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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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Presidential Documents

Title 3—

The President

Presidential Determination No. 94–29 of June 27, 1994

Eligibility of South Africa To Be Furnished Defense Articles and Services Under the Foreign Assistance Act and the Arms Export Control Act

Memorandum for the Secretary of State

Pursuant to the authority vested in me by section 503(a) of the Foreign Assistance Act of 1961, as amended, and section 3(a)(1) of the Arms Export Control Act, I hereby find that the furnishing of defense articles and services to the Government of South Africa will strengthen the security of the United States and promote world peace.

You are authorized and directed to report this finding to the Congress and to publish it in the **Federal Register.**

William J. Clinton

THE WHITE HOUSE,
Washington, June 27, 1994.

[FR Doc. 94–16870
Filed 7–7–94; 4:18 pm]
Billing code 4710–10–M

Editorial note: For the President's remarks to the White House Conference on Africa, see p. 1363 of issue 26 of the *Weekly Compilation of Presidential Documents.*

Rules and Regulations

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

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 179

RIN 3206–AF28

Claims Collection Standards; Debt Collection Act of 1982: Administrative Offset

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to govern the collection of debts owed to the United States which arose from transactions involving OPM's administrative accounts. These regulations implement the debt collection procedures provided under the Debt Collection Act of 1982 (Act). The Act authorizes the Federal Government to collect debts by means of administrative offset from other payments due the debtor from the United States, without the debtor's consent, provided that the debtor is properly notified and given the opportunity to exercise certain administrative rights. OPM's collection of debts due the Retirement and Insurance Group for payment to the Civil Service Retirement and Disability Fund, Employees' Life Insurance Fund, the Retired Federal Employees Health Benefits Fund, or the Employees' Health Benefits Fund is governed by other regulatory provisions.

DATES: These regulations are effective July 11, 1994.

FOR FURTHER INFORMATION CONTACT: Anna Wilson, Chief, Financial Policy Division, Office of the Chief Financial Officer, (CFO) (202) 606–5075.

SUPPLEMENTARY INFORMATION: Section 10 of the Debt Collection Act of 1982 (Act) (Pub. L. 97–365) codified at 31 U.S.C. 3701 *et seq.*, makes several changes in the way Executive and Legislative agencies collect debts owed the Government. The purpose of the Act is to improve the ability of the Government to collect monies owed it.

Under the Act, administrative offset may be initiated when the head of an agency determines that an individual or entity is indebted to the United States, or is notified by the head of another agency that a person or entity is indebted to the United States and that the debtor is owed monies by the United States as a result of transactions with a Federal agency. After the debtor has received certain due process rights, the debt may be collected by administratively offsetting the debt against the amount due.

Under the Act, before the Government may collect a debt by administrative offset, a debtor must be provided with notice that a debt is owed, the opportunity to inspect and copy Government records relating to the debt, the option to enter into a written repayment agreement, and an opportunity for review of the agency's determination concerning the existence of the amount of the debt, or the repayment terms. The debtor must notify the agency of his or her intent to exercise these rights within time periods prescribed in these regulations.

The Act permits the agency to initiate an administrative offset prior to the completion of the due process requirements if failure to do so would substantially jeopardize the agency's ability to collect the debt and if the time remaining before payment is to be made does not reasonably permit completion of the due process procedures. Such prior offset must be followed by completion of the due process procedures.

The Act requires agencies to issue regulations for administrative offset. This final rule establishes the procedures the Office of Personnel Management (OPM) will follow in making an administrative offset from funds paid to a debtor from OPM's administrative accounts. These regulations apply to the collection of debts owed to the United States arising from transactions with OPM other than those involving payments made from the Civil Service Retirement and Disability Fund (the Fund) or where a request for an offset from OPM's administrative accounts—other than the Fund—is received by OPM from another Federal Agency. Regulations for other agencies to request OPM's Retirement and Insurance Group to recover a debt from the Fund are provided at subpart R of part 831 and subpart D of part 845 of title 5, Code of Federal Regulations. These regulations are consistent with the Federal Claims Collection Standards on administrative offset issued jointly by the Department of Justice and the General Accounting Office as set forth in 4 CFR 102.3.

OPM has determined that this document is interpretative because it implements a definitive statutory scheme and the requirements contained in regulations promulgated by the Department of Justice and the General Accounting Office. Accordingly, no Notice of Proposed Rulemaking is required pursuant to 5 U.S.C. 553(b)(A). In addition, because this rule relates to agency management and personnel, no Notice of Proposed Rulemaking is required pursuant to 5 U.S.C. 553(a)(2). For these reasons, a delayed effective date is not required pursuant to 5 U.S.C. 553(d)(2).

Analysis and Comments

The Interim Rule was published in the **Federal Register** on November 19, 1993 (58 FR 60991). The comment period closed on January 18, 1994. Two labor organizations responded with comments. OPM has fully considered all of their comments.

Section 179.303 General

One commenter cited 28 U.S.C. 2415 to question the validity of the time allowed for commencing actions brought by the United States (6 years rather than 10 years). Section (i) of 28 U.S.C. 2415 states: "The provisions of this section shall not prevent the United States or an officer or agency thereof from collecting any claim of the United States by means of administrative offset, in accordance with section 3716 of title 31." That provision precludes agencies from initiating offset to collect a debt more than 10 years after the Government's right to collect the debt first accrued, with certain exceptions explained in that section.

Section 179.305 Agency Review

A commenter expressed concern that the discretion allowed to suspend transactions in an alleged debtor's account pending resolution of an appeal

(179.305(c)) would have a "chilling effect on such appeals by depriving appellants of funds that would otherwise be available to them." The intent of the regulations is to suspend transactions in the account(s) to the extent of the debt owed unless there is evidence of fraud. The language has been modified to clarify that intent.

Another commenter requested that we add to the same section: "Upon lifting the suspension * * * any payments, removals, or transfers, as well as lost interest or discounts due to the debtor that had been precluded due to temporary suspension of transactions in any of the debtor's accounts shall be applied retroactively to cover the period of suspension." This authority is not stated in the Debt Collection Act, and without specific authority, OPM is not authorized to take this action.

Section 179.306 Written Agreement for Repayment

A commenter requested an increase in the amount of time allowed for submission of a financial statement from 10 business days to 30 business days (i.e., from 2 weeks to 6 weeks) "to allow the debtor sufficient time to accurately prepare the financial statement." OPM feels that 10 business days is adequate for the average debtor to present a statement of his or her finances. An audited financial statement is not required. Exceptions will have to be considered on a case-by-case basis.

Section 179.308 Accelerated Procedure

A commenter wished to add "with interest" at the end of the paragraph. The Debt Collection Act of 1982 requires the assessment of interest, penalty fees, and administrative costs on delinquent debts as a means of strengthening enforcement of collections; however, it makes no provision to pay interest to the debtor for erroneous collections. OPM is not authorized to make such payments in the absence of a specific statute or authority permitting such payments.

Regulatory Flexibility Act

No notice of proposed rulemaking is required for these regulations, and the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

List of Subjects in 5 CFR Part 179

Claims.

Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is amending part 179 of title 5 of the Code of Federal Regulations as follows:

PART 179—CLAIMS COLLECTION STANDARDS

1. The authority citation in part 179 is revised to read as follows:

Authority: 31 U.S.C. 952; 5 U.S.C. 1103; Reorganization Plan No. 2 of 1978; 5 U.S.C. 5514; 5 CFR part 550 subpart K; 31 U.S.C. 3701; 31 U.S.C. 3711; 31 U.S.C. 3716; 31 U.S.C. 3720A.

2. Subpart C, consisting of §§ 179.301 through 179.309, is revised to read as follows:

Subpart C—Administrative Offset

Sec.

179.301 Scope of regulations.
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179.303 General.
179.304 Notification procedures.
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Subpart C—Administrative Offset

§ 179.301 Scope of regulations.

These regulations apply to the collection of debts owed to the United States arising from transactions with OPM other than those involving payments made from the Civil Service Retirement and Disability Fund (the Fund), or where a request for an offset from OPM's administrative accounts—other than the Fund—is received by OPM from another Federal agency. Regulations for other agencies to request OPM's Retirement and Insurance Group to recover a debt from the Fund are provided at subpart R of part 831 and subpart D of part 845 of title 5, Code of Federal Regulations. These regulations are consistent with the Federal Claims Collection Standards on Administrative Offset issued jointly by the Department of Justice and the General Accounting Office as set forth in 4 CFR 102.3.

§ 179.302 Definitions.

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

Person, includes a natural person or persons, profit or non-profit corporation, partnership, association, trust, estate, consortium, or other entity which is capable of owing a debt to the United States Government except that agencies of the United States, or of any State or local government, shall be excluded.

§ 179.303 General.

(a) The Director or his or her designee, after attempting to collect a debt from a person under section 3(a) of the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3711(a)), may collect the debt by administrative offset subject to the following:

(1) The debt is certain in amount; and

(2) It is in the best interest of the United States to collect the debt by administrative offset because it is less costly and speeds payment of the debt;

(b) The Director, or his or her designee, may initiate administrative offset with regard to debts owed by a person to another agency of the United States Government, upon receipt of a request from the head of another agency, or his or her designee, and a certification that the debt exists and that the person has been afforded the necessary due process rights.

(c) The Director, or his or her designee, may request another agency that holds funds payable to an OPM debtor to offset the debt against the funds held and will provide certification that:

(1) The debt exists; and

(2) The person has been afforded the necessary due process rights.

(d) If the 6-year period for bringing action on a debt provided in 28 U.S.C. 2415 has expired, then administrative offset may be used to collect the debt only if the costs of bringing such action are likely to be less than the amount of the debt.

(e) No collection by administrative offset shall be made on any debt that has been outstanding for more than 10 years unless facts material to the Government's right to collect the debt were not known, and reasonably could not have been known, by the official or officials responsible for discovering and collecting such debt.

(f) These regulations do not apply to:

(1) A case in which administrative offset of the type of debt involved is explicitly provided for or prohibited by another statute.

(2) Debts owed to OPM by other agencies of the United States or by any State or local government.

§ 179.304 Notification procedures.

Before collecting any debt through administrative offset, a notice of intent to offset shall be sent to the debtor by certified mail, return receipt requested, at the most current address that is available to OPM. The notice shall provide:

(a) A description of the nature and amount of the debt and the intention of OPM to collect the debt through administrative offset;

(b) An opportunity to inspect and copy the records of OPM with respect to the debt;

(c) An opportunity for review within OPM concerning OPM's determinations with respect to the debt; and

(d) An opportunity to enter into a written agreement for the repayment of the amount of the debt.

§ 179.305 Agency review.

(a) A debtor may dispute the existence of the debt, the amount of the debt, or the terms of repayment. The request to review a disputed debt must be received by the OPM official identified in the notification within 30 calendar days of the debtor's receipt of the written notice described in § 179.304.

(b) If the debtor requests an opportunity to inspect or copy OPM's records concerning the disputed claim, 10 business days will be granted for the review. The time period will be measured from the time the request for inspection is granted or from the time the copy of the records is received by the debtor.

(c) Pending the resolution of a dispute initiated by the debtor, transactions in any of the debtor's account(s) maintained in OPM may be temporarily suspended to the extent of the debt that is owed. Depending on the type of transaction, the suspension could preclude payment, removal, or transfer, as well as prevent the payment of interest or discount due thereon. Should the dispute be resolved in the debtor's favor, the suspension will be lifted immediately.

(d) During the review period, interest, penalties, and administrative costs authorized under the Federal Claims Collection Act of 1966, as amended, will continue to accrue.

§ 179.306 Written agreement for repayment.

A debtor who admits liability but elects not to have the debt collected by administrative offset will be afforded an opportunity to negotiate a written agreement for the repayment of the debt. If the financial condition of the debtor does not support the ability to pay in one lump-sum, reasonable installments may be considered. No installment arrangement will be considered unless the debtor submits a financial statement, executed under penalty of perjury, reflecting the debtor's assets, liabilities, income, and expenses. The financial statement must be submitted within 10 business days of OPM's request for the statement. At OPM's option, a confess-judgment note or bond of indemnity with surety may be required for the installment agreement. Notwithstanding the provisions of this section, any reduction or compromise of a claim will be governed by 4 CFR part 103 and 31 U.S.C. 3711.

§ 179.307 Administrative offset.

(a) If the debtor does not exercise the right to request a review within the time specified in § 179.305 or, if as a result of the review, it is determined that the debt is due and no written agreement is executed, then administrative offset shall be ordered in accordance with these regulations without further notice.

(b) Request for offset to a Federal agency: The Director or his or her designee may request that funds due and payable to a debtor by a Federal agency be administratively offset in order to collect a debt owned to OPM by that debtor. In requesting administrative offset OPM, as creditor, will certify in writing to the Federal agency holding funds of the debtor:

(1) That the debtor owes the debt;

(2) The amount and basis of the debt; and

(3) That OPM has complied with the requirements of 31 U.S.C. 3716, its own administrative offset regulations, and the applicable provisions of 4 CFR part 102 with respect to providing the debtor with due process.

(c) Request for offset from a Federal agency: When administrative offset is authorized, any Federal creditor agency may request OPM to make an administrative offset from any OPM funds that are due and payable to a creditor agency's debtor. OPM shall initiate the requested administrative offset only upon:

(1) Receipt of written certification from the creditor agency:

(i) That the debtor owes the debt;

(ii) The amount and basis of the debt;

(iii) That the agency has prescribed regulations for the exercise of administrative offset; and

(iv) That the agency has complied with its own administrative offset regulations and with the applicable provisions of 4 CFR part 102, including providing any required hearing or review.

(2) A determination by OPM that collection by offset against funds payable by OPM would not otherwise be contrary to law.

§ 179.308 Accelerated procedures.

OPM may make an administrative offset against a payment to be made to the debtor prior to the completion of the procedures required by § 179.304 and § 179.305 if failure to take the offset would substantially jeopardize OPM's ability to collect the debt, and the time before the payment is to be made does not reasonably permit the completion of those procedures. Such prior offset shall be promptly followed by the completion of those procedures. Amounts recovered by offset but later found not to be owed to OPM shall be promptly refunded.

§ 179.309 Additional administrative procedures.

Nothing contained in this chapter is intended to preclude the use of any other administrative remedy which may be available.

[FR Doc. 94–16632 Filed 7–8–94; 8:45 am]

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5 CFR Part 179

RIN 3206–AF29

Claims Collection Standards; Debt Collection Act of 1982: Salary Offset

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to govern the collection of debts owed to OPM's administrative accounts by Federal employees. These regulations implement the debt collection procedures provided under the Debt Collection Act of 1982 (Act). The Act authorizes the Federal Government to collect debts by means of offset from the salaries of Federal employees without the employee's consent, provided that the employee is properly notified and given the opportunity to exercise certain administrative rights. OPM's collection of debts due the Retirement and Insurance Group for payment to the Civil Service Retirement and Disability Fund, Employees' Life Insurance Fund, the Retired Federal Employees Health Benefits Fund, or the Employees' Health Benefits Fund is governed by other regulatory provisions.

DATES: These regulations are effective July 11, 1994.

FOR FURTHER INFORMATION CONTACT: Anna Wilson, Chief, Financial Policy Division, Office of the Chief Financial Officer (CFO), (202) 606–5075.

SUPPLEMENTARY INFORMATION: Section 5 of the Debt Collection Act of 1982 (Act) Pub. L. 97–365) codified at 5 U.S.C. 5514, makes several changes in the way Executive and Legislative agencies collect debts owed the Government. The purpose of the Act is to improve the ability of the Government to collect monies owed it.

Under the Act, when the head of an agency determines that an employee of any agency is indebted to the United States, or is notified by the head of another agency that an agency employee is indebted to the United States, the employee's debt may be offset against his/her pay. Before agencies may use the salary offset recovery procedure, certain due process rights must be extended to the debtor.

Before the Government may collect a debt by salary offset, an employee-debtor must be provided with notice of the debt and the opportunity to inspect and copy Government records relating to the debt, enter into a written repayment agreement, and request an impartial hearing on the determination of the agency concerning the existence or the amount of the debt. The employee must notify the agency of his/her intent to exercise these rights within the time period prescribed in the regulations.

The Act requires agencies to issue regulations for salary offset. This final rule establishes the procedures the Office of Personnel Management (OPM) will follow in making a salary offset. OPM has determined that this document is interpretative; it implements a definitive statutory scheme and the requirements contained in regulations promulgated by OPM, codified in 5 CFR part 550, subpart K. Accordingly, no Notice of Proposed Rulemaking is required pursuant to 5 U.S.C. 553(b)(A). In addition, because this rule relates to agency management and personnel, no Notice of Proposed Rulemaking is required pursuant to 5 U.S.C. 553(a)(2). For these reasons, a delayed effective date is not required pursuant to 5 U.S.C. 553(d)(2).

Analysis and Comments

The Interim Rule was published in the **Federal Register** on November 19, 1993 (58 FR 60993). The comment period closed on January 18, 1994. Two labor organizations responded with comments. OPM has fully considered all of their comments.

Section 179.201 Purpose

One commentor requested that we change the 10 years in the second sentence (i.e., the time allowed for commencing actions brought by the United States) to 6 years. They cited no basis for the request. Section 179.201 is based on 31 U.S.C. 3716 which precludes agencies from initiating offset to collect a debt more than 10 years after the Government's right to collect the debt first accrued, with certain exceptions explained in that section.

Section 179.202 Scope

In response to a commenter, we corrected the reference "Section 179.207, Notice Requirement" to "Section 179.207, Hearing."

Section 179.206 Notice Requirements Before Offset

(a)(16) One commenter wished to insert "with interest" after the word "employee" in this sentence. While the Debt Collection Act of 1982 requires the assessment of interest, penalty fees, and administrative costs on delinquent debts as a means of strengthening enforcement of collections, it makes no provision to pay interest to the debtor for erroneous collections. OPM is not authorized to make such payments in the absence of a specific statute or authority. This reasoning applies also to the same comment regarding section 179.215 Refunds.

Section 179.207 Hearing

Both commenters objected to the perceived inequity in treatment of parties who fail to appear (§ 179.207(j)). We have inserted the following language:

* * * proceed with the hearing as scheduled and make his/her determination based upon the oral testimony presented and the documentary evidence submitted by both parties. With the agreement of both parties, the hearing official shall schedule a new hearing date.

One commenter suggested several other changes to this section, §§ 179.208 and 179.209 but provided no bases for the changes. Since the regulation as published complies with requirements of the Debt Collection Act of 1982, the suggested changes were not made.

Executive Order (E.O.) 12291, Federal Regulation

OPM has determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they are regulations that will affect only employees of the Federal Government.

List of Subjects in 5 CFR Part 179

Claims.

Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is amending title 5, Code of Federal Regulations, part 179 as follows:

PART 179—CLAIMS COLLECTION STANDARDS

1. The authority citation for part 179 is revised to read as follows:

Authority: 31 U.S.C. 952; 5 U.S.C. 1103; Reorganization Plan No. 2 of 1978; 5 U.S.C. 5514; 5 CFR part 550 subpart K; 31 U.S.C. 3701; 31 U.S.C. 3711; 31 U.S.C. 3716; 31 U.S.C. 3720A.

2. Section 179.102 of subpart A is revised to read as follows:

§ 179.102 Delegation of authority.

(a) The Chief Financial Officer and his or her delegates are designated by the Director and authorized to perform all the duties for which the Director is responsible under the Debt Collection Act of 1982 and Office of Personnel Management regulations with the exception of debts arising from the Civil Service Retirement and Disability Fund, the Employees' Life Insurance Fund, the Retired Federal Employees Health Benefits Act (74 Stat. 849), and the Employees Health Benefits Fund. However, the Chief Financial Officer and his or her delegates will request a review by the General Counsel or his or her designee for all claims processed (in amounts of $2500 or more) for compromise, suspension, and termination of collection action.

(b) The Associate Director for Retirement and Insurance and his or her delegates are designated by the Director and authorized to perform all the duties for which the Director is responsible under the Debt Collection Act of 1982 and Office of Personnel Management regulations on debts caused by payments from the Civil Service Retirement and Disability Fund (subchapter III of chapter 83 or chapter 84), claims under the provisions of the Federal Employees' Life Insurance Fund (chapter 87), the Retired Federal Employees Health Benefits Act (74 Stat. 849), the Employees Health Benefits Fund (chapter 89), the Panama Canal Construction Annuity Act (58 Stat. 257), and, the Lighthouse Service Widows' Annuity Act (64 Stat. 465).

