Renewal) (Land Mobile, Non-Profit)	Corr & 159	45	PALM	Federal Communications Commission, Blanket Renewal, P.O. Box 358305, Pittsburgh, PA 15251–5305.
35. Corres (Blanket Renewal) (IVDS, Non-Profit)	Corr & 159	45	PAIM	Federal Communications Commission, Blanket, P.O. Box 358305, Pittsburgh, PA 15251–5305.

Action	FCC form No.	Fee amount	Fee type code	Address
36. Corres (Blanket Renewal) Microwave, Non-Profit	Corr & 159	180	PEOM	Federal Communications Commission, Blanket, P.O. Box 358305, Pittsburgh, PA 15251–5305.
37. Corres (Blanket Renewal) Ground, Non-Profit	Corr & 159	85	PBVM	Federal Communications Commission, Blanket, P.O. Box 358305, Pittsburgh, PA 15251–5305.
38. Corres (Blanket Renewal) Coast, Non-Profit	Corr & 159	85	PBMM	Federal Communications Commission, Blanket, P.O. Box 358305, Pittsburgh, PA 15251–5305.
39. Corres (Blanket Renewal) Aircraft, Non-Profit	Corr & 159	45	PAAM	Federal Communications Commission, Blanket, P.O. Box 358305, Pittsburgh, PA 15251–5305.
40. Corres (Blanket Renewal) Ship, Non-Profit	Corr & 159	45	PASM	Federal Communications Commission, Blanket, P.O. Box 358305, Pittsburgh, PA 15251–5305.
41. Corres (Blanket Renewal) BUS, OI, LT, GMRS	Corr & 159	80	PALR	Federal Communications Commission, Blanket, P.O. Box 358305, Pittsburgh, PA 15251–5305.
42. Corres (Blanket Renewal) 470–512, 800, 900, 220	Corr & 159	125	PALS	Federal Communications Commission, Blanket, P.O. Box 358305, Pittsburgh, PA 15251–5305.
43. Corres (Blanket Renewal) 220 Nationwide	Corr & 159	205	PALT	Federal Communications Commission, Blanket, P.O. Box 358305, Pittsburgh, PA 15251–5305.
44. Corres (Blanket Renewal) IVDS	Corr & 159	125	PAIR	Federal Communications Commission, Blanket, P.O. Box 358305, Pittsburgh, PA 15251–5305.
45. Corres (Blanket Renewal) Microwave	Corr & 159	260	PEOR	Federal Communications Commission, Blanket, P.O. Box 358305, Pittsburgh, PA 15251–5305.
46. Corres (Blanket Renewal) Ground	Corr & 159	120	PBVR	Federal Communications Commission, Blanket, P.O. Box 358305, Pittsburgh, PA 15251–5305.
47. Corres (Blanket Renewal) Coast	Corr & 159	120	PBMR	Federal Communications Commission, Blanket, P.O. Box 358305, Pittsburgh, PA 15251–5305.
48. Corres (Blanket Renewal) Aircraft	Corr & 159	115	PAAR	Federal Communications Commission, Blanket, P.O. Box 358305, Pittsburgh, PA 15251–5305.
49. Corres (Blanket Renewal) Ship	Corr & 159	115	PASR	Federal Communications Commission, Blanket, P.O. Box 358305, Pittsburgh, PA 15251–5305.
50. Corres (Blanket Renewal) Common Carrier	Corr & 159	180	CJP	Federal Communications Commission, Blanket, P.O. Box 358305, Pittsburgh, PA 15251–5305.
51. Corres (Blanket Renewal) Common Carrier	Corr & 159	180	CJL	Federal Communications Commission, Blanket, P.O. Box 358305, Pittsburgh, PA 15251–5305.
52. Corres (Blanket Renewal) (BAPS)	Corr & 159	45	MAA	Federal Communications Commission, Blanket, P.O. Box 358305, Pittsburgh, PA 15251–5305.
53. Transfer of Control	703	45	PATM	Federal Communications Commission, Transfer, P.O. Box 358310, Pittsburgh, PA 15251–5310.
54. Billing	Invoice	Various	Various	Federal Communications Commission, Billings, P.O. Box 358325, Pittsburgh, PA 15251–5325.
55. 220 MHz:				
a. New, Renewal, Reinstatement	574	125	PALS	Federal Communications Commission, 220 MHz, P.O. Box 358360, Pittsburgh, PA 15251–5360.
b. Modification, Assignment Non-Profit	574	45	PALM	Federal Communications Commission, 220 MHz, P.O. Box 358790, Pittsburgh, PA 15251–5790.
56. IVDS:				
a. New, Renewal, Reinstatement	574	125	PAIR	Federal Communications Commission, IVDS, P.O. Box 358365, Pittsburgh, PA 15251–5365.
b. Modification Non-Profit	574	45	PAIM	Federal Communications Commission, IVDS, P.O. Box 358795, Pittsburgh, PA 15251–5795.

Action	FCC form No.	Fee amount	Fee type code	Address
b. Modification, Assignment Non-Profit	574	45	PALM	Federal Communications Commission, 220 MHz, P.O. Box 358790, Pittsburgh, PA 15251–5790.
57. Common Carrier:				
a. New, Modification	494	180	CJP	Federal Communications Commission, CCB, P.O. Box 358680, Pittsburgh, PA 15251–5680.
b. Construction	494A	180	CJP	Federal Communications Commission, CCB, P.O. Box 358680, Pittsburgh, PA 15251–5680.
c. Renewal	405	180	CJP	Federal Communications Commission, CCB, P.O. Box 358680, Pittsburgh, PA 15251–5680.
d. Ext. Construct	701	65	CCP	Federal Communications Commission, CCB, P.O. Box 358680, Pittsburgh, PA 15251–5680.
e. Assignment	702	65	CCP	Federal Communications Commission, CCB, P.O. Box 358680, Pittsburgh, PA 15251–5680.
f. Transfer of Control	704	65	CCP	Federal Communications Commission, CCB, P.O. Box 358680, Pittsburgh, PA 15251–5680.
g. Additional Stations	702	45	CAP	Federal Communications Commission, CCB, P.O. Box 358680, Pittsburgh, PA 15251–5680.
h. Additional Stations	704	45	CAP	Federal Communications Commission, CCB, P.O. Box 358680, Pittsburgh, PA 15251–5680.
i. Waiver	Corr & 159	85	CEP	Federal Communications Commission, CCB, P.O. Box 358680, Pittsburgh, PA 15251–5680.
j. New, Modification	494	180	CJL	Federal Communications Commission, CCB, P.O. Box 358680, Pittsburgh, PA 15251–5680.
k. Construction	494A	180	CJL	Federal Communications Commission, CCB, P.O. Box 358680, Pittsburgh, PA 15251–5680.
l. Renewal	405	180	CJL	Federal Communications Commission, CCB, P.O. Box 358680, Pittsburgh, PA 15251–5680.
m. Ext. Construction	701	65	CCL	Federal Communications Commission, CCB, P.O. Box 358680, Pittsburgh, PA 15251–5680.
n. Assignment	702	65	CCL	Federal Communications Commission, CCB, P.O. Box 358680, Pittsburgh, PA 15251–5680.
o. Transfer of Control	704	65	CCL	Federal Communications Commission, CCB, P.O. Box 358680, Pittsburgh, PA 15251–5680.
p. Additional Stations	702	45	CAL	Federal Communications Commission, CCB, P.O. Box 358680, Pittsburgh, PA 15251–5680.
q. Additional Stations	704	45	CAL	Federal Communications Commission, CCB, P.O. Box 358680, Pittsburgh, PA 15251–5680.
r. Construction Waiver	Corr & 159	85	CEL	Federal Communications Commission, CCB, P.O. Box 358680, Pittsburgh, PA 15251–5680.
58. Mass Media (BAPS):				
a. New, Modification	313	100	MEA	Federal Communications Commission, MMB, P.O. Box 358700, Pittsburgh, PA 15251–5700.
b. Renewal	313R	45	MAA	Federal Communications Commission, MMB, P.O. Box 358700, Pittsburgh, PA 15251–5700.
59. Commercial:				
a. New	756	105	PACQ	Federal Communications Commission, FOB, P.O. Box 358725, Pittsburgh, PA 15251–5725.
b. New	756	35	PACR	Federal Communications Commission, FOB, P.O. Box 358800, Pittsburgh, PA 15251–5800.

Action	FCC form No.	Fee amount	Fee type code	Address
c. Renewal	756	80	PACS	Federal Communications Commission, FOB, P.O. Box 358805, Pittsburgh, PA 15251–5805.
60. 470–512:				
a. New, Renewal, Reinstatement	574	125	PALS	Federal Communications Commission, 470–512, P.O. Box 358810, Pittsburgh, PA 15251–5810.
b. Modification, Assignment, Non-Profit	574	45	PALM	Federal Communications Commission, 470–512, P.O. Box 358815, Pittsburgh, PA 15251–5815.
61. 220 Nationwide:				
a. New, Renewal, Reinstatement	574	205	PALT	Federal Communications Commission, 220 Nationwide, P.O. Box 358820, Pittsburgh, PA 15251–5820.
b. Modification, Assignment, Non-Profit	574	45	PALM	Federal Communications Commission, 220 Nationwide, P.O. Box 358825, Pittsburgh, PA 15251–5825.
62. Amateur C/S		70	PBAR	Federal Communications Commission, Amateur, P.O. Box 358830, Pittsburgh, PA 15251–5830.
63. Electronic Filing:				
a. New, Renewal, Reinstatement	ELT	80	PALR	Federal Communications Commission, ELT P.O. Box 358994, Pittsburgh, PA 15251–5994.
b. Modification, Assignment, Non-Profit	ELT	45	PALM	Federal Communications Commission, ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994.
c. New, Renewal, Reinstatement	ELT	1125	PALS	Federal Communications Commission, ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994.
d. New, Renewal, Reinstatement	ELT	205	PALT	Federal Communications Commission, ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994.
e. New, Renewal, Reinstatement	ELT	125	PAIR	Federal Communications Commission, ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994.
f. Modification, Non-Profit	ELT	45	PAIM	Federal Communications Commission, ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994.

3. Section 1.1103 is revised to read as follows:

§ 1.1103 Schedule of charges for equipment authorization, experimental radio services, ship inspections and international telecommunications settlements.

Action	FCC form No.	Fee amount	Fee type code	Address
1. Certification:				
a. Receivers (except TV and FM receivers)	731	330	EEC	Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251–5315.
b. All Other Devices	731	845	EGC	Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251–5315.
c. Modifications and Class II Permissive Changes.	731	45	EAC	Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251–5315.
d. Request for Confidentiality	731 or Corr & 159.	125	EBC	Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251–5315.
2. Type Acceptance:				
a. All Devices	731	425	EFT	Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251–5315.
b. Modifications and Class II Permissive Changes.	731	45	EAT	Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251–5315.
c. Request for Confidentiality	731 or Corr & 159.	125	EBT	Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251–5315.

Action	FCC form No.	Fee amount	Fee type code	Address
3. Type Approval (There are no longer any radio frequency devices subject to Type Approval):				
4. Notifications (All Devices)	731	135	ECN	Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251–5315.
5. Advance Approval for Subscription TV System.	Corr & 159	2,590	EIS	Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251–5315.
a. Request for Confidentiality	Corr & 159	125	EBS	Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251–5315.
6. Assignment of Applicant Code:				
a. New applicants for all application types except Subscription TV.	Corr & 159	45	EAG	Federal Communications Commission, Experimental Radio Service, P.O. Box 358315, Pittsburgh, PA 15251–5315.
7. Experimental Radio Service:				
a. New Construction Permit and Station Authorization (per application).	442	45	EAE	Federal Communications Commission, Experimental Radio Service, P.O. Box 358320, Pittsburgh, PA 15251–5320.
b. Modification to Existing Construction Permit and Station Authority (per application).	442	45	EAE	Federal Communications Commission, Experimental Radio Service, P.O. Box 358320, Pittsburgh, PA 15251–5320.
c. Renewal of Station Authorization (per application).	405	45	EAE	Federal Communications Commission, Experimental Radio Service, P.O. Box 358320, Pittsburgh, PA 15251–5320.
d. Assignment or Transfer of Control (per application).	702 or 703	45	EAE	Federal Communications Commission, Experimental Radio Service, P.O. Box 358320, Pittsburgh, PA 15251–5320.
e. Special Temporary Authority (per application).	Corr & 159	45	EAE	Federal Communications Commission, Experimental Radio Service, P.O. Box 358320, Pittsburgh, PA 15251–5320.
f. Additional fee required for any of the above applications that request confidentiality.	Corr & 159	45	EAE	Federal Communications Commission, Experimental Radio Service, P.O. Box 358320, Pittsburgh, PA 15251–5320.
Ship Inspections:				
a. Inspection of Oceangoing Vessels Under Title III, Part II of the Communications Act (per inspection).	801	715	FFS	Federal Communications Commission, P.O. Box 358110, Pittsburgh, PA 15251–5110.
b. Inspection of Passenger Vessels Under Title III, Part III of the Communications Act (per inspection).	801	370	FCS	Federal Communications Commission, P.O. Box 358110, Pittsburgh, PA 15251–5110.
c. Inspection of Vessels Under the Great Lakes Agreement (per inspection).	801	90	FDS	Federal Communications Commission, P.O. Box 358110, Pittsburgh, PA 15251–5110.
d. Inspection of Vessels Under the Safety of Life at Sea (SOLAS) Convention (per inspection).	801	620	FES	Federal Communications Commission, P.O. Box 358110, Pittsburgh, PA 15251–5110.
e. Temporary Waiver of Inspection	159	70	FBS	Federal Communications Commission, P.O. Box 358110, Pittsburgh, PA 15251–5110.
9. International Telecommunications Settlements Administrative Fee for Collections (per line item).	99	2	IAT	Licensees will be billed.

4. Section 1.1104 is revised to read as follows:

§ 1.1104 Schedule of charges for applications and other filings in the mass media services.

Action	FCC form N No.	Fee amount	Fee type code	Address
1. Commercial TV Stations:				
a. New and Major Change Construction Permits.	301	2,915	MVT	Federal Communications Commission, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165.
b. Minor Change	301	650	MPT	Federal Communications Commission, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165.
c. Hearing (Major/Minor Change, Comparative New, or Comparative Renewal).	N/A	7,765	MWT	Federal Communications Commission, Mass Media Bureau, P.O. Box 358170, Pittsburgh, PA 15251–5165.
d. License	302	200	MJT	Federal Communications Commission, Mass Media Bureau, P.O. Box 358170, Pittsburgh, PA 15251–5165.

Action	FCC form N No.	Fee amount	Fee type code	Address
e. Assignment or Transfer:				
(i) Long Form (per station)	314, 315	650	MPR	Federal Communications Commission, Mass Media Bureau, P.O. Box 358350, Pittsburgh, PA 15251–5165.
(ii) Short Form (per station)	316	95	MDR	
f. Renewal	303–S	115	MGT	Federal Communications Commission, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165.
g. Call Sign (New or Modification)	NA	65	MBT	Federal Communications Commission, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165.
h. Special Temporary Authority (other than to remain silent or extend an existing STA to remain silent).	N/A	115	MGT	Federal Communications Commission, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165.
i. Extension of Time to Construct or Replacement of CP.	307	230	MKT	Federal Communications Commission, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165.
j. Permit to Deliver Programs to Foreign Broadcast Stations.	308	65	MBT	Federal Communications Commission, Mass Media Services, P.O. Box 358190, Pittsburgh, PA 15251–5190.
k. Petition for Rulemaking for New Community of License.	301, 302	1,800	MRT	Federal Communications Commission, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165.
l. Ownership Report (per station)	323	45	MAT	Federal Communications Commission, Mass Media Services, P.O. Box 358180, Pittsburgh, PA 15251–5180.
2. Commercial Radio Stations:				
a. New and Major Change Construction Permit:				
(i) AM Station	301	2,590	MUR	Federal Communications Commission, Mass Media Services, P.O. Box 358190, Pittsburgh, PA 15251–5190.
(ii) FM Station	301	2,335	MTR	Federal Communications Commission, Mass Media Services, P.O. Box 358195, Pittsburgh, PA 15251–5195.
b. Minor Change:				
(i) AM Station	301	650	MPR	Federal Communications Commission, Mass Media Services, P.O. Box 358190, Pittsburgh, PA 15251–5190.
(ii) FM Station	301	650	MPR	Federal Communications Commission, Mass Media Services, P.O. Box 358195, Pittsburgh, PA 15251–5195.
c. Hearing (Major/Minor Change, Comparative New, or Comparative Renewal).	N/A	7,765	MWR	Federal Communications Commission, Mass Media Bureau, P.O. Box 358170, Pittsburgh, PA 15251–5170.
d. New License:				
(i) AM	302	425	MMR	Federal Communications Commission, Mass Media Services, P.O. Box 358190, Pittsburgh, PA 15251–5190.
(ii) FM	302	135	MHR	Federal Communications Commission, Mass Media Services, P.O. Box 358195, Pittsburgh, PA 15251–5195.
(iii) AM Directional Antenna	302	490	MOR	Federal Communications Commission, Mass Media Services, P.O. Box 358190, Pittsburgh, PA 15251–5190.
(iv) FM Directional Antenna	302	410	MLR	Federal Communications Commission, Mass Media Services, P.O. Box 358195, Pittsburgh, PA 15251–5195.
(v) AM Remote Control	301 or 301A	45	MAR	Federal Communications Commission, Mass Media Services, P.O. Box 358190, Pittsburgh, PA 15251–5190.
e. Assignment or Transfer:				
(i) Long Form (per station)	314, 315	650	MPR	Federal Communications Commission, Mass Media Services, P.O. Box 358350 Pittsburgh, PA 15251–5350.
				(ii) Short Form (per station)
				316
				95
				MDR
f. Renewal:				
(i) AM	303–S	115	MGR	Federal Communications Commission, Mass Media Bureau, P.O. Box 358190, Pittsburgh, PA 15251–5190.

Action	FCC form N No.	Fee amount	Fee type code	Address
(ii) FM	303–S	115	MGR	Federal Communications Commission, Mass Media Bureau, P.O. Box 358195, Pittsburgh, PA 15251–5195.
g. Call sign (New Or Modification)	N/A	65	MBR	Federal Communications Commission, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165.
h. Special Temporary Authority (other than to remain silent):				
(i) AM	N/A	115	MGR	Federal Communications Commission, Mass Media Services, P.O. Box 358190, Pittsburgh, PA 15251–5190.
(ii) FM	N/A	115	MGR	Federal Communications Commission, Mass Media Services, P.O. Box 358195, Pittsburgh, PA 15251–5195.
i. Extension of Time to Construct or Replacement of CP:				
(i) AM	307	230	MKR	Federal Communications Commission, Mass Media Services, P.O. Box 358190, Pittsburgh, PA 15251–5190.
(ii) FM	307	230	MKR	Federal Communications Commission, Mass Media Services, P.O. Box 358195, Pittsburgh, PA 15251–5195.
j. Permit to Deliver Programs to Foreign Broadcast Stations.	308	65	MBR	Federal Communications Commission, Mass Media Services, P.O. Box 358190, Pittsburgh, PA 15251–5190.
k. Petition for Rulemaking for New Community License or Higher Class Channel.	301, 302	1,800	MRR	Federal Communications Commission, Mass Media Services, P.O. Box 358195, Pittsburgh, PA 15251–5195.
l. Ownership report (per station)	323	45	MAR	Federal Communications Commission, Mass Media Services, P.O. Box 358180, Pittsburgh, PA 15251–5180.
3. FM Translators:				
a. New or Major Change Construction Permit.	349	490	MOF	Federal Communications Commission, Mass Media Services, P.O. Box 358200, Pittsburgh, PA 15251–5200.
b. License	350	100	MEF	Federal Communications Commission, Mass Media Services, P.O. Box 358200, Pittsburgh, PA 15251–5200.
c. Assignment or transfer (per station)	345, 316	95	MDF	Federal Communications Commission, Mass Media Services, P.O. Box 358350, Pittsburgh, PA 15251–5350.
d. Renewal	348 & 159	45	MAF	Federal Communications Commission, Mass Media Services, P.O. Box 358200, Pittsburgh, PA 15251–5200.
e. Special Temporary Authority (other than to remain silent or extend an existing STA to remain silent).	N/A	115	MGF	Federal Communications Commission, Mass Media Services, P.O. Box 358200, Pittsburgh, PA 15251–5200.
4. TV Translators and LPTV Stations:				
a. New or Major Change Construction Permit.	346	490	MOL	Federal Communications Commission, Mass Media Services, P.O. Box 358185, Pittsburgh, PA 15251–5185.
b. License	347	100	MEL	Federal Communications Commission, Mass Media Services, P.O. Box 358185, Pittsburgh, PA 15251–5185.
c. Assignment or Transfer (per station)	345, 316	95	MDL	Federal Communications Commission, Mass Media Services, P.O. Box 358350, Pittsburgh, PA 15251–5350.
d. Renewal	348	45	MAL	Federal Communications Commission, Mass Media Services, P.O. Box 358185, Pittsburgh, PA 15251–5185.
e. Special Temporary Authority (other than to remain silent or extend an existing STA to remain silent).	N/A	115	MGL	Federal Communications Commission, Mass Media Services, P.O. Box 358185, Pittsburgh, PA 15251–5185.
5. Auxiliary Services (Includes Remote Pickup stations, TV Auxiliary Broadcast stations, Aural Broadcast STL and Intercity Relay stations, and Low Power Auxiliary stations):				
a. Major Actions	313	100	MEA	Federal Communications Commission, Mass Media Services, P.O. Box 358700, Pittsburgh, PA 15251–5700.
b. Renewals	313–R	45	MAA	Federal Communications Commission, Mass Media Services, P.O. Box 358700, Pittsburgh, PA 15251–5700.

Action	FCC form N No.	Fee amount	Fee type code	Address
c. Special Temporary Authority (other than to remain silent or extend an existing STA to remain silent).	N/A	115	MGA	Federal Communications Commission, Mass Media Services, P.O. Box 358700, Pittsburgh, PA 15251–5700.
6. FM Boosters:				
a. New or Major Change Construction Permits.	349	490	MOF	Federal Communications Commission, Mass Media Services, P.O. Box 358200, Pittsburgh, PA 15251–5200.
b. License	350	100	MEF	Federal Communications Commission, Mass Media Services, P.O. Box 358200, Pittsburgh, PA 15251–5200.
c. Special Temporary Authority (other than to remain silent or extent an existing STA to remain silent).	N/A	115	MGF	Federal Communications Commission, Mass Media Services, P.O. Box 358200, Pittsburgh, PA 15251–5200.
7. TV Boosters:				
a. New or Major Change Construction Permits.	346	490	MOF	Federal Communications Commission, Mass Media Services, P.O. Box 358185, Pittsburgh, PA 15251–5185.
b. License	347	100	MEF	Federal Communications Commission, Mass Media Services, P.O. Box 358185, Pittsburgh, PA 15251–5185.
c. Special Temporary Authority (other than to remain silent or extend an existing STA to remain silent).	Corr & 159	115	MGF	Federal Communications Commission, Mass Media Services, P.O. Box 358185, Pittsburgh, PA 15251–5185.
8. International Broadcast Station:				
a. New Station and Facilities Change CP	309	1,960	MSN	Federal Communications Commission, Mass Media Services, P.O. Box 358200, Pittsburgh, PA 15251–5200.
b. License	310	445	MNN	Federal Communications Commission, Mass Media Services, P.O. Box 358200, Pittsburgh, PA 15251–5200.
c. Assignment or Transfer (per station)	314, 315, 316	70	MCN	Federal Communications Commission, Mass Media Services, P.O. Box 358200, Pittsburgh, PA 15251–5200.
d. Renewal	311	110	MFN	Federal Communications Commission, Mass Media Services, P.O. Box 358200, Pittsburgh, PA 15251–5200.
e. Frequency Assignment and Coordination (per frequency hour).	N/A	45	MAN	Federal Communications Commission, Mass Media Services, P.O. Box 358175, Pittsburgh, PA 15251–5175.
f. Special Temporary Authority (other than to remain silent or extend an existing STA to remain silent).	N/A	115	MGN	Federal Communications Commission, Mass Media Services, P.O. Box 358175, Pittsburgh, PA 15251–5175.
9. Direct Broadcast Satellite:				
a. New or Major Change Construction Permit:				
(i) Application for Authorization to Construct a Direct Broadcast Satellite.	N/A	2,335	MTD	Federal Communications Commission, Mass Media Services, P.O. Box 358210, Pittsburgh, PA 15251–5210.
(ii) Issuance of Construction Permit & Launch Authority.	N/A	22,630	MXD	Federal Communications Commission, Mass Media Services, P.O. Box 358210, Pittsburgh, PA 15251–5210.
(iii) License to Operate Satellite	N/A	650	MPD	Federal Communications Commission, Mass Media Services, P.O. Box 358210, Pittsburgh, PA 15251–5210.
b. Hearing (Comparative New, Major/Minor Modifications, or Comparative Renewal).	N/A	7,765	MWD	Federal Communications Commission, Mass Media Services, P.O. Box 358170, Pittsburgh, PA 15251–5170.
c. Special Temporary Authority (other than to remain silent or extend an existing STA to remain silent).	N/A	115	MGD	Federal Communications Commission, Mass Media Services, P.O. Box 358210, Pittsburgh, PA 15251–5210.

5. Section 1.1105 is revised to read as follows:

§ 1.1105 Schedule of charges for applications and other filings in the common carrier services.

Action	FCC form No.	Fee amount	Fee type code	Address
1. All Common Carrier Services:				
a. Hearing (Comparative New or Major/Minor Modifications).	Corr & 159	7,765	BHZ	Federal Communications Commission, Common Carrier Hearing, P.O. Box 358125, Pittsburgh, PA 15251–5125.

Action	FCC form No.	Fee amount	Fee type code	Address
b. Development Authority (Same Charge as regular authority in service unless otherwise indicated):				
c. Formal Complaints and Pole Attachment Complaints Filing Fee.	Corr & 159	140	CIZ	Federal Communications Commission, Common Carrier Enforcement, P.O. Box 358120, Pittsburgh, PA 15251–5120.
2. Domestic Public Land Mobile Stations (includings Base, Dispatch, Control & Repeater Stations):				
a. New or Additional Facility (per transmitter).	401 & 159	265	CMD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
b. Major Modifications (per transmitter)	401 & 159	265	CMD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
c. Fill in Transmitters (per transmitter)	401 & 159 or 489.	265	CMD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
d. Major Amendment to a Pending Applications (per transmitter).	401 & 159	265	CMD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
e. Assignment or Transfer:				
(i) First Call Sign on Application	490 & 159	265	CMD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(ii) Each Additional Call Sign	490 & 159	45	CAD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130 Pittsburgh, PA 15251–5130.
f. Partial Assignment (per call sign)	401 & 159, 490 & 155.	265	CMD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
g. Renewal (per call sign)	405	45	CAD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130 Pittsburgh, PA 15251–5130.
h. Minor Modification (per transmitter)	489	45	CAD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
i. Special Temporary Authority (per frequency/per location).	Corr & 159	230	CLD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
j. Extension of Time to Construct (per application).	489	45	CAD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130 Pittsburgh, PA 15251–5130.
k. Notice of Completion of Construction (per application).	489	45	CAD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
l. Auxiliary Test Station (per transmitter)	401 & 159	230	CLD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130 Pittsburgh, PA 15251–5130.
m. Subsidiary Communications Service (per request).	401 & 159	115	CFD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
n. Reinstatement (per application)	401 & 159 or 489.	45	CAD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
o. Combining Call Signs (per call sign)	489	230	CLD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
p. Standby Transmitter (per transmitter/per location).	401 & 159	230	CLD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
q. 900 MHz Nationwide Paging:				
(i) Renewal:				
(1) Network Organizer	405	45	CAD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
r. Air-Ground Individual License (per station):				
(i) Initial License	409 & 159	45	CAD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.

Action	FCC form No.	Fee amount	Fee type code	Address
(ii) Renewal of License	409 & 159	45	CAD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(iii) Modification of License	409 & 159	45	CAD	Federal Communications Commission, Cellular systems, P.O. Box 358130, Pittsburgh, PA 15251–5130.
3. Cellular Systems (per system):				
a. New or Additional Facilities	401 & 159	265	CMC	Federal Communications Commission, Cellular systems, P.O. Box 358135, Pittsburgh, PA 15251–5135.
b. Major Modification	401 & 159	265	CMC	Federal Communications Commission, Cellular systems, P.O. Box 358135, Pittsburgh, PA 15251–5135.
c. Minor Modification	489	70	CDC	Federal Communications Commission, Cellular systems, P.O. Box 358135, Pittsburgh, PA 15251–5135.
d. Assignment or Transfer (including partial).	490 & 159	265	CMC	Federal Communications Commission, Cellular systems, P.O. Box 358135, Pittsburgh, PA 15251–5135.
e. Renewal	405	45	CAC	Federal Communications Commission, Cellular systems, P.O. Box 358135, Pittsburgh, PA 15251–5135.
f. Extension of Time to Complete Construction.	489	45	CAC	Federal Communications Commission, Cellular systems, P.O. Box 358135, Pittsburgh, PA 15251–5135.
g. Special Temporary Authority (per system).	Corr & 159	230	CLC	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358135, Pittsburgh, PA 15251–5135.
h. Combining Cellular Geographic Service Areas (per system).	Corr & 159	60	CBC	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358135, Pittsburgh, PA 15251–5135.
4. Rural Radio (includes Central Office, Interoffice, or Relay Facilities):				
a. New or Additional Facility (per transmitter).	401 & 159	125	CGR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
b. Major Modifications (per transmitter)	401 & 159	125	CGR	Federal Communications Commission, P.O. Box 358130, Pittsburgh, PA 15251–5130.
c. Major Amendment to Pending Application (per transmitter).	401 & 159	125	CGR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
d. Minor Modification (per transmitter)	489	45	CAR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
e. Assignment or Transfer:				
(i) First Call Sign on Application	490 & 159	125	CGR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(ii) Each Additional Call Sign	490 & 159	45	CAR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(iii) Partial Assignment (per call sign)	401 & 159, 490 & 159.	125	CGR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
f. Renewal (per call sign)	405	45	CAR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
g. Extension of Time to Complete Construction (per application).	489	45	CAR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
h. Notice of Completion of Construction (per application).	489	45	CAR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
i. Special Temporary Authority (per frequency/per location).	Corr & 159	230	CLR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
j. Reinstatement (per application)	401 & 159 or 489.	45	CAR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
k. Combining Call Signs (per call sign)	489	230	CLR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.

Action	FCC form No.	Fee amount	Fee type code	Address
l. Auxiliary Test Station (per transmitter)	401 & 159	230	CLR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
m. Standby Transmitter (per transmitter/per location).	401 & 159	230	CLR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
5. Offshore Radio Service (Mobile, Subscriber and Central Stations)				
a. New or Additional Facility (per transmitter).	401 & 159	125	CGF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
b. Major Modifications (per transmitter)	401 & 159	125	CGF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
c. Fill in transmitters (per transmitter)	401 & 159 or 489.	125	CGF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
d. Major Amendment to Pending Application (per transmitter).	401 & 159	125	CGF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
e. Minor Modification (per transmitter)	489	45	CAF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
f. Assignment or Transfer:				
(i) First Call Sign on Application	490 & 159	125	CGF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(ii) Each Additional Call Sign	490 & 159	45	CAF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(iii) Partial Assignment (per call sign)	401 & 159, 490 & 159.	125	CGF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
g. Renewal (per call sign)	405 & 159	45	CAF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
h. Extension of Time to Complete construction (per application).	489	45	CAF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
i. Reinstatement	401 & 159 or 489.	45	CAF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
j. Notice of Completion of Construction (per application).	489	45	CAF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
k. Special Temporary Authority (per frequency/per location).	Corr & 159	230	CLF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
l. Combining Call Signs (per call sign)	489	230	CLF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
m. Auxiliary Test Station (per transmitter)	401 & 159	230	CLF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
n. Standby Transmitter (per transmitter/per location.	401 & 159	230	CLF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358680, Pittsburgh, PA 15251–5680.
6. Point-to-Point Microwave and Local Television Transmission Service:				
a. Conditional License (per station)	494	180	CJP	Federal Communications Commission, Common Carrier Dom. Radio, P.O. Box 358680, Pittsburgh, PA 15251–5680.
b. Major Modifications of Conditional Licenses or License Authorization (per station).	494	180	CJP	Federal Communications Commission, Common Carrier Dom. Radio, P.O. Box 358680, Pittsburgh, PA 15251–5680.
c. Certification of completion of Construction (per station).	494–A	180	CJP	Federal Communications Commission, Common Carrier Dom. Radio, P.O. Box 358680, Pittsburgh, PA 15251–5680.
d. Renewal (per licensed station)	405	180	CJP	Federal Communications Commission, Common Carrier Dom. Radio, P.O. Box 358680, Pittsburgh, PA 15251–5680.

Action	FCC form No.	Fee amount	Fee type code	Address
e. Assignment or Transfer:				
(i) First Station on Application	702 or 704	65	CCP	Federal Communications Commission, Common Carrier Dom. Radio, P.O. Box 358680, Pittsburgh, PA 15251–5680.
(ii) Each Additional Station	702 or 704	45	CAP	Federal Communications Commission, Common Carrier Dom. Radio, P.O. Box 358680, Pittsburgh, PA 15251–5680.
f. Extension of Construction Authorization (per station).	701	65	CCP	Federal Communications Commission, Feeable Correspondence, P.O. Box 358680, Pittsburgh, PA 15251–5680.
g. Special Temporary Authority or Request for Waiver of Prior Construction Authorization (per request).	Corr & 159	85	CEP	Federal Communications Commission, Common Carrier Dom. Radio, P.O. Box 358305, Pittsburgh, PA 15251–5305.
7. Multipoint Distribution Service (including multichannel MDS):				
a. Conditional License (per station)	494	180	CJM	Federal Communications Commission, Common Carrier Dom. Radio, P.O. Box 358155, Pittsburgh, PA 15251–5155.
b. Major Modification of Conditional Licenses or License Authorization (per station).	494	180	CJM	Federal Communications Commission, Common Carrier Dom. Radio, P.O. Box 358155, Pittsburgh, PA 15251–5155.
c. Certification of Completion of Construction (per channel).	494–A	525	CPM	Federal Communications Commission, Common Carrier Dom. Radio, P.O. Box 358155, Pittsburgh, PA 15251–5155.
d. Renewal (per licensed station)	405	180	CJM	Federal Communications Commission, Common Carrier Dom. Radio, P.O. Box 358155, Pittsburgh, PA 15251–5155.
e. Assignment or Transfer:				
(i) First Station on Application	702 & 704	65	CCM	Federal Communications Commission, Common Carrier Dom. Radio, P.O. Box 358155, Pittsburgh, PA 15251–5155.
(ii) Each Additional Station	704 & 704	45	CAM	Federal Communications Commission, Common Carrier Dom. Radio, P.O. Box 358155, Pittsburgh, PA 15251–5155.
f. Extension of Construction Authorization (per station).	701	130	CHM	Federal Communications Commission, Common Carrier Dom. Radio, P.O. Box 358155, Pittsburgh, PA 15251–5155.
g. Special Temporary Authority or Request for Waiver of Prior Construction Authorization (per request).	Corr & 159	85	CEM	Federal Communications Commission, Common Carrier Dom. Radio, P.O. Box 358155, Pittsburgh, PA 15251–5155.
8. Digital Electronic Message:				
a. Conditional License (per nodal station)	494	180	CJL	Federal Communications Commission, Common Carrier Dom. Radio, P.O. Box 358680, Pittsburgh, PA 15251–5680.
b. Modification of Conditional License or License Authorization (per nodal station).	494	180	CJL	Federal Communications Commission, Common Carrier Dom. Radio, P.O. Box 358680, Pittsburgh, PA 15251–5680.
c. Certification of Completion of Construction (per nodal station).	494–A	180	CJL	Federal Communications Commission, Common Carrier Dom. Radio, P.O. Box 358680, Pittsburgh, PA 15251–5680.
d. Renewal (per licensed nodal	405	180	CJL	Federal Communications Commission, Common Carrier Dom. Radio, P.O. Box 358680, Pittsburgh, PA 15251–5680.
e. Assignment or Transfer:				
(i) First Station on Application	702 or 704	65	CCL	Federal Communications Commission, Common Carrier Dom. Radio, P.O. Box 358680, Pittsburgh, PA 15251–5680.
(ii) Each Additional Station	702 or 704	45	CAL	Federal Communications Commission, Common Carrier Dom. Radio, P.O. Box 358680, Pittsburgh, PA 15251–5680.
f. Extension of Construction Authorization (per station).	701	65	CCL	Federal Communications Commission, Feeable Corr, P.O. Box 358305, Pittsburgh, PA 15251–5305.
g. Special Temporary Authority or Request for Waiver of Prior Construction Authorization (per request).	Corr & 159	85	CEL	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.
9. International Fixed Public Radio (Public and control Stations):				
a. Initial Construction Authorization (per station).	407 & 159	590	CSN	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.