3. Subpart B, consisting of §§ 179.201 through 179.218, is revised to read as follows:

Subpart B—Salary Offset

Sec.

179.201 Purpose.
179.202 Scope.
179.203 Definitions.
179.204 Applicability of regulations.
179.205 Waiver requests and claims to the General Accounting Office.
179.206 Notice requirements before offset.
179.207 Hearing.
179.208 Certification.

179.209 Voluntary repayment agreement as alternative to salary offset.
179.210 Special review.
179.211 Notice of salary offset.
179.212 Procedures for salary offset.
179.213 Coordinating salary offset with other agencies.
179.214 Interest, penalties and administrative costs.
179.215 Refunds.
179.216 Request for the services of a hearing official when the creditor agency is not OPM.
179.217 Non-waiver of rights by payments.
179.218 Additional administrative collection action.

Subpart B—Salary Offset

§ 179.201 Purpose.

The purpose of the Debt Collection Act of 1982 (Pub. L. 97–365), is to provide a comprehensive statutory approach to the collection of debts due the Federal Government. These regulations implement section 5 of the Act which authorizes the collection of debts owed by Federal employees to the Federal Government by means of salary offset, except that no claim may be collected by such means if outstanding for more than 10 years after the agency's right to collect the debt first accrued, unless facts material to the Government's right to collect were not known, and could not reasonably have been known, by the official or officials who were charged with the responsibility for discovery and collection of such debts. These regulations are consistent with the regulations on salary offset published by the Office of Personnel Management (OPM) on July 3, 1984 (49 FR 27470) in 5 CFR part 550, subpart K.

§ 179.202 Scope.

(a) These regulations provide procedures for the collection of monies from a Federal employee's pay by salary offset to satisfy certain debts owed the Government.

(b) These regulations apply to all collections by the Director of OPM (except collections involving debts because of payments made from the Civil Service Retirement and Disability Fund, payments made under the Retired Federal Employees Health Benefits Act (74 Stat. 849), the Panama Canal Construction Annuity Act and the Lighthouse Service Widows' Annuity Act and payments or premiums relating to the Federal Employees' Life Insurance Fund or the Federal Employees Health Benefits Fund) from:

(1) Federal employees who owe debts to OPM; and

(2) OPM employees who owe debts to other agencies.

(c) These regulations do not apply to debts or claims arising under the Internal Revenue Code of 1954, as amended (26 U.S.C. 1 *et seq.*); the Social Security Act (42 U.S.C. 301 *et seq.*); the tariff laws of the United States; or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (e.g., travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108).

(d) Section 179.207 does not apply to any adjustment to pay arising from an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less.

(e) Nothing in these regulations precludes the compromise, suspension, or termination of collection actions, where appropriate, under the standards implementing the Federal Claims Collection Act (31 U.S.C. 3711 *et seq.*, 4 CFR parts 101–105, 38 CFR 1.900 *et seq.*).

(f) Nothing in these regulations precludes an employee from requesting a waiver of the debt under applicable statute; under the standards and procedures specified by the Federal Claims Collection Standards (FCCS); or waiver of salary overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, by submitting a subsequent claim to the General Accounting Office in accordance with procedures established by the General Accounting Office.

§ 179.203 Definitions.

As used in this subpart the following definitions shall apply:

Agency means:

(1) An Executive Agency as defined by section 105 of title 5, United States Code;

(2) A military department as defined by section 102 of title 5, United States Code;

(3) An agency or court of the judicial branch including a court as defined in section 610 of title 28, United States Code, the District Court for the Northern Mariana Islands and the Judicial Panel and Multidistrict Litigation;

(4) An agency of the legislative branch, including the U.S. Senate and the U.S. House of Representatives; and

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

Certification means a written debt claim, as prescribed by § 179.209, that is received from a creditor agency and which requests the paying agency to offset the salary of an employee.

Claim See debt.

Creditor agency means an agency of the Federal Government to which the debt is owed. For purposes of this part *creditor agency* includes OPM, unless otherwise noted.

Debt means money owed by an employee of the Federal Government to an agency of the Federal Government, from sources which include loans insured or guaranteed by the United States and all other amounts due the Government from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interests, fines and forfeitures (except those arising under the Uniform Code of Military Justice) and all other similar sources.

Delinquent means the failure to pay an obligation or debt by the date specified in the initial notification or applicable contractual agreement, unless other payment arrangements have been agreed to by OPM and the debtor by that date, or if, at any time thereafter, the debtor fails to satisfy the obligations under a payment agreement with the creditor agency.

Director means the Director of OPM or his or her designee.

Disposable pay means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or, in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount required by law to be withheld. OPM shall allow the following deductions, and any others required by law to be withheld, in determining disposable pay subject to salary offset;

(1) Federal employment taxes;

(2) Amounts mandatorily withheld for the U.S. Soldiers' and Airmen's Home;

(3) Fines and forfeitures ordered by a court martial or by a commanding officer;

(4) Federal, state or local income taxes no greater than would be the case if the employee claimed all dependents to which he or she is entitled and such additional amounts for which the employee presents evidence of a tax obligation supporting the additional withholding;

(5) Amounts withheld from benefits payable under title II of the Social Security Act where the withholding is required by law;

(6) Amounts deducted for Medicare;

(7) Health insurance premiums;

(8) Normal retirement contributions as explained in 5 CFR 581.105(e) (e.g., Civil Service Retirement deductions, Survivor Benefit Plan or Retired Serviceman's Family Protection Plan); and

(9) Normal life insurance premiums (e.g., Serviceman's Group Life Insurance

and basic Federal Employee's Group Life Insurance premiums) exclusive of optional life insurance premiums.

Employee means a current employee of OPM or other agency, including a current member of the Armed Forces or Reserve of the Armed Forces of the United States.

FCCS means the Federal Claims Collection Standards jointly published by the Department of Justice and the General Accounting Office of 4 CFR 101.1 *et seq.*

Hearing official means an individual (including an administrative law judge) responsible for conducting any hearing with respect to the existence or amount of a debt claimed, and rendering a decision on the basis of such hearing. A hearing official may not be under the supervision or control of the Director of OPM when OPM is the creditor agency.

Notice of intent to offset or *notice of intent* means a written notice from a creditor agency to an employee that states the creditor agency's determination that the employee owes a debt to the creditor agency and apprises the employee of certain administrative rights.

Notice of salary offset means a written notice from the paying agency to an employee after a certification has been issued by the creditor agency, informing the employee that salary offset will begin at the next officially established pay interval.

Office means the central and regional offices of the Office of Personnel Management.

Paying agency means the agency of the Federal Government which employs the individual who owes a debt to an agency of the Federal Government. In some cases, OPM may be both the creditor agency and the paying agency.

Payroll office means the payroll office in the paying agency which is primarily responsible for the payroll records and the coordination of pay matters with the appropriate personnel office with respect to an employee. Payroll office, with respect to OPM, means the central payroll office.

Salary offset means an administrative offset to collect a debt under 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee, without his or her consent.

Salary Offset Coordinator means an official, designated by the Director of OPM, who is responsible for coordinating debt collection activities for OPM.

Waiver means the cancellation, remission, forgiveness, or non-recovery of a debt allegedly owed by an employee to OPM or another agency as permitted or required by 5 U.S.C. 5584, 10 U.S.C. 2774, 32 U.S.C. 716, or any other law.

§ 179.204 Applicability of regulations.

These regulations are to be followed for all OPM collections (except those involving retirement, life, and health insurance debts for recovery by the Associate Director for Retirement and Insurance) in instances where:

(a) OPM is owed a debt by an individual currently employed by another agency;

(b) OPM is owed a debt by an individual who is a current employee of OPM; or

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

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

These regulations do not preclude an employee from requesting waiver of an overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774, 32 U.S.C. 716, or in any way questioning the amount or validity of a debt by submitting a subsequent claim to the General Accounting Office in accordance with the procedures prescribed by the General Accounting Office. These regulations do not preclude an employee from requesting a waiver pursuant to other statutory provisions pertaining to the particular debt being collected.

§ 179.206 Notice requirements before offset.

(a) Deductions under the authority of 5 U.S.C. 5514 shall not be made unless the creditor agency provides the employee with written notice that he/she owes a debt to the Federal government a minimum of 30 calendar days before salary offset is initiated. When OPM is the creditor agency, this notice of intent to offset an employee's salary shall be hand-delivered at work, or sent by registered mail, return receipt requested, to the employee's most current address that is available to the Office and will state:

(1) That the creditor agency has reviewed the records relating to the claim and has determined that a debt is owed, the amount of the debt, and the facts giving rise to the debt;

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

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

(4) An explanation of OPM's policy concerning interest, penalties and administrative costs including a statement that such assessments must be made unless excused in accordance with the FCCS, 4 CFR 101.1 *et seq.* (§ 179.214);

(5) The employee's right to inspect and copy all records of the office pertaining to the debt claimed, or to request and to receive copies of such records if personal inspection is impractical;

(6) If not previously provided, the opportunity to establish a schedule for the voluntary repayment of the debt through offset or to enter into an agreement to establish a schedule for repayment of the debt in lieu of offset (4 CFR 102.2(e)). The agreement must contain terms agreeable to the Office and must be in such form that it is legally enforceable. The agreement must:

(i) Be in writing;

(ii) Be signed by both the employee and the creditor agency;

(iii) Specify all the terms of the arrangement for payment; and

(iv) Contain a provision accelerating the debt in the event of a default by the debtor, but such an increase may not result in a deduction that exceeds 15 percent of the employee's disposable pay unless the employee has agreed in writing to the deduction of a greater amount (5 CFR 550.1104(i)).

(7) The right to a hearing conducted by an impartial hearing official (an administrative law judge, or alternatively, a hearing official not under the supervision or control of the Director) with respect to the existence and amount of the debt claimed, or the repayment schedule (i.e., the percentage of disposable pay to be deducted each pay period), so long as a petition is filed by the employee as prescribed in § 179.207;

(8) The method and time period for requesting a hearing;

(9) The name, address and phone number of an official or employee of the Office who may be contacted concerning procedures for requesting a hearing;

(10) The name and address of the office to which the petition for a hearing should be sent;

(11) That a timely and properly filed petition for hearing will stay the commencement of collection proceedings (a timely filing must be received in the office specified under paragraph (a)(10) of this section within 15 calendar days after receipt of such notice of intent to offset);

(12) That the Office will initiate certification procedures to implement a

salary offset (which may not exceed 15 percent of the employee's disposable pay) not less than 30 days from the date of receipt of the notice of debt, unless the employee files a timely petition for a hearing;

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

(14) That any knowingly false or frivolous statements, representations, or evidence may subject the employee to;

(i) Disciplinary procedures appropriate under chapter 75 of title 5, United States code; part 752 of title 5, Code of Federal Regulations; or any other applicable statute or regulations;

(ii) Penalties under the False Claims Act, sections 3729 through 3731 of title 31, United States Code, or any other applicable statutory authority; and

(iii) Criminal penalties under sections 286, 287, 1001, and 1002 of title 18, United States code, or any other applicable statutory authority;

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

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

(17) That proceedings with respect to such debt are governed by section 5 of the Debt Collection Act of 1982 (5 U.S.C. 5514).

(b) The Office is not required to comply with paragraph (a) of this section for any adjustment to pay arising from:

(1) An employee's selection of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less; or

(2) An employee's consent to make voluntary withholdings from his or her current pay account.

§ 179.207 Hearing.

(a) *Request for hearing.* Except as provided in paragraph (b) of this section, an employee who desires a hearing concerning the existence or amount of the debt or the proposed offset schedule must send such a request to the office designated in the notice of intent (§ 179.207(a)(10)). The request (or petition) for hearing must be received by the designated office not later than 15 calendar days following the employee's receipt of the notice. The employee's request (or petition) must:

(1) Be signed by the employee;

(2) Fully identify and explain with reasonable specificity all the facts, evidence and witnesses, if any, that the employee believes support his or her position; and

(3) Specify whether an oral or paper hearing is requested. If an oral hearing is desired, the request should explain why the matter cannot be resolved by review of the documentary evidence alone (4 CFR 102.3(c)).

(b) *Failure to timely submit.* (1) If the employee files a petition for a hearing after the expiration of the 15 calendar day period provided for in paragraph (a) of this section, the Office may accept the request if the employee can show that the delay was the result of circumstances beyond his of her control or failure to receive actual notice of the filing deadline (unless the employee had actual notice of the filing deadline).

(2) An employee waives the right to a hearing, and will have his or her disposable pay offset in accordance with the Office offset schedule, if the employee:

(i) Fails to file a timely request for a hearing unless such failure is excused; or

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

(c) *Representation at the hearing.* The creditor agency may be represented by legal counsel. The employee may represent himself or herself or may be represented by an individual of his or her choice and at his or her expense.

(d) *Review of Office records related to the debt.* (1) An employee who intends to inspect or copy creditor agency records related to the debt, as provided by § 179.207(a)(5), must send a letter to the official designated in the notice of intent to offset stating his or her intention. The letter must be received within 15 calendar days after the employee's receipt of the notice.

(2) In response to a timely request submitted by the debtor, the designated official will notify the employee of the location and time when the employee may inspect and copy records related to the debt.

(3) If personal inspection is impractical, arrangements shall be made to end copies of such records to the employee.

(e) *Hearing official.* The Office may request an administrative law judge to conduct the hearing, or the Office may obtain a hearing official who is not under the supervision or control of the Director of OPM.

(f) *Obtaining the services of a hearing official when OPM is the creditor agency.* (1) When the debtor is not an OPM employee and the Office cannot provide a prompt and appropriate hearing before a hearing official furnished pursuant to another lawful arrangement, the Office may contact an agent of the paying agency designated in 5 CFR part 581, appendix A, or other individual designated by the paying agency, and request a hearing official.

(2) When the debtor is an OPM employee, the Office may contact any agent of another agency designated in 5 CFR part 581, appendix A, or otherwise designated by that agency, to request a hearing official.

(g) *Procedure.*—(1) *General.* After the employee requests a hearing, the hearing official shall notify the employee of the form of the hearing to be provided. If the hearing will be oral, the notice shall set forth the date, time and location of the hearing. If the hearing will be paper, the employee shall be notified that he or she should submit arguments in writing to the hearing official by a specified date after which the record shall be closed. This date shall give the employee reasonable time to submit documentation.

(2) *Oral hearing.* An employee who requests an oral hearing shall be provided an oral hearing if the hearing official determines that the matter cannot be resolved by review of documentary evidence alone (e.g., when an issue of credibility or veracity is involved). The hearing is not an adversarial adjudication and need not take the form of an evidentiary hearing. Oral hearings may take the form of, but are not limited to:

(i) Informal conferences with the hearing official, in which the employee and agency representative will be given full opportunity to present evidence, witnesses, and argument;

(ii) Informal meetings with an interview of the employee; or

(iii) Formal written submissions with an opportunity for oral presentation.

(3) *Paper hearing.* If the hearing official determines that an oral hearing is not necessary, he or she will make a determination based upon a review of the available written record (4 CFR 102.3(c) (2) and (3)).

(4) *Record.* The hearing official must maintain a summary record of any hearing provided by this subpart (4 CFR 102.3(c)(1)(ii)). Witnesses who testify in

oral hearings will do so under oath or affirmation.

(h) *Date of decision.* The hearing official shall issue a written opinion stating his or her decision, based upon documentary evidence and information developed at the hearing, as soon as practicable after the hearing, but not later than 60 days after the date on which the petition was received by the creditor agency, unless the employee requests a delay in the proceedings. In such case the 60-day decision period shall be extended by the number of days by which the hearing was postponed.

(i) *Content of decision.* The written decision shall include:

(1) A statement of the facts presented to support the origin, nature, and amount of the debt;

(2) The hearing official's findings, analysis, and conclusions including a determination whether the debtor's petition for hearing was baseless and resulted from an intent to delay creditor agency collection activity and whether the Office should pursue other actions against the debtor as provided by 5 CFR 550.1104(d)(11); and

(3) The terms of any repayment schedules, if applicable.

(j) *Failure to appear.* In the absence of good cause shown (e.g., illness), an employee who fails to appear at a hearing shall be deemed, for the purpose of this subpart, to admit the existence and amount of the debt as described in the notice of intent. If the representative of the creditor agency fails to appear, the hearing official shall proceed with the hearing as scheduled and make his/her determination based upon the oral testimony presented and the documentary evidence submitted by both parties. With the agreement of both parties, the hearing official shall schedule a new hearing date. Both parties shall be given reasonable notice of the time and place of the new hearing.

§ 179.208 Certification.

(a) OPM salary offset coordinator shall provide a certification to the paying agency in all cases where:

(1) The hearing official determines that a debt exists;

(2) The employee fails to contest the existence and amount of the debt by failing to request a hearing; or

(3) The employee fails to contest the existence of the debt by failing to appear at a hearing.

(b) The certification must be in writing and must state:

(1) That the employee owes the debt;

(2) The amount and basis of the debt;

(3) The date the Government's right to collect the debt first accrued;

(4) That the Office's regulations have been approved by OPM pursuant to 5 CFR part 550, subpart K;

(5) The date on which payment(s) is due;

(6) If the collection is to be made in installments, the number of installments to be collected, the amount of each installment or percentage of disposable pay, and the commencement date of the first installment, if a date other than the next officially established pay period is required; and

(7) The date(s) of any action(s) taken under 5 U.S.C. 5514(b).

§ 179.209 Voluntary repayment agreement as alternative to salary offset.

(a)(1) In response to a notice of intent, an employee may propose to repay the debt by making voluntary installment payments as an alternative to salary offset. An employee who wishes to repay a debt without salary offset shall submit in writing a proposed agreement to repay the debt. The proposal shall admit the existence of the debt, and the agreement must be in such form that it is legally enforceable. The agreement must:

(i) Be in writing;

(ii) Be signed by both the employee and the creditor agency;

(iii) Specify all the terms of the arrangement for payment; and

(iv) Contain a provision accelerating the debt in the event of default by the debtor, but such an increase may not result in a deduction that exceeds 15 percent of the employee's disposable pay unless the employee has agreed in writing to deduction of a greater amount (5 CFR 550.1104(i)).

(2) Any proposal under paragraph (a) of this section must be received by the official designated in the notice of intent within 30 calendar days after receipt of the notice.

(b) The creditor agency will review a timely and properly submitted repayment proposal by the employee debtor and notify the employee whether the proposed written agreement for repayment is acceptable. It is within the creditor agency's discretion to accept a repayment agreement instead of proceeding by offset.

(c) If the creditor agency decides that the proposed repayment agreement is unacceptable, the employee will have 15 days from the date he or she received notice of that decision to file a petition for a hearing or a special review as provided by § 179.210.

(d) If the creditor agency decides that the proposed repayment agreement is acceptable, the alternative arrangement must be in writing, signed by both the employee and the creditor agency designee and meet the other requirements of this section for a voluntary repayment agreement.

§ 179.210 Special review.

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

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

(1) Income from all sources;

(2) Assets;

(3) Liabilities;

(4) Number of dependents;

(5) Expenses for food, housing, clothing and transportation;

(6) Medical expenses; and

(7) Exceptional expenses, if any.

If an OPM employee requests a special review under this section, the employee shall file an alternative proposed offset or payment schedule and a statement, with supporting documents (§ 179.210(b)), stating why the current salary offset or payments result in an extreme financial hardship to the employee.

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

(d) If the special review results in a revised offset or repayment schedule, the OPM salary offset coordinator shall provide a new certification to the payroll office.

§ 179.211 Notice of salary offset.

(a) Upon receipt of proper certification from a creditor agency, the OPM payroll office will send the OPM employee, identified in the certification as the debtor, a written notice of salary offset. Such notice shall, at a minimum:

(1) State that OPM has received a properly certified debt claim from a creditor agency;

(2) Contain a copy of the certification received from the creditor agency;

(3) Advise the employee that salary offset will be initiated at the next officially established pay interval; and

(4) State the amount of the claim and amount of deductions.

(b) The payroll office shall provide a copy of the notice to the creditor agency and advise such agency of the dollar amount to be offset and the pay period when the offset will begin.

§ 179.212 Procedures for salary offset.

(a) The Director or his or her designee shall coordinate salary deductions under this subpart.

(b) OPM payroll office shall determine the amount of an employee's disposable pay and implement the salary offset.

(c) Deductions shall begin effective the pay period following receipt by OPM's payroll office of proper certification of the debt (§ 179.208).

(d) *Types of collection.*—(1) *Lump-sum payment.* A debt will be collected in a lump sum if possible. If an employee is financially unable to pay in one lump sum or the amount of the debt exceeds 15 percent of disposable pay for an officially established pay interval, collection must be made in installments.

(2) *Installment deductions.* Installment deductions will be made over a period not greater than the anticipated period of employment and, except in rare circumstances, not to exceed 3 years. The size and frequency of installment deductions will bear a reasonable relation to the size of the debt and the employee's ability to pay. The amount deducted for any period will not exceed 15 percent of the disposable pay from which the deduction is made unless the employee has agreed in writing to the deduction of a greater amount.

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

(4) *Lump-sum deductions from other sources.* When an employee subject to salary offset is separated from OPM and the balance of the debt cannot be liquidated by offset of the final salary check, the Office, pursuant to 31 U.S.C. 3716, the FCCS and OPM's implementing regulations, may offset the balance of the debt against any financial payment due the employee from the U.S. Government.

(e) *Multiple debts.* In instances where two or more creditor agencies are seeking salary offset, or where two or more debts are owed to a single creditor agency, OPM payroll office may, at its discretion, determine whether one or more debts should be offset simultaneously within the 15 percent limitation.

(f) *Precedence of debts owed to OPM.* For OPM employees, debts owed to the Office generally take precedence over debts owed to other agencies. In the event that a debt to the Office is certified while an employee is subject to a salary offset to repay another agency, the OPM payroll office may decide whether to have that debt repaid in full before collecting its claim or whether changes should be made in the salary deduction being sent to the other agency. If debts owed the Office can be collected in one pay period, the payroll office may suspend the salary offset to the other agency for that pay period in order to liquidate the office debt.

(g) When an employee owes two or more debts, the best interests of the Government shall be the primary consideration in determining the order of debt collection. The OPM payroll office, in making this determination, will be guided primarily by the statute of limitations that affects the collection of the debt(s).

§ 179.213 Coordinating salary offset with other agencies.

(a) *Responsibility of OPM as the creditor agency.* (1) The Director or his or her designee shall coordinate debt collections with other agencies and shall, as appropriate:

(i) Arrange for a hearing or special review upon proper petitioning by a Federal employee; and

(ii) Prescribe, upon consultation with the General Counsel, such additional practices and procedures as may be necessary to carry out the intent of this regulation.

(2) The designated salary offset coordinator will be responsible for:

(i) Ensuring that each notice of intent to offset is consistent with the requirements of § 179.206;

(ii) Ensuring that each certification of debt that is sent to a paying agency is consistent with the requirements of § 179.208;

(iii) Obtaining hearing officials from other agencies pursuant to § 179.207(f); and

(iv) Ensuring that hearings are properly scheduled.

(3) *Requesting recovery from current paying agency.* Upon completion of the procedures established in these regulations and pursuant to 5 U.S.C. 5514, the Office must:

(i) Certify, in writing, to the paying agency that the employee owes the debt, the amount and basis of the debt, the date on which payment(s) is due, the date the Government's right to collect the debt first accrued, and that the Office's regulations implementing 5 U.S.C. 5514 have been approved by the Office of Personnel Management;

(ii) Advise the paying agency of the amount or percentage of disposable pay to be collected in each installment and the number and commencing date of the installments (if a date other than the next officially established pay period is required);

(iii) Advise the paying agency of the action(s) taken under 5 U.S.C. 5514(b) and give the date(s) and action(s) was taken (unless the employee has consented to the salary offset in writing or signed a statement acknowledging receipt of the required procedures and the written consent or statement is forwarded to the paying agency);

(iv) Submit a debt claim certification containing the information specified in paragraphs (a)(3)(i), (a)(3)(ii) and (a)(3)(iii) of this section and an installment agreement (or other instruction on the payment schedule), if applicable, to the employee's paying agency; and

(v) Submit the debt claim, as provided in § 179.208, to the employee's paying agency for collection if the employee is in the process of separating, and has not received a final salary check, or other final payment(s) from the paying agency. The paying agency must certify the total amount of its collection on the debt and send a copy of the certification to the employee and another copy to the creditor agency. If the paying agency's collection does not fully satisfy the debt, and the paying agency is aware that the debtor is entitled to payments from the Civil Service Retirement and Disability Fund or other similar payments that may be due the debtor employee from other Federal Government sources, the paying agency will provide written notification of the outstanding debt to the agency responsible for making such other payments to the debtor employee. The written notification shall state that the employee owes a debt (including the amount) and that the provisions of this section have been fully complied with. The Office must submit a properly certified claim to the agency responsible for making such payments before the collection can be made.

(4) *Separated employee.* If the employee is already separated and all payments due from his or her former paying agency have been paid, the Office may request, unless otherwise prohibited, that money due and payable to the employee from the Civil Service Retirement and Disability Fund (5 CFR 831.1801 *et seq.* or 5 CFR 845.401 *et seq.*) or other similar funds, be administratively offset to collect the debt (31 U.S.C. 3716 and the FCCS).

(5) *Employee transfer.* When an employee transfers from one paying agency to another paying agency, the Office is not required to repeat the due process procedures described in 5 U.S.C. 5514 and this subpart to resume the collection. The Office will submit a properly certified claim to the new paying agency and will subsequently review the debt to make sure the collection is resumed by the new paying agency.

(b) *Responsibility of the Office as the paying agency*—(1) *Complete claim.* When the Office receives a certified claim from a creditor agency, deductions should be scheduled to begin at the next officially established pay interval. Before deductions can begin, the employee must receive written notice from the Office including:

(i) A statement that the Office has received a certified debt claim from the creditor agency;

(ii) The amount of the debt claim;

(iii) The date salary offset deductions will begin, and

(iv) The amount of such deductions.

(2) *Incomplete claim.* When the Office receives an incomplete certification of debt from a creditor agency, the Office must return the debt claim with notice that procedures under 5 U.S.C. 5514 and 5 CFR 550.1101 *et seq.* must be followed and a properly certified debt claim received before action will be taken to collect from the employee's current pay account.

(3) *Review.* The Office is not authorized to review the merits of the creditor agency's determination with respect to the amount or validity of the debt certified by the creditor agency.

(4) *Employees who transfer from one paying agency to another.* If, after the creditor agency has submitted the debt claim to the Office, the employee transfers from OPM to a different paying agency before the debt is collected in full, the Office will certify the total amount collected on the debt. One copy of the certification will be furnished to the employee and one copy to the creditor agency along with notice of the employee's transfer.

§ 179.214 Interest, penalties and administrative costs.

The office shall assess interest, penalties and administrative costs on debts owed pursuant to 31 U.S.C. 3717 and 4 CFR part 101.1 *et seq.* Penalties and administrative costs will be assessed on all delinquent debts.

(a) In cases of default on a previous repayment agreement, the Office reserves the right to set a new interest rate which reflects the current value of funds to the Treasury at the time a new repayment agreement is executed.

(b) The Office, on a case-by-case basis, may waive all interest accrued on debts paid in full within 60 days of the due date if there is no indication of fault or lack of good faith on the part of the debtor.

(c) The Office may waive, in whole or in part, the collection of interest, penalties, and/or administrative costs assessed under this section under the criteria specified in part 103 of 4 CFR, chapter II, relating to the compromise of claims (without regard to the amount of the debt).

(d) The Office may waive, in whole or in part, the collection of interest, penalties, and/or administrative costs assessed under this section if the Office determines that collection of these charges would be against equity and good conscience or not in the best interests of the United States.

(e) The Office shall waive the accrual of interest pending consideration of a request for reconsideration, administrative review, or waiver of the underlying debt under provisions of a permissive statute providing for such review related to the debt.

(f) The Office shall waive interest on repayment agreements when the amount of interest accruing equals or exceeds the amount of installments the debtor can reasonably afford and there is no indication of fault or lack of good faith on the part of the debtor.

§ 179.215 Refunds.

(a) The Office shall promptly refund any amounts deducted under the authority of 5 U.S.C. 5514 when:

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

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

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

§ 179.216 Request for the services of a hearing official when the creditor agency is not OPM.

(a) The Office will provide a hearing official upon request of the creditor agency when the debtor is employed by the Office and the creditor agency cannot provide a prompt and appropriate hearing before a hearing official furnished pursuant to another lawful arrangement.

(b) The salary offset coordinator will secure qualified personnel to serve as hearing officials.

(c) Services rendered under this section will be provided on a fully reimbursable basis pursuant to the Economy Act of 1932, *as amended*, 31 U.S.C. 1535.

§ 179.217 Non-waiver of rights by payments.

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

§ 179.218 Additional administrative collection action.

Nothing contained in this subpart is intended to preclude the use of any other administrative remedy which may be appropriate.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[Docket No. FV93–981–2FIR]

Almonds Grown in California; Finalize Revision of Administrative Rules and Regulations Concerning Creditable Promotion and Advertising Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, with modifications, the provisions of an interim final rule that changed the focus of the Almond Board of California's (Board) advertising and promotion program by broadening the scope of creditable advertising and promotion activities available to handlers and expanding the Board's ability to engage in a significant generic advertising and promotion program to benefit the entire industry. This action provides for more effective and efficient use of industry advertising and promotion funds.

EFFECTIVE DATE: July 11, 1994.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Finn, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2536–S., P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–1509, or FAX (202) 720–5698; or Martin Engeler, Assistant Officer-in-Charge, California Marketing

Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102–B, Fresno, California 93721; (209) 487–5901 or FAX (209) 487–5906.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 981 [7 CFR Part 981], both as amended, hereinafter referred to as the "order" regulating the handling of almonds grown in California. 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 final rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by OMB.

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 request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary will 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 entry of the ruling.

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 final 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 115 handlers of almonds that are subject to regulation under the marketing order and approximately 7,000 producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration [13 CFR 121.601] as those whose annual receipts are less than $5,000,000, and small agricultural producers have been defined as those having annual receipts of less than $500,000. The majority of the almond handlers and producers may be classified as small entities.

This action finalizes an interim final rule which revised § 981.441 of Subpart—Administrative Rules and Regulations and is based on recommendations of the Board, comments received in response to the interim final rule, comments received in response to the reopening of the comment period of the interim final rule, and other available information. The interim final rule was published in the **Federal Register** [58 FR 43500], on August 17, 1993. The rule amended § 981.441 of the rules and regulations in effect under the order. It provided a 30 day comment period which ended September 16, 1993. During this period, one comment was received from Cal-Almond, Inc., an independent almond handler.

On December 22, 1993, the United States Court of Appeals for the Ninth Circuit in California issued a ruling on a district court order involving an action against the Department by three independent almond handlers wherein such handlers alleged, among other things, that the Board's advertising program during the 1980's was unconstitutional because the program violated the handlers' First Amendment Rights. The district court had ruled that the advertising program was constitutional. The Ninth Circuit Court of Appeals acknowledged the substantial public interest in designing effective advertising and promotion programs to stimulate demand and to increase returns to growers but concluded that the almond program in place during the 1980's was sufficiently flawed in that it did not meet the constitutional standards.

In light of the potential effect of the Ninth Circuit Court of Appeal's decision on the newly established Credit-Back advertising and promotion program and on the almond industry as a whole, the Department determined that it was in the public interest to reopen the comment period for the interim final rule. Accordingly, the comment period was reopened on January 31, 1994, [59 FR 4247]. Reopening of the comment period provided interested persons an opportunity to review the rules for the new Credit-Back advertising and promotion program and to submit additional written opinions and information regarding the potential effect of the Court's decision on that program. The Department also sought comments on how to best address the issues raised in the Court's decision. The second comment period closed on March 2, 1994. Seven additional comments were received. All of the comments received on the interim final rule will be discussed herein.

Statutory and Regulatory Background

The Almond Marketing Order is promulgated pursuant to the Agricultural Marketing Agreement Act of 1937 ("Act"). Congress enacted this statute in 1937, a time of economic upheaval for many farmers, in order to stabilize market conditions and ameliorate shortages and surpluses. Congress believed that "establish[ing] and maintain[ing]" such orderly marketing conditions would be in the public interest, ultimately benefitting both farmers and consumers. *See* 7 U.S.C. 602 (declarations of policy).

The principal means by which Congress sought to effectuate these goals is the promulgation of marketing orders under 7 U.S.C. § 608c. Marketing orders are regulations issued by the Secretary of Agriculture, after notice and hearing, and after a finding by the Secretary that the order's terms "will tend to effectuate the declared policy of [the Act]." *See* 7 U.S.C. § 608c(4). Most orders do not become effective until it is approved by two-thirds or more of the affected producers voting in a referendum. *See* 7 U.S.C. §§ 608c (8) and (9). Conversely, a vote of a simple majority of the affected producers can terminate an order. *See* 7 U.S.C. § 608c(16)(B). Although producers vote on the marketing order, the order imposes direct regulatory obligations only on the activities of "handlers" or processors of agricultural commodities. *See* 7 U.S.C. 608c(1).

Section 608c(6)(I) of the Act provides for the "establishment of production research, marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption or efficient production of any such commodity or product, the expense of such projects to be paid from funds collected pursuant to the marketing order." Section 608c(6)(I) also provides "[t]hat with respect to orders applicable to almonds * * * such projects may provide for any form of marketing promotion including paid advertising and with respect to almonds * * * may provide for crediting the pro rata

expense assessment obligations of a handler with all or any portion of his direct expenditures for such marketing promotion including paid advertising as may be authorized by the order * * *"

Pursuant to this statutory scheme, the Secretary has promulgated a marketing order regulating the handlers of almonds grown in California. The Order is administered by the Almond Board of California ("Board"), which is composed of industry representatives, whose function it is to administer the Order and to recommend amendments to the Order. The duties of the Board also include acting as intermediary between the Secretary and industry members; investigating and collecting data on growing, shipping, and marketing conditions with respect to almonds; furnishing pertinent information to the Secretary; and keeping record of its acts and transactions. Funds to cover the Board's expenses are generated by levying assessments on each handler, in proportion to the kernel weight of almonds received.

Background of the California Almond Industry

The California Almond Marketing Order has been in effect since 1950. It provides a means for growers and handlers to work together to address various problems which affect the marketing of California almonds, including varying weather conditions which can lead to annual swings in production.

One way in which the Almond Marketing Order has helped to address problems affecting the industry is by establishing salable and reserve percentages for all almonds received by handlers during a given crop year. The establishment of reserve percentages has allowed the Department to regulate the supply of almonds marketed and avoid dramatic price drops during years of excess production. In years when the anticipated annual crop is large, a reserve percentage may be established and handlers withhold a percentage of the almonds received from growers from the market. Conversely, in years when the annual crop proves to be small, reserve almonds are released for sale. In addition, small quantities of reserve almonds are sometimes used to develop new products or are disposed of in secondary markets such as oil or livestock feed.

The Department has analyzed the production and sale of almonds since the inception of the Almond Marketing Order. Over the past forty years, the production and sale of almonds, both in this country and abroad, have increased dramatically. In the 1950's, almond production grew from 19 million to 84 million pounds per year and the value increased from $15 to $38 million. By 1969, production had reached 132 million pounds per year at a value of $74 million.

During the 1950's and 1960's, the domestic market was the primary outlet for California almonds. Supplies which exceeded the needs of the domestic market were exported or put to other "non-competitive" uses, such as sliced, diced and slivered almonds. In 1969, shipments of almonds to export markets exceeded domestic shipments for the first time. Most export shipments were of reserve almonds which were sold at prices below domestic levels.

The Almond Marketing Order was amended in 1971 to provide for further market development through the establishment of a creditable advertising and generic promotion program. These programs have been in effect since 1972. In recommending that the Almond Marketing Order be amended to authorize advertising and promotion programs, proponents within the almond industry believed that advertising almonds would tend to increase almond consumption and enhance grower returns. The Department's analysis of sales figures for almonds during the last twenty-two years demonstrate that this belief was correct.

The adoption of the creditable advertising and generic promotion programs has fostered a period of steady growth in the demand for almonds, both domestically and abroad. From 1972 to 1992, domestic shipments of almonds increased from 75 million pounds to 186 million pounds and their value increased from $63 million in 1972 to $318 million in 1992. During these years, the creditable advertising and generic promotion programs fostered an even greater rate of growth in the export market. Annual exports of almonds went from 69 million pounds in 1972 to 350 million pounds in 1992 and the value increased from $58 million to $598 million. The industry has benefitted from increased production and sales as consumption grew and almonds expanded into new markets.

Currently, the majority of almonds produced in the United States are sold abroad, with the largest markets in Germany and Japan. The California almond industry has become an established supplier of high quality almonds to markets throughout the world and has maintained a dominant share (over 60%) of the overall world almond market for the past ten years. Substantial growth has also occurred in the demand for sliced, diced and slivered almonds, once considered a secondary almond market. Due to market expansion, shipments of almonds for such uses are now considered normal commercial sales.

The relative proportion of annual crop sold to ingredient manufacturers in bulk quantities has also increased substantially during the last two decades. Currently, the majority of almonds sold in the United States are sold for use as ingredients in candy, cereal, ice cream, baked goods, cookies, granola bars, prepared meals, and other manufactured products. The Department's data on almond sales to export markets also indicates that the vast majority of almonds sold to European countries are intended for use as ingredients.

Since the adoption of the creditable advertising and generic promotion programs there has been an increase in the number of almond handlers operating in the United States. In 1971, there were 15 almond handlers in California and the four largest handled about 95% of the annual crop. By 1991, there were 115 almond handlers in California and the four largest handled 62% of the annual crop. The growth of the almond market has enabled small handlers to enter the industry in greater numbers.

The Former Creditable Advertising Program

At the time of its adoption in 1971, the almond Marketing Order's advertising and promotion program was structured with a strong emphasis on individual handler advertising and promotion, with a complementary generic program conducted by the Board. Since its implementation, the Secretary has instituted numerous rulemaking actions to revise and update the creditable advertising and promotion program to address changing circumstances in the industry.

In revising the program, the Secretary relied, in part, on industry production and sales data and the Board's consistent belief that the industry's advertising and promotion program provided an effective means of increasing almond sales. The Board, on behalf of the industry, responds to changing industry practices and trends by recommending to the Secretary modifications to the Order's implementing regulations and by redesigning its activities to better reflect these changes, thereby ensuring further development of the almond industry. In addition, the Secretary also relied on comments received from almond industry representatives and other

interested persons prior to adopting certain amendments to the regulations.

Section 981.41 of the Order provides the Board, with the approval of the Secretary, authority to credit a handler's direct expenditures for marketing promotion, including paid advertising, against the applicable portion of their assessment obligation. The requirements that a handler needed to fulfill before obtaining credit for promotion are set forth in § 981.441 of the Administrative Rules and Regulations. The purpose of these requirements was to ensure that creditable activities undertaken by handlers were forms of promotion recognized and accepted by advertising and promotion industry norms, and could reasonably be expected to increase almond consumption. In addition, the requirements were devised to ensure that creditable activities could be documented and costs could be measured in conformance with industry standards.

From the time of the program's inception, the list of handler activities for which credit could be obtained has frequently been revised and expanded in order to meet the changing needs of the industry. In all, over twenty-five Board recommendations have been made and adopted by the Secretary in an effort to improve the Order's advertising and promotion program. Some examples of these revisions are described below.

On September 16, 1982, [47 FR 40783], the creditable advertising and promotion program was revised in order to allow handlers to receive credit against their creditable assessment obligations for distributing sample packages of almonds to charitable and educational institutions (up to 150% credit allowed depending on volume), and for purchasing almond promotional materials from the Board (100% credit allowed). The Board believed that these revisions would provide handlers with additional opportunities to obtain credit for their promotion of almonds, especially for handlers who did not market almonds under a specific brand name. These revisions were also intended to be advantageous to small handlers.

On April 23, 1987, [52 FR 13427], the program was revised to expand provisions already in place concerning the crediting of certain handler marketing promotion expenditures related to mail order promotions. Specifically, the costs of purchasing mailing lists to conduct mail order promotions and the costs of postage and envelopes to mail printed promotional materials became creditable at a rate of up to $25,000 per crop year. The revision was intended to give all handlers a new opportunity to take advantage of crediting. In 1990, [55 FR 41826] the creditable amount was further relaxed to allow handlers to obtain credit for mail order promotions at a rate of up to $25,000 per crop year or 25 percent of their creditable assessment obligations, whichever was greater.

On October 13, 1987, [52 FR 37926], the program was revised to increase the amount of credit that handlers could obtain for media advertising in certain foreign markets. The revision was made because the export market for California almonds was steadily increasing and the need for advertising in foreign countries was increasing accordingly. Under this revised rule, handlers became eligible to receive a 100% credit for all qualified brand advertising media expenditures conducted in designated foreign markets.