Action	FCC form No.	Fee amount	Fee type code	Address
b. Assignment or Transfer (per application)	702 or 704	590	CSN	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.
c. Renewal (per license)	405	425	CON	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.
d. Modification (per station)	403	425	CON	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.
e. Extension of Construction Authorization (per station)	701	215	CKN	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358115, Pittsburgh, PA 15251–5115.
f. Special Temporary Authority or Request for Waiver (per request).	Corr & 159	215	CKN	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358115, Pittsburgh, PA 15251–5115.
10. Fixed Satellite Transmit/Receive Earth Stations:				
a. Initial Application (per station):				
(i) Domestic	493 & 159	1,755	BAX	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) International	493 & 159	1,755	BAX	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.
b. Modification of License (per station):				
(i) Domestic	493 & 159	125	CGX	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) International	493 & 159	125	CGX	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.
c. Assignment or Transfer:				
(i) First Station on application:				
(1) Domestic	702 or 704	345	CNX	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(2) International	702 or 704	345	CNX	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.
(ii) Each Additional Station:				
(1) Domestic	702 or 704	115	CFX	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(2) International	702 or 704	115	CFX	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.
d. Developmental Station (per station):				
(i) Domestic	493 & 159	1,150	CWX	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) International	493 & 159	1,150	CWX	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.
e. Renewal of License (per station):				
(i) Domestic	405	125	CGX	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) International	405	125	CGX	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.
f. Special Temporary Authority or Waivers of Prior Construction Authorization (per request):				
(i) Domestic	Corr & 159	125	CGX	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) International	Corr & 159	125	CGX	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.
g. Amendment of Application (per station):				
(i) Domestic	Corr & 159	125	CGX	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.

Action	FCC form No.	Fee amount	Fee type code	Address
(ii) International	Corr & 159	125	CGX	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.
h. Extension of Construction Permit (per station):				
(i) Domestic	701	125	CGX	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) International	701	125	CGX	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.
11. Fixed Satellite Small Transmit/Receive Earth Stations (2 meters or less and operating in the 4/6 GHz frequency band):				
a. Lead Application	493 & 159	3,885	BDS	Federal Communications Commission, Common Carrier International, P.O. Box 358160, Pittsburgh, PA 15251–5160.
b. Routine Application (per station)	493 & 159	45	CAS	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
c. Modification of License (per station)	493 & 159	125	CGS	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
d. Assignment or Transfer				
(i) First Station on Application	702 & 704	345	CNS	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) Each Additional Station	702 or 704	45	CAS	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
e. Developmental Station (per station)	493 & 159	1,150	CWS	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
f. Renewal of License (per station)	405	125	CGS	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
g. Special Temporary Authority or Waivers of prior construction authorization (per request).	Corr & 159	125	CGS	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
h. Amendment of Application (per station)	Corr & 159	125	CGS	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
i. Extension of Construction Permit (per station).	701	125	CGS	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
12. Receive only Earth Stations:				
a. Initial Application for Registration:				
(i) Domestic	493 & 159	265	CMO	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) International	493 & 159	265	CMO	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.
b. Modification of License or Registration (per station):				
(i) Domestic	493 & 159	125	CGO	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) International	493 & 159	125	CGO	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.
c. Assignment or Transfer:				
(i) First Station on Application:				
(1) Domestic	702 or 704	345	CNO	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(2) International	702 or 704	115	CNO	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.
(ii) Each Additional Station:				
(1) Domestic	702 or 704	115	CFO	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.

Action	FCC form No.	Fee amount	Fee type code	Address
(2) International	702 or 704	115	CFO	Federal Communications Commission, International, P.O. Box 358115, Pittsburgh, PA 15251–5115.
d. Renewal of License (per station):				
(i) Domestic	405	125	CGO	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) International	405	125	CGO	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.
e. Amendment of Application (per station):				
(i) Domestic	Corr & 159	125	CGO	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) International	Corr & 159	125	CGO	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.
f. Extension of Construction Permit (per station):				
(i) Domestic	701	125	CGO	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) International	701	125	CGO	Federal Communications Commission, Common Carrier International, P.O. Box 358115 Pittsburgh, PA 15251–5115.
g. Waivers (per request):				
(i) Domestic	Corr & 159	125	CGO	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358115, Pittsburgh, PA 15251–5115.
(ii) International	Corr & 159	125	CGO	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.
13. Fixed Satellite Very Small Aperture Terminal (VSAT) Systems:				
a. Initial Application (per system)	493 & 159	6,465	BGV	Federal Communications Commission, Common Carrier Dom. Earth Station, P.O. Box 358160, Pittsburgh, PA 15251–5160.
b. Modification of License (per system)	493 & 159	125	CGV	Federal Communications Commission, Common Carrier Dom. Earth Station, P.O. Box 358160, Pittsburgh, PA 15251–5160.
c. Assignment or Transfer of System	702 or 704	1,730	CZV	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
d. Developmental Station	493 & 159	1,150	CWV	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
e. Renewal of License (per system)	405	125	CGV	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
f. Special Temporary Authority of Waivers of Prior Construction Authorization (per request).	Corr & 159	125	CGV	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
g. Amendment of Application (per system)	Corr & 159	125	CGV	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
h. Extension of Construction Permit (per system).	701	125	CGV	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
14. Mobile Satellite Earth Stations:				
a. Initial Application of Blanket Authorization.	493 & 159	6,465	BGB	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
b. Initial Application for Individual Earth Station.	493 & 159	1,550	CYB	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
c. Modification of License (per system)	493 & 159	125	CGB	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
d. Assignment or Transfer (per system)	702 or 704	1,730	CZB	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.

Action	FCC form No.	Fee amount	Fee type code	Address
e. Developmental Station	493 & 159	1,150	CWB	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
f. Renewal of License (per system)	405	125	CGB	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
g. Special Temporary Authority of Waivers of Prior Construction Authorization (per request).	Corr & 159	125	CGB	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
h. Amendment of Application (per system)	Corr & 159	125	CGB	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
i. Extension of Construction Permit (per system).	701	125	CGB	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
15. Radio Determination Satellite Earth Station:				
a. Initial Application of Blanket Authorization.	495 & 159	6,465	BGH	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
b. Initial Application for Individual Earth Station.	493 & 159	1,550	CYH	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
c. Modification of License (per system)	493 & 159	125	CGH	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
d. Assignment or Transfer (per system	702 or 704	1,730	CZH	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
e. Developmental Station	493 & 159	1,150	CWH	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
f. Renewal of License (per system)	405	125	CGH	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
g. Special Temporary Authority or Waivers of Prior Construction Authorization (per request).	Corr & 159	125	CGH	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
h. Amendment of Application (per system)	Corr & 159	125	CGH	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
i. Extension of Construction Permit (per system).	701	125	CGH	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
16. Space Stations:				
a. Application for Authority to Construction:				
(i) Domestic	Corr & 159	2,330	BBY	Federal Communications Commission, Common Carrier Dom. Satellites, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) International	Corr & 159	2,330	BBY	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.
b. Application for Authority to Launch & Operate:				
(i) Initial Application:				
(1) Domestic	Corr & 159	80,360	BNY	Federal Communications Commission, Common Carrier Dom. Satellites, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(2) International	Corr & 159	80,360	BNY	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.
(ii) Replacement Satellite:				
(1) Domestic	Corr & 159	80,360	BNY	Federal Communications Commission, Common Carrier Dom. Satellites, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(2) International	Corr & 159	80,360	BNY	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.
c. Assignment or Transfer (per satellite):				
(i) Domestic	702 or 704	5,740	BFY	Federal Communications Commission, Common Carrier Dom. Satellites, P.O. Box 358160, Pittsburgh, PA 15251–5160.

Action	FCC form No.	Fee amount	Fee type code	Address
(ii) International	702 or 704	5,740	BFY	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.
d. Modification:				
(i) Domestic	Corr & 159	5,740	BFY	Federal Communications Commission, Common Carrier Dom. Satellites, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) International	Corr & 159	5,740	BFY	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.
e. Special Temporary Authority or Waiver of Prior Construction Authorization (per request):				
(i) Domestic	Corr & 159	575	CRY	Federal Communications Commission, Common Carrier Dom. Satellites, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) International	Corr & 159	575	CRY	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.
f. Amendment of Application:				
(i) Domestic	Corr & 159	1,150	CWY	Federal Communications Commission, Common Carrier Dom. Satellites, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) International	Corr & 159	1,150	CWY	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.
g. Extension of Construction Permit/Launch Authorization (per request):				
(i) Domestic	Corr & 159	575	CRY	Federal Communications Commission, Common Carrier Dom. Satellites, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) International	Corr & 159	575	CRY	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.
17. Space Stations (Low Orbit):				
a. Application for Authority to Construction:				
(i) Domestic	Corr & 159	6,890	CZW	Federal Communications Commission, Common Carrier Dom. Satellites, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) International	Corr & 159	6,890	CZW	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.
b. Application for Authority to Launch & Operate:				
(i) Domestic	Corr & 159	241,080	CLW	Federal Communications Commission, Common Carrier Dom. Satellites, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) International	Corr & 159	241,080	CLW	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.
c. Assignment or Transfer (per satellite):				
(i) Domestic	702 or 704	6,890	CZW	Federal Communications Commission, Common Carrier Dom. Satellites, P.O. Box 358115, Pittsburgh, PA 15251–5115.
(ii) International	702 or 704	6,890	CZW	Federal Communications Commission, Common Carrier Dom. Satellites, P.O. Box 358160, Pittsburgh, PA 15251–5160.
d. Modification (per request):				
(i) Domestic	Corr & 159	17,220	CGW	Federal Communications Commission, Common Carrier Dom. Satellites, P.O. Box 358115, Pittsburgh, PA 15251–5115.
(ii) International	Corr & 159	17,220	CGW	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.
e. Special Temporary Authority or Waiver of Prior Construction Authorization (per request):				
(i) Domestic	Corr & 159	1,725	CXW	Federal Communications Commission, Common Carrier Dom. Satellites, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) International	Corr & 159	1,725	CXW	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.

Action	FCC form No.	Fee amount	Fee type code	Address
f. Amendment of Application:				
(i) Domestic	Corr & 159	3,445	CAW	Federal Communications Commission, Common Carrier Dom. Satellites, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) International	Corr & 159	3,445	CAW	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.
g. Extension of Construction Permit/Launch Authorization (per request):				
(i) Domestic	Corr & 159	1,725	CXW	Federal Communications Commission, Common Carrier Dom. Satellites, P.O. Box 358115, Pittsburgh, PA 15251–5115.
(ii) International	Corr & 159	1,725	CXW	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.
18. Section 214 Applications:				
a. Overseas Cable Construction	Corr & 159	10,480	BIT	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.
b. Cable Landing License:				
(i) Common Carrier	Corr & 159	1,180	CXT	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 51251–5115.
(ii) Replacement Satellite	Corr & 159	11,655	BJT	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 51251–5115.
c. Domestic Cable Construction	Corr & 159	705	CUT	Federal Communications Commission, Common Carrier Dom. Services, P.O. Box 358145, Pittsburgh, PA 51251–5145.
d. All other 214 Applications:				
(i) Domestic	Corr & 159	705	CUT	Federal Communications Commission, Common Carrier Dom. Services, P.O. Box 358145, Pittsburgh, PA 51251–5145.
(ii) International	Corr & 159	705	CUT	Federal Communications Commission, Common Carrier Dom. Services, P.O. Box 358115, Pittsburgh, PA 51251–5115.
e. Special Temporary Authority (all services):				
(i) Domestic	Corr & 159	705	CUT	Federal Communications Commission, Common Carrier Dom. Services, P.O. Box 358145, Pittsburgh, PA 51251–5145.
(ii) International	Corr & 159	705	CUT	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 51251–5115.
f. Assignments or Transfers (all services):				
(i) Domestic	Corr & 159	705	CUT	Federal Communications Commission, Common Carrier Dom. Services, P.O. Box 358145, Pittsburgh, PA 51251–5145.
(ii) International	Corr & 159	705	CUT	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 51251–5115.
19. Recognized Private Operating Status (per application).	Corr & 159	705	CUT	Federal Communications Commission, Common Carrier, International, P.O. Box 358115, Pittsburgh, PA 51251–5115.
20. Telephone Equipment Registration	Corr & 159	180	CJQ	Federal Communications Commission, Dom. Services, P.O. Box 358145, Pittsburgh, PA 15251–5145.
21. Tariff Filings:				
a. Filing Fees	Corr & 159	565	CQK	Federal Communications Commission, Tariff filings, P.O. Box 358150, Pittsburgh, PA 15251–5150.
b. Special Permission Filing (per filing) Waiver of any Rule in Part 61 of the Commission's Rules).	Corr & 159	565	CQK	Federal Communications Commission, Tariff filings, P.O. Box 358150, Pittsburgh, PA 15251–5150.
22. Accounting and Audits:				
a. Field Audit	N/A	71,510	N/A	Federal Communications Commission, Accounting & Audits, P.O. Box 358340, Pittsburgh, PA 15251–5340.
b. Review of Attest Audit	N/A	39,030	N/A	Federal Communications Commission, Accounting & Audits, P.O. Box 358140, Pittsburgh, PA 15251–5140.

Action	FCC form No.	Fee amount	Fee type code	Address
c. Review of Depreciation Update Study (Single State).	Corr & 159	23,750	BKA	Federal Communications Commission, Accounting & Audits, P.O. Box 358140, Pittsburgh, PA 15251–5140.
(i) Each Additional State	Corr & 159	785	CVA	Federal Communications Commission, Accounting and Audits, P.O. Box 358140, Pittsburgh, PA 15251–5140.
d. Interpretation of Accounting Rules (per request).	Corr & 159	3,315	BCA	Federal Communications Commission, Accounting and Audits, P.O. Box 358140, Pittsburgh, PA 15251–5140.
e. Petition for Waiver (per petition) (Waiver of Part 69 Tariff Rules & Parts 36, 63 & 69 Accounting Rules).	Corr & 159	5,350	BEA	Federal Communications Commission, Accounting and Audits, P.O. Box 358140, Pittsburgh, PA 15251–5140.

6. Section 1.1106 is added to read as follows:

§ 1.1106 Schedule of charges for applications and other filings in the cable television services.

Action	FCC form No.	Fee amount	Fee type code	Address
1. Cable Television Service:				
a. Cable Television Relay Service:				
(i) Construction Permit	327 & 159	180	TIC	Federal Communications Commission, Cable Services Bureau, P.O. Box 358205, Pittsburgh, PA 15251–5205.
(ii) Assignment or Transfer	327 & 159	180	TIC	Federal Communications Commission, Cable Services Bureau, P.O. Box 358205, Pittsburgh, PA 15251–5205.
(iii) Renewal	327 & 159	180	TIC	Federal Communications Commission, Cable Services Bureau, P.O. Box 358205, Pittsburgh, PA 15251–5205.
(iv) Modification	327 & 159	180	TIC	Federal Communications Commission, Cable Services Bureau, P.O. Box 358205, Pittsburgh, PA 15251–5205.
(v) Special Temporary Authority (other than to remain silent or extend an existing STA to remain silent).	327 & 159	115	TGC	Federal Communications Commission, Cable Services Bureau, P.O. Box 358205, Pittsburgh, PA 15251–5205.
b. Cable Special Relief Petition	N/A	910	TQC	Federal Communications Commission, Cable Services Bureau, P.O. Box 358205, Pittsburgh, PA 15251–5205.
c. 76.12 Registration Statement (per statement).	N/A	45	TAC	Federal Communications Commission, Cable Services Bureau, P.O. Box 358205, Pittsburgh, PA 15251–5205.
d. Aeronautical Frequency Usage Notifications (per notice).	N/A	45	TAC	Federal Communications Commission, Cable Services Bureau, P.O. Box 358205, Pittsburgh, PA 15251–5205.
e. Aeronautical Frequency Usage Waivers (per waiver).	N/A	45	TAC	Federal Communications Commission, Cable Services Bureau, P.O. Box 358205, Pittsburgh, PA 15251–5205.

[FR Doc. 94–14211 Filed 6–13–94; 10:48 am]

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federal register

Thursday
June 16, 1994

Part IV

Department of Education

National Workplace Literacy Program; Proposed Priority; Notice

DEPARTMENT OF EDUCATION

RIN 1830–ZA00

National Workplace Literacy Program

AGENCY: Department of Education.

ACTION: Notice of proposed priority.

SUMMARY: The Secretary proposes an absolute priority to focus fiscal year 1995 funds for new workplace literacy projects on communities that have been designated as Empowerment Zones or Enterprise Communities authorized under section 1391 of the Internal Revenue Code, as amended by title XIII of the Omnibus Budget Reconciliation Act of 1993. Under the proposed absolute priority, funds under this competition would be reserved only for projects that provide workplace literacy services to Empowerment Zones or Enterprise Communities through partnerships eligible for funding in the National Workplace Literacy Program.

DATES: Comments must be received on or before July 18, 1994.

ADDRESSES: All comments concerning the proposed priority must be addressed to Mr. Ronald S. Pugsley, U.S. Department of Education, 400 Maryland Avenue SW., room 4428–MES, Washington, DC 20202–7240.

FOR FURTHER INFORMATION CONTACT: Sarah Newcomb, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue SW., room 4417–MES, Washington, DC 20202–7240, Telephone (202) 205–9872 or Jeanne Williams, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue SW., room 4513–MES, Washington, DC 20202–7327. Telephone (202) 205–5977. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday .

SUPPLEMENTARY INFORMATION:

Background on Empowerment Zone and Enterprise Community Initiative

The Empowerment Zone and Enterprise Community program is a critical element of the Administration's community revitalization strategy. The program is a first step in rebuilding communities in America's poverty-stricken inner cities and rural heartlands. It is designed to empower people and communities by inspiring Americans to work together to create jobs and opportunity.

Under this program, the Federal Government will designate up to nine areas as Empowerment Zones and up to 95 areas as Enterprise Communities in accordance with Internal Revenue Code section 1391, as amended by title XIII of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66). To be eligible for designation, an areas must be nominated by one or more local governments and the State or States in which it is located or by a State-Chartered Economic Development Corporation. A nominated area must be one of pervasive poverty, unemployment, and general distress, and must have a poverty rate of not less than the level specified in section 1392 of the Internal Revenue Code.

In the Empowerment Zone and Enterprise Community program, communities are invited to submit strategic plans that comprehensively address how the community would link economic development with education and training as well as how community development, public safety, human services, and environmental initiatives will together support sustainable communities. Empowerment Zones and Enterprise Communities will be designated by the Department of Agriculture and the Department of Housing and Urban Development (HUD) based on the quality of their strategic plans. Designated areas will receive Federal grant funds and substantial tax benefits and will have access to other Federal programs. (For additional information on the Empowerment Zone and Enterprise Community program, contact HUD at 1–800–998–9999.)

The Department of Education is supporting the Empowerment Zone and Enterprise Community initiative in a variety of ways. It is encouraging Empowerment Zones and Enterprise Communities to use funds they already receive from Department of Education programs (including Chapter 1 of Title I of the Elementary and Secondary Education Act, the Drug-Free Schools and Communities Act, the Adult Education Act, and the Carl D. Perkins Vocational and Applied Technology Education Act) to support the comprehensive vision of their strategic plans. In addition, the Department of Education intends to give preferences to Empowerment Zones and Enterprise Communities in a number of discretionary grant programs that are well suited for inclusion in a comprehensive approach to economic and community development. In addition to the National Workplace Literacy Program described in this notice in which the Department intends to give an absolute preference, the Department intends to give competitive preferences to Empowerment Zones and Enterprise Communities in the Urban Community Service program, the Rehabilitation Act Projects with Industry program, Rehabilitation Act Special Demonstration Projects program, the Parent Training program and Early Childhood Education program under the Individuals With Disabilities Education Act, and a variety of discretionary programs under the Elementary and Secondary Education Act. Notices concerning those programs will be published at a later date.

Background on National Workplace Literacy Program

The National Workplace Literacy Program is ideally suited to play a key role in the Empowerment Zone and Enterprise Community program because it links economic development and education and training efforts. The program, which makes discretionary grants of up to three years in length, supports demonstration projects that teach literacy skills needed in the workplace through exemplary education partnerships. The partnerships are established between a business, industry, or labor organization or a private industry council and an educational organization to support work-related basic skills training. The National Workplace Literacy Program funds may be used, among other things, to update or upgrade the skills of workers in line with changes in production processes or technology. For example, basic skill levels that formerly were adequate for assembly line production are inadequate for employees faced with sophisticated quality control systems, flexible production, team-based work, and participatory management practices.

National Workplace Literacy projects can improve the human resources of Empowerment Zones and Enterprise Communities, increase the productivity of businesses located in Empowerment Zones and Enterprise Communities, and help attract new businesses to these needy areas. Further, an amendment to the program, contained in the National Literacy Act of 1991, establishes a statutory priority for serving small businesses. This is the type of business most likely to be found in the zones.

In addition, the National Workplace Literacy Program is an important vehicle for achieving the National Education Goal that by the year 2000, every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. The program helps further this goal by improving approaches and methods used in meeting the literacy needs of

adults in the workplace, including those with limited English proficiency. The National Workplace Literacy Program will also benefit by establishing an absolute priority related to Empowerment Zones and Enterprise Communities. Communities receiving these designations will already have demonstrated a capacity for the type of cooperative planning that is critical to a successful workplace literacy partnership. Projects funded under the priority will provide models for partnerships in other distressed areas and show how the National Workplace Literacy Program furthers the National Education Goal that every adult American will be literate and able to compete in the global economy.

Note: This notice of proposed priority does *not* solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following publication of the notice of final priority.

Priority

Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that are otherwise eligible for funding under the National Workplace Literacy Program and that meet the following priority. The Secretary may implement this priority for fiscal year 1995 and for any later fiscal year:

Projects that provide workplace literacy services only for (a) persons who reside in and work in Empowerment Zones and Enterprise Communities; (b) persons who work in Empowerment Zones and Enterprise Communities although they do not reside there; or (c) persons who reside in Empowerment Zones and Enterprise Communities and who may work outside the Empowerment Zone or Enterprise Community. If necessary to the proper functioning of a project serving a substantial number of persons in category (c), services may also be provided to a small number of their coworkers who neither work nor reside in an Empowerment Zone or Enterprise Community.

The proposed project under the National Workplace Literacy Program must contribute to the strategic plan of the Empowerment Zone or Enterprise Community and be made an integral component of the Empowerment Zone or Enterprise Community activities.

In providing workplace literacy services, partnerships must develop curricula related to work or use or modify curricula developed by successful workplace literacy partnerships. For competitions under this absolute priority, the Secretary will waive the selection criterion "Evaluation Plan" in 34 CFR 472.22(f) and the evaluation requirements in 34 CFR 472.31 and, in their place, conduct a national evaluation of projects serving Empowerment Zones and Enterprise Communities. The purpose of the waiver is to allow Empowerment Zone and Enterprise Community projects to focus maximum resources on the provision of quality services and to further a Federal evaluation study that particularly can benefit other distressed areas.

Additional Factor the Secretary Considers

After evaluating each application according to the proposed selection criteria, the Secretary may select for funding one or more applications of high quality, other than the most highly rated applications, if the Secretary concludes that this selection would improve the distribution of grants among applicants serving urban and rural areas.

Executive Order 12866

This notice of proposed priority has been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of proposed priority are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of proposed priority, the Secretary has determined that the benefits of the proposed priority justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from this proposed priority without impeding the effective and efficient administration of the program.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding this proposed priority.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in room 4428, Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week, except Federal holidays.

Applicable Program Regulations: 34 CFR Part 472.

(Catalog of Federal Domestic Assistance Number 84.198B National Workplace Literacy Program)

Program Authority: 20 U.S.C. 1211(a).

Dated: June 2, 1994.

Augusta Souza Kappner,

Assistant Secretary, Office of Vocational and Adult Education.

[FR Doc. 94–14591 Filed 6–15–94; 8:45 am]

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June 16, 1994

Part V

Department of Housing and Urban Development

24 CFR Part 9

Enforcement of Nondiscrimination on the Basis of Disability in Programs or Activities Conducted by the Department of Housing and Urban Development; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 9

[Docket No. R-94-1510; FR-2163-F-05]

RIN 2501-AB04

Enforcement of Nondiscrimination on the Basis of Disability in Programs or Activities Conducted by the Department of Housing and Urban Development

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This rule makes final a proposed rule published on May 30, 1991 which proposed to amend title 24 of the Code of Federal Regulations to create a new part 9, that would provide for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended, in programs or activities conducted by HUD. The rule at 24 CFR part 9 is distinguished from the rule at 24 CFR part 8, which applies to private, State or local programs or activities receiving Federal financial assistance from HUD. This final rule at 24 CFR part 9 establishes standards for what constitutes discrimination on the basis of mental or physical disabilities; provides definitions for "individuals with disabilities" and "qualified individuals with disabilities"; establishes a complaint procedure for resolving allegations of discrimination; and also incorporates additional changes to reflect regulatory implementation of the Americans with Disabilities Act.

EFFECTIVE DATE: July 18, 1994.

FOR FURTHER INFORMATION CONTACT: Elizabeth Ryan, Office of Fair Housing and Equal Opportunity, room 5214, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-5000, telephone (202) 708-2333 (voice/TDD). (This is not a toll free number.)

SUPPLEMENTARY INFORMATION:

I. Background

Section 504 of the Rehabilitation Act of 1973, as amended (section 504), states in pertinent part that:

No otherwise qualified individual with disabilities in the United States, * * * shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance *or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.* (29 U.S.C. 794 (1978 amendment italicized)).

On May 30, 1991 (56 FR 24604), HUD published a proposed rule that would amend title 24 of the Code of Federal Regulations to create a new part 9, that would provide for the enforcement of section 504 as it applies to programs or activities conducted by HUD (i.e., HUD conducted programs or activities). The part 9 rule is distinguished from the rule at 24 CFR part 8, which applies to private, State or local programs or activities receiving Federal financial assistance from HUD (HUD assisted programs or activities). However, the substantive nondiscrimination obligations of the agency as set forth in the part 9 rule are adapted from, and are very similar to, those contained in the part 8 rule. (See 24 CFR part 8; see also 28 CFR part 41, which is the section 504 coordination regulation for federally assisted programs issued by the Department of Justice (DOJ).) This general parallelism is in accord with the intent expressed by supporters of the 1978 amendment in House floor debate, including its sponsor, U.S. Rep. James M. Jeffords, that the Federal Government should have the same section 504 obligations as recipients of Federal financial assistance. 124 Cong. Rec. 13,901 (1978) (remarks of Rep. Jeffords); 124 Cong. Rec. E2668, E2670 (daily ed. May 17, 1978) *id.*; 124 Cong. Rec. 13,897 (remarks of Rep. Brademas); *id.* at 38,552 (remarks of Rep. Sarasin).

There are, however, some differences between this part 9 rule and the DOJ section 504 coordination regulations for federally assisted programs, as well as many other agencies' implementing regulations. Many of these changes are based on the Supreme Court's decision in *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979) [*Davis*], and the subsequent circuit court decisions interpreting *Davis* and section 504. These differences were discussed in detail in the preamble to the part 9 proposed rule at 56 FR 24604-24605. There are also differences between the part 9 proposed rule and the part 9 final rule. These differences are discussed in the following section.

II. Differences Between Part 9 Proposed Rule and Part 9 Final Rule

The Department invited public comment on the part 9 proposed rule. During the public comment period, which expired July 29, 1991, the Department received seven comments. The commenters included: One state agency for the visually impaired; a not-for-profit law firm that specializes in disability and health law; an organization representing the interests of senior citizens; two legal service organizations; and two disability advocacy organizations.

Following careful consideration of the issues raised by the commenters, and further consideration of the part 9 rule in light of regulatory implementation of the Americans with Disabilities Act (Pub.L. 101-336, approved July 26, 1990) (ADA), the Department has decided to adopt the part 9 proposed rule substantially as published on May 30, 1991. However, the Department has made some changes to the proposed rule in response to certain issues raised by the commenters, and in response to the final rules published on July 26, 1991, implementing titles I, II, and III of the ADA, which address, respectively, equal employment opportunity for individuals with disabilities (title I); nondiscrimination on the basis of disability in State and local government services (title II); and nondiscrimination on the basis of disability by public accommodations and in commercial facilities (title III). (See 29 CFR part 1630, 56 FR 35726 (title I); 28 CFR part 35, 56 FR 35694 (title II); and 28 CFR part 36, 56 FR 3544 (title III).

A change in terminology that has been made in the part 9 final rule (and which also will be made to the rule in 24 CFR part 8) is replacement of the term "handicap" with "disability." The Rehabilitation Amendments of 1992 (Pub.L. 102-569, approved October 29, 1992) amended the Rehabilitation Act of 1973 to replace "handicap" with "disability."

The additional changes made to the part 9 proposed rule by this final rule include the following.

Applicable Accessibility Standards

The final rule provides that HUD will follow the Uniform Federal Accessibility Standards (UFAS), except where the accessibility standards issued under the ADA provide for greater accessibility than the UFAS. The accessibility standards issued under the ADA are referred to as the ADA Accessibility Guidelines (ADAAG), and

are set forth in appendix A to 39 CFR part 1191.

The UFAS implements the accessibility standards required by the Architectural Barriers Act (42 U.S.C. 4151–4157) (Barriers Act), and these standards are set forth in 24 CFR part 40, appendix A for residential structures, and in 41 CFR 101–19.600 to 101.607 for non-residential structures.

The DOJ, by memorandum dated June 30, 1993, advised all Federal agencies that at a recent meeting, the ATBCB adopted a resolution urging Federal agencies to follow the ADAAG whenever it provides equal or greater accessibility than UFAS. The DOJ has requested that Federal agencies which have not issued their final rules implementing section 504 in Federally-conducted programs and activities comply with the ATBCB's request. The DOJ notes that from a legal point of view, current section 504 regulations do not prohibit implementation of such a policy because the regulations do not require compliance with UFAS, but, rather they simply state that compliance with UFAS is deemed to be compliance with section 504 new construction and alteration requirements.

Accordingly, this final rule provides that HUD will follow the ADAAG whenever it provides greater accessibility than the UFAS. Additionally, the terms "UFAS" and "ADAAG" will be added to the definition section of the part 9 rule—§ 9.103.

Revised Definition of "Accessible"

A minor revision is made to each of the definitions of *accessible* in § 9.103. Each definition includes the phrase "complies with applicable accessibility standards" to clarify that the design, construction or alteration undertaken must comply with applicable accessibility standards.

Revised Definition of "Accessible Route"

This final rule revises the definition of *accessible route*. The definition of *accessible route* in the part 9 proposed rule was modeled on the definition of *accessible route* in 24 CFR part 8. However, on further consideration, the Department finds the part 8 definition to be too limited for purposes of part 9.

Part 8 applies solely to HUD-assisted programs. The majority of these programs are concerned with assisting individuals and families to obtain decent and affordable housing by providing financial assistance (through rental subsidies or for the development and operation of public housing), or by endorsing a mortgage on a house or the mortgage note on a housing project (or both) for insurance. Thus, the part 8 definition of *accessible* route reflects part 8's focus on housing facilities.

Part 9, however, applies to all programs or activities conducted by HUD. These programs and activities, as noted in the preamble to the part 9 proposed rule (56 FR 24605), consist of the following: (1) Employment; (2) HUD's contact with the general public as part of ongoing agency operations; and (3) those HUD programs directly administered by HUD for program beneficiaries and participants. Activities within category 2 include communications with the public (telephone contacts, office walk-ins or interviews) and the public's use of the agency facilities. Activities within category (3) include programs that provide Federal services or benefits (e.g., housing facilities in HUD's Property Disposition Program, training at both HUD and outside facilities, contracting and policy-development). These activities involve many types of buildings and facilities, not just housing facilities.

Accordingly, the definition of *accessible route* route in part 9 is revised by replacing it with the definition of *accessible route* route used in the ADAAG. The definition of *accessible route* route in the ADAAG includes examples of interior accessible route routes and exterior accessible route routes.

Revised Definition of "Adaptability"

The definition of adaptability is also revised by this final rule. The definition of *adaptability* in the proposed part 9 rule was based on the definition of adaptability in 24 CFR part 8. The part 8 definition is solely concerned with adaptability in dwelling units, and, therefore, inappropriate for part 9, for the same reasons stated under the discussion of the revised definition of *accessible route* route. Accordingly, the Department is adopting the definition of *adaptability* based on the definition of *adaptability* provided in the UFAS and ADAAG, which provide the same definition for this term.

As revised in this final rule, adaptability will mean the ability of certain elements of a dwelling unit, such as kitchen counters, sinks and grab bars, to be added or altered so as to accommodate the needs of individuals with or without disabilities or to accommodate the needs of persons with different types or degrees of disability. This definition differs from the definition in the part 9 proposed rule in that it refers to "building spaces and elements" instead of "certain elements of a dwelling unit." Both UFAS and ADAAG use the phrase "building spaces and elements."

Replacement of Definition of "Agency-Owned Housing Facility" With "PDP Housing Facility"

The final rule replaces the term "agency-owned housing facility" with *PDP housing facility*. PDP refers to HUD's Property Disposition Program, and a definition is also included for this term. (See discussion below.) Since the only HUD-owned housing facilities are those in the Property Disposition Program, the Department believed use of the term "PDP housing facility" is a more accurate term.

Revised Definition of "Alteration"

The part 9 final rule replaces the definition of *alteration* set forth in the May 30, 1991 proposed rule with that definition provided in the ADAAG. This definition is more detailed and therefore provides more guidance on what constitutes, and what does not constitute, an alteration.

Revised Definition of "Facility"

The part 9 final rule also replaces the definition of *facility* in the May 30, 1991 proposed rule with that definition provided in the ADAAG. As with the definition of *alteration*, the ADAAG definition of *facility* is more detailed and therefore more helpful than the definition provided in the part 9 proposed rule.

Revised Definition of "Individual With Disabilities"

The definition of *individual with disabilities* (formerly, "individual with handicaps") is also revised by this rule.

Paragraph (a), which defines the term "physical and mental impairment" is revised to include the human immunodeficiency virus disease.

A new paragraph (b) is added to this definition to incorporate the provisions of former § 9.131 in the proposed rule, which addressed applicability of section 504 to current and former illegal use of drugs. The DOJ and the Equal Employment Opportunity Commission (EEOC) which reviewed the part 9 rule in accordance with Executive Order 12067 (see Section IV of this preamble) suggested that the exclusion of individuals currently engaged in the illegal use of drugs from the protection provided by section 504, and the inclusion of individuals undergoing, or having successfully completed, drug rehabilitation, are more appropriately addressed in the definition of "*individual with disabilities.*" Section 9.131 of the proposed rule has been

removed as a result of incorporation of its provisions in the definition of *individual with disabilities.*

Former paragraph (b) (paragraph (b) in the part 9 proposed rule), which addressed impairments that are not included in the definition of "physical or mental impairment" is redesignated as paragraph (c) in this final rule, and is revised to address what is excluded from the definition of *individual with disabilities* for purposes of employment.

In the part 9 proposed rule, paragraph (b) provided that the term "physical or mental impairment" did not include (1) an individual who has a currently contagious disease or infection and who, by reasons of such disease or infection, would constitute a direct threat to the health or safety of other individuals, and (2) an individual who is an alcoholic and whose current use of alcohol prevents the individual from performing the duties of the job in question. Although these exclusions are appropriate for inclusion under the definition of *individual with disabilities,* they are not appropriate for inclusion in the definition of "physical or mental impairment."

Accordingly, new paragraph (c) of the definition of *individual with disabilities* clarifies that the contagious disease and alcohol abuse exclusions are part of the definition of "individual of disabilities" and also clarifies that these exclusions are limited to the employment context, in accordance with section 504 which imposes this limitation.

New Definition for "Property Disposition Program"

As noted above, the final rule provides a definition for this term. *Property Disposition Program* is defined to mean the HUD program under which HUD administers the group of housing facilities that are either owned by the Secretary or where, even though the Secretary has not obtained title, the Secretary is mortgagee-in-possession. Such properties are deemed to be in the possession or control of the agency.