On February 15, 1989, [54 FR 6866], the program was again revised to allow handlers credit against their creditable assessment obligations for payments for in-store supermarket generic or brand advertising using fixed position (i.e. stationary) display advertisements, or video media. In addition, the provisions were further expanded to allow handlers to receive a 150% credit for payments to the Board for the Board's generic advertising and promotion program. These changes gave handlers additional flexibility in meeting their assessment obligations and particularly benefited small handlers which did not have brand names and/or did not market their almonds in retail outlets.

On October 16, 1990, [55 FR 41826], the program was further revised to provide handlers with additional opportunities to receive credit against their creditable assessment obligations for their own branded or generic advertising and promotional activities by (1) allowing credit for in-store supermarket advertisements using light emitting diode (LED) signs (a new form of in-store supermarket advertising which was being offered by advertising firms at that time); (2) expanding the provisions under which handlers could receive credit for in-store supermarket advertisements using fixed position media; (3) allowing handlers credit for brand advertisements in all foreign countries where California almonds were sold; and (4) increasing credit for certain mail order promotion costs. These revisions were intended to better reflect current industry practices as they related to advertising and promotion.

Over the years, other revisions to the program have been adopted in order to expand activities eligible for credit, improve program administration and generally bring the program into line with industry practices. These numerous revisions to the program demonstrate the Board's, as well as the industry's, recognition of changing conditions within the market and their willingness and ability to adapt the almond advertising and promotional program to address these changes.

The Ninth Circuit's Review of the Former Creditable Advertising Program

The Ninth Circuit Court of Appeals recently reviewed the Almond Marketing Order's former creditable advertising and promotion program in *Cal-Almond* v. *U.S. Department of Agriculture*. The case was brought by three independent almond handlers, each of which challenged the constitutionality of the Almond Marketing Order's former creditable advertising program on the grounds that the mandatory nature of the program violated their First Amendment rights. The Department's Judicial Officer upheld the validity of the Order. The handlers sought review in the United States District Court, which affirmed the Secretary's decision. The handlers then appealed to the Ninth Circuit Court of Appeals.

In reviewing the District Court's decision, the Court of Appeals held that the former advertising and promotion program imposed a burden on almond handlers' First Amendment rights, and, therefore, it was necessary to evaluate the nature and scope of the burden imposed on those rights to determine whether the program was constitutional.

The Ninth Circuit evaluated the constitutionality of the former almond advertising and promotion program under a three-pronged test:

(1) Is the governmental interest in establishing and carrying out an advertising and promotion program substantial?

(2) Does the program directly advance that interest?

(3) Is the program no more extensive than necessary to achieve the government's purpose?

In evaluating the almond program under this test, the Court held that there was in fact a substantial governmental interest in establishing a program that would stimulate the demand for almonds and help maintain and expand markets so as to enhance returns to almond growers. The Court went on to find, however, that there was insufficient record evidence to establish that the former almond advertising and promotion program was effective enough to directly advance the government's interest in increasing

almond sales, and that the rules providing for credit against a handler's assessment obligation for its own advertising were more extensive and cumbersome than necessary. Thus, it held that the advertising regulations were an unconstitutional restriction on the handlers' First Amendment rights.

It is important to note that in *Cal-Almond*, the Ninth Circuit did not find inherent constitutional harm in the establishment of research and promotion programs designed to increase sales and enhance grower returns. In fact, the Court acknowledged the substantial governmental interest in establishing such programs in order to maintain and expand the markets for agricultural commodities. The Court's complaint lay with the unique design of the former almond advertising and promotion program, with the lack of record proof that it directly advanced the stated interests, and with the fact that the former creditable advertising requirements seemed more extensive than necessary to achieve the approved goals.

The New Credit-Back Advertising and Promotion Program

An interim final rule published in the **Federal Register** on August 17, 1993, [57 FR 43500] represents the most recent and extensive revision to the Order's advertising and promotion program. Due to changes in the size and structure of the California almond industry during the 1980's and 1990's, as well as the fact that more handlers were beginning to sell almonds for use as ingredients in manufactured products rather than for direct consumption, there was a general perception within the industry that a new and innovative program needed to be implemented which would be even more effective than the former program in promoting the sale of California almonds.

This prompted the Board and its Public Relations and Advertising Committee to seek to create a new and widely accepted advertising and promotion program designed to aid the further development of the almond industry. On April 20, 1993, by a vote of 9–1, the Board recommended the new Credit-Back advertising and promotion program. The sole Board member opposing the new program was generally opposed to the entire concept of creditable advertising and promotion. This Board member asserted that all handlers should be required to fund a generic promotion program equally and that any brand advertising done on their own should be carried out at their own expense without any type of Board oversight.

The new Credit-Back advertising and promotion program recognizes new marketing techniques which have been developed by the industry over the years, and is intended to work with and complement a strong generic advertising and promotion program which will be undertaken by the Board. The premise of the new program is that individual handlers will be most effective in promoting their own portion of the almond crop while the Board will be the most effective vehicle through which to enhance total demand for almonds through a generic advertising and promotion program. Some of the significant features of the new program are as follows.

Under the new program, as modified in this final rule, handlers conducting their own advertising and promotional activities will receive credit against their Credit-Back assessment up to the amount of the Credit-Back assessment installment due if they conduct and document their advertising and promotional activities at least two weeks prior to assessment billings. If handlers do not conduct any advertising and promotional activities prior to assessment billings, they will be required to submit their advertising and promotional assessment when billed. If handlers conduct advertising and promotional activities after assessment billings and file appropriate documentation, they will be eligible for a refund or Credit-Back. Handlers will be billed in four equal installments during the crop year. Handlers are not obligated to take part in the new program. Each handler must make an individual decision whether or not to participate in the new program.

The new Credit-Back program substantially expands the list of advertising and promotional activities which will be eligible for credit under the regulations. The range of activities eligible for credit cover virtually every sales assistance, promotional, publicity and advertising area which a brand or individual company could use to aid in product sales, with the exception of price reductions. In all, there are now fourteen advertising, promotion and public relations categories of activities which will be eligible for credit. These include marketing research, paid media advertising directed to end-users, trade or industrial users, in-store demonstrations, trade fairs, seminars and exhibits, couponing, sponsorships, printing costs, trade and consumer product publicity, direct mailings, sales and marketing presentation kits, and 50/50 advertising with retailers. Each of these activities are widely used and accepted forms of marketing advertising and promotion.

Another aspect of the new program is the elimination of the 33% discount which was formerly allowed to handlers who paid their assessments directly to the Board by a specified date. Under the former creditable advertising and promotion program, handlers who paid their assessments to the Board by a specific date received a 150% credit against the advertising and promotional portion of their assessments. These payments were then used by the Board for generic advertising and promotion. In effect, this allowed handlers a 33% discount on a portion of their assessments. The purpose of the discount at the time was to encourage smaller handlers which did not have individual advertising and promotional programs to contribute to the Board's generic advertising and promotion program. Many members of the industry believed, however, that handlers who received the benefit of the discount did not always pass it on to growers and thus achieved a competitive advantage over handlers who engaged in individual advertising and promotional programs.

Another feature of the new program is an appeals process whereby handlers have the option of anonymity in the event a claim for a promotional activity is denied. Handlers may request that the Public Relations and Advertising Committee review Board staff decisions concerning denied claims. If not satisfied with that committee's decision, handlers may request that the Board review the issue. Handlers have the option of anonymity when their appeal is brought before the Board. Finally, handlers may request that the Department review the Board's decisions. The Department may review all decisions at any point during the appeals process.

The new Credit-Back program also offers handlers more flexibility in getting credit against their assessments for their own advertising and promotional activities compared with the former creditable advertising and promotion program. Some examples of the ways in which the new Credit-Back program offers handlers more flexibility are as follows.

Under the former program, handlers were denied credit for individual advertisements if those advertisements directed consumers to a specific retail store. Under the new program, this type of activity will be covered under the 14 broad categories for which credit will be allowed. Thus, the new program eliminates previous restrictions on handlers and will allow them greater

flexibility in the promotion of their own products.

Also, under the former program credit was denied for advertisements which also promoted competing nuts. Under the new program, advertisements which contain references to almonds as well as competing nuts will be eligible for reimbursement. Any reimbursement will, however, be limited to that percentage of the advertisement's cost which is equal to the percentage of the advertisement which is devoted to almonds or the percentage of the product's weight which is almonds. The Board believes that the percentage rule is logical and fair because the handler credit originates from assessments on almonds, not on other products. The Board believes that to allow more credit than provided in the percentage rule would not serve the best interests of the industry because handlers would receive credit for promoting products which have nothing to do with the almond industry.

Previously, handlers were not allowed credit for advertisements which promoted complementary branded products. Under the new program, credit will be allowed for advertisements that promote both almonds and complementary branded products. For the reasons described above, however, the amount of the reimbursement will be directly related to the percentage of the advertisement which is devoted to the promotion of almonds. This will allow the almond industry to operate under a system which is as unrestricted as possible without sacrificing the objectives of the Almond Marketing Order.

Finally, under the old program, credit was denied for advertisements which promoted products which were less than 50% almonds. Under the new program, credit will be granted for all advertisements of products which contain almonds, regardless of the amount of almonds which are actually in the product. Again, the amount of the reimbursement will be directly related to the percentage of the advertisement which is devoted to the promotion of almonds.

In recommending the new Credit-Back program, the Board concluded that because of the fundamental changes which have occurred in the almond industry in recent years, it has become more difficult for individual handlers to directly reach end consumers through their own advertising and promotion. Therefore, the importance of a collective industry effort to generically promote the overall use of almonds has grown. For these reasons, the Board elected to strengthen its generic promotion program while at the same time providing increased opportunities and incentives for handlers who wished to continue to advertise their own brand products in order to receive Credit-Back against their assessments.

The Board believes that the implementation of the new Credit-Back advertising and promotion program will directly advance the industry's collective goal of increasing almond sales and enhancing grower returns. In addition, the new program encourages and empowers handlers to protect their own interests by promoting their own brand of products in order to get Credit-Back. The new program also recognizes that the collective interests of the industry are better served if brand advertising and promotion is combined with the generic advertising and promotion of almonds. Both generic and brand advertising and promotion are proven promotional tools which have fostered the growth of the almond market over the last twenty years.

The new advertising and promotion program has been carefully structured so that the rules which govern its efficient administration are no more extensive than necessary to meet the desired goals of increasing almond sales and enhancing grower returns. Virtually all aspects of the former creditable advertising and promotion program have been modified or eliminated so as to increase efficiency while at the same time imposing a minimum of restrictions on handlers. The Board, the elective body composed of industry representatives, has carefully considered all aspects of this program and believes that its implementation will lead to even greater strides in the development of the almond market.

The new advertising and promotion program is intended to enable the almond industry to have an advertising and promotion program which better reflects its current needs. The Board believes that there is widespread industry support for the new program. Overall, the new Credit-Back program is expected to foster the worldwide demand for California almonds through the provision of a more efficient and effective program which will encompass both generic and brand advertising and promotion.

Discussion of the Comments

As was previously stated, USDA provided two comment periods for the new Credit-Back program. The first comment period ended on September 16, 1993. One comment was received during this period from Cal-Almond, Inc., an independent almond handler.

The second comment period ended on March 2, 1994. During this period, seven comments were received. Five comments were from independent almond handlers. They were Wiggin Farms, Arbuckle, CA; Western Nut Company, Chico, CA; Waterford Nut Company, Waterford, CA; Rotteveel Orchards, Dixon, CA; and Cal-Almond, Inc., Hughson, CA. A sixth comment was received from the U.S. Small Business Administration, Washington, DC. The seventh comment was received from Mr. Rodger Wasson, President and CEO of the Almond Board of California. All of the comments will be discussed below. Because many of the comments by the independent almond handlers contained similar concerns, they have been combined where appropriate and are addressed collectively.

In its first comment submitted on September 14, 1993, Cal-Almond, Inc., stated that the issuance of an interim final rule rather than a proposed rule to establish the new Credit-Back program was arbitrary and capricious. The commenter asserted that the former creditable advertising and promotion program has been substantially altered by the interim final rule and the burden on handlers has been drastically increased.

It is the Department's position that the issuance of the interim final rule met each of the requirements of the Administrative Procedure Act (APA) which pertain to the promulgation of regulations. The Board requested that the new regulations for the Credit-Back program be effective for the 1993–94 crop year. The only way to accomplish this was through the utilization of interim final rulemaking procedures, as authorized by the APA. Also, the Department was advised by the Board that the action was widely supported by the industry. While there was one dissenting vote among the ten Board members who voted on the establishment of the new program, that person was opposed to the imposition of any advertising assessments on members of the industry. The dissenting Board member had no specific criticisms of the new Credit-Back program. Finally, contrary to the commenter's assertion, the interim final rule represented a relaxation of the then-existing regulations. Moreover, the new Credit-Back program, as modified in this final rule, is further relaxed. The new program is carefully structured so that the rules which govern its efficient administration are no more extensive than necessary to meet the desired industry goals of increasing almond sales and enhancing grower returns. The new program substantially increases the

advertising and promotional activities for which handlers can receive credit against their assessment obligations. At the same time, it decreases the number of reporting deadlines and recordkeeping requirements imposed on handlers.

Cal-Almond further asserted that the Department does not have the authority to regulate how handlers pay growers and that the new Credit-Back program's elimination of the provision which allowed handlers to receive a 150% credit against the promotional advertising portion of their assessments because of concerns about grower returns was therefore arbitrary and capricious. The commenter contended that: (1) the Almond Marketing Order does not permit the Department to insure that growers receive a certain amount of returns on their products, and (2) the Order does not permit the Department to become involved in contracts which handlers have with their growers.

Contrary to the commenter's assertions, the interim final rule establishing the new Credit-Back program does not specify how handlers should pay almond growers, nor does it seek to regulate the returns which growers receive for their almonds. It is, however, the Act's intent that marketing orders help growers and handlers to work together to solve problems which affect their industry. Thus, industry practices which have a potentially negative effect on growers should be considered when making recommendations on changes to marketing order regulations.

Cal-Almond and another independent almond handler, Western Nut Company, also commented that the new Credit-Back program requires handlers to make expenditures of $3 in order to get back $1, thus placing an incredible financial burden on handlers. Cal-Almond stated that this, in turn, will reduce handlers' initial payments to growers.

In addition, independent almond handler, John Rotteveel on behalf of Rotteveel Orchards, indicated that he did not believe that the 50% return for creditable activities was enough to warrant any investment in the program. Grant Ecker on behalf of Waterford Nut Company, stated the new Credit-Back program places a larger economic burden on small handlers than the old program did.

Cal-Almond also objected to the new Credit-Back program's imposition of a 50 percent Credit-Back limit for promotional activities in foreign markets. Cal-Almond stated that this is not an expansion of the previous rule, but is instead a restriction because the former rule allowed 100% credit for qualified promotional activities in foreign markets.

The former creditable advertising and promotion program allowed for variable levels of credit for different activities, between 50 percent and 150 percent depending on the activity. The new Credit-Back program is designed to be more equitable because the credit allowed for all activities is the same. The amount of credit granted for foreign advertising expenditures is identical to the amount given for domestic advertising.

The Department believes that having the same credit amount for each activity provides equity for all handlers' advertising and promotional activities. No preference is given in the new Credit-Back program for one type of advertising and promotional activity over another.

The range of Credit-Back activities has been expanded so that handlers will be able to receive credit for 13 additional categories of promotion and advertising. This expansion could offset any increased outlays which handlers must make for brand promotion and advertising projects due to the reduced rate of credit.

The new Credit-Back program is designed to provide handlers with more flexibility in conducting their advertising and promotional activities. The commenters seem to be suggesting that it would be more desirable for the new program to have an increased credit amount than what is currently allowed.

On May 16, 1994, the Board met and discussed possible revisions that could be made to the new Credit-Back program. It was expressed at this meeting that the 50 percent Credit-Back amount may impose a greater financial burden on handlers than was anticipated. The Board unanimously recommended that the Credit-Back amount be modified from 50 percent to 66⅔ percent ($1.00 for every $1.50 spent). It was determined that this amount would provide incentive for handlers to maintain their individual advertising and promotional efforts and still allow adequate funds for the generic portion of the new advertising and promotion program.

The Department believes that the new Credit-Back program's expanded activities along with an increased credit amount will provide handlers with more incentive to maintain and more flexibility to conduct their individual advertising and promotional efforts. Therefore, we are modifying the new Credit-Back program in this final rule by increasing the amount of credit allowed for approved promotional activities from 50 percent to 66⅔ percent.

Cal-Almond also claimed that the requirement that handlers file an application with the Board to obtain pre-approval of creditable activities means that handlers cannot change their advertising plan for the entire year. Cal-Almond also objected to the requirement that handlers submit proof of at least one approved advertising activity by January 15 of each year. Sharon Wiggin, on behalf of Wiggin Farms, also stated that the form filing requirements and deadlines contained in the interim final rule are difficult to meet. The Department has determined that these comments have merit. The purpose of the requirement that handlers file an application with the Board to obtain pre-approval of creditable activities under the new program was to ensure that handlers were aware that the activity was eligible for Credit-Back prior to expending funds for the activity. In the past, the Board occasionally had to reject claims for activities that did not qualify after the promotional activity had already been conducted by the handler. The pre-approval provision was only intended to assist handlers by helping them avoid any unnecessary outlays of funds for activities that did not qualify for credit.

This aspect of the new program was also discussed at the recent Board meeting. The Board unanimously recommended that the pre-approval provision was not essential to the successful administration of the program. As previously explained, this provision was only intended to assist handlers. Handlers will no longer be required to obtain pre-approval of creditable activities from the Board under the new program as modified in this final rule. The Board will continue to assist any handler in determining whether an advertising and promotional activity is eligible for Credit-Back under the new program prior to the handler expending funds for the activity.

Cal-Almond also objected to the provision which allows Credit-Back payments only for the portion of product weight represented by almonds or the handler's actual payment, whichever is less. The commenter claims that this provision works against those handlers who apply for Credit-Back for advertising of processed products that contain only a small percentage of almonds. The new Credit-Back program is, however, intended to allow Credit-Back only for money actually spent for advertising California almonds, not for advertising another product. As discussed previously, the Board believes that the percentage rule

is logical and fair because the handler's credit originates from assessments on almonds, not on other products. Without the percentage rule, the best interests of the entire industry would not be served because handlers would receive credit for promoting products which have nothing to do with the almond industry.

Cal-Almond also objected to the provision which requires a handler's name, brand, or the words "California almonds," to appear on the product's primary face label in order for the handler to be eligible for Credit-Back. The commenter contended that, because nearly all almonds produced in the United States are grown in California, the requirement that the word "California" be placed on the label is unnecessary and may limit marketing opportunities for some handlers in their negotiations with product manufacturers. The intent, however, of the new advertising and promotion program is to promote the sale and consumption of "California" almonds, not other ingredients in products or almonds not grown in California. This provision will help ensure that advertising generated by the new Credit-Back program is, indeed, for almonds grown in California. In addition, the provision is not limited to the word "California" being placed on the product's primary face label in order for the handler to be eligible for Credit-Back. Handlers can also negotiate with product manufacturers for the appearance of the handler's name or brand on the primary face label in order to be eligible for Credit-Back. Handlers have three alternatives under the new program, all of which ensure the promotion of "California" almonds.

Cal-Almond, Thomas L. Motta, on behalf of Western Nut Company, Grant Ecker, and Sharon Wiggin objected to handlers being required to expend advertising and promotion funds up-front in order to be eligible for a Credit-Back refund at a later date. Cal-Almond also stated that handlers should not have to wait until February 15 of the crop year to begin receiving Credit-Back refunds and that they should not have to wait 30 days after submission of claims to receive a refund. The Department has determined that these comments have merit. Because payment practices have been changed under the new Credit-Back program, the up-front payment may not provide some handlers with enough flexibility early in the crop year to conduct their advertising and promotional activities.

This aspect of the new program was also discussed at the recent Board meeting. The Board unanimously recommended that handlers conducting their own advertising and promotional activities may now receive credit against their Credit-Back assessment up to the amount of the Credit-Back assessment installment due if they conduct and document their advertising and promotional activities at least two weeks prior to assessment billings.

The Department has determined that in order to allow handlers more flexibility early in the crop year to conduct their advertising and promotional activities, this final rule will be modified to allow handlers to receive credit against their Credit-Back assessment up to the amount of the Credit-Back assessment installment due if they conduct and document their advertising and promotional activities at least two weeks prior to assessment billings.

Cal-Almond also objected to the appeal process for determining whether a handler should receive Credit-Back for a particular promotional activity. The commenter claimed that competitors of some handlers will determine the outcome of their appeals. As previously discussed, handlers have the option of anonymity when their appeal is brought before the Board. In addition, the process allows for further appeal to the Department. The Department also has the right to review all decisions at any point during the appeal process.

During the second comment period, Cal-Almond, as well as another independent almond handler, Rotteveel Orchards, commented that under the new Credit-Back program there are many types of promotional and advertising activities which handlers use to promote their products which will be ineligible for Credit-Back. John Rotteveel, on behalf of Rotteveel Orchards, stated the best forms of advertising for his company—"word-of-mouth" advertising and personal contact with potential buyers—are not creditable activities under the new Credit-Back program. In addition, Rotteveel indicated that he did not believe that the 50% return for creditable activities was enough to warrant any investment in the program.

As has already been pointed out, the range of promotional activities eligible for reimbursement under the new Credit-Back program have been significantly expanded. The Department has also modified the new Credit-Back program in this final rule by increasing the amount of credit allowed for approved promotional activities from 50 percent to 66⅔ percent.

Cal-Almond also objected to the Board's television advertisements because it believes that they have a religious connotation which should not be used to promote almonds. The advertising campaign referred to is not intended to be offensive toward any religion, nor does it contain any negative connotations.

Cal-Almond also objected to the portion of the provision which requires individual handlers to determine and declare, within 15 days after the start of the season, the extent to which they intend to use the advertising program. According to the commenter, a handler should not be required to report a year in advance how he/she intends to advertise over an entire year's period.

The intent of this provision, in part, was to help the Board plan its finances for the upcoming crop year. With this information available, the Board could determine who was participating and who was not participating in the new program for that year. They would know at that time that all handlers who did not declare their intent would be paying the entire assessment to the Board and that amount could be earmarked for the generic advertising and promotion program.

The provision did not require handlers to give a dollar amount or an advertising plan to the Board, but merely an anticipated percentage of their entire advertising assessment they believed would be used under the new program. The deadline was not intended to limit a handler's use of the program. Handlers were not restricted to any types of advertising or any specific amounts. However, the total Credit-Back amount could not exceed the original percentage reported to the Board.

Although Cal-Almond's interpretation of this provision is not accurate, the Department considered all aspects of this provision to determine if there were other ways that the Board could obtain this information without requiring handlers to declare their intent to utilize the program. The new Credit-Back program is intended to provide handlers with more flexibility to conduct their own advertising and promotional activities.

The Department believes that the Board has other alternatives to accomplish the objectives discussed above, such as reviewing handler participation during past years to obtain an estimate of participation in the new Credit-Back program for the new crop year. The Department has determined that in order to allow handlers more flexibility to participate in the new Credit-Back program, this provision should be eliminated from the regulations. Accordingly, this final rule will be revised to reflect that change.

During the second comment period, another independent handler, Wiggin Farms, stated that a referendum should be conducted every three years to offer growers an opportunity to vote on increasing or decreasing advertising expenditures and for voting on continuation of the Order.

The Department notes that the Board currently has the authority to recommend annual changes in program expenditures. Determining the merits of holding periodic continuance referenda is outside the scope of this rulemaking. The referenda issue was addressed last year when the Board and other industry groups recommended, during a formal rulemaking hearing in Modesto, California, that periodic referenda be held. The Department is in the process of reviewing and evaluating the record of the formal rulemaking proceeding.

Many comments, as requested, addressed the Ninth Circuit decision. These comments are as follows:

Cal-Almond stated that all of the rules and regulations contained in the interim final rule deprive handlers of their First Amendment rights and suggested that the entire creditable program be eliminated. The commenter asserted that a determination has never been made by the Board as to whether the Order or individual handlers are better at promoting and advertising almonds. The commenter further stated that there have never been any studies conducted to indicate whether the current advertising program is effective and contended that the Department is unable to show that the regulations are required in order to advance the stated goal of selling more almonds and increasing returns to producers. In addition, the commenter contended that the regulations contained in the interim final rule are more extensive than necessary to serve the governmental interest of increasing almond sales.

One independent almond handler, Thomas Motta on behalf of Western Nut, stated that if the Marketing Order's advertising program is deemed constitutional at some future date, the Secretary should evaluate what type of advertising program best serves the almond industry. Motta further stated that the Ninth Circuit ruled that compelled advertising violates a handler's First Amendment rights and that regardless of what the Board calls it, it is still forced collection. Motta suggested that the advertising provisions of the order be put on hold until they are proven to be beneficial to the industry and are determined to be legal by the appropriate Court.

Another independent almond handler, Grant Ecker on behalf of Waterford Nut Company, stated that he agrees with the Ninth Circuit Court ruling that the regulations hinder handler's efforts to increase sales and returns to growers. He stated that the new Credit-Back program places a larger economic burden on small handlers than the old program did.

John Rotteveel, on behalf of Rotteveel Orchards, stated that the current and former advertising programs violate his constitutional rights. He believes that the program is a waste of money and does nothing to increase the consumption of almonds that almond handlers could not do themselves. Finally, Rotteveel stated that there is no way to prove that the advertising programs have increased world demand for almonds. He believes that growers and handlers are expanding these markets without the help of the Order and does not think that the increase in the number of handlers and growers in the United States can be attributed to the Order. Rotteveel suggested phasing out the Order and letting the almond industry run itself.

It is the Department's position that the former creditable advertising program and the new Credit-Back program meet each of the criteria set forth in the Ninth Circuit decision which pertain to constitutionality. The Department believes that both programs are authorized under the Act and that the regulations do not infringe upon the First Amendment rights of any handler. Importantly, the Court in *Cal-Almond* did not hold that all advertising and promotion programs are unconstitutional or illegal on their face. Rather, the court recognized the substantial government interest in promoting almond consumption in order to stimulate the demand for almonds and enhance grower returns.

As previously discussed, the new Credit-Back advertising and promotion program has been carefully structured so that the rules which govern its efficient administration are no more extensive than necessary to meet the desired goals of increasing almond sales and enhancing grower returns. Virtually all aspects of the former creditable advertising and promotion program have been modified or eliminated so as to increase efficiency while at the same time imposing a minimum of restrictions on handlers.

An additional comment in the form of an exception to another comment was received from Cal-Almond well after the second comment period closed. Because Cal-Almond's comment was received after the close of the comment period, it has not been considered.

Another comment was received from the Office of Chief Counsel for Advocacy of the United States Small Business Administration (SBA). The SBA contended that the Secretary did not comply with the Regulatory Flexibility Act (RFA) in issuing the interim final rule. It recommended that the Department perform a regulatory flexibility analysis, which would study the impact of advertising programs on small handlers and would consider alternatives to the program. The SBA further stated that the Secretary's assertion about small entity orientation and compatibility did not meet the requirements of the RFA. The SBA stated that the RFA does not provide exceptions for statutes that are not compatible with its goals. The SBA commented further that: (1) most small handlers sell to "food processors" and have no reason to promote fresh consumption of almonds, and (2) advertising expenses designed to increase use by ingredient manufacturers were not creditable under the old program and are not creditable under the new program. Finally, the SBA stated that the Credit-Back program was promulgated with no evidence that it would advance the government's interest, or that it is the least restrictive program needed to enhance almond sales.

For these reasons, the SBA indicated that the Secretary should consider alternatives to the current advertising program, including no program at all, or, at a minimum, a program that imposes less restrictions on handlers. The SBA also recommended that promotional efforts targeting ingredient manufacturers should be given the same credit as those targeting fresh consumption.

Advertisements resulting from joint participation by a handler and manufacturers or sellers of two complementary products or commodities were eligible for credit under the former advertising and promotion program provided that the brand name was used.

Under the new Credit-Back program, advertising and promotion activities to trade, industrial or end users are specifically eligible for Credit-Back, with no requirement for a brand name. In addition, the Board's generic program contains consumer advertising designed to communicate the message that almonds enhance any product to which they are added. Research has found such consumer advertising is successful in promoting consumption of products used as ingredients. Increased consumption of almonds benefits the entire industry

The Department disagrees with the SBA's assertion that this action fails to meet the requirements for the Regulatory Flexibility Act. The SBA's concerns regarding the program's impact on small businesses have been properly addressed in this document and the interim final rule.

Finally, a comment was received from Rodger Wasson, CEO of the Almond Board, which supported the new Credit-Back program and supplied documentation to substantiate the Board's position. Mr. Wasson discussed the history of the almond industry and beneficial changes that have taken place since the implementation of the creditable advertising program. He stated that the program has provided a variety of services designed to increase the demand for California almonds. In addition, it has continually been revised to meet the needs of the industry. Mr. Wasson stated that the Credit-Back provisions were recommended in order to more fully address the needs of the changing industry.

He stated there are major differences between the previous creditable advertising program and the new Credit-Back program. Some examples are as follows: (1) The previous program allowed handler credit for paid media advertisements only. There were separate systems for "generic packs" and "150 percent credit". The new Credit-Back program adds 13 advertising, promotion and public relations categories (only travel is excluded across-the-board); (2) The previous program contained many reporting periods, carryovers, and recordkeeping on different systems. Credit-Back is simplified with one system, no carryovers, and a basic report-as-you-go reporting system; (3) The previous program did not allow credit for almonds used as an ingredient if the product contained less than 50 percent of almonds by weight. Credit-Back allows credit for the weight represented by almonds as an ingredient; (4) The previous program did not allow credit for advertisements directing consumers to one or more named retail outlets, other than handler-operated outlets. Credit-Back allows such advertisements if they include mention of almonds; (5) The previous program did not allow credit for advertisements promoting "competing nuts." Credit-Back allows credit for this activity determined by the portion of the product represented by almonds and/or product weight, and (6) The previous program did not allow credit for advertisements that promote more than two complementary products. Credit-Back allows credit up to the portion represented by almonds.

In addition, Mr. Wasson submitted materials on the benefits of generic advertising. A summary of the materials is as follows.

Generic Advertising and Promotion Programs

Generic advertising, i.e., advertising activities which focus on the general properties of a product such as flavor, nutritional benefits and convenience, rather than touting specific brand names, is a proven promotional tool which is often used to increase demand for agricultural commodities. When used in conjunction with brand name promotion, generic advertising has proven to be highly successful.

For these reasons, generic advertising of agricultural commodities has grown steadily since the first commodity board was created more than 50 years ago. In 1990, about 350 generic promotion programs were in effect at the federal and state levels, covering more than 80 commodities at a cost of over $530 million annually.

Each of the federal programs referred to above are overseen by USDA. The Agricultural Marketing Service ("AMS") of the USDA currently oversees promotional programs contained in various federal marketing orders authorized under the Agricultural Marketing Agreement Act of 1937 (the AMAA). These marketing orders cover fruits, vegetables, specialty crops and milk. In addition, AMS has oversight responsibility for numerous federal statutes which authorize research and promotion programs for a variety of commodities, including beef, cotton, dairy, eggs, honey, limes, mushrooms, pork, potatoes, soybeans, milk, and watermelons.

The success of many of these advertising and promotion programs has been well documented. For instance, an advertising campaign conducted by the Potato Board has yielded dramatic results.

The Potato Board was founded in 1972 at a time when potato consumption was steadily declining. Many people had poor images of potatoes, did not know of their nutritional value and believed that they were fattening. In the years after its formation, the Board initiated numerous advertising campaigns designed to improve the potato's poor reputation and increase consumer sales. As a result, potato consumption has increased by 12% and 96% of the public is now aware that potatoes are a high fiber, low fat food which can be included in any healthy diet.

Efforts of the National Dairy Promotion and Research Board to promote milk and milk products have also met with success. The Board was founded in 1984 and since then has spent more than $75 million annually on the promotion of dairy products. As a result, dairy product consumption rose by 12% between 1983 and 1990.

Another example of a successful generic program is provided by the California Prune Board. In the 1980's, prunes were not a popular fruit and most members of the public had little knowledge of their nutritional value, specifically, their high fiber content. In 1987, the prune Board began a campaign to highlight the link between consumption of high fiber foods (such as prunes, which were marketed as a good tasting, high fiber fruit) and cancer prevention. The program included direct mailings of product samples to physicians, publicity and media appearances by experts about the health benefits of prunes, and sampling programs in shopping malls and on domestic airline flights. Combined with generic advertising and promotion, the program resulted in a 12% increase in prune sales in 1987 alone. To date, the sales of California prunes continue to rise.

The success of certain commodity programs has also been measured through technical economic studies on the effects of generic advertising on industry sales. The results are impressive.

For instance, in a recent study of the Washington apple industry (Olan D. Forker and Ronald W. Ward, 1991) it was estimated that between 1988 and 1991, the industry received a rate of return of $6.63 for every dollar of assessments spent on the promotion of apples. In all, this represented a $133.76 million dollar return on a $17.5 million investment and the market price which Washington apple growers received for their apples between 1988 and 1991 was estimated to be 12.9% higher than it would have been without generic advertising.

Similarly, a recent study sponsored by the Cattlemen's Beef Promotion and Research Board (Ronald W. Ward, 1993) examined the effects of generic advertising on the beef industry. Based on extensive economic analysis, it was estimated that between 1987 and 1992, the beef industry realized an average return rate of $5.80 for every dollar spent on promotional activities. By February 1992, the total economic return to the industry was estimated at $2.99 billion.

A study by Ronald Ward and Bruce Dixon in 1989 provides an economic

analysis of the effects of generic advertising on fluid milk consumption. The authors of this study found that such promotion, authorized under the National Dairy and Tobacco Adjustment Act of 1983, "confirm[s] a statistically significant relationship between fluid milk consumption and generic fluid milk advertising * * *" Other research conducted by O.D. Forker and H.M. Kaiser of Cornell University indicates that between 1984 and 1990, dairy farmers realized a farm level return rate of 4.6 to 1 on investments in generic advertising authorized under the National Dairy Promotion Program.

Mr. Wasson also submitted materials on the benefits of branded advertising. A summary of the materials is as follows.

Branded Advertising

The usefulness of branded advertising to increase the sales of a particular product is also well documented. Within the private sector, companies unfailingly recognize the importance of advertising and collectively spend billions of dollars a year on advertising and promotion activities in order to generate sales. In 1992 alone, the nation's top 20 advertisers spent more than $500 million on advertising. (Advertising Age, August 29, 1993).

Within the agricultural field, brand advertising is also a useful tool which has been found to benefit not only the actual brand advertiser, but the overall industry as well. Through brand advertising, handlers seek to move their own products from the shelf to the consumer. A recent study conducted by an economist at the University of California at Davis, Department of Agricultural Economics (Jason Christian, 1994) concluded that brand advertising has afforded substantial benefits to all California almond growers.

In his analysis, Christian examined the market effects of brand advertising by one large almond cooperative as well as other independent handlers, between 1972 and 1992. Based on Christian's analysis, it was estimated that the average rate of return to the industry as a result of brand advertising by the cooperative was substantial. During the 1980's the average rate of return for each additional dollar spent on advertising expenditures was about $5.00. Aside from the individual brand advertiser, other handlers in the industry also benefited from the advertising because it created an increased demand for *all* almonds. Between 1979 and 1990, the benefits received by other almond handlers actually exceeded the returns received by the brand advertiser.

Mr. Wasson also submitted materials on the effects of almond promotion on the industry, including documentation on imports and exports of almonds and statistical tables on the almond industry. A summary of the materials is as follows.

Effects of Almond Promotion on the Almond Industry

Aside from the studies described above, there are numerous other indications that the combined creditable and generic advertising program administered by the Almond Board has been highly successful. Statistics indicate that both the supply and demand of California almonds have increased significantly since the inception of the Almond Marketing Order's advertising and promotion program.

In the early 1980's the U.S. almond crop averaged about 300 million pounds. By the early 1990's the almond crop averaged about 550 million pounds. Almonds have thus attained a level of market growth which few other agricultural commodities can claim.

Significantly, grower prices for almonds have remained relatively stable throughout these years of increased production. One basic theory of economic analysis is that prices for a product will fall if supply increases without a corresponding increase in demand. The relative stability of prices within the almond industry throughout the years of increased production indicate that demand for California almonds has increased dramatically over the years.

Another measure of the growing popularity of almonds can be obtained through analysis of per capita consumption. USDA figures indicate that the United States' per capita consumption of almonds is well ahead of that of any competing nuts. In 1970–71, the average American's per capita consumption of almonds was about .34 pounds per person. In 1987–88, the average per capita consumption of almonds was .58 pounds per person. By 1991–92, per capita consumption had risen to .82 pounds per person. This represents a 40% increase in per capita consumption between 1987 and 1992. Importantly, no tree nut was promoted more aggressively than almonds during this period. Additionally, the tree nut with the second largest per capita consumption between 1987 and 1992 was walnuts, at just .54 pounds per person.

Further evidence of the growth of the almond industry is provided by the fact that the use of almonds as ingredients in new products continues to increase. In 1992, almonds were most often included in all new foods containing tree nuts or peanuts which were introduced on the market. In all, 35% of all new products containing any type of nuts which were introduced in 1992 contained almonds.

The Department notes that economic studies of the almond industry also show that advertising is a good use of industry funds. In his 1985 study of the relationship between advertising, risk and domestic sales of almonds, Dr. John Baritelle, a research agricultural economist and a professor at the University of California-Riverside, concluded that advertising has been a good investment for the industry.

As the basis for his study, Baritelle posed the initial question, "What does the industry get for its advertising dollar, and what would we get if we advertised even more?" (Non-Technical Statement on Almond Advertising Model and Domestic Sales, at p. 2) (July, 1985). Almond crops for the years 1981 through 1983 were analyzed.

The study found that for the crop year 1981, when almond production was at an all time high of 408 million pounds and the advertising budget was 10.86 million dollars, total estimated returns on advertising ranged from $1.21 to $4.51 for each dollar spent. This figure included the estimated returns that advertising dollars expended in 1981 would yield in 1982 since the study found that advertising has an impact on per capita sales in the year of expenditure as well as in the following year. Importantly, Baritelle found that even if the 1981 advertising budget had been increased by 25% to $13.58 million, the industry would still have received a total return of at least $1.02 on every dollar spent.

In 1982, when almond production returned to more normal levels and the advertising budget was $8.85 million, total estimated returns on advertising ranged from $1.75 to $6.26 for each dollar spent. Again, this figure included the estimated returns that advertising dollars expended in 1982 would yield in 1983. Additionally, Baritelle noted that even if the 1982 budget had been increased by 75% to $15.49 million, the return to the industry would have been at least $1.04 for every dollar spent.

Finally, the Department notes that in 1983, when almond production was low due to poor weather conditions and the advertising budget was $6.10 million, estimated returns ranged from $2.34 to $8.37. Again, this figure took into account returns that were expected to be realized in 1984.

Mr. Wasson went on to state that although investing in the advertisement

of almonds is a proven way to increase sales, it is significant that, when compared to other commodity boards, the Almond industry spends relatively little on promotional activities. For instance, the Washington Apple and Almond industries have similar crop sizes—about $1 billion—yet the Almond Board spends substantially less on advertising than the Washington Apple Commission. The Almond Board's promotional budget for the year 1993–94 was $5.4 million. The Washington Apple Commissions' advertising expenses for that same period was a little over $7.0 million.

It is also significant that the Almond Board's lengthy process of developing and implementing generic advertising campaigns is consistent with advertising industry norms. Testing and monitoring is performed at various stages in the development and airing of advertisements and follow-up research on their effectiveness is conducted.

Different concepts regarding the best method of promoting almonds are also explored. For example, focus group concept testing was conducted prior to the 1993–94 advertising campaign, and a concept was chosen from four alternatives. Advertisements were then developed, presented to a consumer audience for reaction, and adjustments and refinements were made before a final product was developed.

After airing an advertisement, consumer awareness is measured since this is a basic measurement of an advertisement's effectiveness. Results of these tests recently showed that the television advertisement approved for use by the Almond Board during the 1993–94 campaign was very successful. In addition, based on the experience gained from the 1993–94 campaign, the Board has conducted research to assist in developing a new program for 1994–95.

The Order and its regulations were initiated by the industry for the benefit of the industry. Without majority industry support, the Order, or any part of it, could have been suspended or terminated. Mr. Wasson concluded by stating that the advertising and promotional programs instituted by the Board have received continual majority support since their inception.