Direct Threat Standard—New § 9.131

The part 9 final rule adds a new § 9.131 to implement section 302(b)(3) of the ADA, which addresses the issue of "direct threat to the health or safety of others." Section § 9.131 provides that the agency (HUD) is not required to permit an individual to participate in or benefit from the goods, services, facilities, privileges, advantages and accommodations of the agency where the individual poses a direct threat to the health or safety of others. Section 9.131 is similar to § 36.208 of the final rule implementing title III of the ADA, published on July 26, 1991 (56 FR 35544) and codified at 28 CFR part 36. New § 9.131 is not intended to imply that individuals with disabilities pose risks to others. It is intended to address concerns that may arise in this area, and to establish a strict standard that must be met before denying service to an *individual with disabilities* or excluding that individual from participation in the programs or activities conducted by the agency.

Paragraph (b) of this section defines "direct threat" to mean a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids and services. This paragraph codifies the standard first applied by the Supreme Court in *School Board of Nassau County* v. *Arline,* 480 U.S. 273 (1987), in which the Court held that an individual with a contagious disease may be an *individual with disabilities* under section 504. In *Arline,* the Supreme Court recognized that there is a need to balance the interests of people with disabilities against legitimate concerns for public safety. Although individuals with disabilities are generally entitled to the protection of part 9, a person who poses a significant risk to others may be excluded if reasonable modifications to the agency's policies, practices, or procedures will not eliminate or reduce that risk (i.e., reduce it so that it is below the level of direct threat). The determination that a person poses a direct threat to the health or safety of others may not be based on generalizations or stereotypes about the effects of a particular disability. This determination must be based on an assessment of that individual that conforms to the requirements of paragraph (c) of § 9.131.

Paragraph (c) of § 9.131 establishes the test to be used in determining whether an individual poses a direct threat to the health or safety of others. The agency is required to make an individualized assessment, based on reasonable judgment that relies on current medical evidence, or on the best available objective evidence to determine: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices or procedures will mitigate the risk. This is the test established by the Supreme Court in *Arline.* This type of inquiry is essential if section 504 is to achieve its goal of protecting individuals with disabilities from discrimination based on prejudice, stereotypes, or unfounded fear, while giving appropriate weight to legitimate concerns, such as the need to avoid exposing others to significant health and safety risks. Making this assessment will not usually require the services of a physician. Sources for medical knowledge include guidance from public health authorities, such as the U.S. Public Health Service, the Centers for Disease Control, and the National Institutes of Health, including the National Institute of Mental Health.

Additional Changes

In addition to the above changes, and as discussed in further detail in Section III of this preamble, the final rule also revises § 9.170, which concerns the part 9 compliance procedure. A hearing procedure is not mandated by statute, and the Department has concluded that the compliance procedure set forth in § 9.170 provides an adequate remedy. Certain editorial changes were made to § 9.152 to clarify the extent of the agency's responsibility to modify existing housing.

II. Discussion of Public Comments

The revisions to the part 9 proposed rule discussed in section II above are further addressed in this section III, which addresses the issues raised by the public commenters.

Relationship of Section 504 to the Fair Housing Act and the Americans With Disabilities Act

Comment. Six of the commenters stated that the part 9 proposed rule did not incorporate the standards and requirements that appear in the Fair Housing Act [1] or in title II of the ADA. Two commenters expressed concern that the part 9 rule proposes to implement less stringent standards than the Fair Housing Act, and requested that the part 9 final rule conform to the Fair Housing Act requirements; thus, eliminating any conflict in program regulations. Another commenter stated that the ADA requires HUD's regulations to "refer to the ADA so that when HUD assumes responsibility for housing enforcement under the public services section (title II of the ADA), HUD will be better able to ensure consistency among all of its enforcement responsibilities."

Response. As noted in the preamble discussion under Section II, which discusses changes made to the part 9 proposed rule, HUD does, in several places in the final rule, incorporate the standards and requirements of the ADA. However, it is important to note that in

[1] Title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Amendments Act of 1988 is referred to as the "Fair Housing Act."

enacting the Fair Housing Act and the ADA, the Congress did not override the specific provisions of section 504. While all three statutes (the Fair Housing Act, the ADA, and section 504) provide certain civil rights protection to individuals with disabilities, the scope and mandate of each statute is different.

Section 504 is concerned with discrimination against individuals with disabilities in federally assisted and federally conducted programs and activities. Federal programs or activities subject to section 504 include those in the areas of employment, education, health, social services, housing and agency facilities. Under section 504, the mandate that a federally assisted or conducted program or activity be "accessible" to individuals with disabilities does not, in every case, require structural changes. Moreover, when compliance with the "program accessibility" of section 504 does require structural changes, structural changes are not required to the same extent as required under the Fair Housing Act. Under section 504, accessibility is defined in broader terms, as discussed in the preamble to HUD's part 8 interim rule implementing section 504 for HUD assisted programs and activities:

For example, even though a facility in which a federally assisted program is conducted is free of architectural barriers and thus meets requirements for facility accessibility, the program is not accessible if management policies and procedures effectively bar [individuals with disabilities] from participating in or otherwise benefiting from the program or activity. On the other hand, a program which is conducted in an inaccessible existing facility can be made accessible without altering the facility, where the program or activity can be delivered or otherwise be made available to a [disabled] beneficiary without loss of essential program benefits.

(*See* preamble to part 8 interim rule published on May 6, 1983, 48 FR 20638 at 20640)

The Fair Housing Act is concerned with discriminatory housing practices, and its provisions apply to all housing, not just federally-assisted or federally-owned housing. The Fair Housing Act is also concerned with structural accessibility. The Fair Housing Act establishes accessible design and construction requirements for certain new multifamily dwellings for first occupancy on or after March 13, 1991. These requirements, however, do not extend to existing facilities (i.e., alterations to existing facilities are not required).

The ADA is concerned with discrimination on the basis of disability in the areas of employment, public accommodations, State and local government services, and telecommunications. With respect to structural accessibility, title II of the ADA requires that newly constructed or newly altered State or local government facilities be designed and constructed or altered so as to be readily accessible to and usable by persons with disabilities. (*See* 56 FR 35574.)

The different mandates and scopes of section 504, the Fair Housing Act and the ADA limit the extent to which the regulations promulgated under these statutes can be uniform. Additionally, HUD's section 504 regulations are subject to the coordinating authority of the DOJ under Executive Order 12250 (45 FR 72995, 3 CFR, 1980 Comp., p. 298.) The purpose of DOJ's coordinating authority is to ensure that, to the greatest extent possible, there is uniformity in the implementation of section 504 by all Federal agencies. Accordingly, HUD's section 504 regulations are obliged to adhere, as closely as possible, to DOJ's prototype section 504 regulations for these types of programs, and to such other guidance as DOJ may provide in the issuance of section 504 regulations (for example, see the discussion concerning applicable accessibility standards in Section II of the preamble).

With respect to any conflict among the requirements or the accessibility standards of section 504, the Fair Housing Act and the ADA, and their respective regulations, HUD notes that an individual or entity that is subject to the provisions (including regulatory provisions) of more than one of these statutes must comply with the provisions that provide for the greater substantive rights or the more stringent accessibility standards.

Definition of "Accessible" (§ 9.103)

Comment: Definition Requires Clarification. Two commenters stated that the definition of "accessible" in the part 9 proposed rule lacks the specific guidance provided by the definition for this term in § 100.201 of HUD's Fair Housing Act regulations (24 CFR 100.201). One of the commenters stated that the part 9 definition of "accessible" with respect to individual dwelling units requires that a unit be designed to meet the specific needs of a qualified individual's particular disability or impairment. The commenter requested that HUD clarify that for a unit to be counted toward a program's five percent requirement for accessible units, all the accessibility requirements for dwelling units, as provided in 24 CFR part 40, must be met and not just those which might be adequate to meet the needs of the individual's specific disability.

Response. As discussed above, section 504 and the Fair Housing Act have different purposes. The Fair Housing Act's design and construction accessibility standards apply only to certain new multifamily housing. Section 504 is concerned with overall "program" accessibility, which includes accessibility standards for multifamily housing and other types of facilities, including Federal Government buildings. Additionally, the Fair Housing Act, unlike section 504, does not impose accessibility standards on alterations to existing housing and facilities. Accordingly, the definition of "accessible" in HUD's Fair Housing Act regulations is not sufficiently broad for section 504 purposes. However, as noted in Section II of this preamble, which discusses changes made to the proposed rule, the Department did make some modification to the definitions of "accessible" for purposes of clarity.

With respect to the question of whether an individual dwelling unit, that is altered to be accessible to a qualified individual with a specific disability, counts toward the program's five percent requirement, the Department notes that this issue is addressed by § 9.152 of the rule. Section 9.152 provides that if HUD undertakes alterations to a PDP multifamily housing project, that is subject to the accessibility requirements of § 9.152, a minimum of five percent of the total dwelling units, or at least one unit, whichever is greater, must be made accessible for persons with *mobility* impairments. (Emphasis added.) Section 9.152 also provides that if the unit is on an accessible route and is adaptable and otherwise in compliance with § 9.152(d) (which requires compliance with the definitions, requirements and standards of the UFAS, except where the ADAAG provides for greater accessibility) the unit is accessible for purposes of § 9.152. Section 9.152 further provides that an additional two percent of the units (but not less than one unit) in the project must be made accessible for persons with *hearing or vision impairments.* (Emphasis added.) Thus, whether an individual dwelling unit, which is altered for a specific qualified individual with disabilities, counts toward the program's five percent or two percent requirement depends upon the nature of the alterations undertaken to address the individual's disability.

Definition of "Accessible Route" (§ 9.103)

Comment: Definition Lacks Specific Guidance. Two commenters stated that the definition of "accessible route" as set forth in HUD's Fair Housing regulations provides more guidance than the definition in the part 9 proposed rule, and urged the Department to adopt the definition in the Fair Housing Act regulation.

Response. As discussed in the previous response, the differences between the mandate and scope of the Fair Housing Act and the mandate and scope of section 504 render the definition of "accessible route" in HUD's Fair Housing Act regulations inappropriate for section 504 purposes. However, as noted in section II of this preamble, the Department has revised the definition of "accessible route" to require compliance with the ADAAG. The Department believes that the ADAAG definition of "accessible route" provides more guidance than the definition of "accessible route" in the part 9 proposed rule, and should address the commenters' concerns.

Comment: Definition Should Reference Architectural Barriers Act. One commenter stated that the definitions of "accessible," "accessible route," and "adaptability" should reference the Barriers Act, which imposes access requirements on all HUD-owned, leased, and managed properties.

Response. As discussed in section II of this preamble, the definitions of "accessible route" and "adaptability" were revised in this final rule to adopt the standards of the ADAAG or UFAS, as applicable. Also, §§ 9.151 and 9.152 of the proposed rule, and of this final rule, which establish the requirements for new construction and alterations to existing facilities, provide that the definitions, requirements, and standards of the UFAS apply to facilities covered by this rule, except where the ADAAG may provide for greater accessibility.

Comment: Definition Should Provide Accessibility For Persons Who Are Hearing and Sight Impaired. One commenter stated that the definition of "accessible route" in the part 9 rule provides that "an accessible route that serves only accessible units occupied by persons with hearing or vision impairments would not be required to comply with those requirements intended to effect accessibility for persons with mobility impairments." The commenter requested that HUD revise this definition to include persons who are visually impaired, blind, or deaf and blind. The commenter stated that moving about safely in one's environment can be a major obstacle to independent living for individuals with these disabilities.

Response. HUD agrees with the commenter and believes that the revision made to the definition of "accessible route" by this final rule, which is to adopt the ADAAG definition of "accessible route," addresses the commenter's concern.

Definition of "Adaptability" (§ 9.103)

Comment: HUD Should Adopt the Definition of Adaptability Used in Fair Housing Regulations. Two commenters urged the Department to adopt the definition of "adaptability" in the Fair Housing Act regulations (24 CFR 100.205), and stated that the part 9 rule should not use a different definition than that contained in the Fair Housing Act regulations.

Response. The more explicit description of "adaptability" in the Fair Housing Act regulations results from the fact that the statutory language of the Fair Housing Act is explicit as to what constitutes accessibility and adaptability under the Act. The language in § 100.205(c) of HUD's Fair Housing Act regulations is taken directly from section 804(f)(3)(C) of the Fair Housing Act. However, the features of adaptable design and construction described in § 100.205(c) do not include all the features that may be required under part 9. For example, the accessibility/adaptability requirements of the Fair Housing Act do not require adjustable cabinetry, fixtures and plumbing. (*See* discussion of this issue in the preamble to the Fair Housing Accessibility Guidelines codified at 24 CFR, Ch. I, Subch. A, App. III.) Additionally, the Fair Housing Act does not require accessible/adaptable features for individuals with hearing or vision impairments. The section 504 definition of "adaptability" includes adjustable cabinetry and fixtures, and design features for persons with impaired hearing and vision. Thus, the Fair Housing Act definition of adaptability, which is directed largely to individuals with mobility impairments, is inappropriate for section 504 purposes.

Definition of "Auxiliary Aids" (§ 9.103)

Comment: Definition Should Include Devices for Persons With Impaired Cognitive Skills. Two commenters stated that the definition of "auxiliary aids" in the part 9 rule limits these aids to persons with impaired sensory, manual or speaking skills. The commenters stated that auxiliary aids and services should not exclude individuals with mental disabilities, and suggested that the definition be revised as follows: "Auxiliary aids means services or devices that enable persons with impaired sensory, manual, cognitive, interpersonal, or speaking skills to have equal opportunity . . . ."

Response. HUD's definition of auxiliary aids and services is consistent with the DOJ's definition for these terms. The DOJ interprets auxiliary aids and services as those aids and services designed to provide effective communication, e.g., making aurally and visually delivered information available to persons with hearing, speech and vision impairments. This interpretation was recently reiterated in DOJ's final rules implementing title II and title III of the ADA. (*See* 28 CFR part 35 (title II); and 28 CFR part 36 (title III); see, especially discussion in preamble to title III final rule at 56 FR 35565). To the extent that individuals with cognitive or learning disabilities have impaired sensory, manual, or communication skills, these individuals are covered by the definition of auxiliary aids and services.

Definition of "Individuals With Disabilities" (§ 9.103)

Comment: Definition Omits the Human Immunodeficiency Virus. Four commenters stated that the definition for "individuals with disabilities" in the part 9 rule omits from the list of physical and mental impairments the human immunodeficiency virus (HIV). The commenters stated that it is important to clarify that individuals who test positive for the HIV are covered because subsection (b) of the definition for "individuals with disabilities" excludes individuals who currently have contagious diseases and who pose a direct health and safety threat to others, or who, by reasons of the disease, cannot perform the duties of the job.

Response. As noted in section II of this preamble, HUD has revised the definition of "individuals with disabilities" in the final rule to clarify that persons with the human immunodeficiency virus disease (symptomatic or asymptomatic) are covered.

Comment: Direct Threat Standard Excludes Reasonable Accommodation Requirement. One commenter stated that the "direct threat to the health or safety of others" exclusion derives from the case of *School Board of Nassau County v. Arline*, 107 S.Ct. 1123 (1987), but fails to include the essential caveat that "the direct threat not be capable of elimination by reasonable accommodation". The commenter stated that the Congress, in its discussion of

this direct threat exclusion in the legislative history of the Fair Housing Act, was careful to note the reasonable accommodation requirement. The commenter requested that the reasonable accommodation requirement be explicitly acknowledged in the part 9 final rule.

Response. As discussed in section II of this preamble, the Department has added a new § 9.131 to address the issue of "direct threat to the health or safety of others." This new section provides that the agency must determine whether reasonable modifications of its policies, practices or procedures will mitigate the risk posed by the individual determined to present a direct threat to the health or safety of others. Although the commenter uses the term "reasonable accommodation," which is the appropriate term within the context of the Fair Housing Act, the appropriate comparable term for section 504, generally, is "reasonable modification," which reflects section 504's application to a broader range of programs and activities. However, reference to reasonable accommodation is appropriate when discussing section 504's application to the employment.

Comment: Delete Reference to "Inability to Perform the Essential Elements of Job or Activity." One commenter stated that the exclusion from the definition of "individuals with disabilities" of the following phrase—"persons with a contagious disease who are unable to perform the duties of the job"—was unwarranted. The commenter stated that inquiries as to whether an individual with disabilities is able to perform the duties of a job or activity are relevant only with respect to whether the individual is "qualified"—and then only if the individual is unable to perform the essential duties, not all duties, of the job or activity. The commenter stated that reasonable accommodation must be provided, if necessary, to assist the individual in performing the essential duties. The commenter further stated: "Because this subsection involves the definition of 'individual with disabilities,' rather than 'qualified individual with disabilities,' the reference to inability to perform the duties of job should be deleted."

Response. The Department agrees with the commenter's statement that without reference to the essential duties and reasonable accommodation aspects of the analysis, this particular provision of the definition is misleading. Accordingly, the Department has revised paragraph (c)(1)(ii) of the definition of "individuals with disabilities" to include the following language: "An individual * * * is unable to perform the essential duties of the job, with or without reasonable accommodation."

Definition of "Multifamily Housing Project" (§ 9.103)

Comment: Multifamily Dwellings Covered by Section 504 Should Be the Same as Those Covered by the Fair Housing Act. Three commenters noted that the part 9 rule defined "multifamily housing project" to mean "a project containing five or more dwelling units," while the Fair Housing regulations define covered multifamily dwellings to mean buildings consisting of four or more dwelling units, if such buildings have one or more elevators, and ground floor units in other buildings consisting of four or more units. The commenters stated that the dwellings covered by the section 504 regulations should mirror those of the Fair Housing Act.

Response. The definition of "covered multifamily dwelling" found in the Fair Housing Act regulations is consistent with the definition of this term in the Fair Housing Act. The definition of "multifamily housing project" in the part 9 rule is consistent with the definition of this term in section 207(c) of the National Housing Act (12 U.S.C. 1713), and is the definition with which HUD program participants are familiar. The definition is also consistent with HUD's section 504 regulations for federally assisted activities. (*See* 24 CFR 8.3) Since section 504 extends only to federally assisted and federally conducted programs and activities, the Department believes that the definition of multifamily housing project, as set forth in the National Housing Act, which pertains to Federal housing programs, is the appropriate definition for HUD's section 504 regulations.

Comment: All HUD Housing Should Be Covered by Section 504, Including Single Family Homes. One commenter stated that the occupancy classification provision of the UFAS defines multifamily housing as apartment buildings, without reference to a number of units, and the residential section of the UFAS occupancy classification refers to one and two family dwellings. The commenter stated that the inclusion of the classification of one and two family dwellings in the UFAS indicates that these dwellings are also subject to the Barriers Act. The commenter requested that HUD make all of its housing, including single family homes, subject to the requirements of the Barriers Act.

Response. The fact that the UFAS contains provisions applicable to one or two family dwellings is not determinative of whether one or two family dwellings are subject to the requirements of the Barriers Act. Whether one or two family dwellings are covered by the Barriers Act depends upon whether a statute subjects these types of dwellings to the requirements of Barriers Act. One or two family dwellings are subject to the requirements of section 504, and possibly the UFAS, to the extent that they are part of a HUD conducted program and meet the requirements of 24 CFR 9.150(e).

Definition of "Qualified Individuals With Disabilities" (§ 9.103)

Comment: Eliminate Definition. Five commenters stated that the definition for "qualified individuals with disabilities" should be removed from the part 9 rule. One commenter stated that HUD concedes in the preamble to the proposed part 9 rule that housing programs do not require a definition of qualified individual with disabilities (56 FR 24606). The commenter stated that HUD included this definition so that the part 9 rule will cover all programs or activities conducted by HUD now and in the future, and so that HUD's regulation will be consistent with the DOJ's prototype regulation and the regulations of other Federal agencies (56 FR 24606). The commenter stated that HUD could achieve its purpose through other ways, such as explicitly describing the HUD programs or the kinds of HUD programs to which the definition applies, or explaining that this term does not apply to housing consumers.

Response. The term "qualified individual with disabilities" is taken directly from the language of section 504. The protection afforded by section 504 is restricted to "qualified" individuals with disabilities. As noted in the preamble to the part 9 proposed rule, HUD does not conduct programs under which a person is required to perform services or achieve a level of accomplishment as a part of his or her participation in a particular program or activity (e.g., educational programs) (56 FR 24606). Notwithstanding this fact, HUD determined, as also noted in the preamble to the part 9 proposed rule, that it is important to include a definition for this term so that HUD's regulation will cover all programs or activities conducted by HUD now and in the future, and so that its section 504 regulation for federally conducted programs will be consistent with DOJ's prototype regulation. However, the fact that section 504 applies only to "qualified individuals with disabilities" makes it important to include a

definition for this term in HUD's section 504 regulations.

The purpose in defining the term "qualified individuals with disabilities" is to establish a uniform standard by which an individual with disabilities is determined to be "qualified" to participate in a federally assisted or federally conducted program. The standard, as established by DOJ on the basis of Federal case law concerning section 504, is whether, with appropriate modifications, an individual with disabilities is able to participate in, or achieve the purpose of a federally assisted or federally conducted program or activity. To be considered qualified, however, the modifications required for the individual with disabilities may not be those which would result in a fundamental alteration in the nature of the program. (*See* preamble to DOJ's coordination regulation for federally conducted programs codified at 28 CFR part 39, Editorial Note, 415–429 (1991) at 418; and preamble to proposed part 9 rule at 56 FR 24606.) HUD's definition of "qualified individuals with disabilities" incorporates this basic test established by DOJ and Federal case law and is consistent with the DOJ's definition of "qualified individual with disabilities" in its section 504 prototype regulation for federally conducted programs.

Comment: Eliminate Language Concerning Essential Eligibility Requirements

Five commenters objected to the language concerning "essential eligibility requirements" set forth in paragraph (b) of the definition. One commenter stated that the essential eligibility requirement language included "implicit" eligibility requirements.

Response. In defining "qualified individual with disabilities," HUD adheres to DOJ's guidance on the meaning and interpretation of this term, which guidance is set forth in DOJ's preamble to the final rule implementing its section 504 prototype regulation for federally conducted programs, codified at 28 CFR part 39, Editorial Note, 415–429 (1991). In this preamble, DOJ advises that the concept of "qualified individual with disabilities" includes the notion of "essential eligibility requirements". (*Id* at 419). Under section 504, a qualified individual with disabilities must be able to meet the essential eligibility requirements of a federally assisted or federally conducted program, with the recognition that reasonable modification may need to be made to the program for the individual with disabilities to meet the essential eligibility requirements of the program.

The inclusion of the term "implicit requirements" in the definition is to clarify that the essential eligibility requirements do not include only stated program eligibility requirements, but also those requirements that are inherent in the nature of the program. However, in including implicit requirements in the definition, HUD does not intend a program's eligibility requirements to include requirements that are not intrinsic to the program or that are applied solely to individuals with disabilities—and not to other tenants.

Comment: "All Obligations of Occupancy" Are Not Essential. One commenter stated that the "essential eligibility requirements" include the requirement to comply with "all obligations of occupancy." The commenter stated that all obligations of occupancy cannot possibly be essential. The commenter stated: "Rather than clarifying the obligations of program operators under section 504, this definition will mislead operators into believing that they can exclude any individual with disabilities who cannot fully satisfy every term of the lease, however incidental or unimportant."

Response. The phrase "all obligations of occupancy," as with the phrase "implicit eligibility requirements" discussed above, is intended to refer only to those requirements or obligations that are imposed on all tenants or residents, regardless of whether the tenants or residents are individuals with disabilities. The Department believes that it is important to retain the phrase "all obligations of occupancy" within the definition of "qualified individual with disabilities" because it is embodied in the concept of "essential eligibility requirements". To be eligible to participate in a HUD housing program, an applicant must be able to comply with all obligations of occupancy. Typical occupancy obligations include those related to rent, security deposits, use of premises, subletting, and utility charges. It is inappropriate for the Department to list in a regulation which obligations constitute "important" obligations of occupancy, because of the difficulty in ensuring the comprehensiveness of such a list, and because certain multifamily housing projects as a result of their location or use may require the inclusion of obligations (or terms) that are not generally found in leases for other multifamily housing projects. For the foregoing reasons, the Department declines to state which obligations of occupancy are those with which an individual with disabilities must comply.

Comment: Definition Fails to Note the Obligation of HUD to Provide Reasonable Accommodations. Two commenters stated that the definition fails to note the obligation of HUD to provide reasonable accommodation to individuals who would be able to satisfy essential program requirements with such assistance.

Response. HUD's definition of "qualified individual with disabilities" is consistent with the definition for this term found in DOJ's section 504 prototype regulation for federally conducted programs and in the section 504 regulations of other Federal agencies. The fact that the definition of qualified individual with disabilities does not explicitly refer to the "reasonable modification" requirement does not mean that the requirement is inapplicable to Federal programs covered by section 504. As noted earlier in this preamble, reasonable modification is required under section 504. The reasonable modification requirement, although not explicitly referred to in the definition of "qualified individual with disabilities," is referred to in the definition of "individual with disabilities" and is implicitly referenced in the language of the definition of "qualified individual with disabilities" that provides that modifications in the program or activity, which result in a fundamental alteration in the nature of the program, are not required. Conversely, modifications to the program that would not result in a fundamental alteration in the nature of the program are required.

Comment: Definition Should Include Direct Threat Standard and Eliminate Standard of Significant Risk of Substantial Interference with the Safety of Others. Five commenters supported incorporating the "direct threat" standard that is included in the Fair Housing Act, rather than the standard of "significant risk of substantial interference with the safety or enjoyment of others or with his own health or safety," as set forth in the part 9 rule. One commenter stated that it was absolutely improper to permit evaluation of whether an individual is a potential risk to his or her own health or safety. The commenter stated that: "In the housing context, such a concern can never be related to an essential eligibility requirement. Where an individual may pose a risk to him or herself and to others, the Fair Housing Act standard of direct threat to the health and safety of others is adequate."

Response. As discussed in section II of this preamble, the Department has

added a new § 9.131, which addresses the direct threat standard.

Self-Evaluation (§ 9.110)

Section 9.110(a) provides that HUD shall, within one year of the effective date of the part 9 final rule, evaluate its current policies and practices, and the effects of those policies and practices, including regulations, handbooks, notices and other written guidance, that do not or may not meet the requirements of part 9, and, to the extent modification of any such policies is required, HUD shall take the necessary corrective actions.

Comment: Self-Evaluation Section Should Be Delayed by Final Rule Deadlines. Two commenters suggested that this section be revised to state that remedial actions, which HUD has begun or is planning, will not be delayed by the "deadlines in this section." One of the commenters stated that the part 9 final rule should clearly state that HUD will complete the self-evaluation of its policies and practices within one year of the effective date of the final rule.

Response. The Department periodically reviews the requirements of its various programs, and the policies and practices of these programs, to ensure that all HUD programs, both HUD assisted and HUD conducted, reflect existing statutory requirements. Given this periodic review process, the Department does not intend or foresee any delay in the evaluation of HUD conducted programs to ensure that these programs meet the requirements of part 9, as required by § 9.110.

Comment: HUD Should Review Its Federal Preference Criteria, As Part of Its Self-Evaluation Process. One commenter urged the Department to review its Federal preference criteria for housing programs funded by the Department. The commenter stated that the current criteria are not clear on the definition of what is not a "regular sleeping accommodation" and that Federal preferences should be revised to give top preference to individuals released from institutions, such as hospitals, nursing homes and rehabilitation facilities.

Response. A review of Federal preference criteria for housing programs is not appropriate in connection with the development and implementation of this part 9 rule. This rule is concerned with the implementation of section 504 solely as it applies to HUD conducted programs. Federal preferences in housing affect all HUD housing programs, not only housing owned by HUD. Any changes to the list of individuals that should be given preferences in federally-assisted or federally-conducted housing is more appropriate for proposed rulemaking that provides for advance notice to, and solicitation of comment from, the public.

Comment: Expand Public Participation in the Self-Evaluation Process to Include Comments on Fair Housing Issues. Section 9.110(b) of the part 9 rule provides that HUD shall provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the self-evaluation process by submitting comments, both oral and written. One commenter recommended that HUD expand this section of the self-evaluation process to include fair housing issues that relate to people with disabilities.

Response. As discussed throughout this preamble, the mandate and the scope of the Fair Housing Act and section 504 are different. Accordingly, it is inappropriate for issues specifically related to the Fair Housing Act to be included in the section 504 self-evaluation process. However, to the extent that section 504 incorporates or overlaps with the Fair Housing Act, these issues may be raised in connection with the self-evaluation process.

Comment: Files Should Be Maintained Permanently. Section 9.110(c) of the part 9 rule provides that HUD shall, for a period of at least three years following the completion of the self-evaluation, maintain on file and make available for public inspection: (1) A list of interested persons; (2) a description of the areas examined and any problems identified; and (3) a description of any modifications made or to be made. Two commenters recommended that HUD maintain this file permanently. The commenters stated that HUD may make progress in the implementation and enforcement of section 504 if HUD's efforts are permanently catalogued, and that this progress is more important than maintaining consistency with the DOJ's coordination regulation.

Response. The Department believes that successful implementation and enforcement of section 504 will not be hindered by the rule's requirement to maintain the "self-evaluation" files for a period of three years. The Department notes that under § 9.110, HUD is not required to discard the self-evaluation files after the three year period has expired. Rather, HUD is required to maintain these files for a period of at least three years following the completion of the self-evaluation. HUD may maintain these files permanently or indefinitely. Accordingly, the Department believes that the minimum three-year requirement is sufficient.

Notice (§ 9.111)

Comment: This Section Should Clarify How HUD Will Communicate with People with Disabilities. Section 9.111 provides that HUD shall make available to employees, applicants, participants, beneficiaries, and other interested persons, information regarding the provisions of part 9. One commenter stated that although the preamble to the part 9 proposed rule indicated that certain HUD materials will be made available on tape and in Braille, nothing in the regulation makes that clear. The commenter requested that the part 9 proposed rule describe the specific ways in which HUD will communicate effectively with applicants, participants, personnel or other Federal entities, and members of the public who have disabilities.

Response. To make available to individuals with disabilities the information required by § 9.111, HUD will use, to the extent necessary, the auxiliary aids and services described in § 9.103. The definition of "auxiliary aids" in § 9.103 provides in relevant part as follows: "Although auxiliary aids are required explicitly only by § 9.160(a)(1), they may also be necessary to meet other requirements of the proposed regulation."

General Prohibitions Against Discrimination (§ 9.130)

Section 9.130 lists the general prohibitions against discrimination under section 504. Subsection (b)(vi) of § 9.130 states that it is discriminatory to:

"Deny a dwelling to an otherwise qualified buyer or renter because of a disability of that buyer or renter or a person residing or intending to reside in that dwelling after it is sold, rented or made available." (§ 9.130(b)(vi))

Comment: § 9.130 Should Include Relatives, Friends and Associates of Individuals with Disabilities. Three commenters stated that this paragraph was similar to language in the Fair Housing Act, except that the Fair Housing Act adds a third category of discrimination—"or because of a disability of any person associated with that person." The commenters urged adoption of this category of individuals so that the section 504 regulations, like the Fair Housing regulations (24 CFR 100.202), will prohibit discrimination against buyers and renters who have relatives, friends or associates who have disabilities.

Response. The Fair Housing Act prohibits, *inter alia*, discrimination

against any person on the basis of disability, whether or not it is the aggrieved person or an associate or relative of that person who is disabled. Because of differences in the language and structure of the Fair Housing Act and section 504, the Fair Housing Act language is not necessarily transferable to section 504.

Comment: This Section Should Incorporate Language Concerning Reasonable Accommodation. One commenter requested that HUD incorporate the language of § 100.204 of the Fair Housing Act regulations concerning reasonable accommodation in the part 9 rule's provision establishing the general prohibitions against discrimination under section 504.

Response. HUD's Fair Housing Act regulation concerning reasonable accommodation is not appropriate for the section 504 regulations. The reasonable accommodation requirements of the Fair Housing Act are narrower than the "reasonable modification" requirements of section 504, because the Fair Housing Act requirements only refer to reasonable modifications and the rules, policies, practices or services associated with a dwelling unit. (*See* 24 CFR 100.204.) Under section 504, reasonable modifications will vary in the context of each Federal program or activity. Accordingly, it is important that the interpretation of reasonable modification with respect to a program or activity covered by section 504 not be limited to the interpretation provided by HUD's Fair Housing Act regulations. Additionally, as noted previously, the term, "qualified individuals with disabilities," used throughout the part 8 and part 9 rules implicitly incorporates the concept of reasonable accommodation or reasonable modification.

Program Accessibility: Existing Facilities (§ 9.150)

Comment: The Department Should Consider the Impact of the Americans with Disabilities Act on Existing Facilities. Section 9.150(b) provides that HUD is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. Three commenters stated that HUD should consider the impact of the ADA on HUD programs and activities. Two commenters stated that it would be helpful both to consumers and to HUD and Justice enforcement personnel if these regulations referred to the ADA and to the ADA title II regulations and standards.

Response. In developing this final rule, the Department in consultation with the DOJ and EEOC, has considered the impact of the ADA on HUD conducted programs and activities, and where appropriate, incorporated those requirements of the ADA that are applicable to these programs and activities.

Comment: Section 9.150(e) Should Clarify HUD's Responsibility to Make Reasonable Modifications in Housing Sold to Buyers with Disabilities. Section 9.150(e) provides that HUD is not required to make alterations to existing facilities that are part of HUD's Property Disposition Programs, unless such alterations are necessary to meet the needs of a current or prospective tenant during the time when the Department expects to retain legal possession of the facilities and there is no alternative method to meet the needs of that tenant. Section 9.150(e) further provides that nothing in this section shall be construed to require alterations to make facilities accessible to persons with disabilities who are expected to occupy the facilities only after HUD relinquishes legal possession.

One commenter stated that this section relieves HUD of all responsibility to make any modifications for buyers with disabilities who purchase housing through HUD's Property Disposition Program. The commenter stated that § 9.150(e) should be revised to clarify HUD'S responsibility to make reasonable modifications in housing sold to buyers with disabilities.

Another commenter stated that the part 9 final rule should be revised to provide that HUD will exert its best efforts to assist a purchaser in obtaining the funding and expertise that HUD is able to provide in making the building usable for tenants and owners with disabilities.

Response. Section 9.150 requires the housing provider to demonstrate that physical alterations to make a unit accessible would result in a fundamental alteration in the nature of the program or activity or in an undue financial and administrative burden. This section requires that where physical alterations would result in a fundamental alteration or undue financial and administrative burden, alternative action must be taken that would not result in such an alteration or such burdens, but nevertheless would ensure that individuals with disabilities receive the benefits and services of the program or activity.

In the preamble to the part 9 proposed rule, HUD explained why the traditional approach to program accessibility with respect to existing facilities is not appropriate for the Property Disposition Programs because HUD holds the properties only temporarily and for an unpredictable amount of time (56 FR 24611). Since HUD does not know how long it will be in possession of the property, the agency cannot identify a time period within which it can assess the needs of those who might wish to live there in the future. However, HUD recognizes that during the time that the agency retains possession of a housing property under this program, HUD provides a housing service to the residents and also has a section 504 obligation to those who apply for housing in the facility.

Program Accessibility: Alterations of Property Disposition Program Multifamily Housing Facilities (§ 9.152)

Section 9.152 imposes accessibility requirements on HUD when HUD undertakes alterations to multifamily housing facilities that are part of HUD's Property Disposition Program. This section would require that once HUD undertakes alterations that cost 75 percent or more of the replacement value of the building, HUD must make at least five percent of the units accessible to tenants with mobility disabilities and two percent of the units accessible to tenants with sight and hearing disabilities.

Comment: Section 9.152 Should Include the Fair Housing Act Standards for New Construction. One commenter stated that HUD adopted the 75 percent figure for its section 504 federally assisted regulations, because it purposely wanted the level of alterations to "be tantamount to new construction" (53 FR 20224). The commenter stated that the Department is now required to meet the Fair Housing Act new construction standards when altering housing facilities. The commenter further stated that this section requires the five percent/two percent standard only in buildings with 15 or more units that are undergoing significant alteration, and that this requirement conflicts with HUD's UFAS standards for federally owned residential property which has no minimum 15 unit requirement.