The Department's Conclusion

The Department's experience has been that whenever a segment of any industry is "required" to do certain things in order to make a program work for all, it is not unusual to find members of the industry who do not agree with any or all aspects of the program. There are some who just do not want to participate in any advertising or promotion programs. In order for a marketing order to be successful, however, participation by everyone is very important.

With the decision of the Ninth Circuit, the Department's oversight responsibilities of the almond marketing order were carefully analyzed and considered. It was determined that it is in the best interest of the majority of the almond industry that the advertising and promotion program continue as modified herein.

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.

The information collection requirements contained in these regulations have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB Control Number 0581–0071.

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 new Credit-Back program, as modified herein, will be more beneficial to the industry if it is implemented at the beginning of the 1994–95 crop year which begins July 1, 1994; (2) this action provides handlers with additional flexibility in the types of promotion and advertising allowed for crediting; (3) this action relaxes requirements currently in effect; (4) the interim final rule provided two comment periods which were addressed in this action and modifications were made based on the comments and other relevant information.

After consideration of the all relevant material presented, the information and recommendations submitted by the Board, the comments received, and other information, the Department has determined that finalizing the interim final rule, with modifications, as published in the **Federal Register** [58 FR 43500, August 17, 1993] will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR 981

Almonds, Marketing agreements, Nuts, Reporting and recording requirements.

For the reasons set forth in the preamble, 7 CFR Part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 981 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 981.441 is revised to read as follows:

§ 981.441 Credit for market promotion activities, including paid advertising.

(a) In order for a handler to receive credit for his/her own promotional activities from his/her pro rata portion of advertising assessment payments, pursuant to § 981.41(c), the Board must determine that such expenditures meet the applicable requirements of this section. Credit will be granted either in the form of a payment from the Board, or as an offset to the advertising assessment if activities are conducted and documented to the satisfaction of the Board at least two weeks prior to assessment billings. Credit, hereinafter termed "Credit-Back", will be granted in an amount not to exceed 66⅔ percent of a handler's proven expenditures for qualified activities.

(b) The portion of the handler assessment for which credit may be received under this section will be billed, and is due and payable, at the same time as the portion of the handler assessment used for the Board's administrative expenses, unless the handler(s) conduct and document activities at least two weeks prior to assessment billings. In the latter case, handlers' advertising assessment obligations will be reduced according to the amount of proven activities approved by the Board.

(c) The Board shall grant Credit-Back for qualifying activities only to the handler who performed such activities and who filed a claim for Credit-Back in accordance with this section.

(d) Credit-Back shall be granted only for qualified promotional activities which are conducted and completed during the crop year for which Credit-Back is requested.

(e) The following requirements shall apply to Credit-Back for all promotional activities:

(1) Credit-Back granted by the Board shall be that which is appropriate when compared to accepted professional practices and rates for the type of activity conducted. In the case of claims for Credit-Back activities not covered by specific and established criteria, the Board shall grant the claim if it is consistent with practices and rates for similar activities. To this end, the Board may issue guidelines for qualifying activities from time to time as warranted. For activities in markets

other than the United States and Canada, paragraph (e)(5) of this section shall also apply.

(2) The clear and evident purpose of each activity shall be to promote the sale, consumption or use of California almonds, and nothing therein shall detract from this purpose.

(3) No Credit-Back will be given for advertising placed in publications that target the farming or grower trade. No Credit-Back shall be given for any outdoor advertising or sponsorships in the California almond growing counties of Butte, Colusa, Fresno, Glenn, Kern, Madera, Merced, Sacramento, San Joaquin, Stanislaus, and Tulare counties, except that, outdoor advertising in these counties which specifically directs consumers to a handler-operated outlet offering direct purchase of almonds will be eligible for Credit-Back.

(4) Credit-Back shall be granted for those qualified activities specified below, except that Credit-Back for travel expenses will not be allowed in any case.

(i) *Paid advertising directed to end-users, trade or industrial users.* Credit-Back shall be granted for money spent on paid advertising space or time including, but not limited to, newspapers, magazines, radio, television, transit and outdoor media, and including the standard agency commission costs not to exceed 15 percent of gross.

(ii) *Other market promotion activities.* Credit-Back shall be granted for market promotion other than paid advertising, for the following activities:

(A) Marketing research (except pre-testing and test-marketing of paid advertising);

(B) Trade and consumer product publicity;

(C) Printing costs for promotional material;

(D) Direct mail printing and distribution;

(E) Retail in-store demonstrations;

(F) Point-of-sale materials (not including packaging);

(G) Sales and marketing presentation kits;

(H) Trade fairs and exhibits;

(I) Trade seminars;

(J) 50/50 advertising with retailers;

(K) Couponing (printing, distribution and handling costs only);

(L) Purchase of Board produced promotional materials; and

(M) Sponsorships

(iii) For any qualified activity involving joint participation by a handler and a manufacturer or seller of a complementary product(s), or a handler selling multiple complementary products, including other nuts, with such activity including the handler's name or brand, or the words "California Almonds", the amount allowed for Credit-Back claim shall reflect that portion of the activity represented by almonds, or the handler's actual payment, whichever is less.

(iv) When products containing almonds are promoted, the amount allowed for Credit-Back shall reflect that portion of the product weight represented by almonds, or the handler's actual payment, whichever is less. In addition, the product must display the handler's name or brand, or the words "California Almonds" on the primary, face label.

(5) Credit-Back for promotional activities in a foreign market shall be granted at 66⅔ percent of a handler's unreimbursed expenditures for qualified activities in any foreign market, if the handler is promoting pursuant to a contract with the Foreign Agricultural Service, USDA (FAS) and/or the California Department of Food and Agriculture (CDFA). Such activities must also meet the requirements of paragraphs (e) (1), (2), (3), (4), and (6) of this section. Unless the Board is administering the foreign marketing program, such activities shall not be eligible for Credit-Back unless the handler certifies that he/she was not and will not be reimbursed by either FAS or the CDFA for the amount claimed for Credit-Back, and has on record with the Board all claims for reimbursement made to FAS and/or the CDFA. Foreign market expenses paid by third parties as part of a handler's contract with FAS or CDFA will not be eligible for Credit-Back.

(6) A handler must file claims with the Board to obtain Credit-Back for promotional expenditures, as follows:

(i) All claims submitted to the Board for any qualified activity must include:

(A) A description of the activity and when and where it was conducted;

(B) Copies of all invoices from suppliers or agencies;

(C) Copies of all canceled checks issued by the handler in payment of these invoices; and

(D) An actual sample, picture or other physical evidence of the activity.

(ii) Handlers may receive credit against their assessment obligation up to the advertising amount of the assessment installment due; *Provided:* That the handler submits the required documentation for a qualified activity at least two weeks prior to the mailing of assessment notices from the Board. In all other instances, handlers must remit the advertising assessment to the Board when billed, and a refund will be issued to the extent of proven, qualified activities.

(iii) Checks from the Board in payment of approved Credit-Back claims will be mailed to handlers on February 15, April 15, June 15, and 30 days after submission of final claims for the crop year pursuant to paragraph (e)(6)(iv) of this section. To receive payment on these dates, handler claims must be submitted, with all required elements, at least one month prior to the payment date. A handler can receive Credit-Back for his/her allowable direct expenditures only up to the amount of that portion of the handler's assessment designated for marketing promotion, including paid advertising.

(iv) A statement of the Credit-Back commitments outstanding as of the close of a crop year must be submitted in full to the Board within 15 days after close of that crop year. Final claims must be submitted within 105 days after the close of that crop year.

(f) *Appeals.* If a determination is made by the Board staff that a particular promotional activity is not eligible for Credit-Back because it does not meet the criteria specified herein, or for any other reason, the affected handler may request the Public Relations and Advertising Committee to review the Board staff's decision. If the affected handler disagrees with the decision of the Public Relations and Advertising Committee, the handler may request that the Board review the Committee decision. If the handler disagrees with the decision of the Board, the handler, through the Board, may request that the Secretary review the Board's decision. Handlers have the right to request anonymity in the review of their appeal. The Secretary maintains the right to review any decisions made by the aforementioned bodies at his/her discretion.

Dated: July 6, 1994.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–16731 Filed 7–6–94; 4:14 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–18–AD; Amendment 39–8958; AD 94–14–06]

Airworthiness Directives; Beech Model 400A and 400T (Military T–1A) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Beech Model 400A and 400T (military T–1A) airplanes, that requires an inspection of certain flap roller retention components to detect discrepant or missing parts, and replacement of discrepant or missing parts; and installation of new washers on the roller attach bolts. This amendment is prompted by reports of undersized tabs on some lock washers, and tabs or inner tangs missing from the washers installed on the flap roller bolts. Such discrepancies defeat the locking function of the tab washer, and could result in loss of the nut and flap roller. The actions specified by this AD are intended to prevent loss of the main or aft flap surface and subsequent reduced controllability of the airplane.

DATES: Effective August 10, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 10, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Larry Engler, Aerospace Engineer, Airframe Branch, ACE–120W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4122; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Beech Model 400A and 400T (military T–1A) airplanes was published in the **Federal Register** on March 15, 1994 (59 FR 11939). That action proposed to require an inspection of certain flap roller retention components to detect discrepant or missing parts, and replacement of discrepant or missing parts with new or serviceable parts; and installation of new washers, tab washers, and flat washers on the roller attach bolts.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 122 Model Beech 400A and 400T (military T–1A) airplanes of the affected design in the worldwide fleet. The FAA estimates that 102 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $100 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $55,080, or $540 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

94–14–06 Beech Aircraft Corporation: Amendment 39–8958. Docket 94–NM–18–AD.

Applicability: Model 400A airplanes, serial numbers RK–1 through RK–79 inclusive; and Model 400T (military T–1A) airplanes, serial numbers TT–1 through TT–42 inclusive, and TT–44; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of the main or aft flap surface and subsequent reduced controllability of the airplane, accomplish the following:

(a) Within 200 hours time-in-service after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD in accordance with Beech Service Bulletin No. 2522, dated January 1994.

(1) Perform an inspection of the flap roller retention components to detect discrepant or missing parts; and, prior to further flight, replace any discrepant or missing part with a new or serviceable part.

(2) Install new washers, new tab washers, and new flat washers on the roller attach bolts.

(b) As of the effective date of this AD, no person shall install a bolt, part number 45A97115–1 or 45A97115–51; or a tab washer, part number 168AS–06–2; on any airplane unless the requirements of paragraph (a)(1) of this AD have been accomplished on that bolt or tab washer.

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

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

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a

location where the requirements of this AD can be accomplished.

(e) The inspection, replacement, and installation shall be done in accordance with Beech Service Bulletin No. 2522, dated January 1994. 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 Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(f) This amendment becomes effective on August 10, 1994.

Issued in Renton, Washington, on June 23, 1994.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–15735 Filed 7–8–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 93–NM–220–AD; Amendment 39–8961; AD 94–14–09]

Airworthiness Directives; Lockheed Model 382 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Lockheed Model 382 series airplanes, that requires a revision to the Airplane Flight Manual to require takeoff operation in accordance with revised performance data. This amendment is prompted by a report of a change that had been incorporated into the propeller governor of these airplanes during production, which altered the thrust decay characteristic of the propeller when operating in an engine failure scenario. The actions specified by this AD are intended to ensure that the airplane is operated at sufficient speeds to mitigate the problems associated with a faster thrust decay and to prevent the airplane from departing the side of the runway.

DATES: Effective August 10, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 10, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Lockheed Western Export Company, 2251 Lake Park Drive, Smyrna, Georgia 30080. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas Peters, Aerospace Engineer, Flight Test Branch, ACE–160A, FAA, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349; telephone (404) 991–3915; fax (404) 991–3606.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Lockheed Model 382 series airplanes was published in the **Federal Register** on March 25, 1994 (59 FR 14124). That action proposed to require a revision to the FAA-approved AFM to require takeoff operation of the airplane in accordance with the revised performance data.

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

The commenter supports the proposed rule.

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

There are approximately 112 Model 382, 382E, and 382G series airplanes of the affected design in the worldwide fleet. The FAA estimates that 18 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the AFM change, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $990, or $55 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

94–14–09 Lockheed: Amendment 39–8961. Docket 93–NM–220–AD.

Applicability: Model 382, 382E, and 382G series airplanes; equipped with a servo-type valve housing assembly, having part number 714325–2, –3, –5, –6, or –7, installed on any outboard engine; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the airplane is operated at sufficient speeds to mitigate the problems associated with a faster thrust decay and to prevent the airplane from departing the side of the runway, accomplish the following:

(a) Within 60 days after the effective date of this AD, revise the Limitations and Performance Data Sections of the FAA-approved Airplane Flight Manual (AFM) to

include the information specified in Lockheed Airplane Flight Manual Supplement 382–16, dated August 11, 1993, and operate the airplane accordingly thereafter. The requirements of this paragraph may be accomplished by inserting AFM Supplement 382–16 into the AFM.

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

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

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The AFM revision shall be done in accordance with Lockheed Airplane Flight Manual Supplement 382–16, dated August 11, 1993. 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 Lockheed Western Export Company, 2251 Lake Park Drive, Smyrna, Georgia 30080. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(e) This amendment becomes effective on August 10, 1994.

Issued in Renton, Washington, on June 23, 1994.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–15736 Filed 7–8–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–NM–21–AD; Amendment 39–8957; AD 94–14–05]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 series airplanes, that requires removal of the actuator from the fuel-ballast transfer valve, and installation of a locking device on the fuel-ballast transfer valve. This amendment is prompted by a report that the fuel-ballast transfer valve on certain airplanes must be modified to ensure the valve is closed at all times. If the transfer valve is open during flight, the fuel supply to the engines may be reduced during cross-feed operation to the extent that fuel starvation could occur. The actions specified by this AD are intended to prevent engine flameout due to fuel starvation.

DATES: Effective August 10, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 10, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes was published in the **Federal Register** on March 30, 1994 (59 FR 14799). That action proposed to require removal of the actuator from the fuel-ballast transfer valve, and installation of a locking device on the fuel-ballast transfer valve.

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

The commenter supports the proposed rule.

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

The FAA estimates that 5 airplanes of U.S. registry will be affected by this AD, that it will take approximately 0.5 work hour per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $250 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,387.50, or $277.50 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

94–14–05 Fokker: Amendment 39–8957. Docket 94–NM–21–AD.

Applicability: Model F28 Mark 0100 series airplanes, serial numbers 11443, 11446 through 11449 inclusive, and 11456; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced fuel flow to the engines during crossfeed operations and the possibility of engine flameout, accomplish the following:

(a) Within 30 days after the effective date of this AD, remove the actuator from the fuel-ballast transfer valve, part number 7933141J, and install a locking device on the fuel-ballast transfer valve, in accordance with Fokker Service Bulletin SBF100–28–029, Revision 1, dated November 30, 1993.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The removal and installation shall be done in accordance with Fokker Service Bulletin SBF100–28–029, Revision 1, dated November 30, 1993, which contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1–3	1	November 30, 1993.
4–7	Original	November 10, 1993.

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 Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(e) This amendment becomes effective on August 10, 1994.

Issued in Renton, Washington, on June 23, 1994.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–15737 Filed 7–8–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–ANE–27; Amendment 39–8964; AD 94–14–16]

Airworthiness Directives; Pratt & Whitney JT8D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Pratt & Whitney (PW) JT8D series engines. This action requires initial and repetitive inspections of the Number 7 fuel nozzle and support assembly, replacement of the Number 7 fuel nozzle and support assembly with a more leak-resistant configuration, and replacement of aluminum oil pressure and scavenge tube fittings with steel fittings. This amendment is prompted by reports of two engine fires initiated by fuel leakage from the Number 7 fuel nozzle and support assembly, ignition of that fuel, melting of aluminum oil pressure and scavenge tube fittings that are in the proximity of the Number 7 nozzle, and augmentation of that fire with the liberated oil. The actions specified in this AD are intended to prevent fuel leakage from the Number 7 fuel nozzle and support assembly, ignition of that leaking fuel, and liberation of oil from melted oil line fittings, which can result in an uncontained engine fire and damage to the aircraft.

DATES: Effective July 26, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 26, 1994.

Comments for inclusion in the Rules Docket must be received on or before September 9, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket Number 94–ANE–27, 12 New England Executive Park, Burlington, MA 01803–5299.

The service information referenced in this AD may be obtained from Pratt & Whitney, Technical Publications Department, M/S 132–30, 400 Main Street, East Hartford, CT 06108. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mark A. Rumizen, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7137, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) has received two reports of uncontained engine fires on Pratt & Whitney (PW) JT8D series engines due to fuel leakage from the Number 7 fuel nozzle and support assembly, ignition of that fuel, melting of aluminum oil pressure and scavenge tube fittings that are in the proximity of the Number 7 nozzle, and augmentation of that fire with the liberated oil. The resulting fire burned through the engine diffuser case and fan ducts, causing an aircraft engine cowl fire. The FAA has determined that the fuel nozzle and support assembly is susceptible to incomplete or improper refurbishment or repair that could result in fuel leaks across the fuel nozzle seals, and that the aluminum oil pressure and scavenge tube fittings have inadequate fire resistance capability. These oil line fittings are in the path of the fuel leaking and associated fire from the Number 7 fuel nozzle and support assembly. Impingement of the fire on these oil fittings causes them to melt, thus causing the oil contained in the oil tubes to escape and to augment the fire. Therefore, this amendment will require the inspection of the Number 7 fuel nozzle and support assembly for evidence of fuel leakage and burning until replacement of the Number 7 fuel nozzle and support assembly with a more leak-resistant configuration. It also requires replacement of the aluminum oil tube fittings with steel fittings. This condition, if not corrected, could result in fuel leakage from the Number 7 fuel nozzle and support assembly, ignition of that leaking fuel, and liberation of oil from melted oil line fittings, which can result in an uncontained engine fire and damage to the aircraft.

The FAA has reviewed and approved the technical contents of PW Alert Service Bulletin (ASB) No. A6153, Revision 1, dated June 8, 1994, that describes procedures for initial and repetitive borescope inspections of the Number 7 fuel nozzle and support

assembly; and ASB No. A6169, Revision 1, dated June 15, 1994, and A6170, dated May 13, 1994, that describe procedures for replacement of the Number 7 fuel nozzle and support assembly with a more leak-resistant configuration and replacement of the aluminum oil tube fittings with steel fittings, respectively.

Since an unsafe condition has been identified that is likely to exist or develop on other PW JT8D series engines of the same type design, this AD is being issued to prevent uncontained engine fire and damage to the aircraft. This AD requires inspection of the Number 7 fuel nozzle and support assembly for evidence of fuel leakage and burning until replacement of the Number 7 fuel nozzle and support assembly with an improved sealing configuration. This AD also requires replacement of the aluminum oil tube fittings with steel fittings. The actions are required to be accomplished in accordance with the alert service bulletins described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–ANE–27." The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

94–14–16 Pratt & Whitney: Amendment 39–8964. Docket 94–ANE–27.

Applicability: Pratt & Whitney (PW) Model JT8D–209, –217, –217A, –217C, –219 turbofan engines; and JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR turbofan engines incorporating the original issue or any revision of Pratt & Whitney Service Bulletin No. 5650; and any PW Model JT8D engine with low emissions fuel nozzles, Part Numbers 775485, 809137–01, 802965, and 5004308–02 installed. These engines are installed on but not limited to Boeing 727 and 737 series, and McDonnell Douglas DC–9 and MD–80 series aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent fuel leakage from the Number 7 fuel nozzle and support assembly and melting of the oil pressure and scavenge tube fittings, which can result in an uncontained engine fire and damage to the aircraft, accomplish the following:

(a) Inspect Number 7 fuel nozzle and support assemblies in accordance with PW Alert Service Bulletin (ASB) No. A6153, Revision 1, dated June 8, 1994, as follows:

(1) For Number 7 fuel nozzle and support assemblies that have accumulated more than 2,500 hours time in service (TIS) since last fuel nozzle and support assembly overhaul on the effective date of this airworthiness directive (AD), initially inspect for fuel leakage within 700 hours TIS after the effective date of this AD.

(2) For engines with Number 7 fuel nozzle and support assemblies with 2,500 or less hours TIS since fuel nozzle and support assembly overhaul on the effective date of this AD, initially inspect prior to accumulating 3,200 hours TIS since overhaul.

(3) Thereafter, inspect for fuel leakage in accordance with PW ASB A6153, Revision 1, dated June 8, 1994, at intervals not to exceed 700 hours TIS since last inspection.