Response. As previously discussed, it is inappropriate for HUD to incorporate the standards and requirements of the Fair Housing Act in a regulation implementing section 504 because the purposes and goals of these two statutes are not identical. To the extent that newly constructed HUD multifamily housing is subject to the requirements of the Fair Housing Act and section 504,

HUD will adhere to the standards that provide for greater accessibility.

The UFAS standards were promulgated under the Barriers Act. (*See* 24 CFR part 40, App. A, 4.1; 49 FR 31528; 53 FR 20228.) Because section 504 requires compliance with accessibility standards in certain circumstances, the DOJ recommended that Federal agencies provide that new construction and alterations comply with the ADAAG or the UFAS (that is, compliance with the ADAAG whenever the ADAAG provides for greater accessibility than the UFAS). Compliance with the UFAS or the ADAAG therefore is deemed to be compliance with section 504. The DOJ recommended the UFAS and the ADAAG as the applicable accessibility standards for section 504 to reduce potential conflict between standards enforced under the Barriers Act and section 504. However, the degree of accessibility required by the Barriers Act and that required by section 504 are not identical, and the regulations and standards promulgated under section 504 and the Barriers Act reflect these differences.

Comment: Replacement Cost Cap of Section 9.152 Should Be Lowered from 75 percent to 50 percent. One commenter recommended lowering the replacement cost cap in § 9.152 because many states and cities nationwide have a lower triggering percentage. The commenter stated that HUD projects should not be allowed to remain inaccessible until a renovation totals 75 percent of replacement cost when private buildings are subject to a more stringent standard.

Response. The 75 percent replacement cost cap set forth in § 9.152 is also contained in § 8.23 of HUD's section 504 regulation for HUD assisted programs. The replacement cost cap issue was carefully considered by the Department during development of the final part 8 rule. The Department received 290 comments on this issue following publication of the proposed part 8 rule (53 FR 20224). In the preamble to the final part 8 rule, the Department explained in detail the reasons behind its decision to retain the 75 percent replacement cost cap. (*See* 53 FR 20224.) The comment made by the commenter on this issue in the context of the part 9 rule has not persuaded the Department to revise its initial decision that the 75 percent replacement cost cap is an appropriate standard for section 504 purposes. The Department points out, however, that HUD projects in jurisdictions which impose more stringent accessibility standards, than those prescribed in HUD's section 504 regulations, must comply with the more stringent requirements.

Comment: Section 9.152(b) is Unclear As to When Responsibility to Modify Existing Housing Ends. One commenter stated that paragraph (b) of § 9.152 is confusing. The commenter stated that housing providers who read the regulation do not understand when their responsibility to modify existing housing ends. The commenter stated that paragraph (b) should be revised to clarify that each time a building is altered, accessibility requirements apply.

Response. The Department believes that part of the confusion concerning § 9.152 results from the fact that the subheadings were inadvertently omitted at the time of publication of the part 9 proposed rule. Paragraph (a) of § 9.152 should be titled "Substantial Alterations," and paragraph (b) of this section should be titled "Other Alterations." The final rule includes these subheadings which indicates the extent of the provider's responsibility to modify existing housing. The Department believes that no further revisions to this section are necessary. The issue raised by the commenter, like the issue in the preceding comment, was the subject of considerable public comment at the time of publication of the proposed part 8 rule. (*See* 24 CFR 20224.) The Department believes that the lack of substantial public comment on § 9.152(b), which is identical to § 8.23(b), indicates that the provisions of this section are not confusing for the majority of HUD program participants. Accordingly, except for the inclusion of the subheadings, the Department declines to amend the language in this section.

Distribution of Accessible Dwelling Units (§ 9.153)

This section requires accessible units to be distributed throughout projects "to the maximum extent feasible and subject to reasonable health and safety requirements".

Comment: Eliminate Language Concerning "To the Maximum Extent Feasible". Two commenters recommended that the Department delete the language beginning "to the maximum extent feasible." The commenters stated that the Fair Housing Act prohibits segregating all tenants with disabilities into one area or into one part of a building.

Response. The language in § 9.153 is identical to the language in § 8.26 of HUD's section 504 regulation for federally assisted programs. Section 8.26 was the subject of considerable public comment following publication of the part 8 proposed rule. (*See* 53 FR 20226.) The commenters on the part 8 rule expressed concerns similar to those expressed by the commenters on this rule. In the preamble to the part 8 proposed rule, the Department stated that this provision does not allow "the unnecessary segregation of qualified individuals with disabilities" (53 FR 20226). The Department reaffirms that prohibition here, and notes that this prohibition is contained in § 9.130(b)(1)(iv), which prohibits the agency from providing different or separate housing, aid, benefits, or services to individuals with disabilities, or to any class of individuals with disabilities than is provided to others unless such action is necessary to provide qualified individuals with disabilities with housing, aid, benefits, or services that are as effective as those provided to others.

Occupancy of Accessible Dwelling Units (§ 9.154)

Section 9.154(b) provides that when offering an accessible unit to an applicant who is not disabled and does not require the accessibility features of the unit, the Department may require the applicant to agree (and may incorporate this agreement in the lease) to move to a non-accessible unit when available.

Comment: Department Should Require All Leases to Incorporate "Agreement to Move" Clause as Standard Practice. One commenter recommended that the Department incorporate this provision in the lease as standard practice.

Response. The Department believes that it is unnecessary to require that this provision be incorporated in the lease as standard practice. The Department believes that the language in § 9.154, which provides that this provision may be incorporated in the lease is adequate. The Department notes that this language was contained in § 8.26 of HUD's part 8 interim rule published on May 6, 1983 (48 FR 20655) and was retained in § 8.27(b) of the part 8 final rule, published on June 2, 1988 (53 FR 20240). Because this provision has been in HUD's section 504 regulations for approximately 10 years, the Department believes that HUD managers are aware that they are legally empowered to—and will—require an applicant without disabilities to agree to move to a non-accessible unit when one becomes available.

Housing Adjustments (§ 9.155)

This section requires the Department to modify its housing policies and practices to ensure that they do not limit

the participation of tenants with disabilities.

Comment: New Housing Policies Implemented In Response to Fair Housing Act Should be Included in § 9.155. One commenter stated that since the passage of both section 504 and the Fair Housing Act, HUD has changed some of its housing policies, as for example, making FHA mortgages available to non-profit organizations for the purchase of single-family homes that are to be used by groups of unrelated tenants with disabilities. The commenter recommended that these new policies be listed in the regulation.

Response. The Department does not believe that the part 9 rule is the proper place to enunciate any policy revisions resulting from the Fair Housing Act. All new policies have been or will be announced in a more appropriate forum.

Comment: Section 9.155(a) Should Include Reference to Reasonable Accommodation. Four commenters stated that the last sentence of § 9.155(a) discusses fundamental alterations and undue financial and administrative burdens but not reasonable accommodation, which indicates that HUD has no duty to reasonably accommodate an individual's disability.

Response. Again, the appropriate term, generally, for purposes of section 504 is "reasonable modification." The reasonable modification issue has been raised in connection with other sections of the part 9 rule. The Department refers the commenters to its previous response on this issue as set forth in this preamble.

Communications (§ 9.160)

Section 9.160 would require HUD to take appropriate steps to ensure effective communication with personnel of other Federal entities, applicants, participants and members of the public.

Comment: Section 9.160 Should Address the Communication Needs of Individuals with Impaired Cognitive Skills. One commenter stated that this section focuses on individuals with hearing and sight disabilities, and excludes individuals with impaired cognitive skills.

Response. The provisions of this section are not intended to exclude individuals who have disabilities other than hearing and vision impairments. Because hearing and vision impairments present easily identifiable communication difficulties, a number of auxiliary aids and services have been designed to overcome these communication difficulties, and serve as clear examples of how effective communication may be achieved under the requirements of section 504. However, the provisions of § 9.160 clearly provide that HUD shall, where necessary, furnish the auxiliary aid appropriate to an individual's disability, and in determining what type of auxiliary aid is necessary, shall give primary consideration to the request of the individual with disabilities.

Compliance Procedures (§ 9.170)

Section 9.170 would establish the procedures for processing complaints arising under section 504. In the preamble to the proposed rule, the Department specifically solicited comment on whether the compliance procedures for part 9 should include a hearing before an Administrative Law Judge. (See 56 FR 24613.)

Comment: Procedures Should Include Full Evidentiary Hearing Before an Administrative Law Judge. One commenter recommended that HUD provide complainants with the opportunity for a full evidentiary hearing before an Administrative Law Judge in appeals from the Assistant Secretary's determination.

Response. The issue of whether the part 9 rule should provide for an administrative law judge was carefully considered by the Department during development of the proposed part 9 rule, and again, after receiving this comment. The Department has concluded that the complaint processing procedure set forth in § 9.170 will provide for an adequate remedy, and therefore, it is not necessary to provide for a hearing before an administrative law judge. Accordingly, the "right to request a hearing" has been deleted from § 9.170 of the final rule.

IV. Other Matters

Coordination. This final rule has been reviewed by the Department of Justice. It is an adaptation of a prototype prepared by the Department of Justice under Executive Order 12250 (45 FR 72995, 3 CFR, 1980 Comp., p. 298) and distributed to Executive agencies. This final rule also has been reviewed by the Equal Employment Opportunity Commission under Executive Order 12067 (43 FR 28967, 3 CFR, 1978 Comp., p. 206).

Environmental Impact. At the time of development of the proposed part 9 rule, a Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. That Finding of No Significant Impact remains applicable to this final rule and is available for public inspection during regular business hours in the Office of the Rules Docket Clerk at the above address.

Impact on Small Entities. The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication, and by approving it, certifies that this rule does not have a significant economic impact on small entities. The purpose of this rule is to provide for the enforcement of section 504 of the Rehabilitation Act of 1973 as it applies to programs or activities conducted by HUD.

Executive Order 12612, Federalism. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule would not, if implemented, have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. Specifically, the requirements of this rule are directed to HUD programs and activities, and do not impinge upon the relationship between the Federal government and State and local governments. Accordingly, the rule is not subject to review under the Order.

Executive Order 12606, the Family. The General Counsel, as the Designated Official under Executive Order 12606, *the Family*, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The rule establishes requirements prohibiting discrimination against individuals with disabilities in programs and activities conducted by HUD.

Semiannual Agenda of Regulations. This rule was listed as sequence number 1528 in the Department's Semiannual Agenda of Regulations published on April 25, 1994 (59 FR 20424, 20434) pursuant to Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 9

Blind, Buildings, Civil rights, Employment, Equal employment opportunity, Federal buildings and facilities, Government employees, Persons with disabilities.

Accordingly, title 24 of the Code of Federal Regulations is amended by adding a new part 9, consisting of §§ 9.101 through 9.170, to read as follows:

PART 9—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF DISABILITY IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Sec.
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9.149 Program accessibility: discrimination prohibited.
9.150 Program accessibility: existing facilities.
9.151 Program accessibility: new construction and alterations.
9.152 Program accessibility: Alterations of Property Disposition Program multifamily housing facilities.
9.153 Distribution of accessible dwelling units.
9.154 Occupancy of accessible dwelling units.
9.155 Housing adjustments.
9.160 Communications.
9.170 Compliance procedures.

Authority: 29 U.S.C. 794; 42 U.S.C. 3535(d).

§ 9.101 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of disability in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 9.102 Applicability.

This part applies to all programs or activities conducted by the agency, except for programs or activities conducted outside the United States that do not involve individuals with disabilities in the United States.

§ 9.103 Definitions.

For purposes of this part:

Accessible: (1) When used with respect to the design, construction, or alteration of a facility or a portion of a facility other than an individual dwelling unit, means that the facility or portion of the facility when designed, constructed or altered, complies with applicable accessibility standards and can be approached, entered, and used by individuals with physical disabilities. The phrase "accessible to and usable by" is synonymous with accessible.

(2) When used with respect to the design, construction, or alteration of an individual dwelling unit, means that the unit is located on an accessible route and, when designed, constructed, altered or adapted, complies with applicable accessibility standards, and can be approached, entered, and used by individuals with physical disabilities. A unit that is on an accessible route and is adaptable and otherwise in compliance with the standards set forth in § 9.151 is "accessible" within the meaning of this definition. When a unit in an existing facility which is being made accessible as a result of alterations is intended for use by a specific qualified individual with disabilities (e.g., a current occupant of such unit or of another unit under the control of the same agency, or an applicant on a waiting list), the unit will be deemed accessible if it meets the requirements of applicable standards that address the particular disability or impairment of such person.

Accessible route means a continuous unobstructed path connecting accessible elements and spaces of a building or facility. Interior accessible routes may include corridors, floors, ramps, elevators, lifts, and clear floor space at fixtures. Exterior accessible routes may include parking access aisles, curb ramps, crosswalks at vehicular ways, walks, ramps and lifts.

ADA means the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 through 12213)

ADA Accessibility Guidelines (ADAAG) means the Accessibility Guidelines issued under the ADA, and which are codified in the Appendix to 39 CFR part 1191.

Adaptability means the ability of certain building, spaces and elements, such as kitchen counters, sinks, and grab bars, to be added or altered, to accommodate the needs of persons with or without disabilities, or to accommodate the needs of persons with different types or degrees of disability. For example, in a unit adaptable for a person with impaired hearing, the wiring for visible emergency alarms may be installed but the alarms need not be installed until such time as the unit is made ready for occupancy by a person with impaired hearing.

Agency means the Department of Housing and Urban Development.

Alteration means a change to a building or facility or its permanent fixtures or equipment that affects or could affect the usability of the building or facility or part thereof. Alterations include, but are not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, changes or rearrangements of the structural parts and changes or rearrangements in the plan configuration of walls and full-height partitions. Normal maintenance, re-roofing, painting, or wallpapering or changes to mechanical and electrical systems are not alterations unless they affect the usability of the building or facility.

Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Assistant Secretary means the Assistant Secretary of Housing and Urban Development for Fair Housing and Equal Opportunity.

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or communication skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, note takers, written materials, and other similar services and devices.

Complete complaint means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Current illegal use of drugs means illegal use of drugs that occurred recently enough to justify a reasonable belief that a person's drug use is current or that continuing use is a real and ongoing problem.

Drug means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812).

Facility means all or any portion of buildings, structures, site improvements, complexes, equipment, roads, walks, passageways, parking lots, rolling stock or other conveyances, or

other real or personal property located on a site.

Historic properties means those properties that are listed or are eligible for listing in the National Register of Historic Places, or such properties designated as historic under a statute of the appropriate State or local government body.

Illegal use of drugs means the use of one or more drugs, the possession or distribution of which is unlawful under the Controlled Substances Act (21 U.S.C. 812). The term "illegal use of drugs" does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

Individual with disabilities means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) "Physical or mental impairment" includes:

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus disease (symptomatic or asymptomatic), mental retardation, emotional illness, drug addiction and alcoholism.

(2) The term "individual with disabilities" does not include:

(i) An individual who is currently engaging in the illegal use of drugs, when the agency acts on the basis of such use. This exclusion, however, does not exclude an individual with disabilities who—

(A) Has successfully completed a supervised drug rehabilitation program, and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully, and is no longer engaging in such use;

(B) Is participating in a supervised rehabilitation program, and is no longer engaging in such use; or

(C) Is erroneously regarded as engaging in such use, but is not engaging in such use.

(ii) Except that it shall not violate this part for the agency to adopt or administer reasonable policies and procedures, including but not limited to drug testing, designed to ensure than an individual described in paragraphs (2)(i)(A) and (B) of this definition is no longer engaging in the illegal use of drugs.

(iii) Nothing in paragraph (2) of this definition shall be construed to encourage, prohibit, restrict or authorize the conduct of testing for illegal use of drugs.

(iv) The agency shall not deny health services provided under titles I, II and III of the Rehabilitation Act of 1973 (29 U.S.C. 701 through 777f) to an individual with disabilities on the basis of that individual's current illegal use of drugs, if the individual is otherwise entitled to such services.

(3) For purposes of employment, the term "individual with disabilities" does not include:

(i) An individual who has a currently contagious disease or infection and who, by reason of such disease or infection—

(A) Has been determined, in accordance with the provisions of § 9.131, to pose a direct threat to the health or safety of other individuals, which threat cannot be eliminated or reduced by reasonable accommodation, or

(B) Is unable to perform the essential duties of the job, with or without reasonable accommodation; or

(ii) An individual who is an alcoholic and whose current use of alcohol prevents him or her from performing the duties of the job in question or whose employment would constitute a direct threat to the property or the safety of others by reason of his or her current alcohol abuse.

(4) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(5) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(6) "Is regarded as having an impairment" means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the agency as having such an impairment.

Multifamily housing project means a project containing five or more dwelling units.

Official or Responsible Official means the Assistant Secretary of HUD for Fair Housing and Equal Opportunity.

PDP housing facility means a housing facility administered under HUD's Property Disposition Program.

Project means the whole of one or more residential structures and appurtenant structures, equipment, roads, walks, and parking lots which are covered by a single mortgage or contract or otherwise treated as a whole by the agency for processing purposes, whether or not located on a common site.

Property Disposition Program (PDP) means the HUD program which administers the housing facilities that are either owned by the Secretary or where, even though the Secretary has not obtained title, the Secretary is mortgagee-in-possession. Such properties are deemed to be in the possession or control of the agency.

Qualified individual with disabilities means:

(1) With respect to any agency non-employment program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with disabilities who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature; or

(2) With respect to any other agency non-employment program or activity, an individual with disabilities who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity.

(3) "Essential eligibility requirements" include stated eligibility requirements such as income, as well as other explicit or implicit requirements inherent in the nature of the program or activity, such as requirements that an occupant of a PDP multifamily housing facility be capable of meeting selection criteria and be capable of complying with all obligations of occupancy with or without supportive services provided by persons other than the agency.

(4) "Qualified person with disabilities" as that term is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 9.140.

Replacement cost of the completed facility means the current cost of construction and equipment for a newly constructed housing facility of the size and type being altered. Construction and equipment costs do not include the cost of land, demolition, site improvements, non-dwelling facilities and administrative costs for project development activities.

Secretary means the Secretary of Housing and Urban Development.

Section 504 means section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794). As used in this part, section 504 applies only to programs or activities conducted by the agency and not to federally assisted programs.

Substantial impairment means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

UFAS means the Uniform Federal Accessibility Standards, which implement the accessibility standards required by the Architectural Barriers Act (42 U.S.C. 4151 through 4157), and which are established at 24 CFR part 40, Appendix A for residential structures, and 41 CFR 101–19.600 through 101–19.607, and Appendix A to these sections, for non-residential structures.

§ 9.110 Self-evaluation.

(a) The agency shall, within one year of the effective date of this part, evaluate its current policies and practices, and the effects of those policies and practices, including regulations, handbooks, notices and other written guidance, that do not or may not meet the requirements of this part. To the extent modification of any such policies is required, the agency shall take the necessary corrective actions.

(b) The agency shall provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, for at least three years following the completion of the self-evaluation, maintain on file and make available for public inspection:

(1) A list of interested persons;

(2) A description of the areas examined and any problems identified; and

(3) A description of any modifications made or to be made.

§ 9.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency. The agency shall make such information available to such persons in such manner as the Secretary finds necessary to apprise them of the protections against discrimination assured them by section 504 and this part. All publications and recruitment materials distributed to participants, beneficiaries, applicants or employees shall include a statement that the agency does not discriminate on the basis of disability. The notice shall include the name of the person or office responsible for the implementation of section 504.

§§ 9.112–9.129 [Reserved]

§ 9.130 General prohibitions against discrimination.

(a) No qualified individual with disabilities shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b) (1) The agency, in providing any housing, aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability—

(i) Deny a qualified individual with disabilities the opportunity to participate in or benefit from the housing, aid, benefit, or service;

(ii) Afford a qualified individual with disabilities an opportunity to participate in or benefit from the housing, aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with disabilities with any housing, aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate housing, aid, benefits, or services to individuals with disabilities or to any class of individuals with disabilities than is provided to others unless such action is necessary to provide qualified individuals with disabilities with housing, aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with disabilities the opportunity to participate as a member of planning or advisory boards;

(vi) Deny a dwelling to an otherwise qualified buyer or renter because of a disability of that buyer or renter or a person residing in or intending to reside in that dwelling after it is sold, rented or made available; or

(vii) Otherwise limit a qualified individual with disabilities in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the housing, aid, benefit, or service.

(2) For purposes of this part, housing, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for individuals with disabilities and for persons without disabilities, but must afford individuals with disabilities equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement.

(3) The agency may not deny a qualified individual with disabilities the opportunity to participate in programs or activities that are not separate or different, despite the existence of programs or activities that are permissibly separate or different for persons with disabilities.

(4) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would:

(i) Subject qualified individuals with disabilities to discrimination on the basis of disability; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with disabilities.

(5) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would:

(i) Exclude individuals with disabilities from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with disabilities.

(6) The agency, in the selection of procurement contractors, may not use criteria that subject qualified individuals with disabilities to discrimination on the basis of disability.

(7) The agency may not administer a licensing or certification program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of disability, nor may the agency establish requirements for the programs or activities of licensees or certified

entities that subject qualified individuals with disabilities to discrimination on the basis of disability. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this part.

(c) (1) Notwithstanding any other provision of this part, persons without disabilities may be excluded from the benefits of a program if the program is limited by Federal statute or Executive order to individuals with disabilities. A specific class of individuals with disabilities may be excluded from a program if the program is limited by Federal statute or Executive order to a different class of individuals.

(2) Certain agency programs operate under statutory definitions of "persons with disabilities" that are more restrictive than the definition of "individual with disabilities" contained in § 9.103. Those definitions are not superseded or otherwise affected by this regulation.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

(e) The obligation to comply with this part is not obviated or alleviated by any State or local law or other requirement that, based on disability, imposes inconsistent or contradictory prohibitions or limits upon the eligibility of qualified individuals with disabilities to receive services or to practice any occupation or profession.

(f) The enumeration of specific forms of prohibited discrimination in paragraphs (b) and (d) of this section does not limit the general prohibition in paragraph (a) of this section.

§ 9.131 Direct threat.

(a) This part does not require the agency to permit an individual to participate in, or benefit from the goods, services, facilities, privileges, advantages and accommodations of that agency when that individual poses a direct threat to the health or safety of others.

(b) "Direct threat" means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services.

(c) In determining whether an individual poses a direct threat to the health or safety of others, the agency must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures will mitigate the risk.

§§ 9.132—9.139 [Reserved]

§ 9.140 Employment.

No qualified individual with disabilities shall, on the basis of disability, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1613 (subpart G), shall apply to employment in federally conducted programs or activities.

§§ 9.141—9.148 [Reserved]

§ 9.149 Program accessibility: discrimination prohibited.

Except as otherwise provided in § 9.150, no qualified individual with disabilities shall, because the agency's facilities are inaccessible to or unusable by individuals with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 9.150 Program accessibility: existing facilities.

(a) *General.* Except as otherwise provided in paragraph (e) of this section, the agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. This section does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by individuals with disabilities;

(2) In the case of historic properties, require the agency to take any action that would result in a substantial impairment of significant historic features of an historic property; or

(3) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 9.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Secretary or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits and services of the program or activity.

(b) *Methods.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with disabilities. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, also shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151 through 4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified individuals with disabilities in the most integrated setting appropriate.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section within sixty days of July 18, 1994 except that where structural changes in facilities are undertaken, such changes shall be made within three years of July 18, 1994, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, within six months of July 18, 1994, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including individuals with disabilities

or organizations representing individuals with disabilities, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to individuals with disabilities;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

(e) The requirements of paragraphs (a), (b), and (c) of this section shall apply to the Property Disposition Programs. However, this section does not require HUD to make alterations to existing facilities that are part of the Property Disposition Programs unless such alterations are necessary to meet the needs of a current or prospective tenant during the time when HUD expects to retain legal possession of the facilities, and there is no alternative method to meet the needs of that current or prospective tenant. Nothing in this section shall be construed to require alterations to make facilities accessible to persons with disabilities who are expected to occupy the facilities only after HUD relinquishes legal possession.

§ 9.151 Program accessibility: new construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered and provide emergency egress so as to be readily accessible to and usable by individuals with disabilities. The definitions, requirements, and accessibility standards that apply to buildings covered by this section are those contained in the UFAS, except where the ADAAG provides for greater accessibility for the type of construction or alteration being undertaken, and in this case, the definitions, requirements and standards of the ADAAG shall apply.

§ 9.152 Program accessibility: alterations of Property Disposition Program multifamily housing facilities.

(a) *Substantial alteration.* If the agency undertakes alterations to a PDP multifamily housing project that has 15 or more units and the cost of the alterations is 75 percent or more of the replacement cost of the completed facility, then the project shall be designed and altered to be readily accessible to and usable by individuals with disabilities. Subject to paragraph (c) of this section, a minimum of five percent of the total dwelling units, or at least one unit, whichever is greater, shall be made accessible for persons with mobility impairments. A unit that is on an accessible route and is adaptable and otherwise in compliance with the standards set forth in paragraph (d) of this section is accessible for purposes of this section. An additional two percent of the units (but not less that one unit) in such a project shall be accessible for persons with hearing or vision impairments. If state or local requirements for alterations require greater action than this paragraph, those requirements shall prevail.

(b) *Other alteration.* (1) Subject to paragraph (c) of this section, alterations to dwelling units in a PDP multifamily housing project shall, to the maximum extent feasible, be made to be readily accessible to and usable by individuals with disabilities. If alterations of single elements or spaces of a dwelling unit, when considered together, amount to an alteration of a dwelling unit, the entire dwelling unit shall be made accessible. Once five percent of the dwelling units in a project are readily accessible to and usable by individuals with mobility impairments, then no additional elements of dwelling units, or entire dwelling units, are required to be accessible under this paragraph. Once two percent of the dwelling units in a project are readily accessible to or usable by individuals with hearing or vision impairments, then no additional elements of dwelling units, or entire dwelling units, are required to be accessible under this paragraph.

(2) Alterations to common areas or parts of facilities that affect accessibility of existing housing facilities, shall, to the maximum extent feasible, be made to be accessible to and usable by individuals with disabilities.

(c) The agency may establish a higher percentage or number of accessible units than that prescribed in paragraphs (a) or (b) of this section if the agency determines that there is a need for a higher percentage or number, based on census data or other available current data. In making such a determination, HUD shall take into account the expected needs of eligible persons with and without disabilities.

(d) The definitions, requirements, and accessibility standards that apply to PDP multifamily housing projects covered by this section are those contained in the UFAS, except where the ADAAG provides for greater accessibility for the type of alteration being undertaken, and, in this case, the definitions, requirements and standards of the ADAAG shall apply.

(e) With respect to multifamily housing projects operated by HUD, but in which HUD does not have an ownership interest, alterations under this section need not be made if doing so would impose undue financial and administrative burdens on the operation of the multifamily housing project.

§ 9.153 Distribution of accessible dwelling units.

Accessible dwelling units required by § 9.152 shall, to the maximum extent feasible, be distributed throughout projects and sites and shall be available in a sufficient range of sizes and amenities so that a qualified individual with disabilities' choice of living arrangements is, as a whole, comparable to that of other persons eligible for housing assistance under the same agency conducted program. This provision shall not be construed to require (but does allow) the provision of an elevator in any multifamily housing project solely for the purpose of permitting location of accessible units above or below the accessible grade level.

§ 9.154 Occupancy of accessible dwelling units.

(a) The agency shall adopt suitable means to assure that information regarding the availability of accessible units in PDP housing facilities reaches eligible individuals with disabilities, and shall take reasonable nondiscriminatory steps to maximize the utilization of such units by eligible individuals whose disability requires the accessibility features of the particular unit. To this end, when an accessible unit becomes vacant, the agency (or its management agent) before offering such units to an applicant without disabilities shall offer such unit:

(1) First, to a current occupant of another unit of the same project, or comparable projects under common control, having disabilities requiring the accessibility features of the vacant unit and occupying a unit not having such features, or, if no such occupant exists, then

(2) Second, to an eligible qualified applicant on the waiting list having a

disability requiring the accessibility features of the vacant unit.

(b) When offering an accessible unit to an applicant not having disabilities requiring the accessibility features of the unit, the agency may require the applicant to agree (and may incorporate this agreement in the lease) to move to a non-accessible unit when available.

§ 9.155 Housing adjustments.

(a) The agency shall modify its housing policies and practices as they relate to PDP housing facilities to ensure that these policies and practices do not discriminate, on the basis of disability, against a qualified individual with disabilities. The agency may not impose upon individuals with disabilities other policies, such as the prohibition of assistive devices, auxiliary aids, alarms, or guides in housing facilities, that have the effect of limiting the participation of tenants with disabilities in any agency conducted housing program or activity in violation of this part. Housing policies that the agency can demonstrate are essential to the housing program or activity will not be regarded as discriminatory within the meaning of this section if modifications would result in a fundamental alteration in the nature of the program or activity or undue financial and administrative burdens.

(b) The decision that compliance would result in such alteration or burdens must be made by the Secretary or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits and services of the program or activity.

§ 9.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford an individual with disabilities an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the individual with disabilities.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries or members of the public by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used to communicate with persons with impaired hearing.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with this section would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Secretary or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with § 9.160 would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits and services of the program or activity.

§ 9.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of disability in programs or activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 under section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The Responsible Official shall coordinate implementation of this section.

(d) Persons may submit complete complaints to the Assistant Secretary for Fair Housing and Equal Opportunity, 451 Seventh St., SW., Washington, DC 20410, or to any HUD Area Office. The agency shall accept and investigate all complete complaints for which the agency has jurisdiction. All complete complaints shall be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause. For purposes of determining when a complaint is filed, a complaint mailed to the agency shall be deemed filed on the date it is postmarked. Any other complaint shall be deemed filed on the date it is received by the agency. The agency shall acknowledge all complaints, in writing, within ten (10) working days of receipt of the complaint.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate Government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151 through 4157), is not readily accessible to and usable by individuals with disabilities. The agency shall delete the identity of the complainant from the copy of the complaint.

(g)(1) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the Office of Fair Housing and Equal Opportunity shall complete the investigation of the complaint, attempt informal resolution, and if no informal resolution is achieved, issue a letter of findings. If a complaint is filed against the Office of Fair Housing and Equal Opportunity, the Secretary or a designee of the Secretary shall investigate and resolve the complaint through informal agreement or letter of findings.

(2) If a complaint is resolved informally, the terms of the agreement

shall be reduced to writing and made part of the complaint file, with a copy of the agreement provided to the complainant and the agency. The written agreement may include a finding on the issue of discrimination and shall describe any corrective action to which the complainant and the respondent have agreed.

(3) If a complaint is not resolved informally, the Office of Fair Housing and Equal Opportunity or a person designated under this paragraph shall notify the complainant of the results of the investigation in a letter containing—

(i) Findings of fact and conclusions of law;

(ii) A description of a remedy for each violation found;

(iii) A notice of the right to appeal to the Secretary;

(h)(1) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by § 9.170(g). The Assistant Secretary or the person designated by the Secretary to decide an appeal of a complaint filed against the Office of Fair Housing and Equal Opportunity may extend this time for good cause.

(2) Timely appeals shall be accepted and processed by the Assistant Secretary. Decisions on an appeal shall not be issued by the person who made the initial determination.

(i) The Assistant Secretary or the person designated by the Secretary to decide an appeal of a complaint filed against the Office of Fair Housing and Equal Opportunity shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the agency determines that it needs additional information from the complainant, it shall have 60 days from the date it receives the additional information to make its determination on the appeal.

(j) The time limits cited in paragraphs (g) and (i) of this section may be extended with the permission of the Assistant Attorney General.

(k) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

Dated: June 9, 1994.

Henry G. Cisneros,

Secretary.

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federal register

Thursday
June 16, 1994

Part VI

Department of Labor

Office of Labor-Management Standards

29 CFR Part 417

Local Labor Organization Officers; Procedure for Removal; Proposed Rule

DEPARTMENT OF LABOR

Office of Labor-Management Standards

29 CFR Part 417

RIN 1294–AA10

Procedure for Removal of Local Labor Organization Officers

AGENCY: Office of Labor-Management Standards, Office of the American Workplace, Labor.

ACTION: Proposed rule.

SUMMARY: The Department of Labor is proposing to amend the regulation pertaining to the procedure for removal of local labor organization officers pursuant to section 401(h) of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA). Section 417.16 presently gives the Secretary of Labor the authority to bring suit against a union after a member has filed a complaint with the Secretary alleging that the local labor organization has failed to follow the officer removal procedures contained in the organization's constitution and bylaws. This proposed rule deletes that language, which purports to give the Secretary general authority to bring suit against a union for failing to follow its officer removal procedures even if the inadequacy of the procedure has not been established. This change will bring the regulation into conformity with a court of appeals decision that held that the Secretary lacks such authority.

DATES: Interested parties may submit written comments on this proposal. All comments must be submitted by August 15, 1994.

ADDRESSES: Written comments should be submitted to Edmundo Gonzales, Deputy Assistant Secretary for Labor-Management Standards, Office of the American Workplace, U.S. Department of Labor, 200 Constitution Avenue, NW., room N–5605, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Kay H. Oshel, Chief, Division of Interpretations and Standards, Office of Labor-Management Standards, Office of the American Workplace, U.S. Department of Labor, 200 Constitution Avenue, NW., room N–5605, Washington, DC 20210; (202) 219–7373. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title IV of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), governs the election and removal of labor organization officers. Section 401(h) of the LMRDA (29 U.S.C. 481(h)) provides that if the Secretary of Labor, upon application of a member of a local labor organization, finds after a hearing in accordance with the Administrative Procedure Act, that the constitution and bylaws of the labor organization do not provide an adequate procedure for the removal of an elected officer guilty of serious misconduct, such officer may be removed for cause shown and after notice and hearing, by the members in good standing voting in a secret ballot conducted by the officers of such labor organization in accordance with its constitution and bylaws insofar as they are not inconsistent with the provisions of Title IV of the LMRDA.

The Department has interpreted section 401(h), when read in conjunction with section 402(a), as additionally granting the Secretary of Labor the authority to file suit against a union for failure to follow removal procedures whose adequacy has not been challenged. Section 402(a) states in part that "(a) a member of a labor organization: (1) Who has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body, or (2) who has invoked such available remedies without obtaining a final decision within three calendar months after their invocation, may file a complaint with the Secretary within one calendar month thereafter alleging the violation of any provision of section 401 (*including violation of the constitution and bylaws of the labor organization pertaining to the election and removal of officers*) (emphasis added) * * *." Subpart B of 29 CFR part 417 implements this interpretation.

In *Donovan* v. *Hotel, Motel & Restaurant Employees Local 19*, 700 F.2d 539 (9th Cir. 1983), however, the court held, after examining the legislative history of the Act, that the LMRDA does not authorize the Secretary to bring civil action against a union for failure to follow its concededly adequate officer removal procedure. *Local 19* rejected the Secretary's reliance on section 402(a) as a basis for extending his authority under section 401(h) to intervene in officer removal proceedings where an adequate removal procedure exists. The court concluded that those regulations found in subpart B of 29 CFR part 417 which purport to give the Secretary general authority to intervene in union affairs upon a finding that a union has failed to follow its adequate removal procedures are void for lack of statutory authority.

Local 19 is the only judicial decision that addresses this issue, and the Department has determined, upon review, that the holding of the court in *Local 19* is correct. The Department therefore proposes to delete the language in subpart B of 29 CFR part 417 granting the Secretary authority to file suit against a union for failure to follow its adequate officer removal procedures.

Administrative Notices

A. Executive Order 12866

The Department of Labor has determined that this rule is not a significant regulatory action as defined in section 3(f) of Executive Order 12866 in that it will not: (1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities, (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency, (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof, or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

B. Regulatory Flexibility Act

The Agency Head has certified that this proposed rule, if issued, will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act. The proposed rule will only apply to local labor organizations and would decrease the regulation of such labor organizations. However, the Department has determined that labor organizations regulated pursuant to the statutory authority granted under the LMRDA do not constitute small entities. Therefore, a regulatory flexibility analysis is not required.

C. Paperwork Reduction Act

This rule contains no information collection requirements. Therefore, the Paperwork Reduction Act of 1980, as amended, is not applicable.

List of Subjects in 29 CFR Part 417

Labor unions

Text of Proposed Rule

In consideration of the foregoing, the Department of Labor proposes that subpart B of part 417 of title 29, Code of Federal Regulations, be amended as follows:

PART 417—PROCEDURE FOR REMOVAL OF LOCAL LABOR ORGANIZATION OFFICERS

In the authority citation for part 417 continues to read as follows:

Authority: Secs. 401, 402, 73 Stat. 533, 534 (29 U.S.C. 481, 482); Secretary Order No. 2–93 (58 FR 42578).