(4) Remove from service Number 7 fuel nozzle and support assemblies that exhibit evidence of fuel leakage as described in PW ASB No. A6153, Revision 1, dated June 8, 1994, and replace with the improved sealing configuration nozzle in accordance with paragraph (b) of this AD, as follows:

(i) Within 25 hours TIS, or 25 cycles in service (CIS), whichever occurs first, after the inspection performed in paragraph (a)(1), (a)(2), or (a)(3) for aircraft with only one engine exhibiting Number 7 fuel nozzle and support assembly leakage.

(ii) Prior to further flight, on aircraft with two engines exhibiting Number 7 fuel nozzle and support assembly leakage, remove and replace at least one of the leaking Number 7 fuel nozzle and support assemblies. The remaining Number 7 fuel nozzle and support assembly that exhibits leakage shall be removed and replaced in accordance with paragraph (a)(4)(i) of this AD.

(iii) Prior to further flight, on Boeing 727 aircraft, with three engines exhibiting

Number 7 fuel nozzle and support assembly leakage, remove and replace at least two of the leaking Number 7 fuel nozzle and support assemblies. The remaining Number 7 fuel nozzle and support assembly that exhibits leakage shall be removed and replaced in accordance with paragraph (a)(4)(i) of this AD.

Note: Fuel nozzles that have not undergone overhaul do not require inspection in accordance with paragraph (a) of this AD.

(b) At the next accessibility of the diffuser build group after the effective date of this AD, but no later than July 31, 1999, accomplish the following:

(1) Replace the Number 7 fuel nozzle and support assembly with the improved sealing configuration in accordance with Part 1 of PW ASB No. A6169, Revision 1, dated June 15, 1994.

(2) Replace the aluminum pressure and scavenge oil tube fittings with steel fittings in accordance with PW ASB No. A6170, dated May 13, 1994.

Note: Replacement of the following oil tubes with corresponding oil tubes that incorporate steel fittings constitutes compliance with paragraph (b)(2) of this AD:

(i) Outer internal Number 4 and 5 bearing pressure tube assembly for PW JT8D–200 series engines.

(ii) Outer internal main bearing pressure tube assembly for PW JT8D–200 series engines.

(iii) Main bearing pressure manifold assembly for PW JT8D–200 series engines.

(iv) Front Number 4½ and 6 bearing pressure tube assembly for all other JT8D engines.

(v) Number 4 bearing oil scavenge tube assembly for all other JT8D engines.

(vi) Number 4 bearing oil pressure tube assembly for all other JT8D engines.

(vii) Main bearing pressure manifold assembly for all other JT8D engines.

(c) Incorporation of the hardware required by paragraph (b)(1) of this AD, constitutes terminating action for the inspections required by paragraph (a) of this AD.

(d) For the purpose of this AD, accessibility of the diffuser build group is defined as engine maintenance that entails flange separation of the diffuser case from the combustion chamber outer case.

(e) For the purpose of this AD, fuel nozzle and support assembly overhaul is defined as disassembly of the fuel nozzle from the support assembly that entails removal of the fuel nozzle nut.

(f) For any Number 7 fuel nozzle and support assembly that is removed for evidence of leakage in accordance with paragraph (a) of this AD, submit the following information within 60 days after the removal, to the Manager, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, Massachusetts, 01803–5299; fax (617) 238–7199:

(1) Fuel nozzle and support assembly part number and serial number.

(2) Fuel nozzle and support assembly time and cycles since overhaul.

(3) Description of fuel nozzle and support assembly distress.

(4) Position of distressed fuel nozzle and support assembly.

(5) Description of any other resultant engine damage.

(6) Engine serial number.

(7) Engine time and cycles since overhaul.

The reporting requirements of this AD terminate after compliance with paragraph (b)(1) of this AD. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provision of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) and have been assigned OMB Control Number 2120–0056.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(h) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(i) The inspections and modifications shall be done in accordance with the following service documents:

Document No.	Pages	Revision	Date
PW ASB No. A6153	1–4	1	June 8, 1994.
	5	Original	February 4, 1994.
	6–8	1	June 8, 1994.
	9–12	Original	February 4, 1994.
Total pages: 12.			
PW ASB No. A6169	1–6	1	June 15, 1994.
	7–16	Original	April 29, 1994.
	17	1	June 15, 1994.
	1–30	Original	April 29, 1994.
Total pages: 30.			
PW ASB No. A6170	1–20	Original	May 13, 1994.
Total pages: 20.			

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 Pratt & Whitney, Technical Publications Department, M/S 132–30, 400 Main Street, East Hartford, CT 06108. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(j) This amendment becomes effective on July 26, 1994.

Issued in Burlington, Massachusetts, on June 29, 1994.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 94–16399 Filed 7–8–94; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 94–NM–61–AD; Amendment 39–8970; AD 94–14–21]

Airworthiness Directives; Boeing Model 747–400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747–400 series airplanes, that requires a revision to the Flap Control Unit input wiring. This amendment is prompted by reports of disconnection of the Landing Gear Module electrical connectors, which can result in the loss of the primary, secondary, and alternate control of the flaps. The actions specified by this AD are intended to prevent the possibility of an all-flaps-up landing due to the loss of control of all flap operations.

DATES: Effective August 10, 1994. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 10, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kathi Ishimaru, Aerospace Engineer, Systems & Equipment Branch, ANM–130S, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2674; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747–400 series airplanes was published in the Federal Register on May 12, 1994 (59 FR 24671). That action proposed to require a revision to the Flap Control Unit (FCU) input wiring.

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

One commenter, Boeing, requests that the discussion of the addressed unsafe condition that appeared in the preamble to the notice be clarified. In that preamble, the FAA stated that, if the landing gear module connectors become disconnected, all FCU modes of flap operation (primary, secondary, and alternate control of flaps) could be lost. The commenter suggests that the discussion would have been more precise if it had contained information to indicate that the landing gear module includes the ALTN ARM FLAPS switch and the ALTN FLAPS position selector used to control the leading and trailing edge flaps in the alternate mode. The FAA acknowledges this information.

This same commenter requests that the proposal be revised to cite the latest revision of Boeing Service Bulletin 747–27A2346 as the source for modification procedures. The FAA concurs. Since issuance of the notice, the FAA has reviewed and approved Revision 1 of Boeing Service Bulletin 747–27A2346, dated May 19, 1994. This revision contains a correction to a type of wire that had been called out in the original version of the service bulletin; this correction ensures that the wire and its associated solder sleeve are metalurgically compatible. In order to ensure that the correct wiring modification assembly is installed on the affected airplanes, the FAA has determined that the revised service bulletin should be cited as the appropriate source of service information for complying with the requirements of this rule. The final rule has been revised accordingly. The FAA has confirmed that no U.S. operators have yet modified any affected airplane in accordance with the original service bulletin; therefore, by citing the revised service bulletin, the final rule will impose no additional economic burden on any U.S. operator.

One commenter requests that the compliance time be extended from the proposed 30 days to 90 days, due to a possible parts availability problem. This commenter states that it does not normally stock the required parts and materials to accomplish the proposed requirements of the rule. This commenter has ordered these parts from a supplier and is currently waiting to obtain them. Additionally, this commenter points out that the manufacturer's service bulletin, referenced in the proposal, recommends 60 days for modification. The FAA does not concur with the commenter's request. In developing an appropriate compliance time for this action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the manufacturer's recommendation as to an appropriate compliance time, the availability of required parts, and the practical aspect of installing the required modification within a maximum interval of time allowable for all affected airplanes to continue to operate without compromising safety. The FAA points out that the parts required for the wiring modification are readily available; therefore, obtaining them within the proposed compliance time should not pose a problem for any affected operator. Further, the FAA took into account the 60-day compliance time recommended by the manufacturer, as well as the number of days required for the rulemaking process; in consideration of these factors, the FAA finds that 30 days after the effective date of this final rule will fall approximately at the same time for compliance as recommended by the manufacturer. However, under the provisions of paragraph (b) of the final rule, the FAA may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 300 Model 747–400 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 34 airplanes of U.S. registry will be affected by this AD, that it will take approximately 10 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $200 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $25,500, or $750 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

94–14–21 Boeing: Amendment 39–8970. Docket 94–NM–61–AD.

Applicability: Model 747–400 airplanes having line numbers 696 through 1019, inclusive, and 1021 through 1026, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the possibility of an all-flaps-up landing due to the loss of control of flap operations, accomplish the following:

(a) Within 30 days after the effective date of this AD, revise the Flap Control Unit (FCU) input wiring in accordance with Boeing Alert Service Bulletin 747–27A2346, Revision 1, dated May 19, 1994.

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

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

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The wiring revision shall be done in accordance with Boeing Alert Service Bulletin 747–27A2346, Revision 1, dated May 19, 1994. 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 Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(e) This amendment becomes effective on August 10, 1994.

Issued in Renton, Washington, on July 1, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–16535 Filed 7–8–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–NM–76–AD; Amendment 39–8966; AD 94–14–18]

Airworthiness Directives; de Havilland Model DHC–8–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain de Havilland Model DHC–8–100 series airplanes. This action requires repetitive inspections of the hydraulic selector valve to determine the rate of leakage of hydraulic fluid, and replacement of certain valves with serviceable valves, if necessary. This AD also provides an optional terminating action for the repetitive inspections. This amendment is prompted by a report of pilot valve leakage of hydraulic fluid in a landing gear selector valve on a Model DHC–7 series airplane. The actions specified in this AD are intended to prevent inadvertent retraction of the landing gear in the event of a low voltage condition at the selector valve down solenoid.

DATES: Effective July 26, 1994. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 26, 1994.

Comments for inclusion in the Rules Docket must be received on or before September 9, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–76–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Danko Kramar, Aerospace Engineer, Systems and Equipment Branch, ANE–173, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; telephone (516) 791–6428; fax (516) 791–9024.

SUPPLEMENTARY INFORMATION: Transport Canada Aviation, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on certain de Havilland Model DHC–8–100 series airplanes. Transport Canada advises that it has received a report of pilot valve leakage of hydraulic fluid in a landing gear selector valve on a Model DHC–7 series airplane. The cause of this leakage has been attributed to a faulty seal. Such leakage, if combined with a low voltage condition at the selector valve down solenoid, could result in inadvertent retraction of the landing gear.

Since the same selector valve that is used on Model DHC–7 series airplanes is installed on Model DHC–8–100 series airplanes, the FAA finds that the latter airplane model also is subject to the addressed unsafe condition. The FAA may consider issuance of parallel rulemaking action to address this unsafe condition on Model DHC–7 series airplanes.

De Havilland, Inc., has issued Alert Service Bulletin S.B. A8–32–117, dated December 11, 1992, that describes procedures for repetitive inspections of the hydraulic selector valve to determine the rate of leakage of hydraulic fluid, and replacement of certain valves with serviceable valves, if necessary. Transport Canada Aviation classified this service bulletin as mandatory and issued Canadian Airworthiness Directive CF–94–05, dated March 16, 1994, in order to assure the continued airworthiness of these airplanes in Canada.

De Havilland, Inc., also has developed a valve (Modification 8/0530) that incorporates several improvements to minimize pilot valve leakage. This valve is equipped with an improved spring that keeps the valve firmly seated. The improved valve incorporates a reduced rate of opening and further restricts the orifice leading to the landing gear

actuators. Replacement of certain valves with these improved valves will minimize the possibility of inadvertent landing gear retraction.

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada Aviation has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada Aviation, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent inadvertent retraction of the landing gear in the event of a low voltage condition at the selector valve down solenoid. This AD requires repetitive inspections of the hydraulic selector valve to determine the rate of leakage of hydraulic fluid, and replacement of certain valves with serviceable valves, if necessary. This AD also provides an optional terminating action for the repetitive inspections. The actions are required to be accomplished in accordance with the alert service bulletin described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–76–AD." The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

94–14–18 de Havilland, Inc.: Amendment 39–8966. Docket 94–NM–76–AD.

Applicability: Model DHC–8–100 series airplanes; serial numbers 003 through 038 inclusive; equipped with landing gear selector valve, part number 57420 or 57420–3; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent inadvertent retraction of the landing gear due to pilot valve leakage, accomplish the following:

(a) Within 300 hours time-in-service after the effective date of this AD, inspect the hydraulic selector valve to determine the rate of leakage of hydraulic fluid, in accordance with the Accomplishment Instructions of de Havilland Alert Service Bulletin S.B. A8–32–117, dated December 11, 1992.

(1) If the rate of leakage is 100 cubic centimeters (cc) per minute or less: Repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 10,000 hours time-in-service.

(2) If the rate of leakage is more than 100 cc per minute, but less than 1,000 cc per minute: Within 300 hours time-in-service, replace the hydraulic selector valve with a serviceable valve in accordance with the alert service bulletin. Thereafter, repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 10,000 hours time-in-service.

(3) If the rate of leakage is 1,000 cc or more per minute, but less than 1,500 cc per minute: Within 50 hours time-in-service, replace the hydraulic selector valve with a serviceable valve in accordance with the alert service bulletin. Thereafter, repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 10,000 hours time-in-service.

(4) If the rate of leakage is 1,500 cc or more per minute: Prior to further flight, replace the hydraulic selector valve with a serviceable valve in accordance with the alert service bulletin. Thereafter, repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 10,000 hours time-in-service.

(b) Replacement of the hydraulic selector valve, part number 57420 or 57420–3, with an improved valve (Modification 8/0530), part number 57420–5, constitutes terminating action for the requirements of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance

Inspector, who may add comments and then send it to the Manager, New York ACO.

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

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspections and replacement shall be done in accordance with de Havilland Alert Service Bulletin S.B. A8–32–117, dated December 11, 1992. 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 de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on July 26, 1994.

Issued in Renton, Washington, on June 30, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–16406 Filed 7–8–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–75–AD; Amendment 39–8967; AD 94–14–19]

Airworthiness Directives; de Havilland Model DHC–7 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain de Havilland Model DHC–7 series airplanes. This action requires repetitive inspections of the hydraulic selector valve to determine the rate of leakage of hydraulic fluid, and replacement of certain valves with serviceable valves, if necessary. This AD also provides an optional terminating action for the repetitive inspections. This amendment is prompted by a report of pilot valve leakage of hydraulic fluid in a landing gear selector valve on a Model DHC–7 series airplane. The actions specified in this AD are intended to prevent inadvertent retraction of the landing gear in the event of a low voltage condition at the selector valve down solenoid.

DATES: Effective July 26, 1994. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 26, 1994.

Comments for inclusion in the Rules Docket must be received on or before September 9, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–75–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Danko Kramar, Aerospace Engineer, Systems and Equipment Branch, ANE–173, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791–6428; fax (516) 791–9024.

SUPPLEMENTARY INFORMATION: Transport Canada Aviation, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on certain de Havilland Model DHC–7 series airplanes. Transport Canada Aviation advises that it has received a report of pilot valve leakage of hydraulic fluid in a landing gear selector valve on a Model DHC–7 series airplane. The cause of this leakage has been attributed to a faulty seal. Such leakage, if combined with a low voltage condition at the selector valve down solenoid, could result in inadvertent retraction of the landing gear.

De Havilland, Inc., has issued Alert Service Bulletin S.B. A7–32–97, dated November 10, 1992, that describes procedures for repetitive inspections of the hydraulic selector valve to determine the rate of leakage of hydraulic fluid, and replacement of certain valves with serviceable valves, if necessary. Transport Canada Aviation classified this service bulletin as mandatory and issued Canadian Airworthiness Directive CF–94–04, dated March 16, 1994, in order to assure the continued airworthiness of these airplanes in Canada.

De Havilland, Inc., also has developed a valve (Modification 7/2516) that incorporates several improvements to minimize pilot valve leakage. This valve is equipped with an improved spring that keeps the valve firmly seated. The improved valve incorporates a reduced rate of opening and further restricts the orifice leading to the landing gear actuators. Replacement of certain valves with these improved valves will minimize the possibility of inadvertent landing gear retraction.

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada Aviation has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada Aviation, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent inadvertent retraction of the landing gear in the event of a low voltage condition at the selector valve down solenoid. This AD requires repetitive inspections of the hydraulic selector valve to determine the rate of leakage of hydraulic fluid, and replacement of certain valves with serviceable valves, if necessary. This AD also provides an optional terminating action for the repetitive inspections. The actions are required to be accomplished in accordance with the alert service bulletin described previously.

The FAA is considering the issuance of parallel rulemaking action to address the same unsafe condition on Model DHC–8–100 series airplanes.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption ADDRESSES. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–75–AD." The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

94–14–19 de Havilland, Inc.: Amendment 39–8967. Docket 94–NM–75–AD.

Applicability: Model DHC–7 series airplanes; serial numbers 003 through 110 inclusive; equipped with landing gear selector valve, part number 57420 or 57420–3; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent inadvertent landing gear retraction due to pilot valve leakage, accomplish the following:

(a) Within 300 hours time-in-service after the effective date of this AD, inspect the hydraulic selector valve to determine the rate of leakage of hydraulic fluid, in accordance with the Accomplishment Instructions of de Havilland Alert Service Bulletin S.B. A7–32–97, dated November 10, 1992.

(1) If the rate of leakage is 100 cubic centimeters (cc) per minute or less: Repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 5,400 hours time-in-service.

(2) If the rate of leakage is more than 100 cc per minute, but less than 1,000 cc per minute: Within 300 hours time-in-service, replace the hydraulic selector valve with a serviceable valve in accordance with the alert service bulletin. Thereafter, repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 5,400 hours time-in-service.

(3) If the rate of leakage is 1,000 cc or more per minute, but less than 1,500 cc per minute: Within 50 hours time-in-service, replace the hydraulic selector valve with a serviceable valve in accordance with the alert service bulletin. Thereafter, repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 5,400 hours time-in-service.

(4) If the rate of leakage is 1,500 cc or more per minute: Prior to further flight, replace the hydraulic selector valve with a serviceable valve in accordance with the alert service bulletin. Thereafter, repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 5,400 hours time-in-service.

(b) Replacement of the hydraulic selector valve, part number 57420 or 57420–3, with an improved valve (Modification 7/2516), part number 57420–5, constitutes terminating action for the requirements of this AD.

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

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

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspections and replacement shall be done in accordance with de Havilland Alert Service Bulletin S.B. A7–32–97, dated November 10, 1992. 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 de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(f) This amendment becomes effective on July 26, 1994.

Issued in Renton, Washington, on June 30, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–16405 Filed 7–8–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 93–NM–222–AD; Amendment 39–8960 AD 94–14–08]

Airworthiness Directives; Canadair Model CL–600–2B16 (CL–601–3A) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Canadair Model CL–600–2B16 series airplanes, that requires inspection to detect chafing of the wiring harness of the air driven generator (ADG), modification of the wiring harness, and repair of any chafed harness. This amendment is prompted by a report that the wiring harness on certain airplanes was produced in a configuration that is subject to chafing and electrical shorting. The actions specified by this AD are intended to prevent chafing or shorting of the wiring harness, which could result in loss of ADG power to the essential bus when the ADG is deployed during an emergency situation.

DATES: Effective August 10, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 10, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station A, Montreal, Quebec, H3C 3G9 Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Michele Maurer, Aerospace Engineer, Systems and Equipment Branch, ANE–173, FAA Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791–6427; fax (516) 791–9024.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Canadair Model CL–600–2B16 series airplanes was published in the **Federal Register** on March 14, 1994 (59 FR 11735). That action proposed to require inspection to detect chafing and modification of the wiring harness of the air driven generator (ADG), and repair of any chafed harness.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 25 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,375, or $55 per airplane.

The FAA estimates that it will take approximately 9 work hours per airplane to accomplish the modification and the average labor rate is $55 per work hour. Required parts will cost approximately $199 per airplane. Based on these figures, the total cost impact of the modification on U.S. operators is estimated to be $17,350, or $694 per airplane.

Based on the figures, above, the total (inspection plus modification) cost impact of the AD on U.S. operators is estimated to be $18,725, or $749 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

94–14–08 Canadair: Amendment 39–8960. Docket 93–NM–222–AD.

Applicability: Model CL–600–2B16 series airplanes having serial numbers 5099 through 5131, inclusive; certificated in any category.

Note 1: Airplanes having serial numbers 5001 through 5098, inclusive, are subject to the requirements of AD 91–19–01, amendment 39–8026 (which is similar in content to this amendment).

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of emergency power to the essential bus when the air driven generator (ADG) is deployed, accomplish the following:

(a) Within 25 hours time-in-service after the effective date of this AD, inspect to detect chafing of the wiring harness of the ADG in accordance with Canadair Alert Service Bulletin A601–0370, Revision 1, dated April 15, 1993. If chafing is found, prior to further flight, repair in accordance with the service bulletin.