2. The heading part 417, subpart B, is revised to read as follows:

Subpart B—Procedures Upon Failure of Union to Act Following Subpart A Procedures

3. 29 CFR 417.16 is revised to read as follows:

§ 417.16 Initiation of proceedings.

(a) Any member of a local labor organization may file a complaint with the Office of Labor-Management Standards alleging that following a finding by the Assistant Secretary pursuant to Subpart A that the constitution and bylaws of the labor organization pertaining to the removal of officers are inadequate, or a stipulation of compliance with the provisions of section 401(h) of the Act reached with the Director in connection with a prior charge of the inadequacy of a union's constitution and bylaws to remove officers, as provided in subpart A of this part, the labor organization: (1) Has failed to act within a reasonable time, or (2) has violated the procedures agreed to with the Director, or (3) has violated the principles governing adequate removal procedures under § 417.2(b)

(b) The complaint must be field pursuant to section 402(a) of the Act within one calendar month after one of the two following conditions has been met: (1) The member has exhausted the remedies available to him under the constitution and bylaws of the organization, or (2) the member has invoked such remedies without obtaining a final decision within three calendar months after invoking them.

Signed in Washington, DC this 9th day of June, 1994.

Martin Manley,

Assistant Secretary for the American Workplace.

[FR Doc. 94–14541 Filed 6–15–94; 8:45 am]

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federal register

Thursday
June 16, 1994

Part VII

Department of Education

34 CFR Part 386

Rehabilitation Training: Rehabilitation Long-Term Training; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 386

RIN 1820–AB21

Rehabilitation Training: Rehabilitation Long-Term Training

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing grants for long-term training to implement the Rehabilitation Act Amendments of 1992 and the Technology-Related Assistance for Individuals With Disabilities Act Amendments of 1994. The Rehabilitation Long-Term Training program is authorized by section 302 of Title III of the Rehabilitation Act of 1973, as amended (the Act). The purpose of this discretionary grant program is to fund projects to provide academic training in areas of personnel shortages identified by the Secretary.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Richard Melia, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3324 Switzer Building, Washington, DC 20202–2649. Telephone (202) 205–9400. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: These final regulations implement changes made by the Rehabilitation Act Amendments of 1992 (Pub. L. 102–569) and the Technology-Related Assistance for Individuals With Disabilities Act Amendments of 1994 (Pub. L. 103–218). These amendments direct the Secretary to issue regulations, as appropriate, to carry out the provisions of the Rehabilitation Act of 1973, as amended.

This program supports the National Education Goal that, by the year 2000, every adult American be literate and possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. The Department supports a variety of training activities for vocational rehabilitation personnel so that they may assist individuals with disabilities in gaining the knowledge and skills to obtain employment and compete in a global economy.

On October 8, 1993, the Secretary published a notice of proposed rulemaking (NPRM) for the Rehabilitation Long-Term Training program in the **Federal Register** (58 FR 52606). The major issues related to this program are discussed in the preamble to the NPRM. Significant changes resulting from public comment since publication of the NPRM include—(1) A waiver provision for part of the non-Federal share of the cost of a project if an applicant demonstrates that it does not have sufficient resources for the entire match; (2) An exemption for existing projects from the requirement to direct 75 percent of the total award to scholarships; and (3) A broadening of the term "deaf" to include individuals who are "hard of hearing" and of the term "blind" to include individuals who have "vision impairment."

In addition, after the NPRM was published, the Technology-Related Assistance for Individuals With Disabilities Act Amendments of 1994 (Pub. L. 103–218) was enacted. Those amendments included a technical change to the Rehabilitation Act of 1973, as amended, in the area of rehabilitation training. That statutory change has been incorporated into these regulations by adding the use, applications, and benefits of assistive technology devices and assistive technology services to the list of areas of personnel shortages identified in § 386.1.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 386 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

Major issues are grouped according to subject, with appropriate sections of the regulations referenced in parentheses. Other substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes are not addressed.

General Comments

Intent of Change in Long-Term Training Regulations

Comment: A commenter expressed the opinion that since university programs have long been addressed in the long-term category, the change in regulations appears to be intended to eliminate any training that results in less than an academic degree.

Discussion: Approximately 70 percent of grants under the Rehabilitation Long-Term Training program are currently for academic training. The 30 percent that are non-academic are concentrated in several areas: Administration, prosthetics and orthotics, community rehabilitation personnel, mental illness, independent living, client assistance program, supported employment, and deafness. The intent is not to eliminate any training for less than an academic degree, but to clarify and focus the specific mission of each training authority to improve program management. Regulations that accurately reflect the program purpose of providing academic training in areas of personnel shortages identified by the Secretary permit targeted allocations of funds to specific personnel needs, facilitate pertinent outcome measures, and ensure that administrative requirements relating to proposal evaluations, scholarships, recordkeeping, matching, and reporting are appropriate.

Changes: None.

Insufficient Public Input in the Regulations Development Process

Comments: There were a number of comments stating that the proposed regulations were developed without participation of the rehabilitation field.

Discussion: The Secretary agrees that open and extensive public participation strengthens the regulations process. In fact, extensive public input was obtained when the Rehabilitation Services Administration (RSA) convened a public meeting on rehabilitation training and published a notice requesting written public comments in May 1991. Comments received provided useful information that was considered in crafting the regulations. Also, training meetings were held throughout the United States in 1993 on the Rehabilitation Act Amendments.

Changes: None.

The Department Should Conduct a Needs Assessment Before Enacting New Regulations That Reduce or Eliminate Post-Employment Training for Rehabilitation Personnel

Comments: Most of the comments calling for needs assessments were from direct service providers who were concerned that the academic program emphasis in the Rehabilitation Long-Term Training program would reduce or eliminate crucial training for current service delivery personnel.

Discussion: The Department has conducted needs assessments of the training needs of personnel providing vocational rehabilitation services to individuals with disabilities since 1983 and will continue to do so in the future, as the authorizing statute requires it.

Changes: None.

Funding Post-Employment Training if Long-Term Training Regulations Are Enacted

Comments: A number of commenters expressed concern that there appears to be no money to provide post-employment training under training authorities other than long-term training. Commenters requested that, if the Rehabilitation Long-Term Training program is to be substantially changed, new regional networks of community-based continuing education units be established. These units would be similar to the Rehabilitation Continuing Education Programs and would be focused on individuals at the front lines of service delivery. Several commenters suggested that separate regulations could be developed for university and non-university grant recipients.

Discussion: The Secretary agrees that post-employment training needs of community rehabilitation training providers should be addressed, in part, by a network of regional continuing education programs. The Secretary annually allocates funds to address personnel shortages of qualified rehabilitation personnel. These funds are targeted to address training needs by professional discipline and rehabilitation jobs. The Secretary submits an annual report to the Congress containing and justifying rehabilitation training allocations in detail. The Secretary has authority to allocate funds from the long-term training area to continuing education or other short-term or specialized training for post-employment training of community rehabilitation personnel.

Changes: None.

Specific Comments by Section

The Program Purpose of Rehabilitation Long-Term Training (§§ 386.1 and 386.20(g)(2)

Comments: A number of commenters supported inclusion of academic training as the primary purpose of the Rehabilitation Long-Term Training program. They stated that the emphasis on academic outcomes is consistent with the requirements of the Rehabilitation Act Amendments of 1992 (1992 Amendments) to the Rehabilitation Act, which stress the use of "qualified" personnel. However, a number of other commenters asked about the statutory authority for funding only academic programs and excluding continuing education programs under the Rehabilitation Long-Term Training program. These commenters argued that there is no justification in the Rehabilitation Act for stating that the purpose of RSA's Long-Term Training program is to provide "academic" training.

Discussion: Section 302 of the Rehabilitation Act, as amended, is the statutory basis for the rehabilitation training programs. Except for the in-service training program, which now is included in the Act, the specific rehabilitation training programs, including the Rehabilitation Long-Term Training program, are established in regulations issued by the Secretary based on the statutory authority in section 302. The Secretary establishes programs so that each has a specific mission defined in regulations with appropriate outcome measures. The Secretary believes that the long-term training program should be focused on academic training.

Changes: None

Client Assistance Program (CAP) (§ 386.1)

Comments: Several commenters observed that preparation for employment in client assistance programs is not currently offered in academic training settings and that CAP training should continue to be provided under long-term training.

Discussion: The Secretary agrees that no current academic training exists for preparing individuals to work in client assistance programs and that there is a demonstrated need for continued post-employment training of CAP personnel. Existing CAP training projects will continue to be funded until their current grant periods end. The Secretary plans to invite future applications for CAP training under the provisions in section 302 of the Act and in the general regulations for Rehabilitation Training in 34 CFR part 385. Future CAP training notices will be targeted to specific needs for training and technical assistance and published for public comment before applications are solicited.

Changes: None.

Fields of Study Under the Rehabilitation Long-Term Training Program (§ 386.1)

Comments: Several commenters suggested revisions in the listing of fields of study to conform with the listing of fields of study in section 302(b)(1)(B) of the Rehabilitation Act and to include additional, specific fields, such as vision therapy and rehabilitation computer systems.

Discussion: The listing of fields in the Rehabilitation Act does not provide enough detail. For example, a specific category is needed for the Secretary to target training resources for the preparation of specialized personnel for individuals who are blind or have vision impairment. The list of 30 areas established in regulations builds upon the listing in the Act by using areas that have been included in past long-term training competitions because they are areas where needs assessments show continuing needs. The Secretary has the authority under § 386.1(b)(30) of the regulations to invite applications in other fields, such as vision therapy and rehabilitation computer systems, contributing to the rehabilitation of individuals with disabilities. Also, the Experimental and Innovative Training program (34 CFR part 387) offers opportunities for submittal of proposals to develop new types of training programs for rehabilitation personnel.

Changes: None.

Use of the Term "Blind" and the Term "Deaf" (§ 386.1)

Comments: One commenter suggested that the term "blind" be eliminated because it connotes the absence of vision, and the vast majority of individuals who are targeted for rehabilitation under this category have residual vision (i.e., are partially sighted). Another commenter suggested substituting a broader category that would include blind individuals as well as other individuals with visual impairment. One Commenter suggested elimination of the term "deaf" as it connotes the absence of hearing, and many individuals served under the Rehabilitation Act have partial hearing loss. The commenter suggested use of a more inclusive phrase, such as persons with hearing loss.

Discussion: The Secretary agrees that a change is needed in the identification of these categories of training. In the past, the Act included specialized personnel in providing services to individuals who are blind and to individuals who are deaf among the targeted areas of personnel shortages to which training projects might be directed. The terms "blind" and "deaf" were not specifically defined, but were broadly interpreted to include individuals with partial or total vision or hearing loss. The 1992 Amendments removed the terms "blind" and "deaf" from the listing of training areas in section 302(b)(1) and substituted training of personnel to provide services to individuals with specific disabilities.

Since the regulations in 34 CFR part 386 provide the basis for specific allocations of training funds to targeted areas of personnel shortages, it is particularly important that the listing of targeted areas be as specific and inclusive as possible.

Changes: The Secretary has included "specialized personnel for rehabilitation of individuals who are blind or have vision impairment" and "specialized personnel for rehabilitation of individuals who are deaf or hard of hearing" as targeted areas within § 386.1 for training allocations.

Lack of Academic Training in Guam (§ 386.1)

Comment: One commenter expressed concern that rehabilitation training in Guam, which in the past has been provided through continuing education projects under the long-term training program, will no longer be available.

Discussion: The Secretary recognizes the need for improved access to rehabilitation training for Guam and other remote and isolated areas. The Secretary believes that these needs will be met, in part, by distance learning training, which was first funded in fiscal year 1993 as a result of the 1992 Amendments (section 803(a) of the Rehabilitation Act of 1973, as amended).

Changes: None.

Eligibility of State Agencies and Other Public or Nonprofit Agencies and Organizations, Including Institutions of Higher Education, Under the Rehabilitation Long-Term Training Program (§ 386.2)

Comment: One commenter noted that, since State agencies and other public or nonprofit agencies do not offer degrees or certificates, maintaining those organizations as eligible applicants implies the intent to continue non-academic long-term training.

Discussion: Section 302(a) of the Act establishes the broad eligibility criteria for applicants under the Rehabilitation Long-Term Training program. The Secretary is aware of the rapidly changing auspices and circumstances under which specialized academic and certificate training is offered in the field of rehabilitation. Consortia and partnerships of States, public or nonprofit private agencies and organizations, and institutions of higher education may be formed to address rehabilitation training needs. The Secretary encourages those efforts and desires regulations that will facilitate new approaches through flexibility in eligibility requirements.

Changes: None.

Professional Corporation or Professional Practice (§ 386.4)

Comment: One commenter wrote in support of the provisions in the regulations that define professional corporation or professional practice.

Discussion: The Secretary appreciates the support for the definition of professional corporation or professional practice.

Changes: None.

Related Agency (§ 386.4)

Comment: One commenter suggested substituting the legislative definition of "community rehabilitation program" in place of the language proposed in § 386.4(b) describing related agencies that are not American Indian rehabilitation programs.

Discussion: Section 7(25) of the Act includes an expanded definition of "community rehabilitation program." The Secretary reviewed the definition of community rehabilitation program in preparing regulations implementing the Rehabilitation Act Amendments of 1992. There is not an exact match between the expanded definition of community rehabilitation program in Title I of the Act and the legislative definition of related agency in Title III. Therefore, "community rehabilitation program" was not used in the definition of related agency.

Changes: None.

Including Specific References to Culturally Diverse Populations in Appropriate Sections of the Regulations (§§ 386.1, 386.20, 386.33, and 386.40)

Comments: Several commenters felt that, although individuals who are unserved or underserved by programs under the Act are specifically referenced in the description of the Rehabilitation Long-Term Training program, policies and procedures to include culturally diverse recruitment and retention efforts should be implemented for all 30 categories of rehabilitation training. Selection criteria should be modified to give credit for program development related to culturally diverse populations.

Discussion: The Secretary agrees that it is essential that all requirements in the Rehabilitation Act of 1973, as amended, are implemented to ensure equal access and outreach for traditionally underserved populations, including minorities. At present, the primary method for directing rehabilitation training program grantees to meet those requirements is through the assurances mandated for each applicant. The Department is currently working to implement section 21 of the Act, including outreach services and other related activities, to enhance the capacity of minority institutions to compete for grants, contracts, and cooperative agreements. In the future, the Department may propose specific priorities or selection criteria that address needs of traditionally underserved populations across the range of rehabilitation discretionary programs.

Changes: None.

Minimum 10 Percent Matching Requirement (§ 386.30)

Comments: Many comments were received objecting to the requirement that the Federal share of an award may not be more than 90 percent of the total cost of a project under this program. A number of commenters pointed out that the eight percent indirect costs currently allowed by the Department on training awards do not cover current administrative costs. Concern was expressed that many universities would not provide a 10 percent match. Some commenters observed that the present negotiated system offers flexibility. Many commenters pointed out that post-employment training programs for community rehabilitation personnel would have difficulty with the 10 percent required match. Some university commenters indicated that their institutions face substantial resource problems. Other commenters asked if the match could be in-kind. One commenter wrote that the limitation of 90 percent Federal support for proposed projects is fair and reasonable.

Discussion: The Rehabilitation Act of 1973, as amended, requires a matching component for rehabilitation training grants. The Secretary believes that, if the Department states the minimum matching amount in advance of negotiations, the award process is more understandable and efficient. Most current academic grantees under the Rehabilitation Long-Term Training program have negotiated awards with a match in excess of 10 percent. The Secretary is aware that a number of non-academic, post-employment training grantees under this program have experienced difficulty meeting even a 10 percent matching requirement. This problem will be solved, in part, by funding some future awards with a post-employment focus under the Rehabilitation Continuing Education program in which the current matching requirement as presented in recent closing date announcements is four percent. In all instances, the applicant share may be in-kind. As a result of a recent program audit that identified

problems in the use of faculty time for in-kind matching, the Secretary prefers that the applicant share in the Rehabilitation Long-Term Training program by directly funding student scholarship assistance as the designated match.

Changes: The 10 percent matching requirement remains, but a new provision has been added indicating that the Secretary may waive part of the non-Federal share of the cost of the project if the applicant demonstrates during the negotiations process that it does not have sufficient resources to contribute the entire match.

Requirements for Directing Grant Funds: Adverse Impact of the Requirement That a Grantee Must Use at Least 75 Percent of Total Award for Scholarships as Defined in § 386.4 (§ 386.31)

Comments: Numerous commenters, primarily from community rehabilitation programs and related personnel training programs, expressed concern that the proposed 75 percent scholarship requirement would limit access of community rehabilitation program personnel to needed continuing education programs.

Discussion: The Secretary agrees that personnel employed in community rehabilitation programs should continue to receive short-term, continuing rehabilitation training. This will be accomplished by offering that training under other, more appropriate Rehabilitation Training program categories, including 34 CFR part 389 (Rehabilitation Continuing Education Programs) and 34 CFR part 390 (Rehabilitation Short-Term Training). The Secretary believes that the availability of needed post-employment training for community rehabilitation personnel will be provided through regional continuing education programs. However, the Secretary wants to ensure that all currently funded multi-year long-term training projects continue for the remainder of their project period.

Changes: A new provision has been added (§ 386.31(c)) stating that the requirement for a grantee to use at least 75 percent of the total award for scholarships does not apply for the remainder of the project period for multi-year projects in existence as of October 1, 1994.

Comments: One commenter expressed concern that directing long-term training programs to use at least 75 percent of their total award for scholarships will reduce cross-training of professionals who work with individuals with disabilities.

Discussion: The Secretary believes that rehabilitation short-term, continuing education, and in-service training programs offer excellent opportunities for cross-training of rehabilitation professionals. In addition, the Secretary believes that existing professional program accreditation processes and individual licensure and certification procedures by national, State, and professional organizations are attentive to cross-training needs.

Changes: None.

Comments: Several commenters observed that scholarships are not needed in a prosthetic or orthotic curriculum because programs attract more than enough qualified students. Moreover, it was noted that prosthetic and orthotic programs are costly to operate. Students attend labor intensive lab classes with a low student to instructor ratio. Although programs are making changes that will reduce expenses, supply and equipment costs are high, and without additional Federal support, it would be difficult to operate them. Many students now take loans to pay for their education, are supported by employers, or are self-supporting. Supplementation of these resources with direct student support from RSA could be useful, but the commenters do not feel this should be the primary method of support.

Discussion: The Secretary acknowledges that prosthetics and orthotics (P & O) rehabilitation training is highly individualized and often requires intensive lab supervision and high equipment costs. The Secretary will take these unique circumstances, to the extent that they are supported with evidence in the proposal, into consideration in reviewing the requirement to direct at least 75 percent of the total award for scholarships. The Secretary is concerned by the argument that scholarships are not needed in P & O because the field attracts more than enough students. The purpose of the Rehabilitation Long-Term Training program is to provide academic training in areas of personnel shortages identified by the Secretary. P & O has been identified as an area with personnel shortages, and providing students with scholarships ensures that the work-or-repay provisions of the Rehabilitation Act will direct graduates to service in support of State rehabilitation agencies in areas of personnel shortages.

Changes: None.

Comments: A number of commenters requested that the current regulations be maintained to address specialized nonacademic programs in deafness, blindness, mental illness, independent living, and in vocational evaluation because unique, one-of-a-kind projects currently funded under long-term training would no longer be eligible for support under the new regulations.

Discussion: The Secretary believes that the Rehabilitation Long-Term Training program cannot be expected to meet all specialized training needs, particularly in nonacademic areas. The Secretary plans to make greater use of the extensive flexibility provided by section 302 of the Act and the six specific rehabilitation training programs to ensure that specialized training needs are addressed.

Changes: None.

Comments: Several representatives of tribal-controlled colleges commented that, because of support that they receive from the Bureau of Indian Affairs for each Native American student, there is less need for stipends and scholarships as student incentives. Tribal-controlled colleges, however, need greater levels of financial support to maintain national and regional networks through faculty travel, for supervision at internship sites; for course development, and for materials development. Commenters were concerned that the 75 percent limit would hurt program growth and quality and would be detrimental to undergraduate rehabilitation programs in rural regions where graduates work with American Indian clients.

Discussion: The Secretary agrees that tribal-controlled colleges and other training programs for Native Americans often conduct rehabilitation training under unique circumstances. Under § 386.31(b), the Secretary may award grants that use less than 75 percent of the total award for scholarships based on the unique nature of the project. It will be particularly important for applicants to document the unique circumstances that apply in their proposals to assist the Secretary in making this determination.

Changes: None.

Comments: Two commenters observed that, if a quantitative requirement regarding the percentage of funds directed to scholarships is necessary, there should be a reduction in the limit and a broadening of the unique circumstances under § 386.31(b) if less than 75 percent of the funds are devoted to scholarships. The Department should provide examples of circumstances of projects funded with less than 75 percent in scholarships. In addition, projects should be approved that demonstrate that the shortage they intend to meet is best met by funding training program resources such as faculty and equipment. Many traditional degree or certificate granting disciplines, such as physical medicine

and rehabilitation and its residency programs, are limited because of the lack of adequate numbers of faculty and, therefore, programs. Also, there should be an exception for training programs in newly emerging areas, such as independent living, that do not have degrees or certificates.

Discussion: The Secretary believes that a quantitative limit is necessary to establish clear standards for all applicants. Current long-term training grants average over $100,000 per year; therefore, a grant with 75 percent of the award targeted for scholarships will still have more than $25,000 for other related costs. Broadening the circumstances under which unique projects may be supported that use less than 75 percent of the total award for scholarships is not consistent with the overall objective of the long-term training program.

Changes: None.

Comments: Many commenters from university rehabilitation training programs expressed concern that programs at their institutions might be discontinued if Federal funds were required to be directed to student support rather than for paying for instructional costs.

Discussion: Existing regulations require academic training projects with a multi-year project period to increase the grantee's share of teaching costs progressively in each succeeding year so that total personnel costs are fully absorbed by the grantee at the termination of the project period. The 75 percent requirement provides greater latitude than existing regulations.

Changes: None.

Requirements for Directing Grant Funds: The Department of Education Should Target Priorities To Require Grantees To Award Specific Degrees or Certificates (§ 386.31).

Comments: One commenter requested that the Secretary use program announcements to target programs on degrees and certificates in appropriate areas. Two commenters requested that the Secretary be sensitive to individual student preferences for attending degree or certificate programs.

Discussion: The Secretary believes that current professional accreditation by the designated accrediting agency in the professional field in which grant support is being provided is adequate assurance that an academic program offers an appropriate degree. From time to time, the Secretary may assign an absolute priority to proposals offering a specific degree or certificate if the Secretary has determined that personnel shortages in the professional field require that preference. Those priorities will be presented for public comment before applications are solicited. The Secretary agrees that, to the extent possible in responding to personnel shortages, a wide range of degree and certificate programs offering Federal rehabilitation scholarship assistance should be available to facilitate student choice. However, no change in the regulations is required.

Changes: None.

Exclusion of Federal Employees From Receiving Training Scholarships (§ 386.33(a)(2))

Comment: One commenter protested that this is not a fair regulation because it discriminates against a group of people—Federal employees. The example was a full-time GS–7 Federal correctional officer enrolled in a rehabilitation counseling program at a university with an RSA grant.

Discussion: The Secretary agrees that the limitation on Federal employees serves no useful purpose.

Changes: The restrictive language has been dropped.

Grantee Disbursement and Scholarship Assurance Provisions (§§ 386.33 Through 386.43)

Comments: Several commenters called for a less adversarial phrasing of scholarship conditions to enhance recruitment of trainees. Other suggestions included placing the burden on the scholar (at the time of the exit interview) to report to the grantee using a packet containing several change-of-address forms, change-of-employment forms, and a completion of work obligation form. Another commenter stated the belief that any tracking or reporting activities pursuant to payback obligations are the exclusive responsibility of the granting agency.

Discussion: The regulations describe conditions that must be met by a grantee after award in subpart D and conditions that must be met by a scholar in subpart E. No adversarial system of grantee vs. scholar or Federal agency vs. grantee is implied or intended. The intent is to clearly identify the responsibilities of all parties. Tracking and recordkeeping, which can be facilitated by change-of-address and change-of-employment forms, are not excessively burdensome for the numbers of students supported by the average grant under the Rehabilitation Long-Term Training program.

Changes: None.

Work-or-Repay Requirements for Certificate Programs (§§ 386.4 and 386.34)

Comment: One commenter asked for assurances that the work-or-repay provisions will be applied to all academic degree pre- or post-employment programs as well as to non-degree awarding, certificate granting continuing education programs.

Discussion: The Secretary agrees that the work-or-repay provision applies to each individual who receives a scholarship, whether for a degree or a certificate program. The term "certificate" is defined in § 386.4 of the regulations. Examples of certificate programs that offer scholarships and are subject to the work-or-repay provision include post-baccalaureate training in allied health areas, such as occupational therapy, physical therapy, and prosthetics and orthotics. The Secretary believes that the work-or-repay provision does not apply to certificate programs in non-academic or emerging areas because no scholarship assistance is provided to individuals. Assistance in the form of per-diem expenses for short-term training is not considered to be scholarship assistance subject to the work-or-repay provision. It would be burdensome and inappropriate to enforce a work-or-repay provision for that assistance. The Secretary believes that confusion about the different types of certificates and the applicability of repayment will be resolved by focusing the Rehabilitation Long-Term Training program on academic scholarship training (degree and certificate) subject to the work-or-repay provision and using other more appropriate training authorities for non-academic, non-scholarship, post-employment training.

Changes: None.

Stricter Standards for Work-or-Repay Provision (§ 386.34)

Comment: One commenter suggested that grantees be required to arrange for all scholars to attend an extensive pre-enrollment work-or-repay seminar series at which participating agencies in the city or State (along with the grantee) would provide clearly detailed information regarding job opportunities for and subsequent responsibilities of scholars.

Discussion: The Secretary agrees that a job seminar would be valuable for many scholarship recipients and potential rehabilitation employers. Such an activity, however, should be at the discretion of the grantee and not a regulatory requirement.

Changes: None.

Flexibility in Future Applications of Work-or-Repay Requirements (§ 386.34)

Comment: One commenter encouraged flexibility in the application of this requirement to emerging fields like independent living.

Discussion: The Secretary agrees that the work-or-repay provision should apply only to academic training and that fields such as independent living (IL) do not currently provide academic training subject to the work-or-repay provision. The Secretary plans to support future post-employment training grants in IL under training authorities that are not subject to the work-or-repay provision. However, it appears likely that research and curriculum development advances will soon make academic training, particularly in community colleges, possible. Therefore, in anticipation of the need to provide academic or certificate training opportunities, the Secretary has also retained IL as a Rehabilitation Long-Term Training program field.

Changes: None.

Work-or-Repay Tracking Systems (§ 386.34(g))

Comments: Several commenters expressed concern that the proposed regulations inappropriately place grantee institutions in watch-dog roles. In particular, there was objection to the requirement for documentation that the grantee has checked for addresses of missing scholars with alumni organizations.

Discussion: The Secretary does not believe that the requirement that the grantee check with university-sponsored alumni organizations if it is experiencing difficulty in locating a scholar is inappropriate. The regulations do not constitute a basis for forcing disclosure of records from any private organization. If a grantee cannot document, because of the inability to locate a scholar who has graduated, that requirements of the work-or-repay provision have been met by an individual, the grantee will be responsible for reporting to the Secretary that the individual has not completed the requirement. The Secretary will then initiate enforcement actions as outlined in § 386.43. The intent of the regulations is to have the grantee exhaust all possibilities to locate and contact the individual before the matter is referred to the Secretary.

Changes: None.

Work-or-Repay Records (§ 386.34(h))

Comments: Two commenters expressed concern that the proposed regulations inappropriately obligate grantee institutions to perform time-consuming and expensive database creation, maintenance, updating, and reporting functions for as many as six years for which the grantee receives no compensation from the Federal Government.

Discussion: The Secretary believes that the work-or-repay provision is a partnership between grantees and the Federal Government. Grantees are closest to the individuals and are in the best position to advise, assist, and admonish scholars on matters related to their work-or-repay requirements. The Secretary believes that administrative costs for these activities are minimal and are not feasible for line itemization. Instead, the Secretary sees these costs as subsumed under grantee indirect costs. The regulations have been written to state clearly that the responsibility for recordkeeping extends until the repayment period has ended for all students provided scholarships.

Changes: None.

June 1, 1992, Effective Date for New Work-or-Repay Provisions (§ 386.34)

Comment: A commenter expressed concern that this requirement is being imposed a full five months before the 1992 Amendments to the Rehabilitation Act were even approved. The commenter asked how, if these proposed regulations are in response to the 1992 Amendments, can this date be required since it predates the amendments?

Discussion: The June 1992 effective date was set retroactively in the Rehabilitation Act Amendments of 1992.

Changes: None.

Payback Requirements for Scholars Who Become University Educators (§ 386.34)

Comments: Two commenters observed that the proposed regulations do not permit graduate and doctoral level scholarship recipients to meet the work-or-repay provision by teaching at a university unless the university has a formal agreement with the State agency identifying the university as a "related agency."

Discussion: The identification of a "related agency" derives from the Rehabilitation Act of 1973, as amended. Educators whose college or university employer meets the definition of a related agency (§ 386.4) by providing services to individuals with disabilities under an agreement with a designated State agency and who are employed in the area of specialty for which Federal support for their training was provided will have no problem meeting the requirement. Examples of acceptable arrangements include educators who have agreements to supervise field placements of students in training at State agencies and related agencies, who serve as advisors or consultants to State agencies and related agencies, and who provide direct services through their universities, including the instruction of individuals with disabilities. The key to meeting the work-or-repay requirement through employment in an educational institution is that the institution have an appropriate agreement with the designated State agency and that the scholar work in his or her specialty area.

Changes: None.

Proposed Six-Year Repayment Period (§ 386.34)

Comment: One commenter expressed concern that, after completing a two-year graduate program, a scholar will have only six years for repayment instead of the current ten-year repayment period.

Discussion: The time limits are set in the Rehabilitation Act Amendments of 1992.

Changes: None.

Work-or-Repay Provisions for Scholars Receiving Federal Benefits (§ 386.43)

Comment: One commenter suggested that the deferral of repayment due to disability be modified to exclude circumstances under which the individual achieves Social Security Disability Insurance (SSDI) earned income status.

Discussion: The Secretary does not believe that there is a need to distinguish the repayment status of scholars by the type of disability benefits a scholar may be receiving.

Changes: None.

Waiver of Notice of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the language added in § 386.1(b)(30) merely incorporates into the regulations a statutory change made by the Technology-Related Assistance for Individuals With Disabilities Act Amendments of 1994 to the Rehabilitation Act of 1973, as amended, and does not implement substantive policy. Therefore, the Secretary has determined, pursuant to 5 U.S.C. 553(b)(B), that public comment on the change in the regulations is unnecessary and contrary to the public interest.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed regulations and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 386

Grant programs, Rehabilitation training. Reporting and recordkeeping requirements.

Dated: June 9, 1994.

(Catalog of Federal Domestic Assistance Number 84.129, Rehabilitation Training: Rehabilitation Long-Term Training)

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

The Secretary amends title 34 of the Code of Federal Regulations by revising part 386 to read as follows:

PART 386—REHABILITATION TRAINING: REHABILITATION LONG-TERM TRAINING

Subpart A—General

Sec.
386.1 What is the Rehabilitation Long-Term Training program?
386.2 Who is eligible for an award?
386.3 What regulations apply?
386.4 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

386.20 What selection criteria does the Secretary use?

Subpart D—What Conditions Must Be Met After an Award?

386.30 What are the matching requirements?
386.31 What are requirements for directing grant funds?
386.32 What are allowable costs?
386.33 What are the requirements for grantees in disbursing scholarships?
386.34 What assurances must be provided by a grantee that intends to provide scholarships?
386.35 What information must be provided by a grantee that is an institution of higher education to assist designated State agencies?

Subpart E—What Conditions Must Be Met by a Scholar?

386.40 What are the requirements for scholars?
386.41 Under what circumstances does the Secretary grant a deferral or exception to performance or repayment under a scholarship agreement?
386.42 What must a scholar do to obtain a deferral or exception to performance or repayment under a scholarship agreement?
386.43 What are the consequences of a scholar's failure to meet the terms and conditions of scholarship agreement?

Authortiy: 29 U.S.C. 711(c) and 774, unless otherwise noted.

Subpart A—General

§ 386.1 What is the Rehabilitation Long-Term Training program?

(a) The Rehabilitation Long-Term Training program provides financial assistance for—

(1) Projects that provide basic or advanced training leading to an academic degree in one of those fields of study identified in paragraph (b) of this section;

(2) Projects that provide a specified series of courses or program of study leading to award of a certificate in one of those fields of study identified in paragraph (b) of this section; and

(3) Projects that provide support for medical residents enrolled in residency training programs in the specialty of physical medicine and rehabilitation.

(b) The Rehabilitation Long-Term Training program is designed to provide academic training in areas of personnel shortages identified by the Secretary and published in a notice in the **Federal Register**. These areas may include—

(1) Vocational rehabilitation counseling;

(2) Rehabilitation technology;

(3) Rehabilitation medicine;

(4) Rehabilitation nursing;

(5) Rehabilitation social work;

(6) Rehabilitation psychiatry;

(7) Rehabilitation psychology;

(8) Rehabilitation dentistry;

(9) Physical therapy;

(10) Occupational therapy;

(11) Speech pathology and audiology;

(12) Physical education;

(13) Therapeutic recreation;

(14) Community rehabilitation program personnel;

(15) Prosthetics and orthotics;

(16) Specialized personnel for rehabilitation of individuals who are blind or have vision impairment;

(17) Rehabilitation of individuals who are deaf or hard of hearing;

(18) Rehabilitation of individuals who are mentally ill;

(19) Undergraduate education in the rehabilitation services;

(20) Independent living;

(21) Client assistance;

(22) Administration of community rehabilitation programs;

(23) Rehabilitation administration;

(24) Vocational evaluation and work adjustment;

(25) Services to individuals with specific disabilities or specific impediments to rehabilitation, including individuals who are members of populations that are unserved or underserved by programs under this Act;

(26) Job development and job placement services to individuals with disabilities;

(27) Supported employment services, including services of employment specialists for individuals with disabilities;

(28) Specialized services for individuals with severe disabilities;

(29) Recreation for individuals with disabilities;

(30) The use, applications, and benefits of assistive technology devices and assistive technology services; and

(31) Other fields contributing to the rehabilitation of individuals with disabilities.

(Authority: 29 U.S.C. 711 and 771a)

§ 386.2 Who is eligible for an award?

Those agencies and organizations eligible for assistance under this program are described in 34 CFR 385.2.

(Authority: 29 U.S.C. 771a(a))

§ 386.3 What regulations apply?

The following regulations apply to the Rehabilitation Training: Rehabilitation Long-Term Training program:

(a) The regulations in this part 386.

(b) The regulations in 34 CFR part 385.

(Authority: 29 U.S.C. 771a)

§ 386.4 What definitions apply?

The following definitions apply to this program:

(a) Definitions in 34 CFR 385.4.

(b) *Other definitions.* The following definitions also apply to this part:

Academic year means a full-time course of study—

(1) Taken for a period totaling at least nine months; or

(2) Taken for the equivalent of at least two semesters, two trimesters, or three quarters.

Certificate means a recognized educational credential awarded by a grantee under this part that attests to the completion of a specified series of courses or program of study.

Professional corporation or professional practice means—

(1) A professional service corporation or practice formed by one or more individuals duly authorized to render the same professional service, for the purpose of rendering that service; and

(2) The corporation or practice and its members are subject to the same supervision by appropriate State regulatory agencies as individual practitioners.

Related agency means—

(1) An American Indian rehabilitation program; or

(2) Any of the following agencies that provide services to individuals with disabilities under an agreement with a designated State agency in the area of specialty for which training is provided:

(i) A Federal, State, or local agency.

(ii) A nonprofit organization.

(iii) A professional corporation or professional practice group.

Scholar means an individual who is enrolled in a certificate or degree granting course of study in one of the areas listed in § 386.1(b) and who receives scholarship assistance under this part.

Scholarship means an award of financial assistance to a scholar for training and includes all disbursements or credits for student stipends, tuition and fees, and student travel in conjunction with training assignments.

State rehabilitation agency means the designated State agency.

(Authority: 29 U.S.C. 711(c))

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 386.20 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Plan of operation.* (30 points) The Secretary evaluates each application on the basis of the criterion in § 385.32(a).

(b) *Quality of key personnel.* (10 points) The Secretary evaluates each application on the basis of the criterion in § 385.32(b).

(c) *Budget and cost effectiveness.* (10 points) The Secretary evaluates each application on the basis of the criterion in § 385.32(c).

(d) *Evaluation plan.* (5 points) The Secretary evaluates each application on the basis of the criterion in § 385.32(d).

(e) *Adequacy of resources.* (5 points) The Secretary evaluates each application on the basis of criterion in § 385.32(e).

(f)(1) *Evidence of need.* (10 points) The Secretary reviews each application for information that shows that the need for the training project has been adequately justified.

(2) The Secretary looks for information that shows that the need for the training project has been established in terms of rehabilitation supply and demand for qualified rehabilitation personnel and includes an assessment of how the project will respond to personnel needs established in local, State, or national studies.

(g)(1) *Relevance to State-Federal rehabilitation service program.* (10 points) The Secretary reviews each application for information that shows that the proposed project appropriately relates to the mission of the State-Federal rehabilitation service program.

(2) The Secretary looks for information that shows that the project can be expected either to increase the supply of trained personnel available to State and other public or nonprofit agencies involved in the rehabilitation of individuals with physical or mental disabilities through degree or certificate granting programs, or to improve the skills and quality of professional personnel in the rehabilitation field in which the training is to be provided through the granting of a degree or certificate.

(h)(1) *Nature and scope of curriculum.* (20 points) The Secretary reviews each application for information that demonstrates the adequacy of the proposed curriculum.

(2) The Secretary looks for information that shows—

(i) The scope and nature of the coursework reflect content that can be expected to enable the achievement of the established project objectives;

(ii) The curriculum and teaching methods provide for an integration of theory and practice relevant to the educational objectives of the program;

(iii) There is evidence of educationally focused practical and other field experiences in settings that ensure student involvement in the provision of vocational rehabilitation, supported employment, or independent living rehabilitation services to individuals with disabilities, especially individuals with severe disabilities;

(iv) The coursework includes student exposure to vocational rehabilitation, supported employment, or independent living rehabilitation processes, concepts, programs, and services; and

(v) If applicable, there is evidence of current professional accreditation by the designated accrediting agency in the professional field in which grant support is being requested.

(Approved by the Office of Management and Budget under control number 1820–0018.)

(Authority: 29 U.S.C. 711(c) and 771a)

Subpart D—What Conditions Must Be Met After an Award?

§ 386.30 What are the matching requirements?

The Federal share may not be more than 90 percent of the total cost of a project under this program. The Secretary may waive part of the non-Federal share of the cost of the project after negotiations if the applicant demonstrates that it does not have sufficient resources to contribute the entire match.

(Authority: 29 U.S.C. 711(c))

§ 386.31 What are the requirements for directing grant funds?

(a) A grantee must use at least 75 percent of the total award for scholarships as defined in § 386.4.

(b) The Secretary may award grants that use less than 75 percent of the total award for scholarships based upon the unique nature of the project, such as the establishment of a new training program or long-term training in an emerging field that does not award degrees or certificates.

(c) For multi-year projects in existence on October 1, 1994, the requirements of paragraph (a) of this section do not apply for the remainder of the project period.

(Authority: 29 U.S.C. 711(c) and 771a)

§ 386.32 What are allowable costs?

In addition to those allowable costs established in the Education Department General Administrative Regulations in 34 CFR 75.530 through 75.562, the following items are allowable under long-term training projects:

(a) Student stipends.

(b) Tuition and fees.

(c) Student travel in conjunction with training assignments.

(Authority: 29 U.S.C. 711(c) and 771a)

§ 386.33 What are the requirements for grantees in disbursing scholarships?

(a) Before disbursement of scholarship assistance to an individual, a grantee—

(1)(i) Shall obtain documentation that the individual is—

(A) A U.S. citizen or national; or

(B) A permanent resident of the Republic of the Marshall Islands, Federated States of Micronesia, Republic of Palau, or the Commonwealth of the Northern Mariana Islands; or

(ii) Shall confirm from documentation issued to the individual by the U.S. Immigration and Naturalization Service that he or she—

(A) Is a lawful permanent resident of the United States; or

(B) Is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; and

(2) Shall confirm that the applicant has expressed interest in a career in clinical practice, administration, supervision, teaching, or research in the vocational rehabilitation, supported employment, or independent living rehabilitation of individuals with disabilities, especially individuals with severe disabilities;

(3) Shall have documentation that the individual expects to maintain or seek employment in a designated State rehabilitation agency or in a nonprofit rehabilitation, professional corporation, professional practice group, or related agency providing services to individuals with disabilities or individuals with severe disabilities under an agreement with a designated State agency;

(4) Shall reduce the scholarship by the amount in which the combined awards would be in excess of the cost of attendance, if a scholarship, when added to the amount the scholar is to receive for the same academic year under Title IV of the Higher Education Act, would otherwise exceed the scholar's cost of attendance;

(5) Shall limit scholarship assistance to the individual's cost of attendance at the institution for no more than four academic years except that the grantee may provide an extension consistent with the institution's accommodations under section 504 of the Act if the grantee determines that an individual has a disability that seriously affects the completion of the course of study; and

(6) Shall obtain a Certification of Eligibility for Federal Assistance from each scholar as prescribed in 34 CFR 75.60, 75.61, and 75.62.

(Approved by the Office of Management and Budget under control number 1820–0018.)

(Authority: 29 U.S.C. 711(c) and 771a(b))

§ 386.34 What assurances must be provided by a grantee that intends to provide scholarships?

A grantee under this part that intends to grant scholarships for any academic year beginning after June 1, 1992, shall provide the following assurances before an award is made:

(a) *Requirement for agreement.* No individual will be provided a scholarship without entering into a written agreement containing the terms and conditions required by this section. An individual will sign and date the agreement prior to the initial disbursement of scholarship funds to the individual for payment of the individual's expenses, such as tuition.

(b) *Disclosure to applicants.* The terms and conditions of the agreement that the grantee enters into with a scholar will be fully disclosed in the application for scholarship.

(c) *Form and terms of agreement.* Each scholarship agreement with a grantee will be in the form and contain the terms that the Secretary requires, including at a minimum the following provisions:

(1) The scholar will—

(i) Maintain employment—

(A) In a nonprofit rehabilitation agency or related agency or in a State rehabilitation agency or related agency, including a professional corporation or professional practice group through which the individual has a service arrangement with the designated State agency;

(B) On a full- or part-time basis; and

(C) For a period of not less than the full-time equivalent of two years for each year for which assistance under this section was received, within a period, beginning after the recipient completes the training for which the scholarship was awarded, of not more than the sum of the number of years required in this paragraph and two additional years; and

(ii) Repay all or part of any scholarship received, plus interest, if the individual does not fulfill the requirements of paragraph (c)(1(i) of this section, except as the Secretary by regulations may provide for repayment exceptions and deferrals.

(2) The employment obligation in paragraph (c)(1) of this section as applied to a part-time scholar will be based on the accumulated academic years of training for which the scholarship is received.

(3) Until the scholar has satisfied the employment obligation described in paragraph (c)(1) of this section, the scholar will inform the grantee of any change of name, address, or employment status and will document employment satisfying the terms of the agreement.

(4) Subject to the provisions in § 386.41 regarding a deferral or exception, when the scholar enters repayment status under § 386.43(e), the amount of the scholarship that has not been retired through eligible employment will constitute a debt owed to the United States that—

(i) Will be repaid by the scholar, including interest and costs of collection as provided in § 386.43; and

(ii) May be collected by the Secretary in accordance with 34 CFR Part 30, in the case of the scholar's failure to meet the obligation of § 386.43.

(d) *Executed agreement.* The grantee will provide an original executed agreement upon request to the Secretary.

(e) *Standards for satisfactory progress.* The grantee will establish, publish, and apply reasonable standards for measuring whether a scholar is maintaining satisfactory progress in the scholar's course of study. The Secretary considers an institution's standards to be reasonable if the standards—

(1) Conform with the standards of satisfactory progress of the nationally recognized accrediting agency that accredits the institution's program of study, if the institution's program of study is accredited by such an agency, and if the agency has those standards;

(2) For a scholar enrolled in an eligible program who is to receive assistance under the Rehabilitation Act, are the same as or stricter than the institution's standards for a student enrolled in the same academic program who is not receiving assistance under the Rehabilitation Act; and

(3) Include the following elements:

(i) Grades, work projects completed, or comparable factors that are measurable against a norm.

(ii) A maximum timeframe in which the scholar shall complete the scholar's educational objective, degree, or certificate.

(iii) Consistent application of standards to all scholars within categories of students; e.g., full-time, part-time, undergraduates, graduate students, and students attending programs established by the institution.

(iv) Specific policies defining the effect of course incompletes, withdrawals, repetitions, and noncredit remedial courses on satisfactory progress.

(v) Specific procedures for appeal of a determination that a scholar is not making satisfactory progress and for reinstatement of aid.

(f) *Exit certification.* The grantee has established policies and procedures for

receiving written certification from scholars at the time of exit from the program acknowledging the following:

(1) The name of the institution and the number of the Federal grant that provided the scholarship.

(2) The scholar's field of study.

(3) The number of years the scholar needs to work to satisfy the work requirements in § 386.34(c)(1)(i)(C).

(4) The total amount of scholarship assistance received subject to the work-or-repay provision in § 386.34(c)(1)(ii).

(5) The time period during which the scholar must satisfy the work requirements in § 386.34(c)(1)(i)(C).

(6) All other obligations of the scholar in § 386.34.

(g) *Tracking system.* The grantee has established policies and procedures to determine compliance of the scholar with the terms of the agreement. In order to determine whether a scholar has met the work-or-repay provision in § 386.34(c)(1)(i), the tracking system must include for each employment position maintained by the scholar—

(1) Documentation of the employer's name, address, dates of the scholar's employment, and the position the scholar maintained;

(2) Documentation of how the employment meets the requirements in § 386.34(c)(1)(i); and

(3) Documentation that the grantee, if experiencing difficulty in locating a scholar, has checked with existing tracking systems operated by alumni organizations.

(h) *Reports.* The grantee shall make reports to the Secretary that are necessary to carry out the Secretary's functions under this part.

(i) *Records.* The grantee shall maintain the information obtained in paragraphs (g) and (h) of this section for a period of time equal to the time required to fulfill the obligation under § 386.34(c)(1)(i)(C).

(Approved by the Office of Management and Budget under control number 1820–0018.)

(Authority: 29 U.S.C. 711(c) and 771a(b))

§ 386.35 What information must be provided by a grantee that is an institution of higher education to assist designated State agencies?

A grantee that is an institution of higher education provided assistance under this part shall cooperate with the following requests for information from a designated State agency:

(a) Information required by section 101(a)(7) of the Act which may include, but is not limited to—

(1) The number of students enrolled by the grantee in rehabilitation training programs; and

(2) The number of rehabilitation professionals trained by the grantee who graduated with certification or licensure, or with credentials to qualify for certification or licensure, during the past year.

(b) Information on the availability of rehabilitation courses leading to certification or licensure, or the credentials to qualify for certification or licensure, to assist State agencies in the planning of a program of staff development for all classes of positions that are involved in the administration and operation of the State agency's vocational rehabilitation program.

(Approved by the Office of Management and Budget under control number 1820–0018.)

(Authority: 29 U.S.C. 711(c) and 771a)

Subpart E—What Conditions Must Be Met by a Scholar?

§ 386.40 What are the requirements for scholars?

A scholar—

(a) Shall receive the training at the educational institution or agency designated in the scholarship; and

(b) Shall not accept payment of educational allowances from any other Federal, State, or local public or private nonprofit agency if that allowance conflicts with the individual's obligation under § 386.33(a)(4) or § 386.34(c)(1).

(c) Shall enter into a written agreement with the grantee, before starting training, that meets the terms and conditions required in § 386.34;

(d) Shall be enrolled in a course of study leading to a certificate or degree in one of the fields designated in § 386.1(b); and

(e) Shall maintain satisfactory progress toward the certificate or degree as determined by the grantee.

(Authority: 29 U.S.C. 711(c) and 771a(b))

§ 386.41 Under what circumstances does the Secretary grant a deferral or exception to performance or repayment under a scholarship agreement?

A deferral or repayment exception to the requirements of § 386.34(c)(1) may be granted, in whole or part, by the Secretary as follows:

(a) Repayment is not required if the scholar—

(1) Is unable to continue the course of study or perform the work obligation because of a disability that is expected to continue indefinitely or result in death; or

(2) Has died.

(b) Repayment of a scholarship may be deferred during the time the scholar is—

(1) Engaging in a full-time course of study at an institution of higher education;

(2) Serving, not in excess of three years, on active duty as a member of the armed services of the United States;

(3) Serving as a volunteer under the Peace Corps Act;

(4) Serving as a full-time volunteer under Title I of the Domestic Volunteer Service Act of 1973;

(5) Temporarily totally disabled, for a period not to exceed three years; or

(6) Unable to secure employment as required by the agreement by reason of the care provided to a disabled spouse for a period not to exceed 12 months.

(Authority: 29 U.S.C. 771(c) and 771a(b))

§ 386.42 What must a scholar do to obtain a deferral or exception to performance or repayment under a scholarship agreement?

To obtain a deferral or exception to performance or repayment under a scholarship agreement, a scholar shall provide the following:

(a) *Written application.* A written application must be made to the Secretary to request a deferral or an exception to performance or repayment of a scholarship.

(b) *Documentation.* (1) Documentation must be provided to substantiate the grounds for a deferral or exception.

(2) Documentation necessary to substantiate an exception under § 386.41(a)(1) or a deferral under § 386.41(b)(5) must include a sworn affidavit from a qualified physician or other evidence of disability satisfactory to the Secretary.

(3) Documentation to substantiate an exception under § 386.41(a)(2) must include a death certificate or other evidence conclusive under State law.

(Approved by the Office of Management and Budget under control number 1820–0018.)

(Authority: 29 U.S.C. 711(c) and 771a)

§ 386.43 What are the consequences of a scholar's failure to meet the terms and conditions of a scholarship agreement?

In the event of a failure to meet the terms and conditions of a scholarship agreement or to obtain a deferral or an exception as provided in § 386.41, the scholar shall repay all or part of the scholarship as follows:

(a) *Amount.* The amount of the scholarship to be repaid is proportional to the employment obligation not completed.

(b) *Interest rate.* The Secretary charges the scholar interest on the unpaid balance owed in accordance with 31 U.S.C. 3717.

(c) *Interest accrual.* (1) Interest on the unpaid balance accrues from the date the scholar is determined to have entered repayment status under paragraph (e) of this section.

(2) Any accrued interest is capitalized at the time the scholar's repayment schedule is established.

(3) No interest is charged for the period of time during which repayment has been deferred under § 386.41.

(d) *Collection costs.* Under the authority of 31 U.S.C. 3717, the Secretary may impose reasonable collection costs.

(e) *Repayment status.* A scholar enters repayment status on the first day of the first calendar month after the earliest of the following dates, as applicable:

(1) The date the scholar informs the Secretary he or she does not plan to fulfill the employment obligation under the agreement.

(2) Any date when the scholar's failure to begin or maintain employment makes it impossible for that individual to complete the employment obligation within the number of years required in § 386.34(c)(1).

(f) *Amounts and frequency of payment.* The scholar shall make payments to the Secretary that cover principal, interest, and collection costs according to a schedule established by the Secretary.

(Authority: 29 U.S.C. 711(c) and 771a(b))

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Part VIII

Department of Housing and Urban Development

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

Notice of Funding Availability for the Affirmative Fair Housing Marketing Reinvention Lab Project; Competitive Solicitation

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N-94-3765 ; FR-3650-N-01]

NOFA for the Affirmative Fair Housing Marketing Reinvention Lab Project; Competitive Solicitation

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of funding availability (NOFA).

SUMMARY: This NOFA announces the availability of up to $1.0 million of FY 1993 Fair Housing Initiatives Program funding for a special project to be carried out in the Chicago, Illinois metropolitan area. The purposes of this project, which is part of the overall effort to reinvent the way the Department carries out its civil rights mission, are (1) to test the effectiveness of a metropolitan areawide affirmative fair housing marketing plan and associated activities to be administered by a central clearinghouse, especially in terms of generating increased housing choice and opportunity for eligible assisted and insured housing applicants; (2) to determine the potential savings in administrative costs for both housing providers and the Department if the clearinghouse concept were to be implemented permanently; and (3) to determine whether eligible applicants for federally-assisted and/or insured private rental or sales housing would be better served by the clearinghouse in terms of the support services performed during the mortgage loan evaluation and rental application processes.

In the body of this document is information concerning the purpose of the NOFA, eligibility, available amounts, selection criteria, how to apply for funding, and how selections will be made.

DATES: An application for funding under this Notice will be available following publication of the Notice. The actual application due date and time will be specified in the application kit. In no event, however, will the application be due before August 15, 1994.

ADDRESSES: To obtain a copy of the application kit, please write the Fair Housing Information Clearinghouse, Post Office Box 6091, Rockville, MD 20850 or call the toll-free number 1-800-343-3442.

FOR FURTHER INFORMATION CONTACT: Laurence D. Pearl, Director, Office of Program Standards and Evaluation, (202) 708-0288, or William Dudley Gregorie, Director, Program Standards Division, Office of Fair Housing and Equal Opportunity, room 5226, 451 Seventh Street SW., room 5224, Washington, DC 20410, (202) 708-2287. A telecommunications device (TDD) for hearing- and speech-impaired persons is available at (202) 708-2287. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

Application requirements associated with this program have been approved by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), and assigned OMB control number 2529-0033.

I. Purpose and Substantive Description

(a) Authority

(1) The Fair Housing Act

Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601-19 (Fair Housing Act), charges the Secretary of Housing and Urban Development with responsibility to accept and investigate complaints alleging discrimination based on race, color, religion, sex, handicap, familial status or national origin in the sale, rental, advertising or financing of housing. The Fair Housing Act also directs the Secretary to cooperate with State and local agencies administering fair housing laws, and to cooperate with and render technical assistance to State, local and other public or private entities carrying out programs to prevent and eliminate discriminatory housing practices. The Act also directs the Secretary to administer the Department's housing and urban development programs in a manner affirmatively to further the objectives of the Act.

In addition to the Affirmative Fair Housing Marketing requirements described below, the Department has since 1971 attempted to translate the affirmatively furthering mandate through policy mechanisms such as the Site and Neighborhood Standards, Tenant Selection and Assignment and Equal Housing Opportunity Plans, and other program and project-specific strategies. In recent months the Department has recognized that these project and program-specific mechanisms do not fully address the broad-based fair housing problems which actually exist. The Department has also identified the problem of concentration of persons by race and income as a major barrier to the achievement of the objectives of fair housing in the United States. The Department is in the process of formulating appropriate responses that will be tested in the near future through special demonstration projects similar to this lab, including the feasibility of implementing a metropolitan areawide affirmative fair housing marketing plan through a clearinghouse mechanism.

(2) The FHIP Program

Section 561 of the Housing and Community Development Act of 1987, 42 U.S.C. 3616 note, established as a demonstration program the Fair Housing Initiatives Program (FHIP) to strengthen the Department's enforcement of the Fair Housing Act and to further fair housing. This program assists projects and activities designed to enforce and enhance compliance with the Fair Housing Act and substantially equivalent State and local fair housing laws. Implementing regulations are found at 24 CFR part 125.

Three general categories of activities were established at 24 CFR part 125 for FHIP funding under section 561 of the Housing and Community Development Act of 1987: The Administrative Enforcement Initiative, the Education and Outreach Initiative, and the Private Enforcement Initiative. Section 905 of the Housing and Community Development Act of 1992 (HCDA 1992) (Pub. L. 102-550, approved October 28, 1992), amended section 561 by adding specific eligible applicants and activities to the Education and Outreach and Private Enforcement Initiatives, as well as an entirely new Fair Housing Organization Initiative. Section 905 also gave the program permanent status.

The regulations at 24 CFR part 125, subpart C, describe the purpose and eligible activities under the Education and Outreach Initiative, the segment of the FHIP program under which the activity proposed in this NOFA is to be funded. Section 125.303(b) describes eligible outreach projects that may be funded under this initiative, including but not limited to the following:

"(1) Developing national, regional and local media campaigns;

(2) Bringing housing industry and civic or fair housing groups together to identify illegal real estate practices and to determine how to correct them;

(3) Designing specialized outreach projects to inform all persons of the availability of housing opportunities;

(4) Developing and implementing a response to new or more sophisticated housing practices that may result in discriminatory housing practices; and

(5) Developing mechanisms for the identification of and quick response to housing discrimination cases that involve physical harm."

The activities set forth in this NOFA are eligible activities under the Education and Outreach Initiative of the FHIP program, since they relate to various eligible activities of this initiative. Other sections of this NOFA will specifically illustrate how this relationship is facilitated.

(3) Affirmative Fair Housing Marketing Requirements

The Fair Housing Act states that it is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States. The Act also states at Section 808(e)(5) that the Department of Housing and Urban Development shall administer its programs in a manner affirmatively to further the objectives of the Fair Housing Act. Affirmative Fair Housing Marketing has, since 1972, been one of the means by which the Department has carried out Section 808(e)(5) of the Act through the programs it has administered. The purpose of Affirmative Fair Housing Marketing as stated in the regulations at 24 CFR 200.600, is to "achieve a condition in which individuals of similar income levels in the same housing market area have a like range of housing choices available to them regardless of their race, color, religion, sex, handicap, familial status or national origin." These regulations also apply to all applicants for participation in HUD insured subsidized or unsubsidized housing programs whose applications are approved for:

Multifamily projects and manufactured home parks of five or more lots, units or spaces, and initial submissions by a lender for an application for mortgage insurance on a single family property, where the property is located in a subdivision and the builder or developer intends to sell five or more properties in the subdivision;[1] and dwelling units when the applicant's participation would exceed five or more HUD-insured single-family homes within the preceding twelve-month period. Such participants are required to develop an affirmative marketing program on a HUD-approved form. The regulations describe the specific components of an Affirmative Fair Housing Marketing Plan (AFHM) at 24 CFR 200.620.

The Department reviews and evaluates these affirmative marketing plans submitted on Form HUD-935.2 (see attachment) as part of an applicant's request for funding under a number of single-family and multifamily mortgage insurance and subsidy programs. These reviews and evaluations, as well as the monitoring of the implementation of these Affirmative Marketing Plans, are conducted under procedures outlined in HUD Handbook 8025.1 REV-2, Implementation of Affirmative Fair Housing Marketing Requirements. The Department also conducts compliance-related activities under the regulations at 24 CFR Part 108, Affirmative Fair Housing Marketing Compliance Regulations.

A number of evaluations of both the administration of affirmative fair housing marketing and the underlying objectives of the policy conducted since 1974 have raised questions about AFHM's effectiveness and results, especially in terms of its effects on racial housing patterns within housing market areas. These evaluations and recent assessments of how the review of Affirmative Fair Housing Marketing (AFHM) Plans fits into the overall workload of the Field Office FHEO Divisions and Program Operations Divisions in the Regional Offices have also raised questions about the overall cost-effectiveness and efficiency of the review process itself. The 1990 evaluation of AFHM performed by the Office of Program Standards and Evaluation recommended that the Department pilot test the use of a third party to accept applications, check references, and provide an applicant a list of all available housing opportunities under HUD-assisted and insured single-family and multifamily programs. The evaluation also recommended that the Department conduct studies of the manner in which various groups search for rental and sales housing and the costs and benefits of various marketing techniques. The activities described in this NOFA address these recommendations in large part.

(b) Allocation Amounts

For FY 1993, the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1993 (approved October 6, 1992, Pub. L. 102-389), (93 Appropriations Act) appropriated $10.6 million for the FHIP program. Of this amount, $1 million of Education and Outreach Initiative funds is made available under this NOFA to carry out an affirmative fair housing marketing "lab" experiment. The balance of $9.6 million in FY 1993 funds was made available in a NOFA published on December 22, 1993 (58 FR 68000) and amended on February 25, 1994 (59 FR 9235).

The Department estimates that the affirmative fair housing marketing lab project will function approximately 18 months at a cost to the federal government not to exceed $1.0 million dollars. The final cost will depend upon submissions from eligible applicants. In no case will the cost to the federal government for implementing the project under this NOFA exceed $1.0 million dollars. The continuing operation of the clearinghouse following completion of the lab will depend entirely on the income generated from fees and other funding sources.

(c) Project Objectives

As a means of implementing the Department's strong commitment to administer its programs affirmatively to further fair housing, the Department seeks to implement an affirmative fair housing marketing lab. This lab will test an areawide affirmative marketing approach intended to expand affordable housing opportunities for those persons identified as least likely to apply for the housing because of where it is located. The specific objectives of this lab are:

(1) To promote greater awareness and acceptance on the part of housing providers and the entire community of the need to market assisted housing on a nondiscriminatory basis throughout the metropolitan area to increase housing choice and advance equal housing opportunity;

(2) To develop a model for the use of metropolitan areawide affirmative marketing as an effective tool to affirmatively further fair housing and provide greater affordable housing choice and opportunity throughout a metropolitan area;

(3) To determine whether use of a clearinghouse is an effective method over the long-term for assisted and insured multifamily housing providers and builders and developers of HUD-insured single-family housing to carry out their responsibilities under the Affirmative Fair Housing Marketing Regulations; and

(4) To test ways for metropolitan areawide affirmative marketing clearinghouses to become and remain financially self-supporting.

(d) Eligible Applicants

The following entities, either individually or in combination, are eligible to apply for funding under this

[1] See the Federal Register of August 3, 1993, HUD Systems for Approval of Single-Family Subdivisions. This Final Rule included amendments to the Affirmative Fair Housing Marketing Regulations that added handicap and familial status as protected classes under these Regulations.

NOFA: Non-profit civil rights and housing organizations; organizations representing segments of the housing or mortgage lending industries; higher education institutions with expertise in civil rights and housing. While location within the Chicago metropolitan area would be highly desirable, it is not required.

(e) Project Components

HUD seeks to implement a fair housing marketing lab to examine new methods for offering privately operated federally assisted and insured multifamily housing, within the Chicago metropolitan area to all eligible residents of the area. For the purpose of this NOFA, the Chicago metropolitan area includes the City of Chicago and Cook, DuPage, Will, Kane, McHenry and Lake Counties. This area was selected because of its extensive past experience in implementing areawide interjurisdictional programs to promote fair housing and increased housing choice and because of the existing infrastructure for carrying out such programs. It is hoped that a new approach to affirmative fair housing marketing will result in a breakdown of jurisdictional barriers to housing opportunities and promote initiatives that diminish residential segregation and encourage residential diversity. The $1 million offered through this NOFA will be targeted toward affirmative fair housing marketing activities affecting either multifamily housing alone, single-family housing alone, or both simultaneously. In addition, an applicant may focus its proposed activities on either the entire metropolitan area or specific target areas which it may designate.

The Affirmative Fair Housing Marketing Lab involves three distinct elements:

(1) The first element of the lab entails the establishment of a metropolitan areawide clearinghouse that will:

(i) Develop and administer a metropolitan areawide affirmative fair housing marketing plan affecting participating privately-owned federally assisted and insured multifamily housing. A complete description of this Plan is found at Section IV (a)(2) of this NOFA. The plan would not include assisted housing owned by the public housing authorities in the Chicago metropolitan area, since at this time the Department's Affirmative Fair Housing Marketing Regulations do not apply to PHA-operated housing. Furthermore, the Department plans to conduct similar, larger-scale experiments on metropolitan-wide strategies which will combine both privately-operated and PHA-operated housing.

(ii) Develop and maintain the following databases:

(A) A metropolitan areawide database of all families eligible for privately operated HUD-assisted (including insured) multifamily housing who have used the services offered by the clearinghouse. The database would be compiled through any of the following methods:

(*1*) Encouraging families already on waiting lists of participating projects to take advantage of the housing opportunities offered by the clearinghouse. Under this concept, the project manager would notify in writing all families on his or her individual project waiting list of the existence of the clearinghouse and the availability of both the services and the expanded housing choices it will offer. The notice would also say that any family which was found to be eligible for any housing opportunity offered by the clearinghouse would not lose its position on the individual project's waiting list and would in fact be "crosslisted" for all projects for which the family was eligible.

Note: A participant may opt to continue to maintain its own project waiting list while using the other application intake services.

(*2*) Recruiting families who respond to advertisements placed in various media as part of the proposer's metropolitan areawide affirmative marketing plan;

(B) An areawide list of housing opportunities offered by managers of participating multifamily projects subject to AFHM requirements. These housing opportunities may be categorized by jurisdiction within the Chicago metropolitan area, by neighborhood within the City of Chicago, by assisted or insured housing program, and by bedroom size;

(C) The demographics of each development and the neighborhoods in which the assisted and insured housing opportunities are located must be included and updated as turnover occurs. Information on the social services, transportation, schools, churches, employment opportunities and other facets of the community must also be included.

(iii) Carry out a major effort to secure voluntary participation in the clearinghouse by a significant number of housing providers subject to AFHM requirements that do business within the area designated by the applicant. For purposes of this NOFA, housing providers include corporations, individuals, or other entities who own and/or operate apartment complexes of 10 or more units (including the Illinois Housing Development Authority which operates Section 8 Housing projects subject to AFHM requirements), realty companies and home builders who build, rehabilitate or sell 10 or more new single-family homes annually, and financial institutions involved in the making of loans on residential property. This effort shall include outreach and education programs targeted at apartment managers, real estate sales organizations and housing industry professionals, and shall describe the roles of the clearinghouse and the providers in helping individual families take advantage of expanding affordable housing choices throughout the Chicago metropolitan area. These outreach activities should be targeted especially toward those housing professionals that do business outside of racially-impacted, ethnically-impacted and lower-income impacted neighborhoods and are willing to attract applicants to those areas in which their race does not predominate. Such activities should also be targeted to housing professionals who do business in predominantly minority areas and are willing to attempt to attract non-minority applicants.

The clearinghouse operator will have to explain the financial benefits and obligations of participating in the clearinghouse, which can include the participants' being relieved of their AFHM and eligibility determination responsibilities. To encourage participation by housing providers, HUD will waive the AFHM requirements and, as necessary to permit participation, other regulatory and contractual requirements pertaining to tenant selection and assignment that are not required by statute throughout the period of the lab. These waivers would affect those who would otherwise be subject to the waived programmatic requirements (i.e., all persons approved for the development or rehabilitation of single-family subdivisions, multifamily projects of 10 or more units, and all other persons subject to AFHM Plan requirements in Departmental programs). This affirmative fair housing marketing lab will not alter in any way the requirement for Public Housing Authorities to develop and submit an Equal Housing Opportunity Plan (EHOP) for Section 8 existing housing.

(iv) Operate a one-stop metropolitan areawide housing center which shall perform the following services:

(A) Processing applications for participating federally-assisted and/or insured privately-owned and operated multifamily housing submitted by

families who desire to investigate housing opportunities offered by participating owners, managers and real estate brokers. While making applicants aware of all housing opportunities in the area designated by the applicant, the office shall emphasize housing opportunities within areas in which the applicant is least likely to apply for the housing without special outreach activities, because of where the housing is located, and offer additional fair housing counseling for those persons desiring to relocate within such areas. The clearinghouse shall also encourage the creation of housing opportunities within predominantly minority sections of the lab area, so that applicants regardless of race or ethnicity may take advantage of them. The clearinghouse shall also make available information on transportation, schools, social services, employment opportunities and other facets of living in the area selected by the applicant.

For all families that have not previously been on an assisted project's waiting list, the clearinghouse could review for eligibility, perform income and employment verification, secure all information necessary to determine federal or local preferences, and automatically crosslist the applicant for each type of housing project within the program for which he or she is eligible. For example, if a family were to apply for a Section 221(d)(3) unit and were to be found eligible under that program, the family would be crosslisted for all of that program's projects which were participating in the clearinghouse.

(B) Conduct testing and other related activities, particularly in the event that an applicant served by the clearinghouse appears to have encountered discrimination on the basis of race, color, religion, sex, national origin, handicap or familial status or other prohibited conduct that may violate the Fair Housing Act or Executive Order 11063. However, testing for enforcement purposes may be funded only from sources other than this NOFA, and the proposer shall indicate clearly the purpose of any testing and the source and amount of funding devoted to this purpose. Testing, if carried out for educational purposes only, may be funded through this NOFA.

(C) Provide escort and other services to families willing to explore housing opportunities in neighborhoods where their race or ethnic group does not predominate and where they would have been least likely to apply without special outreach.

(v) The applicant can also propose any of the following activities affecting FHA-insured, VA or conventionally financed single-family housing which is affordable for low-income families. These activities may be funded either exclusively from this NOFA, exclusively from sources other than this NOFA or from both federal and non-federal sources:

(A) An areawide affirmative fair housing marketing plan which emphasizes the single-family market;

(B) An areawide list of single-family homeownership opportunities generated from financial institutions, realty companies and local governments. These entities may refer prospective home purchasers to the clearinghouse upon request, so that such purchasers can avail themselves of the homeownership opportunities listed by the clearinghouse; and

(C) A campaign that targets: (*1*) Realty companies and home builders who build, rehabilitate or sell 10 or more new single-family homes annually, and

(*2*) financial institutions involved in the making of loans on residential property through the outreach program to housing providers contained in the proposed areawide affirmative marketing plan.

(2) The second element of the lab consists of an evaluation of the clearinghouse concept. The evaluation shall address:

(i) How the clearinghouse concept compares with the present system of HUD review of individual affirmative marketing plans and with the participation by local affiliates of the National Association of Realtors, the National Association of Homebuilders, the National Association of Real Estate Brokers and several other major national real estate industry organizations in the Voluntary Affirmative Marketing Agreement Program, in terms of cost-effectiveness; and

(ii) How effective the clearinghouse is in creating greater housing choice and opportunity and in affecting change in a community's housing occupancy and homeownership patterns.

The Department has decided that the evaluation of the activities conducted under this NOFA will be conducted by an independent contractor prior to the end of the project.

(3) The third element of the lab requires the development of new ways to:

(i) Identify groups within the eligible population that are less likely to apply for housing without special outreach;

(ii) Encourage those groups to take advantage of housing opportunities in nontraditional areas;

(iii) Identify effective advertising methods;

(iv) Increase awareness of nondiscriminatory tenant selection and application processing; and

(v) Test other ways to implement affirmative fair housing marketing.

(f) Selection Criteria/Ranking Factors

(1) Selection Criteria for Ranking Applications for Assistance

All proposals submitted in response to this NOFA will be ranked on the basis of the following selection criteria:

(i) *The anticipated impact of the proposal on the concerns identified in the application.* (25 points). In determining the anticipated impact of each proposal, HUD will evaluate whether the proposal is well-conceived and likely to be successful if implemented, and will consider the degree to which the proposal addresses the significant fair housing issues affecting the Chicago metropolitan area which had been identified in the fair housing analysis required under this NOFA. Particular emphasis will be placed on how the proposer describes the potential impact of the proposed plan on the fair housing environment. This criterion will be judged on the basis of the applicant's submissions in response to Paragraphs IV (a)(1), (a)(2) and (a)(6) of this NOFA under the heading "Checklist of Application Submission Requirements".

(ii) *The extent to which the proposal will provide benefits in support of fair housing after the lab has been completed.* (25 points) In determining the extent to which the proposal will continue providing benefits after funded activities have been completed, HUD will consider the degree to which the concept can be used as a model for similar metropolitan areawide affirmative marketing clearinghouses in other parts of the country. HUD will also evaluate how the applicant plans to insure the long-term financial viability of the clearinghouse fundraising from public and private sources or other means. This criterion will be judged on the basis of the applicant's submissions in response to Paragraphs IV (a)(1), (a)(2), (a)(5), and (a)(8) of this NOFA under the heading "Checklist of Application Submission Requirements".

(iii) *The extent to which the project will provide the maximum benefits in a cost-effective manner* (20 points). In determining the extent to which the proposal will provide the maximum benefit for the metropolitan area covered by this NOFA in a cost-effective manner, HUD will consider the quality and reasonableness of the proposed statement of work, and the timeline and

budget for implementation and completion of the lab.

HUD will consider as well the adequacy and clarity of proposed procedures to be used by the proposer for monitoring the progress of the lab and ensuring its timely completion. These procedures may consist of a system for checking whether or not the milestones established are being met.

The applicant's capability in handling financial resources (e.g., adequate financial control and accounting procedures) demonstrated through previous project management experience will be taken into account as part of the assessment. HUD will also consider the degree to which the applicant proposes to use funds for program costs as opposed to administrative costs. This criterion will be judged on the basis of the proposer's submissions in response to Paragraphs IV(a)(3), (a)(5) and (a)(7) of this NOFA under the heading "Checklist of Application Submission Requirements".

(iv) The *extent to which the applicant's professional and organizational experience will further the achievement of the proposal's goals* (20 points). In determining the extent to which the applicant's professional and organizational experience are likely to further the achievement of the proposal's goals, HUD will consider the applicant's experience in formulating and carrying out programs to prevent or eliminate discriminatory practices, including the applicant's management of past or current projects, including projects that have addressed the problem of providing housing on a nondiscriminatory basis to minorities, women, the disabled and other protected classes.

HUD will also consider these qualifications in the context of the applicant's overall knowledge of the fair housing environment in the Chicago metropolitan area. It will also consider the experience and qualifications of existing personnel identified for key positions, or a description of the qualifications of new staff that will be hired, including subcontractors and consultants. This criterion will be judged on the basis of the proposer's submissions in response to Paragraph IV(a)(3) of this NOFA under the heading "Checklist of Application Submission Requirements".

(v) *The extent to which the project will utilize other public or private resources that may be available* (10 points). The applicant shall describe whether in addition to the $1.0 million provided by this NOFA it plans to use other public or private resources. The other resources must be clearly and specifically targeted for this project and must be over and above the resources available to the applicant as part of its present, non-project operations for such expenses as salaries, equipment, supplies and rent. This criterion will be judged on the basis of the applicant's response to Paragraph IV (a)(4) of this NOFA under the heading "Checklist of Application Submission Requirements".

(vi) *Minority Business Enterprise/ Women-Owned Business Enterprise* (5 points). The applicant shall also describe its experience in Minority Business Enterprise/Women-Owned Business Enterprise contracting. The applicant shall provide a summary of the total amount awarded in each of the two categories for the previous three years and the percentage that amount represents of the total contracts awarded by the applicant in the relevant time period.

(2) Selection Process. Each application for funding will be evaluated competitively and awarded points based on the General Selection Criteria identified in the previous section. The final decision rests with the Assistant Secretary or her designee. After eligible applications are evaluated against the factors for award and assigned a score, they will be organized by rank order.

(3) Cost factors. The Department expects to fund one proposal as a result of this NOFA. It is possible, however, that two or more complete and eligible applications, after evaluation against the Selection Criteria, may be considered equal in technical merit. Should that occur, their relative evaluated cost will become the deciding factor. Furthermore, an applicant's proposal will not be funded whose costs are determined to be unrealistically low or unreasonably high.

(f) Applicant Notification and Award Procedures

(1) Notification

No information will be available to applicants during the period of HUD evaluation, except for notification in writing to those applicants that are determined to be ineligible or that have technical deficiencies in their applications that may be corrected. The Selectee will be announced by HUD upon completion of the evaluation process, subject to final negotiations and award.

(2) Negotiations

After HUD has ranked the applications and made an initial determination of applicants whose scores are within the funding range (but before the actual award), HUD may require that applicants in this group participate in negotiations to determine the specific terms of the grant agreement. In cases where it is not possible to conclude the necessary negotiations successfully, awards will not be made. If an award is not made to an applicant whose application is in the initial funding ranking because of an inability to complete successful negotiations, and if funds are available to fund any applications that may have fallen outside the initial funding ranking, HUD will select the next highest ranking applicant and proceed as described in the preceding paragraph.

(3) Funding Instrument

HUD expects to award a cost reimbursable or fixed-price cooperative agreement to the successful applicant. HUD reserves the right, however, to use the form of assistance agreement determined to be appropriate after negotiations with the applicant.

(4) Reduction of Requested Grant Amounts and Special Conditions

HUD may approve an application for an amount lower than the amount requested, withhold funds after approval, and/or the grantee will be required to comply with special conditions added to the grant agreement, in accordance with 24 CFR 85.12, the requirements of this NOFA, or where:

(i) HUD determines the amount requested for one or more of the components of the proposal is unreasonable or unnecessary.

(ii) The applicant has demonstrated an inability to manage HUD grants;

(iii) For any other reason where good cause exists.

(5) Performance Sanctions

A recipient failing to comply with the procedures set forth in its grant agreement will be liable for such sanctions as may be authorized by law, including repayment of improperly used funds, termination of further participation in FHIP, and denial of further participation in programs of the Department or of any federal agency.

III. Application Process

An application kit is required as the formal submission to apply for funding. The kit includes information on the Statement of Work and Budget for activities proposed by the applicant. An application may be obtained by writing the Fair Housing Information Clearinghouse, Post Office Box 6091, Rockville, MD 20850, or by calling the toll-free number 1–800–343–3442. To

ensure a prompt response, it is suggested that requests for application kits be made by telephone.

Completed applications are to be submitted to Laurence D. Pearl, Director, Office of Program Standards and Evaluation, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, room 5224, 451 Seventh Street SW., Washington, DC 20410. The application due date and time will be specified in the application kit. In no event, however, will the application be due before August 15, 1994. The application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. A transmission by facsimile machine ("FAX") will not constitute delivery.

IV. Checklist of Application Submission Requirements

(a) General Requirements

The application kit will contain a checklist of application submission requirements to complete the application process. Each proposal submitted under this NOFA must contain the following items:

(1) A metropolitan areawide analysis of the impediments to fair housing choice faced by individual homeseekers within the Chicago metropolitan area, taking into account any of the institutional problems involving the major segments of the real estate and lending industries. This analysis must include a discussion of the problems which specifically relate to the marketing of single-family and multifamily housing to all segments of the population, with particular emphasis on marketing to persons considered protected under the Fair Housing Act and other statutes. The analysis must also discuss the connections between the effectiveness of marketing and the processes of selecting tenants for multifamily projects and evaluating the creditworthiness of applicants for home mortgages. The analysis must also address how its proposed clearinghouse concept will (i) address any and all impediments identified, (ii) help effect change in the current racial and income related housing patterns within the Chicago metropolitan area affected by this NOFA, and (iii) help increase the awareness of all participants in the housing process, especially participants from the real estate industry, of their obligations under fair housing statutes.

(2) A metropolitan areawide affirmative fair housing marketing plan with the following components:

(i) A description of an overall advertising campaign targeted toward groups identified as least likely to apply for assisted housing located within areas for reasons such as the race or national origin of the persons in the area, the lack of units that are accessible to physically disabled persons in the area and the absence of significant numbers of families with children in the area. The campaign may be organized to reach the entire area affected by this NOFA or may be segmented to reach particular jurisdictions, sections within individual jurisdictions or particular segments of the eligible population. The plan shall describe the media to be used, including minority media, community organizations and contacts, referral services that assist disabled persons, and other tactics. The objective of this part of the plan is to encourage prospective renters and home purchasers to use the services of the clearinghouse in their housing searches, especially those services that will support their searches within non-traditional areas.

(ii) A campaign to involve the various provider communities in the clearinghouse on a voluntary basis, *e.g.*, assisted multifamily housing managers, local boards of realtors, home builders associations and individual home builders. The plan shall describe the methods to be used to recruit within the provider community, and how it plans to describe the incentives and obligations (both financial and otherwise) for participation in the clearinghouse. All such financial and other incentives and obligations shall be reviewed and approved by the Department prior to the implementation of this lab. The plan shall also describe any and all training programs to be presented to clearinghouse participants on their obligations under federal, state and local fair housing laws.

(iii) A fair housing counseling program to be given all prospective renters and homebuyers who use the clearinghouse's services to search for dwellings located within areas in which their race or ethnic group does not predominate and in areas where they would be otherwise least likely to apply for housing without special outreach activities due to factors pertaining to the racial or ethnic composition of the neighborhood.

(iv) A goals statement on ensuring increased housing choice and causing deconcentration by race and income in different sections of the community. These goals may be stated in terms of achieving socio-economic changes, *e.g.*, in the racial/ethnic composition of particular neighborhoods or projects, or of getting individual homeseekers to feel that their housing options were increased by availing themselves of the services offered by the clearinghouse. The goals can also be stated in terms of bringing about changes in the attitudes and practices of financial institutions, real estate offices, apartment management companies and other entities that make decisions about their customers' housing choices.

(v) Description of the structure of a consolidated areawide database for multifamily housing units offered by the clearinghouse's fair housing center. This database can be generated from applicants who avail themselves of the services offered by the fair housing center after it opens, or from the waiting lists maintained by the individual participating private owners or management companies prior to the center's opening. The proposer shall also describe the mechanics of actual tenant selection, *e.g.*, selection by the fair housing center staff or by the individual apartment management company or landlord; the procedures to be used by the clearinghouse in processing applications from individual apartment seekers and the arrangements to be made with participating multifamily project managers with respect to referrals from the clearinghouse and the actual selection of tenants;

(vi) Descriptions of activities appropriate to the single-family market, to be included by applicants who wish to emphasize marketing to the prospective home purchaser. Such activities may include:

(A) Testing appropriate methods of involving local financial institutions under the aegis of the fair housing center in activities which will increase the sensitivity and awareness of such institutions and their professional staff about the impact of their lending and mortgage credit review practices upon properties and individuals located in lower-income and racially and ethnically impacted neighborhoods;

(B) Testing new methods of marketing to nontraditional home purchasers, *e.g.*, low-income families, persons with disabilities, and first-time home purchasers who desire to increase their knowledge of the responsibilities of homeownership;

(C) Testing a clearinghouse system geared toward referring prospective home purchasers to real estate

professionals who will assist them in navigating the home purchase process.

(3) A statement of work, a budget—which must include a realistic amount, not to exceed $2,000, in travel costs for financial management training sponsored by the Department—and a timeline for the implementation of the proposed activities, consisting of a description of the specific activities to be conducted with these funds, the geographic areas to be served by the activities, the cost of each proposed activity and a schedule for the implementation and completion of the activities.

(4) A description of the applicant's experience in formulating or carrying out programs to prevent or eliminate discriminatory housing practices or in implementing other civil rights programs, the experience and qualifications of existing personnel identified for key positions, or a description of the qualifications of new staff to be hired, including subcontractors/consultants.

(5) A description of the financial mechanisms to be used by the clearinghouse operator in addition to the federal funds to make the clearinghouse self-sustaining. Such a mechanism shall be reviewed and approved by the Department prior to the implementation of this lab.

(6) A description of the procedures to be used by the applicant for monitoring the progress of the proposed activities.

(7) A description of the fair housing benefits that successful completion of the project will produce, and the indicators by which these benefits are to be measured. These possible benefits can include changes in racial, ethnic and income-related housing patterns that may have taken place during the testing period, increases in awareness and changes in lending, or sales and rental practices which result in fairer treatment for persons protected by civil rights statutes. Particular emphasis must be placed on measuring and comparing the costs and the benefits of the present system of HUD AFHM Plan processing and the clearinghouse concept being tested under this NOFA.

(8) A description of how the clearinghouse will be of continuing use in dealing with housing discrimination after the completion of the demonstration. In this section, the proposer shall explain how the clearinghouse plans to continue its existence after the expiration of this grant, describing the public and private sources of financing and the services which are both similar to and different from the services to be offered during the period of this grant.

(9) HUD Form 2880, Applicant Disclosures.

(10) The applicant must submit a certification and disclosure in accordance with the requirements of section 319 of the Department of the Interior Appropriations Act (Pub. L. 101–121, approved October 23, 1989), as implemented in HUD's interim final rule at 24 CFR part 87, published in the **Federal Register** on February 26, 1990 (55 FR 6736). This statute generally prohibits recipients and subrecipients of federal contracts, grants, cooperative agreements and loans from using appropriated funds for lobbying the Executive and Legislative Branches of the federal government in connection with a specific contract, grant, or loan. If warranted, the applicant should include the Disclosure of Lobbying Activities Form (SF–LLL).

V. Corrections to Deficient Applications

Applicants will not be disqualified from being considered for funding because of technical deficiencies in their application submission, e.g., an omission of information such as regulatory/program certifications, inadequate budget data, or incomplete signatory requirements for application submission.

HUD will notify an applicant in writing of any technical deficiencies in the application. The applicant must submit corrections within 14 calendar days from the date of HUD's letter notifying the applicant of any technical deficiency.

The 14-day correction period pertains only to non-substantive, technical deficiencies or errors. Technical deficiencies relate to items that:

(a) Are not necessary for HUD review under selection criteria/ranking factors; and

(b) Would not improve the substantive quality of the proposal.

VI. Other Matters

Section 504 Requirements

Recipients will be expected to comply with the requirements of Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, and 24 CFR part 8. Section 504 prohibits discrimination based on handicap in federally assisted programs.

Prohibition Against Lobbying

On February 26, 1990, at 55 FR 6736, the Department joined in the issuance of a government-wide interim rule advising recipients and subrecipients of federal contracts, grants, cooperative agreements and loans exceeding $100,000 of a new prohibition against use of appropriated funds for lobbying the Executive or Legislative Branches of the federal government in connection with a specific contract, grant, or loan. In general, this rule prohibits the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. In addition, the recipient must file a disclosure if it has made or has agreed to make any payment with nonappropriated funds that would be prohibited if paid with appropriated funds. The law provides substantial monetary penalties for failure to file the required certification or disclosure.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with the Department's regulations at 24 CFR part 50 which implement Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that the policies announced in this Notice would not have a significant impact on the formation, maintenance, and general well-being of families except indirectly to the extent of the social and other benefits expected from this program of assistance.

Executive Order 12612, Federalism

The General Counsel has determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, that the policies contained in this Notice will not have federalism implications and, thus, are not subject to review under the Order. The promotion of fair housing policies is a recognized goal of general benefit without direct implications on the relationship between the national government and the states or on the distribution of power and responsibilities among various levels of government.

Drug-Free Workplace Certification

The Drug-Free Workplace Act of 1988 requires grantees of federal agencies to certify that they will provide drug-free workplaces. Thus, each applicant must certify that it will comply with drug-free

workplace requirements in accordance with 24 CFR part 24, subpart F.

Section 102 HUD Reform Act Documentation and Public Access Requirements; Applicant/Recipient disclosures

Documentation and Public Access Requirements

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these documentation and public access requirements.)

Disclosures

HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case generally 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 subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

Section 103 HUD Reform Act

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 was published May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (TDD/Voice). (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

Section 112 HUD Reform Act

Section 13 of the Department of Housing and Urban Development Act contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

Authority: Section 561 of the Housing and Community Development Act of 1987 (42 U.S.C. 3616 note); Title VIII, Civil Rights Act of 1968, as amended (42 U.S.C. 3601–3619); Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: June 10, 1994.

Paul Williams,

General Deputy, Assistant Secretary for Fair Housing and Equal Opportunity.

BILLING CODE 4210–28–P

Affirmative Fair Housing Marketing Plan

U.S. Department of Housing and Urban Development
Office of Fair Housing and Equal Opportunity

Attachment

OMB Approval No. 2529-0013 (exp. 10/31/93)

1a. Applicant's Name, Address(including city, State and zip code) & Phone Number:

1c. Project/Application Number

1d. Number of Units

1e. Price or Rental Range
From $
To $

1f. For Multifamily Housing Only
☐ Elderly ☐ Non-Elderly

1g. Approximate Starting Dates:
Advertising:
Occupancy:

1b. Project's Name, Location: (including city, State and zip code)

1h. County:

1i. Census Tract:

1j. Managing/Sales Agent's Name & Address: (including city, State and zip code)

2. **Type of Affirmative Marketing Plan:** (mark only one)
☐ Project Plan ☐ Minority Area ☐ White (non-minority) Area
☐ Mixed Area (with _____ % minority residents)
☐ Annual Plan (for single-family scattered site units) **Note:** A separate Annual Plan must be developed for each type of census tract in which the housing is to be built.

3. **Direction of Marketing Activity:** (indicate which group(s) in the housing market area are least likely to apply for the housing because of its location and other factors without special outreach efforts)
☐ White (non-Hispanic) ☐ Black (non-Hispanic) ☐ Hispanic
☐ American Indian or Alaskan Native ☐ Asian or Pacific Islander

4a. **Marketing Program: Commercial Media:** (Check the type of media to be used to advertise the availability of this housing)
☐ Newspapers/Publications ☐ Radio ☐ TV ☐ Billboards ☐ Other (specify)

Name of Newspaper, Radio or TV Station	Racial/Ethnic Identification of Readers/Audience	Size/Duration of Advertising

4b. **Marketing Program: Brochures, Signs, and HUD's Fair Housing Poster:**
(1) Will brochures, letters, or handouts be used to advertise? ☐ Yes ☐ No If "Yes", attach a copy or submit when available.
(2) For project site sign, indicate sign size _____ x _____; Logotype size _____ x _____. Attach a photograph of project sign or submit when available.
(3) HUD's Fair Housing Poster must be conspicuously displayed wherever sales/rentals and showings take place. Fair Housing Posters will be displayed in the
☐ Sales/Rental Office ☐ Real Estate Office ☐ Model Unit ☐ Other (specify)

4c. **Community Contacts.** To further inform the group(s) least likely to apply about the availability of the housing, the applicant agrees to establish and maintain contact with the groups/organizations listed below that are located in the housing market area or SMSA. If more space is needed, attach an additional sheet. Notify HUD-FHEO of any changes in this list. Attach a copy of correspondence to be mailed to these groups/organizations. (Provide all requested information.)

Name of Group/Organization:	Racial/Ethnic Identification:	Approximate Date:	Person Contacted or to be Contacted:

Address & Phone Number:	Method of Contact :	Indicate the specific function the Group/Organization will undertake in implementing the marketing program:

5. **Future Marketing Activities** (Rental Units Only) Mark the box(s) that best describe marketing activities to fill vacancies as they occur after the project has been initially occupied.
☐ Newspapers/Publications ☐ Radio ☐ TV ☐ Brochures/Leaflets/Handouts
☐ Site Signs ☐ Community Contacts ☐ Other(specify)

6. **Experience and Staff Instructions:** (See instructions)
6a. Staff has experience. ☐ Yes ☐ No
6b. On separate sheets, indicate training to be provided to staff on Federal, State and local fair housing laws and regulations, as well as this AFHM Plan. Attach a copy of the instructions to staff regarding fair housing.

7. **Additional Considerations:** Attach additional sheets as needed.

8. **Changes and Revisions:** By signing this form, the applicant agrees, after appropriate consultation with HUD, to change any part of the plan covering a multifamily project to ensure continued compliance with Section 200.620 of HUD's Affirmative Fair Housing Marketing Regulations.

Signature of Person Submitting this Plan & Date of Submission:

Name: (type or print)

Title & Name of Company:

For HUD-FHEO Use Only

Approval By:	Disapproval By:
Signature & Date:	Signature & Date:
Name: (type or print)	Name: (type or print)
Title:	Title:

Previous Editions are Obsolete

form HUD-935.2 (10/92)
ref. Handbook 8025.1

Public Reporting Burden for this collection of information is estimated to average 0.75 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600; and to the Office of Management and Budget, Paperwork Reduction Project (2529-0013), Washington, D.C. 20503. Do not send this completed form to either of the above addressees.

Instructions

Send the Completed form to: Your Local HUD Office, Attention: Fair Housing and Equal Opportunity Director/Specialist

The Affirmative Fair Housing Marketing Regulations require that each applicant subject to these regulations carry out an affirmative program to attract prospective buyers or tenants of all minority and non- minority groups in the housing market area regardless of race, color, religion, sex or national origin. These groups include Whites (Non-Hispanic) and members of minority groups: Blacks (Non-Hispanic), American Indians/Alaskan Natives, Hispanics and Asian/Pacific Islanders in the Standard Metropolitan Statistical Areas (SMSA) or housing market area who may be subject to housing discrimination on the basis of race, color, religion, sex or national origin. The applicant shall describe on this form the activities it proposes to carry out during advance marketing, where applicable, and the initial sales or rent-up period. The affirmative program also should ensure that any group(s) of persons normally NOT likely to apply for the housing without special outreach efforts (because of existing neighborhood racial or ethnic patterns, location of housing in the SMSA price or other factors), know about the housing, feel welcome to apply and have the opportunity to buy or rent.

Part 1 - Applicant and Project Identification. The applicant may obtain Census Tract location information, item 1i, from local planning agencies, public libraries and other sources of Census Data. For item 1g, specify approximate stating date of marketing activities to the groups targeted for special outreach and the anticipated date of initial occupancy. Item 1j is to be completed only if the applicant is not to implement the plan on its own.

Part 2 - Type of Affirmative Marketing Plan. Applicants for multifamily and subdivision projects are to submit a Project Plan which describes the marketing program for the particular project or subdivision. Scattered site builders are to submit individual annual plans based on the racial composition of each type of census tract. For example, if a builder plans to construct units in both minority and non- minority census tracts, separate plans shall be submitted for all of the housing proposed for both types.

Part 3 - Direction of Marketing Activity. Considering factors such as price or rental of housing, the racial/ethnic characteristics of the neighborhood in which housing is (or is to be) located, and the population within the housing market area, public transportation routes, etc., indicate which group(s) you believe are least likely to apply without special outreach.

Part 4 - Marketing Program. The applicant shall describe the marketing program to be used to attract all segments of the eligible population, especially those groups designated in the Plan as least likely to apply. The applicant shall state: the type of media to be used, the names of newspapers/call letters of radio or TV stations; the identity of the circulation or audience of the media identified in the Plan, e.g., White (Non-Hispanic), Black (Non-Hispanic), Hispanic, Asian-American/Pacific Islander, American Indian/ Alaskan Native; and the size or duration of newspaper advertising or length and frequency of broadcast advertising. Community contacts include individuals or organizations that are well known in the project area or the locality and that can influence persons within groups considered least likely to apply. Such contacts may include, but need not be limited to: neighborhood, minority and women's organizations, churches, labor unions, employers, public and private agencies, and individuals who are connected with these organizations and/or are well-known in the community.

Part 5 - Future Marketing Activities. Self-Explanatory.

Part 6 - Experience and Staff Instructions.

a. Indicate whether the applicant has previous experience in marketing housing to group(s) identified as least likely to apply for the housing.

b. Describe the instructions and training given to sales/rental staff. This guidance to staff must include information regarding Federal, State and local fair housing laws and this AFHM Plan. Copies of any written materials should be submitted with the Plan, if such materials are available.

Part 7 - Additional Considerations. In this section describe other efforts not mentioned previously which are planned to attract persons in either those groups already identified in the Plan as least likely to apply for the housing or in groups nor previously identified in the Plan. Such efforts may include outreach activities to female-headed households.

Part 8 - The applicant's authorized agent signs and dates the AFHM Plan. By signing the Plan, the applicant assumes full responsibility for its implementation. The Department may at any time monitor the implementation of the Plan and request modification in its format or content, where the Department deems necessary.

Notice of Intent to Begin Marketing. No later than 90 days prior to the initiation of sales or rental marketing activities, the applicant with an approved Affirmative Fair Housing Marketing Plan shall submit notice of intent to begin marketing. The notification is required by the Affirmative Fair Housing Marketing Plan Compliance Regulations (24 CFR Part 108.15). It is submitted either orally or in writing to the FHEO Division of the appropriate HUD Office serving the locality in which the proposed housing is located. OMB approval of the Affirmative Fair Housing Plan includes approval of this notification procedure as part of the Plan. The burden hours for such notification are included in the total designated for this Affirmative Fair Housing Marketing Plan form.

form HUD-935.2

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Thursday
June 16, 1994

Part IX

Department of Education

34 CFR Part 682

Federal Family Education Loan Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 682

RIN 1840–AB62

Federal Family Education Loan Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Federal Family Education Loan (FFEL) Program. The FFEL Program consists of the Federal Stafford, Federal Supplemental Loans for Students (SLS), Federal PLUS, and the Federal Consolidation Loan programs. These amendments are needed to implement changes made to the Higher Education Act of 1965, as amended (HEA), by the Higher Education Amendments of 1992 (Pub. L. 102–325). Public Law 102–325 added new section 428J to the HEA which authorizes the Secretary to establish a demonstration program for loan forgiveness for certain types of professional or public service. Under section 428J of the HEA, the Secretary is authorized to forgive portions of Federal Stafford Loans incurred by a student borrower who performs volunteer service or works in certain teaching or nursing areas. Minor changes to section 428J were made by the National and Community Service Trust Act of 1993 (Pub. L. 103–82). Section 428J was also recently amended by the Higher Education Technical Amendments of 1993 (Pub. L. 103–208). Those additional statutory changes are also reflected in these regulations. This program is not currently funded.

EFFECTIVE DATE: Pursuant to section 482(c) of the Higher Education Act of 1965, as amended (20 U.S.C. 1089(c)), these regulations take effect July 1, 1995, with the exception of the information collection requirements in § 682.215. The information collection requirements in § 682.215 will become effective on July 1, 1995, or after these requirements have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980, whichever is later. A document announcing the effective date will be published later in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Barbara Bauman, Program Specialist, Loans Branch, Division of Policy Development, Policy, Training, and Analysis Service, U. S. Department of Education, 400 Maryland Avenue SW. (room 4310, ROB–3), Washington, DC 20202–5449. Telephone: (202) 708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: New section 428J of the HEA authorizes the Secretary to promulgate regulations to establish a loan forgiveness demonstration program in the Federal Stafford Loan Program. The purpose of the demonstration program is to encourage individuals to enter the teaching and nursing professions and to perform national and community service by offering partial Federal Stafford loan forgiveness. If funding is provided, the loan forgiveness program is available only to new borrowers who, as of October 1, 1989, had no outstanding debt on a FFEL Program loan.

On February 25, 1994, the Secretary published a notice of proposed rulemaking (NPRM) for part 682 in the **Federal Register** (59 FR 9376). The NPRM included a discussion of the major issues surrounding the proposed changes which will not be repeated here. The following list summarizes those issues and identifies the pages of the preamble to the NPRM on which a discussion of those issues may be found:

- Eligibility requirements for a borrower who wishes to qualify for loan forgiveness (page 9378);
- Application procedures for loan forgiveness (page 9378);
- Limitations of the loan forgiveness program (page 9378);
- Requirements for borrowers desiring loan forgiveness under the teaching, volunteer service or nursing categories (pages 9378–9379);
- Percentages of loan amounts eligible for forgiveness based on year of service completed (page 9379).

Substantive Revisions to the Notice of Proposed Rulemaking

Section 682.215(c) Application

- The Secretary has defined September 1 as the earliest date in which a borrower can apply for loan forgiveness in addition to the October 1 deadline for submitting applications.
- The Secretary has clarified that borrowers who submit incomplete and inaccurate loan forgiveness applications will not be considered for loan forgiveness unless and until a completed application is submitted.

Section 682.215(i) Definitions

- The Secretary has expanded the definition of both "elementary school" and "secondary school" to include nonprofit private day or residential schools to be consistent with the definition for these terms in the Perkins Loan Program definitions.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 14 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes made to the regulations as a result of those comments follows.

Major issues are grouped according to subject. Technical and other minor changes, and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority, are not addressed.

Section 682.215(a) General

Comment: Some commenters noted that there is no formal method specified in the regulations to inform borrowers about the loan forgiveness program. The commenters recommended that details be provided to borrowers in the application/promissory note or the disclosure statement. The commenters did not believe that lenders should be required to do a special mailing.

Discussion: The Secretary will ensure that guaranty agencies take steps to inform borrowers about the loan forgiveness program should the program be funded. These methods may include mention in the application/promissory note or disclosure statement or in public documents such as the Student Guide. Lenders will not be expected to publicize the program through a special mailing.

Change: None.

Comment: A commenter recommended that the definition of eligible borrower be clarified to convey that a borrower who had paid off an outstanding debt under the FFEL programs prior to October 1, 1989 would be eligible for the forgiveness program if the borrower became a "new" borrower with their first disbursement of a new FFEL program loan on or after October 1, 1989.

Discussion: The Secretary believes that the regulations convey that a borrower who has no outstanding debt under the FFEL programs as of October 1, 1989 would qualify as an eligible borrower.

Change: None.

Comment: A commenter asked if lenders would be required to produce a new repayment schedule for a borrower each year loan forgiveness is granted. The commenter also suggested that the percentages of loan forgiveness should

have no effect on the borrower's current payments.

Discussion: The Secretary does not believe that it is necessary for a lender to provide new repayment schedules to borrowers who receive loan forgiveness. The Secretary expects that the reduction of the loan amount owed by a borrower as a result of the loan forgiveness will most likely result in a reduction of the number of payments to be made by the borrower.

Change: None.

Comment: A commenter asked if all Federal Stafford loans were eligible for forgiveness under this demonstration program.

Discussion: The Secretary agrees that the regulations should be clarified to explain that subsidized, unsubsidized, and nonsubsidized Federal Stafford loans will be eligible for forgiveness under § 682.215.

Change: The final regulations have been revised to incorporate this clarification.

Comment: One commenter urged the Secretary to include loans made under the Federal Direct Student Loan Program to be eligible for the forgiveness program. The commenter believed that since the Omnibus Budget Reconciliation Act of 1993 stated that all terms and conditions under the Federal Stafford Loan Program, which include cancellation, deferment and other provisions, also apply to the Federal Direct Student Loan Program, Congress intended for the loan forgiveness program to be included as well.

Discussion: The Secretary agrees with the commenter that loans made under the Federal Direct Student Loan Program are eligible for the forgiveness program. Direct Loan regulations will specify Direct Loan borrowers' eligibility for loan forgiveness under this program.

Change: None.

Comment: Some commenters believed that the Secretary should provide timeframes and procedures by which to notify borrowers of their approval or denial of loan forgiveness eligibility. The commenters were also interested in knowing the timeframes and procedures that the Secretary will adopt to notify the holder regarding which borrowers will receive forgiveness and when the holder will be given the appropriate funds.

Discussion: The borrower will be informed of his or her eligibility for loan forgiveness by the Secretary in a timely manner. The Secretary will take appropriate steps to inform holders of proper procedures. However, the Secretary notes that without knowing the amount of appropriations, if any, that might be available for the forgiveness program and the potential number of recipients, it is impossible to define those methods in these regulations.

Change: None.

Comment: Some commenters expressed concern about borrower confusion regarding the borrower's repayment obligation if the borrower is eligible for loan forgiveness. The commenters were worried about the period of time between when a borrower applies for loan forgiveness and the holder's receipt of the loan forgiveness payment from the Secretary. The commenters wanted to know how the servicer would be notified that the borrower's loan or loans are eligible for loan forgiveness and whether the borrower would be required to continue to make regular monthly payments in the time period between the loan forgiveness application submission and payment from the Secretary.

Discussion: The Secretary recognizes the potential problems created by this structure. Because this program is not an entitlement, the Secretary cannot promise an otherwise eligible borrower that funding will be available to award a percentage of loan forgiveness. Therefore, the Secretary reminds the commenters that the borrower is still in repayment on his or her loan, regardless of eligibility for the loan forgiveness unless he or she is in an authorized deferment or forbearance period.

Change: None.

Comment: One commenter wanted to know if a borrower could participate in both a state forgiveness program as well as this demonstration program.

Discussion: Although the National and Community Service Act of 1990 (42 U.S.C. 12571 *et seq.*) precludes a borrower from receiving a loan cancellation benefit under both that program and this loan forgiveness program, the Secretary believes that a borrower participating in the loan forgiveness program under § 682.215 is eligible to participate in state forgiveness programs, where allowable by the state.

Change: None.

Section 682.215(b)

Comment: Some commenters believed that in the instances where a defaulted borrower made satisfactory repayment arrangements on the loans in default, a borrower should be allowed to have those defaulted loans forgiven as well. The commenters believed that if the motivation behind the demonstration program was to encourage borrowers to enter into public service, then defaulted borrowers could be further enticed into public service by being allowed to "work off" their defaulted loans as well as those not in default.

Discussion: This issue was thoroughly discussed at the negotiated rulemaking sessions that preceded publication of the NPRM. Given that there may be limited or no funding for this program, the Secretary felt that it would be inappropriate to provide this benefit on loans that are still in default.

Change: None.

Comment: A commenter recommended that the Secretary and the guaranty agencies establish a way to easily verify that satisfactory repayment arrangements had been made on a loan that is to be considered eligible for loan forgiveness.

Discussion: The Secretary encourages guaranty agencies to provide appropriate information to lenders regarding a borrower's loan status. Additionally, the Secretary anticipates that the National Student Loan Data System will assist in providing this type of information.

Change: None.

Comment: Two commenters recommended that the Secretary should encourage guaranty agencies to consider those borrowers who have defaulted on their loans but are likely to be eligible for loan forgiveness to be good candidates for a rehabilitated loan.

Discussion: The Secretary believes that it is illogical to conclude that eligibility for one program assures eligibility for another. The loan rehabilitation program has specific requirements separate from the forgiveness program.

Change: None.

Comment: One commenter requested that the Secretary clarify that defaulted loans that have been rehabilitated should be eligible for forgiveness.

Discussion: The Secretary agrees with the commenter. Once a loan has been rehabilitated it is no longer in default and is therefore considered to be eligible for forgiveness under this program.

Change: The final regulations have been revised to incorporate this clarification.

Section 682.215(c)

Comment: Three commenters urged the Secretary to develop a standardized loan forgiveness application form that includes such data items as borrower dates of service, loan balance information, eligibility, and interest amounts in order to simplify the process.

Discussion: The Secretary agrees and is committed to consulting with FFEL participants to develop a standardized

application form pursuant to the requirements of section 432(1) of the HEA.

Change: None.

Comment: One commenter questioned to whom the term "designee" in § 682.215(c) refers. The commenter also recommended that the Secretary provide the designee with a means by which to identify and verify that a certain type of facility, tax-exempt organization or teacher shortage area meets the criteria of § 682.215. The commenter suggested that a more suitable alternative would be to require the certifying official to certify that the organization meets the requirements of § 682.215.

Discussion: The term "designee" refers to the departmental official assigned with implementing this program. The Secretary will provide the designee with all necessary information at the appropriate time if necessary. The Secretary notes that the NPRM provided that the certifying official in each category of forgiveness certify that the borrower's service meets the requirements of § 682.215.

Change: None.

Comment: In considering the October 1 deadline for submitting forgiveness applications, some commenters recommended that the regulations define a specific timeframe as to the earliest date an application for forgiveness may be received. They reasoned that since funding for this program may be limited and will be awarded on a first-come, first-served basis, applicants should be informed of the first date upon which they can apply. The commenters also wished to know whether a borrower need complete the service prior to applying for forgiveness or merely have completed service before the October 1 deadline.

Discussion: The Secretary agrees with the commenters that a borrower should be informed of the first date on which a forgiveness application can be received. A borrower's application for forgiveness should be postmarked no earlier than September 1 of each year that forgiveness is requested. The Secretary has chosen the September start date in order to be fair to all categories of borrowers, since certain professions have more definitive begin and end dates or terms that may end in June or July that would give them an advantage over other borrowers if the earliest date to apply was July or August. The Secretary also believes that it is appropriate to require that the service be completed prior to the borrower's submission of an application for forgiveness. This would result in fair treatment to the greatest number of borrowers and would eliminate the need to confirm that the borrower completed the service.

Change: The final regulations have been revised to include September 1 as the earliest date for forgiveness applications to be received.

Comment: A commenter asked if applications for forgiveness should be routed through the lender or guaranty agency or directly to the Secretary.

Discussion: Applications for loan forgiveness should be directed to the Secretary.

Change: None.

Comment: Some commenters felt that there should be a provision whereby a borrower who qualified for forgiveness one year but did not receive it due to limited funding should be first to be considered for forgiveness the following year. The commenters also wanted to know if a borrower who qualified and received the forgiveness one year would be automatically eligible for the following year's forgiveness.

Discussion: This approach was discussed at the negotiated rulemaking sessions. The Secretary believes that given the limited amount of funding, there is no statutory basis to allow eligible applicants from one year to automatically qualify for the next year. Similarly, borrowers who were denied forgiveness due to lack of funding one year will not be given priority over the next year's applicants. Borrowers are required to reapply for each year for which they wish to receive the forgiveness benefit.

Change: None.

Comment: Some commenters wanted to know how to treat a borrower's incomplete forgiveness application. The commenters asked whether a borrower should be disqualified, or if allowed to provide the missing information, how much time should a borrower have to submit the information. They also wanted to know if the borrower's first-come, first-served status would be affected by submitting an incomplete application.

Discussion: An incomplete or inaccurate application will not qualify a borrower for receiving loan forgiveness. However, the Secretary will attempt to notify the borrowers who submit inaccurate or incomplete applications so that they will have an opportunity to complete and submit a complete application by the October 1 deadline.

Change: None.

Comment: A number of commenters expressed confusion over the treatment of borrowers with regard to forbearance. Some commenters questioned whether forbearance for eligible borrowers under the forgiveness program was necessary or administratively feasible.

Discussion: The Secretary reminds the commenters that all borrowers who request forbearance while they are serving in areas that would qualify for forgiveness are entitled to forbearance as stated in section 428J. The ability to obtain forbearance is based on the borrower's being engaged in qualifying service and is not dependent on whether the borrower actually receives the loan forgiveness.

Change: None.

Comment: Some commenters asked when a borrower could request forbearance since the borrower does not apply for forgiveness until after the year of service has been completed. The commenters questioned whether forbearance would be granted retroactively at the time the borrower applied for forgiveness or if the lender or servicer would be expected to grant forbearance to a borrower the year prior to application while the borrower was serving in an eligible position. The commenters felt that the wording of the NPRM regarding forbearance may be confusing for a borrower who may think that payments do not have to be made during the period of service. The commenters also wished to know if the forbearance applied only to the loans eligible for forgiveness or on all loans.

Discussion: The Secretary wishes to emphasize that the holder or servicer is to grant forbearance to a borrower upon the borrower's request while the borrower is serving in one of the categories of service eligible for forgiveness under § 682.215. A borrower shall receive forbearance while serving regardless of whether sufficient funding is available for forgiveness at the end of that year of service. The forbearance will apply to all loans held by the borrower that would normally be entitled to forbearance. A borrower who is not in an authorized deferment or forbearance status while serving is expected to follow the terms of the promissory note regarding repayment.

Change: None.

Comment: Some commenters recommended that all borrowers in qualifying service that wish to apply for forbearance be given explicit instruction as to the terms of the forbearance and the fact that receiving forbearance for service under § 682.215 was not related to receiving loan forgiveness for performing qualifying service. The commenters were concerned that a borrower would be incurring additional costs with a forbearance with the potential of not receiving the loan forgiveness benefit for performing qualifying service.

Discussion: The Secretary shares the concerns of the commenters and expects holders to provide information on the option of forbearance under this program as is required under the FFEL programs. The holders will inform borrowers that funding, if available for this program, is limited and that receiving a forbearance during qualifying service does not guarantee loan forgiveness under this program and as such may result in additional costs to the borrower.

Change: None.

Section 682.215 (e), (f), and (g)

Comment: Some commenters asked that the Secretary clarify that a borrower must apply for forgiveness each year following the year of qualifying service in the teaching, volunteer and nursing categories.

Discussion: The Secretary anticipates that some eligible borrowers may have completed qualifying service in previous years that would not be immediately preceding the time in which they apply for this program. In this situation, the Secretary envisions that a borrower would need to indicate the begin and end date of the year of service, as all other eligible borrowers are required to do. Loan forgiveness, if funding is available, would be at the level based on which year the borrower last received forgiveness. For example, a borrower who qualified and received the benefit for the first year of service, but not the second year, who now qualifies for forgiveness for the third year of service would receive the benefit as a second year participant in the forgiveness program.

Change: The final regulations have been revised to clarify that a borrower must apply each year to obtain loan forgiveness under this demonstration program.

Section 682.215(h)

Comment: Some commenters asked whether all Federal Stafford loans are eligible for loan forgiveness. They recommended that if all Federal Stafford loans are eligible the Secretary should specify how the holder should apply the forgiveness amounts.

Discussion: The Secretary clarifies that unsubsidized, subsidized and nonsubsidized Federal Stafford loans are eligible for this forgiveness program and that the holder should apply the forgiveness amounts first to the unsubsidized portion, followed by the subsidized and then the nonsubsidized portion of the loans.

Change: The final regulations have been revised in both § 682.215(a) and § 682.215(h) to incorporate this clarification.

Comment: Some commenters are worried that holders and servicers do not link individual loans to the specific academic years when the borrower was in school and will therefore be unable to identify which years constitute the borrower's last two years of undergraduate education or two-year period when the borrower was obtaining a post graduate teaching or additional teaching certificate.

Discussion: The Secretary believes that holders and servicers are able to track loan amounts for this purpose because numerous existing program requirements already require such tracking. Loans are made based on statutory annual loan limits for applicable undergraduate and post baccalaureate academic levels. This data is available on a loan-by-loan basis for each borrower in lender and guaranty agency systems and should be sufficient for purposes of implementing these provisions.

Change: None.

Section 682.215(h)(5)

Comment: A commenter objected to the provision in the NPRM that states that payments eligible for forgiveness under this program that were already repaid by the borrower will not be refunded. The commenter noted that a prudent borrower may choose not to risk the additional costs of forbearance given the questionable funding for this program and continue to repay the loan, perhaps resulting in paying a loan amount that could have been forgiven but is now not eligible.

Discussion: The statute does not authorize the refunding of any repayment of a Federal Stafford loan.

Change: None.

Section 682.215(i)

Comment: A commenter recommended that the term "secondary school" should not include education beyond the twelfth grade. The commenter stated that this definition conflicts with the commonly recognized definition of postsecondary education in many states and thus may confuse those involved in postsecondary education.

Discussion: This definition was taken from already existing FFEL program regulations.

Change: None.

Comment: One commenter objected to the Secretary limiting the teaching forgiveness provision to borrowers who teach in public elementary and secondary schools. The commenter pointed out that section 428J provides forgiveness for those borrowers who teach full time in a school that qualifies under section 462(a)(2)(A) of the HEA for loan cancellation for Perkins loan recipients. The commenter noted that under the Perkins Loan Program, cancellation is provided for full-time teachers in nonprofit private elementary schools as well. The commenter requested that the Secretary make the definitions of elementary school and secondary school consistent with the Perkins definitions.

Discussion: The Secretary agrees with the commenter.

Change: The final regulations have been revised to include nonprofit private schools in the elementary school and secondary school definitions. This change allows those serving in these types of schools to be eligible under the teaching forgiveness category of § 682.215(e).

Comment: A commenter suggested that the Secretary expand the definitions that pertain to the nursing category of loan forgiveness. The commenter asked that the Secretary broaden the eligibility of sites to encourage more nursing graduates to participate in the forgiveness program.

Discussion: The Secretary consulted with the Secretary of Health and Human Services (HHS) in determining the definitions that would apply to the facilities described in section 428J in which a borrower would be employed full-time as a nurse. These definitions were taken from HHS and other existing regulations. The statute indicates that the Secretary is to rely on the expertise of HHS in these areas. Accordingly, there will be no change.

Change: None.

Executive Order 12866

These final regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering the program effectively and efficiently. In assessing the potential costs and benefits—both quantitative and qualitative—of these regulations, the Secretary has determined that the benefits of the regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 682

Administrative practice and procedure, Colleges and universities, Education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: May 10, 1994.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.032, Federal Family Education Loan Program)

The Secretary amends part 682 of title 34 of the Code of Federal Regulations as follows:

PART 682—FEDERAL FAMILY EDUCATION LOAN PROGRAM

1. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

2. A new § 682.215 is added to read as follows:

§ 682.215 Federal Stafford Loan forgiveness demonstration program.

(a) *General.* The Federal Stafford Loan forgiveness demonstration program is intended to encourage individuals to enter the teaching and nursing professions and to perform national and community service. Under this demonstration program, the Secretary repays portions of unsubsidized, subsidized and nonsubsidized Federal Stafford obligations that were incurred by a borrower during the borrower's last two years of undergraduate education if that borrower worked in those professions or performed that service. For purposes of this section, an eligible borrower is a borrower who, as of October 1, 1989, had no outstanding debt under the FFEL programs.

(b) *Borrower eligibility; requirements for qualification.* A borrower may obtain loan forgiveness under this program if he or she was employed as a full-time teacher in certain elementary and secondary schools teaching certain subjects or as a full-time nurse in certain types of hospitals or health care centers, or was serving as a volunteer under the Peace Corps Act or under the Domestic Volunteer Service Act of 1973, or was performing comparable service as a full-time employee of a tax exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986. For purposes of this section, *full-time* means the standard used by a State or profession in defining full-time employment. For a borrower serving in more than one organization, the determination of "full-time" is based on the combination of all qualifying employment. A borrower who is in default on a FFEL loan and has not made satisfactory repayment arrangements is not eligible for forgiveness. However, if a borrower has made satisfactory repayment arrangements on the loan or loans in default, the forgiveness applies only to the loan or loans held by the holder that are not in default. Federal Stafford loans that have been rehabilitated are eligible for forgiveness.

(c) *Application.* To qualify for the forgiveness program, an eligible borrower shall apply to the Secretary each year following a completed year of service, but no earlier than September 1 and no later than October 1 of a given year. The application must be in writing, on a form provided by the Secretary and according to procedures established by the Secretary. An eligible borrower must complete a year of service prior to filing a loan forgiveness application with the Secretary. Eligible borrowers are chosen on a first-come, first-served basis to participate and must receive forbearance upon request for each year of service for which forgiveness is requested. An eligible borrower must reapply each year to receive the forgiveness benefit. Incomplete or inaccurate applications are not considered in the first-come, first-served process. If a borrower initially submits an incomplete or inaccurate application, the borrower must provide a completed application to the Secretary or his designee prior to consideration in the selection process.

(d) *Limitation; Stafford forgiveness recipients.* The total amount of loans forgiven is limited to the amount of funds appropriated for the fiscal year for the demonstration program.

(e) *Borrower eligibility; teaching forgiveness.* (1) To qualify for teaching loan forgiveness under this section, a borrower must have taught full-time for a year (as defined by the jurisdiction in which the borrower is employed) in a teacher shortage area as certified by the authorizing official. For purposes of this paragraph a teacher has taught in a teacher shortage area if—

(i) The teacher taught in a school that satisfied the criteria in section 465(a)(2)(A) of the Act for loan cancellation for Perkins loan recipients who teach in those schools; and

(ii) The teacher taught mathematics, science, foreign languages, special education, bilingual education or in any other field of expertise where the State educational agency determined there was a shortage of qualified teachers.

(2) The borrower, in the time frame provided under paragraph (c) of this section, for the year of service for which forgiveness is requested, must provide to the Secretary or his designee—

(i) A statement by the chief administrative officer of the public elementary or secondary school in which the borrower was teaching—

(A) Certifying the year that the borrower was employed as a full-time teacher;

(B) Certifying which subject area listed in paragraph (e)(1)(ii) of this section or designated by the State educational agency the borrower taught; and

(C) Verifying that the borrower taught in a school that satisfies the requirements of paragraph (e)(1)(i) of this section.

(f) *Borrower eligibility; volunteer service forgiveness.* (1)(i) To qualify for the volunteer service loan forgiveness under this paragraph, a borrower must have served as a full-time volunteer for at least a year (defined as twelve consecutive months) under—

(A) The Peace Corps Act; or

(B) The Domestic Volunteer Service Act of 1973 (ACTION programs).

(ii) A borrower may also qualify for the volunteer service loan forgiveness if the borrower performed service comparable to service provided under paragraph (f)(1) of this section as a full-time employee of an organization that is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986, if the borrower did not receive compensation that exceeds the greater of—

(A) The minimum wage rate described in section 6 of the Fair Labor Standards Act of 1938; or

(B) An amount equal to 100 percent of the poverty line for a family of two as defined in section 673(2) of the Community Services Block Grant Act.

(2) To qualify under this paragraph, the borrower must—

(i) Have worked for an organization that provides services to low income persons and their communities to assist

them in eliminating poverty and poverty-related human, social, and environmental conditions; and

(ii) Not, as part of his or her duties, have given religious instruction, conducted worship services, engaged in religious proselytizing, or engaged in fund-raising to support religious activities.

(3) The borrower, in the time frame provided under paragraph (c) of this section, for the year of service for which forgiveness is requested under paragraphs (f)(1), (f)(2), or (f)(3) of this section must provide to the Secretary or his designee a statement from an authorized official of the organization or agency for whom the borrower worked certifying—

(i) That the borrower served in a job that satisfies the requirements of this paragraph;

(ii) The date on which the borrower's service began; and

(iii) The date on which the borrower completed the year of service.

(g) *Borrower eligibility; nursing profession loan forgiveness.* (1) To qualify for the nursing profession loan forgiveness under this paragraph, a borrower must have been employed as a full-time nurse for a public hospital, a rural health clinic, a migrant health center, an Indian Health Service Health Center, an Indian Health Center, a Native Hawaiian Health Center or for an acute care or long-term care facility.

(2) To qualify for loan forgiveness under this paragraph, a borrower, in the time frame provided under paragraph (c) of this section, for the year of service for which forgiveness is requested, must provide to the Secretary or his designee—

(i) A statement from an authorized official where the borrower was employed certifying that the borrower was employed as a full-time nurse for a facility described in this section and served for the term of at least one year (defined as twelve consecutive months);

(ii) The date on which the borrower's service began; and

(iii) The date on which the borrower's year of service ended.

(h) *Forgiveness amounts.* (1) The Secretary repays the holder a percentage of the total amount of Stafford loans owed by the eligible borrower for—

(i) The borrower's last 2 years of undergraduate education; or

(ii) The 2 academic years in which a borrower who was not already participating in loan repayment pursuant to this section returned to an institution of higher education for the purpose of obtaining a post graduate teaching certificate or additional teacher certification.

(2) The Secretary repays loans on the following basis:

(i) 15 percent of the total original principal amount of Federal Stafford loans for each of the first two years in which the borrower is awarded the benefit and meets the requirements of this section.

(ii) 20 percent of the total original principal amount for each of the third and fourth years.

(iii) 30 percent of the total original principal amount for the fifth year.

(3) The Secretary repays the holder for the amount of interest, including capitalized interest, which accrued on the loan or loans subject to forgiveness over the year.

(4) Payments made by the Secretary must be applied first to the unsubsidized Federal Stafford portion of the loan, followed by the subsidized Federal Stafford portion, and then the nonsubsidized Federal Stafford portion.

(5) The amount of payments made by the Secretary under paragraphs (h)(2)(i), (h)(2)(ii), and (h)(2)(iii) of this section may not exceed the sum of the outstanding principal balance of the loan or loans subject to forgiveness plus all interest payments made in accordance with paragraph (h)(3) of this section.

(6) Payments received from a borrower who qualifies for loan forgiveness under this section may not be refunded.

(i) *Definitions.* The following definitions apply to this section:

Acute care facility means either a short-term care hospital in which the average length of patient stay is less than 30 days, or a short-term care hospital in which over 50% of all patients are admitted to units where the average length of patient stay is less than 30 days.

Elementary school means a public or nonprofit private day or residential school that provides elementary education, as determined under State law.

Indian Health Service Health Center means a health care facility (whether operated directly by the Indian Health Service or operated by a tribal contractor or grantee under the Indian Self-Determination Act), that is physically separated from a hospital and that provides one or more clinical treatment services, such as physician, dentist or nursing services, available at least 40 hours a week for outpatient care to persons of Indian or Alaska Native descent.

Long-term care facility means a facility that offers services designed to provide diagnostic, preventive, therapeutic, rehabilitative, supportive and maintenance services for individuals who have chronic physical or mental impairments.

This facility may have a variety of institutional and non-institutional health settings, including the home, and the goal of the service is to promote the optimum level of physical, social and psychological functioning.

Native Hawaiian Health Center means an entity (as defined in section 8 of the Native Hawaiian Health Care Act of 1988 (Pub.L. 100–579)—

(1) That is organized under the laws of the State of Hawaii;

(2) That provides or arranges for health care services through practitioners licensed by the State of Hawaii, if licensure requirements are applicable;

(3) That is a public or private nonprofit entity; and

(4) In which Native Hawaiian health practitioners significantly participate in the planning, management, monitoring, and evaluation of health services.

Public hospital means a facility (as defined in 24 CFR 242.1)—

(1) Owned by a State or unit of local government or by an instrumentality thereof, or owned by a public benefit corporation established by a State or unit of local government or by an instrumentality thereof;

(2) That provides community services for inpatient medical care of the sick or injured (including obstetrical care);

(3) Where not more than 50 percent of the total patient days during any year are customarily assignable to the categories of chronic convalescent and rest, drug and alcoholic, epileptic, mentally deficient, mental, nervous and mental, and tuberculosis; and

(4) That is licensed or regulated by the State (or, if there is no State law providing for such licensing or regulation by the State, by the municipality or other political subdivision in which the facility is located).

Rural Health Clinic means an entity (as defined under section 1861(aa)(2) of the Social Security Act and in 42 CFR 491.2 that—

(1) Is primarily engaged in furnishing to outpatients, physicians' services and services furnished by a physician assistant or by a nurse practitioner, as well as those services and supplies covered under sections 1861(s)(2)(A) and 1961(s)(10) of the Social Security Act;

(2) In the case of a facility that is not a physician-directed clinic, has an arrangement (consistent with the provisions of State and local law relative to the practice, performance, and delivery of health services) with

one or more physicians under which provision is made for the periodic review by those physicians of covered services furnished by physician assistants and nurse practitioners, the supervision and guidance by such patients as may be necessary, and the availability of those physicians for advice and assistance in the management of medical emergencies, and in the case of the physician-directed clinic, has one or more of its staff physicians perform the activities accomplished through such an arrangement;

(3) Maintains clinical records on all patients;

(4) Has arrangements with one or more hospitals, having agreements in effect under section 1866 of the Social Security Act, for the referral and admission of patients requiring inpatient services or diagnostic or other specialized services as are not available at the clinic;

(5) Has written policies, that are developed with the advice of (and with provision of review of those policies from time to time by) a group of professional personnel, including one or more physicians and one or more physician assistants or nurse practitioners, to govern those services which it furnishes;

(6) Has a physician assistant or nurse practitioner responsible for the execution of policies described in paragraph (5) of this definition and relating to the provision of the clinic's services;

(7) Directly provides routine diagnostic services, including clinical laboratory services, as prescribed in 42 CFR 491.2, and has prompt access to additional diagnostic services from facilities meeting requirements under title 42;

(8) In compliance with State and Federal law, has available for administering to patients of the clinic at least such drugs and biologicals as are determined under 42 CFR 491.2 to be necessary for the treatment of emergency cases and has appropriate procedures or arrangements for storing, administering, and dispensing any drugs and biologicals;

(9) Has appropriate procedures for review of utilization of clinic services to the extent that the Secretary determines to be necessary and feasible; and

(10) Meets other requirements as the Secretary of Health and Human Services may find necessary in the interest of the health and safety of the individuals who are furnished services by the clinic.

Secondary school means a public or nonprofit private day or residential school that provides secondary education, as determined under State law. In the absence of applicable State law, the Secretary may determine, with respect to that State, whether the term "secondary school" includes education beyond the twelfth grade.

State education agency means the agency or official designated by the Governor or by State law as being primarily responsible for the State supervision of public elementary and secondary schools.

Teacher means a professional who provides direct and personal services to students for their educational development through classroom teaching.

(Authority: 20 U.S.C. 1071 to 1087–2)

[FR Doc. 94–14593 Filed 6–15–94; 8:45 am]

BILLING CODE 4000–01–P

federal register

Thursday
June 16, 1994

Part X

Department of the Interior

Bureau of Indian Affairs

Plan for the Use of the Gila River Indian Community Indian Judgment Funds in Docket No. 236–N Before the United States Court of Federal Claims; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Plan for the Use of the Gila River Indian Community Indian Judgment Funds in Docket No. 236–N Before the United States Court of Federal Claims

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

EFFECTIVE DATE: This plan was effective as of May 9, 1994.

FOR FURTHER INFORMATION CONTACT: Terry Lamb, Historian, Bureau of Indian Affairs, Division of Tribal Government Services, 2611 MS/MIB, 1849 C Street NW., Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The Act of October 19, 1973 (Pub. L. 93–134, 87 Stat. 466), as amended, requires that a plan be prepared and submitted to Congress for the use and distribution of funds appropriated to pay a judgment of the Indian Claims Commission or Court of Claims to any Indian tribe. Funds were appropriated on January 25, 1993 in satisfaction of the award granted to the Gila River Indian Community before the United States Court of Federal Claims in Docket 236–N. The plan for the use of the funds was submitted to Congress with a letter dated January 24, 1994 and was received (as recorded in the Congressional Record) by the Senate on February 7, 1994 and by the House of Representatives on January 25, 1994. The plan became effective May 9, 1994 as provided by the 1973 Act, as amended by Pub. L. 97–458, since a joint resolution disapproving it was not enacted. The plan reads as follows:

Plan

for the Use of the Gila River Indian Community Judgment Funds in Docket No. 236–N before the United States Claims Court

The funds appropriated January 25, 1993 in satisfaction of the award granted in Docket No. 236–N to the Gila River Indian Community before the U.S. Claims Court, less attorney fees and litigation expenses, and including all interest and investment income accrued, shall be used and distributed as follows:

Per Capita Aspect

The Secretary of the Interior ("Secretary") shall make a per capita distribution of eighty percent (80%) of the principal, interest, and investment income accrued, in a sum as equal as possible, to each member of the Gila River Pima-Maricopa Indian Community, born on or prior to and living on the effective date of this plan. Any remaining amount, after the per capita payment to the members, shall revert to the tribe for use in the programming aspect of this plan.

Programming Aspect

Twenty percent (20%) of the principal, interest and investment income accrued shall continue to be invested with the interest to be available to the community's general fund on an annual budgetary basis to be used for operation of community programs.

If at some future date, the Gila River Indian Community decides to amend this Plan, the Plan may be amended with the approval of the Secretary.

General Provisions

The per capita shares of living, competent adults shall be paid directly to them. The per capita shares of deceased individual beneficiaries shall be determined and distributed in accordance with 43 CFR part 4, subpart D. Per capita shares of legal incompetents and minors shall be handled as provided in the Act of October 19, 1973, 87 Stat. 466, as amended January 12, 1983, 96 Stat. 2512.

None of the funds made available under this plan for programming or per capita distribution shall be subject to Federal or State income taxes, nor shall such funds nor their availability be considered as income or resources, nor otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act or, except for any per capita shares in excess of $2,000, any Federal or federally assisted programs.

Hilda A. Manuel,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 94–14630 Filed 6–15–94; 8:45 am]

BILLING CODE 4310–02–M

Federal Register

Thursday
June 16, 1994

Part XI

Department of the Interior

Fish and Wildlife Service

50 Part 17

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 222

Endangered and Threatened Wildlife and Plants; Remove the Eastern North Pacific Population of the Gray Whale From the List of Endangered Wildlife; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 101–8AC38

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 222

[Docket No. 921233–2333; I.D. 011394B]

Endangered and Threatened Wildlife and Plants; Final Rule to Remove the Eastern North Pacific Population of the Gray Whale From the List of Endangered Wildlife

AGENCIES: Fish and Wildlife Service (Service), Interior, and National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: The Service is amending the List of Endangered and Threatened Wildlife and Plants (List) by revising the entry for the gray whale (*Eschrichtius robustus*) to remove the eastern North Pacific (California) population from the List while retaining the western North Pacific (Korean) population as endangered. In addition, the NMFS is amending its list of endangered species under NMFS jurisdiction. These actions correspond to a determination by NMFS, and concurrence by the Service, that the eastern North Pacific population of the gray whale should be removed from the List. The eastern North Pacific population has recovered to near its estimated original population size and is neither in danger of extinction throughout all or a significant portion of its range, nor likely to again become endangered within the foreseeable future throughout all or a significant portion of its range. The Service and NMFS believe that the western North Pacific gray whale population, which is geographically isolated from the eastern population, has not recovered and should remain listed as endangered.

EFFECTIVE DATE: June 16, 1994.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours, at the Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, at the above NMFS address (telephone 301/713–2055), or Jamie Rappaport Clark, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, ARLSQ–452, Washington, D.C. 20240 (telephone 703/358–2171).

SUPPLEMENTARY INFORMATION: The Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), is administered jointly by the Service and NMFS. NMFS has jurisdiction over most marine species, including whales, and makes determinations under section 4(a) of the Act as to whether a species should be listed as endangered or threatened. Reclassification of listed species from endangered to threatened and removal of species from the List require concurrence by the Service with the NMFS determination. The Service maintains and publishes the List, codified at 50 CFR 17.11 and 17.12, for all species determined by the Service or NMFS to be endangered or threatened.

On January 7, 1993 (58 FR 3121), NMFS published a final notice of determination that the eastern North Pacific (California) stock (population) of gray whale has recovered to near its estimated original population size and, while individual and cumulative impacts may have the potential to adversely affect the eastern population, that population is neither in danger of extinction throughout all or a significant portion of its range, nor likely to again become endangered within the foreseeable future throughout all or a significant portion of its range. NMFS determined, therefore, that the eastern North Pacific population of the gray whale should be removed from the List under the Act. NMFS also determined that the western North Pacific gray whale stock, which is geographically isolated from the eastern population, has not recovered and should remain listed as endangered.

NMFS conducted a comprehensive evaluation of the status of the species in terms of the factors contained in section 4(a)(1) of the Act for listing and delisting actions, and provided an extensive public comment period on its proposed determination (56 FR 58869; November 22, 1991). The Service has reviewed the complete administrative record regarding this action and finds that the determination is well based and concurs that the eastern North Pacific population should be removed from the List. Therefore, in accordance with section 4(a)(2) of the Act, the Service is amending the List by revising the entry for the gray whale to remove the eastern North Pacific (California) population, while retaining the western North Pacific (Korean) population as endangered. A list of endangered species under the jurisdiction of NMFS is contained in 50 CFR part 222. Therefore, concurrent with the Service's regulatory action, NMFS is amending § 222.23(a) to correspond with the amendment of § 17.11(h).

This final rule is issued under 50 CFR parts 17 and 222 and is not subject to Office of Management and Budget review under E.O. 12866. Because this rule implements a determination previously subject to notice and comment and will relieve an existing restriction, the Service Director and the Assistant Administrator for Fisheries, NOAA, under section 553(b)(B) and (d) of the Administrative Procedure Act (5 U.S.C. 553 *et seq.*), for good cause, find that it is unnecessary to provide additional notice and public comment on this rule or to delay for 30 days its effective date.

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act (NEPA) of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act, as amended. A notice outlining the reasons for this determination was published by the Service in the **Federal Register** on October 25, 1983 (48 FR 49244).

As amended in 1982 (Public Law 97–304), the Act, in section 4(b)(1)(A), restricts the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation* v. *Andrus*, 657 F.2d 829 (6th Cir., 1981), NMFS has categorically excluded all endangered species listings from environmental assessment requirements of NEPA (48 FR 4413, February 6, 1984).

List of Subjects in 50 CFR Parts 17 and 222

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

Regulations Promulgation

Accordingly, part 17, subchapter B of chapter I, and part 222, subchapter C of chapter II, title 50 of the Code of Federal Regulations, are amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.11(h) is amended by revising the table entry for "Whale, gray" in the "Species" column under the heading for MAMMALS to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*		*
Whale, gray	*Eschrichtius robustus.*	North Pacific Ocean: coastal and adjacent seas. Formerly North Atlantic Ocean.	Entire, except eastern North Pacific Ocean: coastal and Bering, Beaufort, and Chukchi Seas.	E	3,536	NA	NA
*	*	*	*	*	*		*

PART 222—ENDANGERED FISH OR WILDLIFE

1. The authority citation for part 222 continues to read as follows:

Authority: 16 U.S.C. 1531–1544.

§ 222.23 [Amended]

2. Section 222.23(a) is amended by removing the words "Gray whale (*Eschrichtius robustus* (*glaucus, gibbosus*))" in the second sentence and adding in their place the words "Western North Pacific (Korean) gray whale (*Eschrichtius robustus*)".

Dated: February 28, 1994.

Mollie H. Beattie,

Director, U.S. Fish and Wildlife Service, Department of the Interior.

Dated: March 9, 1994.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 94–14113 Filed 6–15–94; 8:45 am]

BILLING CODE 4310–55–P

federal register

Thursday
June 16, 1994

Part XII

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Temporary Flight Restrictions; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 26605; Notice No. 91–14]

RIN 2120–AD–55

Temporary Flight Restrictions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM); withdrawal.

SUMMARY: This document withdraws a proposal to amend the Federal Aviation Regulations to require the operator of an aircraft used in conducting authorized news-gathering operations in an area covered by temporary flight restrictions (TFR) to contact the official in charge of the on-scene emergency response activities for the purpose of obtaining information about current and forecasted disaster relief aircraft activities. The objective of the NPRM was to increase the level of safety afforded aircraft used in conducting rescue or disaster relief operations. The FAA has carefully considered all of the comments received in response to the NPRM and as a result has concluded that safety in TFR's can be increased through procedural versus regulatory means. Accordingly, the NPRM is being withdrawn.

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

SUPPLEMENTARY INFORMATION:

Background

On July 24, 1991, the FAA published Notice No. 91–14 (56 FR 34000). The NPRM proposed amending § 91.137(c)(5) of the Federal Aviation Regulations (FAR) to require that: (1) All pilots of aircraft carrying properly accredited media personnel initially contact the official in charge of on-scene emergency response activities to ascertain the routes, altitudes, and operating areas in use by disaster relief aircraft; and (2) the aircraft be operated clear of all disaster relief aircraft operations identified by the official in charge. Currently, when TFR's are established for the purpose of providing a safe environment for the operation of disaster relief aircraft, aircraft carrying properly accredited newspeople may enter the prescribed area without prior approval, provided a flight plan has been filed. However, the aircraft must be operated above the altitude(s) being used by rescue or disaster relief aircraft. The process a pilot uses to determine which altitudes are being utilized is not prescribed in the current regulation.

Discussion of Comments

Thirty-one comments were received in response to the NPRM (the comment period closed September 23, 1991). Most commenters supported the goal of the NPRM to promote increased air traffic safety in TFR's; however, the best means to accomplish this was disputed.

Several commenters recommended that a common disaster frequency be established for all aircraft. Other commenters expressed concern over the potential inability of media aircraft to communicate with emergency ground officials, suggesting that on-scene ground officials be required to possess an aircraft compatible two-way radio. Suggestions were made to require pilot monitoring of the frequency while in the disaster area. Finally, suggestions were made to incorporate this proposed rule into the Airman's Information Manual rather than add it to the FAR.

The FAA recognizes the potential merit of this proposal and acknowledges the validity of the express concerns. Since this NPRM was published, the FAA has been reviewing regulations and procedures currently utilized for temporary flight restrictions.

In addition to aircraft carrying news media encountering difficulties in determining the altitude being used by disaster relief aircraft, other TFR problems have been cited. These problems include pilots being unable to receive the location of a TFR area in a timely manner; aircraft on instrument flight rules (IFR) flight plans and military aircraft on IFR training routes intruding into the TFR; the large number of aircraft in TFR's implemented for an incident or event generating a high degree of public interest; and the untimely process used to put TFR's in place, particularly when they involve critical situations such as toxic spills. In addition, of the 13 documented incidents in TFR's, only 2 were confirmed to be aircraft carrying news media. The other incidents involved general aviation aircraft or military aircraft that inadvertently penetrated the TFR's. The reason most often given was lack of information about the existence of the TFR and the inability to positively identify the TFR location.

Reasons for Withdrawal

Based on the comments received in response to Notice No. 94–14, and the additional data as stated above, the FAA has determined that there is inadequate justification to pursue further this regulatory action. The FAA has determined that additional study of current TFR procedures, which may include parts of Notice No. 91–14, is necessary. Therefore, it is in the best interest of all concerned to withdraw Notice No. 91–14.

The Decision and Withdrawal

Accordingly, the FAA concludes that further rulemaking on Notice No. 91–14 should not proceed at this time. Therefore, Notice No. 91–14 is withdrawn. This action does not preclude the FAA from considering similar proposals in the future or commit it to any further or future course of action on this subject.

The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 31(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 et seq: E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

Issued in Washington DC on June 8, 1994.

Harold W. Becker,

Acting Director, Air Traffic, Rules and Procedures Service.

[FR Doc. 94–14679 Filed 6–15–94; 8:45 am]

BILLING CODE 4910–13–M

federal register

Thursday
June 16, 1994

Part XIII

The President

Proclamation 6701: Father's Day, 1994

Presidential Determination No. 94–26: Determination Under Section 402(d)(1) of the Trade Act of 1974, as Amended—Continuation of Waiver Authority (China)

Presidential Determination No. 94–27: Determination Under Section 402(d)(1) of the Trade Act of 1974, as Amended—Continuation of Waiver Authority (Former Eastern Bloc States)

Federal Register
Vol. 59, No. 115
Thursday, June 16, 1994

Presidential Documents

Title 3—

The President

Proclamation 6701 of June 14, 1994

Father's Day, 1994

By the President of the United States of America

A Proclamation

June conjures up memories of sunny days, backyard cookouts, relaxing vacations, lush gardens in bloom, and on the third Sunday of the month, the celebration of Father's Day. This is a time set aside by tradition to pay tribute to fathers across our land and to thank them for their unconditional love, for their belief in their children's potential, and for their vital parental role. Their profound influence on their sons and daughters—on society itself—is incalculable.

The loving concern of fathers in raising, protecting, educating, encouraging, and providing direction for their children shapes our national character, as well as our children's. The positive interaction of fathers who responsibly welcome the challenges of guiding their children is immeasurable. Through the nurturing support of such parents, competent, caring, and resilient generations of citizens develop and thrive. These fathers, whether biological, foster, or adoptive, deserve our honor and gratitude.

All fathers in our society today must reinvest in supplying emotional and financial support for their children. It is never too late to assume the responsibility for meeting a child's needs. To do so, despite personal and economic hardship, is to help our children transcend adverse circumstances and to earn the love, respect, and appreciation that will become a legacy of devotion for generations long after ours.

Our Nation is becoming increasingly aware that a father's acceptance and support are powerful motivators. It is most fitting that we recognize our fathers' contributions today and every day—that we express, through word or deed, our appreciation to them and that we remember their love, their friendship, and their faith in us.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, in accordance with a joint resolution of the Congress approved April 24, 1972 (36 U.S.C. 142a), do hereby proclaim, Sunday, June 19, 1994, as "Father's Day." I invite the States, communities and people of the United States to observe this day with appropriate ceremonies as a mark of appreciation and affection for our fathers.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of June, 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. 94–14921
Filed 6–15–94; 10:52 am]
Billing code 3195–01–P

Presidential Documents

Presidential Determination No. 94–26 of June 2, 1994

Determination Under Section 402(d)(1) of the Trade Act of 1974, as Amended—Continuation of Waiver Authority

Memorandum for the Secretary of State

Pursuant to the authority vested in me under the Trade Act of 1974, as amended, Public Law 93–618, 88 Stat. 1978 (hereinafter "the Act"), I determine, pursuant to section 402(d)(1) of the Act, 19 U.S.C. 2432(d)(1), that the further extension of the waiver authority granted by section 402(c) of the Act will substantially promote the objectives of section 402 of the Act. I further determine that the continuation of the waiver applicable to the People's Republic of China will substantially promote the objectives of section 402 of the Act.

You are authorized and directed to publish this determination in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, June 2, 1994.

[FR Doc. 94–14925
Filed 6–15–94; 11:49 am]
Billing code 4710–10–M

Editorial note: For the President's letter to Congress on the renewal of this most-favored-nation trade status for China, see page 1203, issue 22 of the *Weekly Compilation of Presidential Documents*.

Presidential Documents

Presidential Determination No. 94–27 of June 2, 1994

Determination Under Section 402(d)(1) of the Trade Act of 1974, as Amended—Continuation of Waiver Authority

Memorandum for the Secretary of State

Pursuant to section 402(d)(1) of the Trade Act of 1974, as amended ("the Act"), I determine that the further extension of the waiver authority granted by section 402(c) of the Act will substantially promote the objectives of section 402 of the Act. I further determine that the continuation of the waivers applicable to Albania, Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Mongolia, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan will substantially promote the objectives of section 402 of the Act.

You are authorized and directed to publish this determination in the **Federal Register.**

William J. Clinton

THE WHITE HOUSE,
Washington, June 2, 1994.

[FR Doc. 94–14924
Filed 6–15–94; 11:48 am]
Billing code 4710–10–M

Editorial note: For the President's letter to Congress on the renewal of this most-favored-nation trade status for these former Eastern Bloc states, see page 1203, issue 22 of the *Weekly Compilation of Presidential Documents.*

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H.R. 1632/P.L. 103–266

To amend title 11, District of Columbia Code, and Part C of title IV of the District of Columbia Self-Government and Governmental Reorganization Act to remove gender-specific references. (June 13, 1994; 108 Stat. 713; 9 pages)

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