(b) Within 60 days after the effective date of this AD, modify the harness installation of the ADG in accordance with Canadair Alert Service Bulletin A601–0370, Revision 1, dated April 15, 1993.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an

appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspection and modification shall be done in accordance with Canadair Alert Service Bulletin A601–0370, Revision 1, dated April 15, 1993. 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 Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station A, Montreal, Quebec, H3C 3G9 Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on August 10, 1994.

Issued in Renton, Washington, on June 23, 1994.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–15732 Filed 7–8–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–NM–15–AD; Amendment 39–8959; AD 94–14–07]

Airworthiness Directives; Jetstream Aircraft Limited Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Jetstream Model 4101 airplanes, that requires modification of the mounting structure of the elevator controls on the rear pressure bulkhead. This amendment is prompted by the results of a structural analysis which indicate that certain structure in the elevator control system may be subject to deformation when maximum load is exerted by the pilot(s) in the event of a jam in the elevator control cables. The actions specified by this AD are intended to prevent reduced controllability of the airplane due to structural deformation in the elevator control system.

DATES: Effective August 10, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 10, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Jetstream Aircraft, Incorporated, P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Jetstream Model 4101 airplanes was published in the **Federal Register** on March 15, 1994 (59 FR 11947). That action proposed to require modification of the mounting structure of the elevator control components on the rear pressure bulkhead.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 8 airplanes of U.S. registry will be affected by this AD, that it will take approximately 16.5 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will be provided at no cost to the operator. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $7,260, or $907.50 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

94–14–07 Jetstream Aircraft Limited: Amendment 39–8959. Docket 94–NM–15–AD.

Applicability: All Model 4101 airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced controllability of the airplane due to structural deformation in the elevator control system, accomplish the following:

(a) Within 6 months after the effective date of this AD, modify the mounting structure of the elevator controls on the rear pressure bulkhead in accordance with Jetstream Service Bulletin J41–53–012, dated November 30, 1993.

(b) An alternative method of compliance or adjustment of the compliance time that

provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with Jetstream Service Bulletin J41–53–012, dated November 30, 1993. 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 Jetstream Aircraft, Incorporated, P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on August 10, 1994.

Issued in Renton, Washington, on June 23, 1994.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–15734 Filed 7–8–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 94–ANM–7]

Modification of Class E Airspace; Kalispell, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule published on June 10, 1994, which inadvertently listed incorrect coordinates in the airspace description for Glacier Park International Airport, Kalispell, Montana.

EFFECTIVE DATE: 0901 UTC, August 18, 1994.

FOR FURTHER INFORMATION CONTACT: James E. Riley, System Management Branch (ANM–530), Air Traffic Division, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; Telephone: (206) 227–2537

SUPPLEMENTARY INFORMATION:

On June 10, 1994, the Federal Aviation Administration (FAA) published a final rule that amended the Kalispell, Montana, Class E airspace area to accommodate arrival/departure aircraft transitioning between the en route and terminal areas in western Montana. However, that action inadvertently listed incorrect coordinates in the airspace description for Glacier Park International Airport. This action corrects that error.

Correction of Final Rule

Accordingly, pursuant to the authority delegated to me, the publication in the **Federal Register** on June 10, 1994, (59 FR 29949; **Federal Register** Document 94–14140) and the corresponding description in FAA Order 7400.9A, which is incorporated by reference in 14 CFR 71.1, are corrected as follows:

§ 71.1 [Corrected]

On page 29949, in the third column, the description for the Kalispell, Montana, Class E airspace is corrected to read as follows:

ANM MT E5 Kalispell, MT [Revised]

Kalispell, Glacier Park International Airport, MT
(lat. 48°18′41″ N, long. 114°15′18″ W)
Smith Lake NDB
(Lat. 48°06′30″ N, Long. 114°27′40″ W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Glacier Park International Airport, and within 4.8 miles each side of the 035° and 215° bearing from the Smith Lake NDB extending from the 7-mile radius to 10.5 miles southwest of the NDB; that airspace extending upward from 1,200 feet AGL bounded by a line beginning at lat. 47°30′00″ N., long. 113°30′03″ W.; to lat. 48°30′00″ N., long. 113°30′03″ W.; west along lat. 48°30′00″ N., to the Montana/Idaho state boundary, south along the Montana/Idaho state boundary until intersecting lat. 47°30′00″ N., then to the point of beginning; excluding Federal airways.

Issued in Seattle, Washington, on June 29, 1994.

Charles E. Davis,

Acting Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 94–16675 Filed 7–8–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 27813; Amdt. No. 1610]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

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

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

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

For Purchase—Individual SIAP copies may be obtained from:

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

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

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

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

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA Form

documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

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

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

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

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

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on July 1, 1994.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

2. Part 97 is amended to read as follows:

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

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

Effective 18 August, 1994

Lompoc, CA, Lompoc, VOR/DME–A, Amdt 4
Daytona Beach, FL, Daytona Beach Regional, NDB OR GPS RWY 7L, Amdt 24
Daytona Beach, FL, Daytona Beach Regional, ILS RWY 7L, Amdt 28
Daytona Beach, FL, Daytona Beach Regional, RADAR–1, Amdt 7
Greenfield, IA, Greenfield Muni, NDB RWY 32, Amdt 1
Covington/Cincinnati, OH/KY, Cincinnati/Northern Kentucky INTL, NDB RWY 9, Amdt 12
Covington/Cincinnati, OH/KY, Cincinnati/Northern Kentucky INTL, NDB RWY 18R, Amdt 16
Covington/Cincinnati, OH/KY, Cincinnati/Northern Kentucky INTL, ILS RWY 9, Amdt 14
Covington/Cincinnati, OH/KY, Cincinnati/Northern Kentucky INTL, ILS RWY 18L, Amdt 3
Covington/Cincinnati, OH/KY, Cincinnati/Northern Kentucky INTL, ILS RWY 18R, Amdt 17
Covington/Cincinnati, OH/KY, Cincinnati/Northern Kentucky INTL, ILS RWY 27, Amdt 15
Covington/Cincinnati, OH/KY, Cincinnati/Northern Kentucky INTL, ILS RWY 36L, Amdt 36
Covington/Cincinnati, OH/KY, Cincinnati/Northern Kentucky INTL, ILS RWY 36R, Amdt 4
Newark, NJ, Newark Intl, ILS RWY 4R, Amdt 9
Gallup, NM, Gallup Municipal, VOR RWY 6, Amdt 7
Gallup, NM, Gallup Municipal, LOC RWY 6, Amdt 3
Farmingdale, NY, Republic, LOC BC RWY 32, Amdt 3, CANCELLED
Farmingdale, NY, Republic, ILS RWY 14, Amdt 5
Middletown, NY, Randall, NDB–A, Orig
Mount Olive, NC, Mount Olive Muni, VOR–A, Amdt 1
Hebron, OH, Buckeye Executive, VOR–A, Amdt 5, CANCELLED
Willoughby, OH, Willoughby Lost Nation Muni, VOR–A, Orig
Willoughby, OH, Willoughby Lost Nation Muni, VOR RWY 27, ORIG
Bellefonte, PA, Bellefonte, VOR–A, Amdt 1
Mount Pocono, PA, Pocono Mountains Muni, VOR RWY 13, Amdt 5
Philadelphia, PA, Philadelphia Intl, ILS RWY 17, Amdt 5
Pittsburgh, PA, Pitttsburgh Metro, VOR RWY 31, Amdt 2, CANCELLED
Jasper, TN, Marion County-Brown Field, NDB RWY 4, Amdt 4
Parsons, TN, Scott Field, VOR/DME–A, Amdt 2
Parsons, TN, Scott Field, VOR/DME–B, Amdt 1
Sevierville, TN, Gatlinburg-Pigeon Forge, VOR/DME or GPS RWY 10, Amdt 5
Beaumont, TX, Beaumont Muni, VOR/DME OR GPS RWY 13, Amdt 2
Beaumont/Port Arthur, TX, Jefferson County, VOR RWY 12, Amdt 9
Dalhart, TX, Dalhart Muni, VOR OR GPS RWY 17, Amdt 11
Dalhart, TX, Dalhart Muni, VOR/DME OR GPS RWY 35, Amdt 1
El Paso, TX, West Texas, VOR/DME–A, Amdt 4
Follette, TX, Follett-Lipscomb County, VOR/DME–A, Amdt 2
Jacksonville, TX, Cherokee County, VOR/DME OR GPS RWY 13, Amdt 3
Jacksonville, TX, Cherokee County, NDB RWY 13, Amdt 5
Jasper, TX, Jasper County-Bell Field, NDB RWY 18, Amdt 7
Liberty, TX, Liberty Muni, VOR–A, Amdt 5
Lufkin, TX, Angelina County, VOR/DME RWY 15, Amdt 3
Lufkin, TX, Angelina County, VOR RWY 33, Amdt 13
Lufkin, TX, Angelina County, NDB RWY 7, Amdt 2

Lufkin, TX, Angelina County, ILS RWY 7, Amdt 1
Lufkin, TX, Angelina County, VOR/DME RNAV RWY 7, Amdt 3
Lufkin, TX, Angelina County, VOR/DME RNAV RWY 15, Amdt 4
Nacogdoches, TX, A. L. Mangham Jr. Regional, ILS RWY 36, Amdt 1
Nacogdoches, TX, A. L. Mangham Jr. Regional, NDB RWY 18, Amdt 1
Nacogdoches, TX, A. L. Mangham Jr. Regional, NDB RWY 36, Amdt 1
Paris, TX, Cox Fld, VOR/DME OR GPS RWY 35, Amdt 10, CANCELLED
Paris, TX, Cox Fld, VOR RWY 35, Orig

** * * Effective July 21, 1994*

Greenville, ME, Greenville Muni, NDB RWY 14, Amdt 4
Greenville, ME, Greenville Seaplane Base, NDB–A, Amdt 4
Frederick, MD, Frederick Muni, GPS RWY 5, Orig
Dayton, OH, James M. Cox Dayton Intl, Radar–1, Amdt 9
Denton, TX, Denton Muni, GPS RWY 35, Orig
Oshkosh, WI, Wittman Regional, GPS RWY 27, Orig

[FR Doc. 94–16676 Filed 7–8–94; 8:45 am]
BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 27814; Amdt. No. 1611]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

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

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

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

For Purchase—Individual SIAP copies may be obtained from;

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

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

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

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

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

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

The Rule

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

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (Air).

Issued in Washington, DC, on July 1, 1994.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

2. Part 97 is amended to read as follows:

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

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

* * * EFFECTIVE UPON PUBLICATION

FDC Date	State	City	Airport	FDC No.	SIAP
02/08/94 ...	AR	Blytheville	Arkansas International	FDC 4/0683	ILS/DME Rwy 18 Orig.
06/01/94 ...	SC	Rock Hill	Rock Hill/York County/Bryant Field	FDC 4/2496	VOR/DME RNAV Rwy 2 Amdt 4A.
06/16/94 ...	LA	Lafayette	Lafayette Regional	FDC 4/2771	VOR/DME Rwy 11 Amdt.
06/16/94 ...	LA	Lafayette	Lafayette Regional	FDC 4/2772	VOR Rwy 4R Amdt 1.
06/16/94 ...	LA	Shreveport	Sheveport Regional	FDC 4/2773	ILS Rwy 14 Amdt 21.
06/22/94 ...	FL	Daytona Beach	Daytona Beach Regional	FDC 4/2907	LOC BC Rwy 25R Amdt 14.
06/22/94 ...	GA	Carrollton	West Georgia Regional	FDC 4/2887	LOC Rwy 34, Amdt 1.
06/22/94 ...	GA	Carrollton	West Georgia Regional	FDC 4/2893	NDB OR GPS Rwy 34, Amdt 1.
06/22/94 ...	GA	Vidalia	Vidalia Muni	FDC 4/2886	LOC Rwy 24, Amdt 2.
06/22/94 ...	NJ	Newark	Newark Intl	FDC 4/2898	ILS Rwy 4R Amdt 8B.
06/23/94 ...	GA	Cornelia	Habersham County	FDC 4/2952	NDB Rwy 6 Amdt 1.
06/23/94 ...	KY	Louisville	Standiford Field	FDC 4/2915	ILS Rwy 19, Amdt 9.
06/24/94 ...	LA	Baton Rouge	Baton Rouge Metropolitan/Ryan Field	FDC 4/2987	ASR Rwy 4L Amdt 9.
06/27/94 ...	KS	Manhattan	Manhattan Muni	FDC 4/2982	NDB OR GPS–A Amdt 19.
06/28/94 ...	MA	Boston	General Edward Lawrence Logan Intl	FDC 4/3092	ILS Rwy 22L Amdt 4.
06/28/94 ...	NM	Farmington	Four Corners Regional	FDC 4/3093	VOR Rwy 25 Amdt 8.
06/28/94 ...	NM	Farmington	Four Corners Regional	FDC 4/3094	ILS Rwy 25 Amdt 6.
06/28/94 ...	NM	Farmington	Four Corners Regional	FDC 4/3095	VOR/DME Rwy 7 Amdt 3.
06/29/94 ...	LA	Baton Rouge	Baton Rouge Metropolitan/Ryan Field	FDC 4/3136	VOR Rwy 4L Amdt 15.

[FR Doc. 94–16677 Filed 7–8–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 520 and 558

Animal Drugs, Feeds, and Related Products; Fenbendazole

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of two supplemental new animal drug applications (NADA's) filed by Hoechst-Roussel Agri-Vet Co. One supplemental NADA provides for use of fenbendazole granules, the other provides for use of a fenbendazole Type A medicated article to make Type C medicated feed, both products for use as dewormers for zoo and wildlife animals.

EFFECTIVE DATE: July 11, 1994.

FOR FURTHER INFORMATION CONTACT: Marcia K. Larkins, Center for Veterinary Medicine (HFV–112), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–0614.

SUPPLEMENTARY INFORMATION: Hoechst-Roussel Agri-Vet Co., Rt. 202–206, P.O. Box 2500, Somerville, NJ 08876–1258, filed a supplement to NADA 121–473 that provides for use of fenbendazole 22.2 percent granules to top dress feed, and a supplement to NADA 131–675 that provides for use of a fenbendazole Type A medicated article (4 percent, 8 percent, and 20 percent) to make Type C medicated feed. The supplements provide for using 2.5 to 10 milligrams of fenbendazole per kilogram of body weight per day for 3 days for removal and control of internal parasites in zoo and wildlife animals.

Supplemental NADA 121–473 is approved as of May 31, 1994, supplemental NADA 131–675 is approved as of July 11, 1994, and the regulations are amended in 21 CFR 520.905b and 558.258 to reflect the approvals.

Approval of NADA 131–675 is for use of fenbendazole Type A medicated article to make Type C medicated feed. Fenbendazole is a Category II drug which, as provided in 21 CFR 558.4, requires an approved form FDA 1900 for making a Type C medicated feed. Therefore, use of fenbendazole Type A medicated articles to make Type C medicated feeds as in NADA 131–675 requires an approved form FDA 1900.

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

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), these supplemental approvals qualify for a 3-year period of marketing exclusivity, for supplemental NADA 121–473 for this use beginning May 31, 1994, and for supplemental NADA 131–675 for this use beginning July 11, 1994, because new clinical or field investigations (other than bioequivalence or residue studies) conducted by the sponsor were required for the approvals.

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

List of Subjects

21 CFR Part 520

Animal drugs.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 520 and 558 are amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

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

2. Section 520.905b is amended by adding new paragraph (c)(3) to read as follows:

§ 520.905b Fenbendazole granules.

* * * * *

(c) * * *

(3) *Zoo and wildlife animals*—(i) *Amount.* Ten milligrams per kilogram per day for 3 days.

(ii) *Indications for use.* For control of internal parasites of *Felidae* and *Ursidae* as follows:

(A) Lion (*Panthera leo*) and Tiger (*Panthera tigris*): Ascarid (*Toxocara cati, Toxascaris leonina*), Hookworm (*Ancylostoma* spp.).

(B) Cheetah (*Acinonyx jubatus*): Ascarid (*Toxocara cati, Toxascaris leonina*).

(C) Puma (*Felis concolor*), Panther (*Panthera* spp.), Leopard (*Panthera pardus*), Jaguar (*Panthera onca*): Ascarid (*Toxocara cati, Toxascaris leonina*), Hookworm (*Ancylostoma* spp.), Tapeworm (*Taenia hydatigena, T. krabbei, T. taeniaeformis*).

(D) Black Bear (*Ursus americanus*): Ascarid (*Baylisascaris transfuga, Toxascaris leonina*), Hookworm (*Ancylostoma caninum*), Tapeworm (*Taenia hydatigena, T. krabbei*).

(E) Polar Bear (*Ursus maritimus*) and Grizzly Bear (*Ursus horribilis*): Ascarid (*Baylisascaris transfuga, Toxascaris leonina*).

(iii) *Limitations.* Top dress or mix with a small portion of food. Must be fully consumed prior to feeding. Federal law restricts this drug to use by or on the order of a licensed veterinarian. Do not use 14 days before or during the hunting season.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

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

4. Section 558.258 is amended by adding new paragraph (c)(4) to read as follows:

§ 558.258 Fenbendazole.

* * * * *

(c) * * *

(4) *Zoo and wildlife animals.* For removal and control of internal parasites in hoofed zoo and wildlife animals as follows:

(i) *Feral swine* (*Suis scrofa*): 3 milligrams per kilogram per day for 3 days. Treatment for kidney worm (*Stephanurus dentatus*), roundworm (*Ascaris suum*), nodular worm (*Oesophagostomum dentatum*).

(ii) *Ruminants* (subfamily *Antilopinae, Hippotraginae, Caprinae*): 2.5 milligrams per kilogram per day for 3 days. Treatment for small stomach worm (*Trichostrongylus* spp.), thread necked intestinal worm (*Nematodirus* spp.), barberpole worm (*Haemonchus* spp.), whipworm (*Trichuris* spp.).

(iii) *Rocky mountain bighorn sheep* (*Ovis c. canadensis*): 10 milligrams per kilogram per day for 3 days. Treatment and control of *Protostrongylus* spp.

(iv) *Limitations.* Use as complete feed. Prior withdrawal of feed or water is not necessary. Retreatment may be required in 6 weeks. Consult your veterinarian for assistance in the diagnosis, treatment, and control of parasitism. Do not use 14 days before or during the hunting season.

Dated: June 21, 1994.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 94–16615 Filed 7–8–94; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Part 1220

[Docket No. 94N–0148]

Regulations Under the Tea Importation Act; Tea Standards

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing the establishment of tea standards for the year beginning May 1, 1994, and ending April 30, 1995. The tea standards are provided for under the Tea Importation Act (the Act). The Act prohibits the importation of a tea that is inferior to the annual tea standard. Under the Act, the importation of a tea may be withheld until FDA examines the tea and is sure that it complies with the annual standard.

DATES: Effective May 1, 1994; written comments by August 10, 1994.

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

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5099.

SUPPLEMENTARY INFORMATION: Because of the unique nature of the decisionmaking process for establishing annual standards for tea, the procedural protections that are part of this process, and the short period within which standards must be set, FDA has never, since the enactment in 1897 of the Act (21 U.S.C. 41), used notice and comment rulemaking for tea standards.

Each final rule setting the standards is based on the recommendations of the

Board of Tea Experts (the board), which is comprised of tea experts who are representative of the tea trade. The board selects standards each year according to the provisions of the Act. The board bases its selection on tea samples submitted by members of the tea trade to the board. Relying primarily on organoleptic examination, the board selects one tea to represent the standard for each major type of tea imported into the United States. In choosing a standard, the board tries to select one at least equal in quality to that of the previous year. The Act prohibits the importation of a tea that is inferior to the annual tea standard. Under the Act, the importation of a tea may be withheld until FDA examines the tea and is sure that it complies with the annual standard.

The annual meeting of the board is open to the public and is announced in advance in the **Federal Register**. At the annual meeting any interested person may present data, information, or views orally or in writing regarding new standards.

The annual tea standards are prepared and submitted to the Secretary of Health and Human Services by the board (21 CFR 1220.41).

Should a tea importer be dissatisfied with an FDA tea examiner's rejection of a shipment of tea, the importer can refer its complaint to the U.S. Board of Tea Appeals and then to the U.S. Court of Appeals. FDA is unaware of any complaints or arguments having ever occurred concerning a designated standard, despite the many years since the enactment of the Act.

FDA concludes that notice and comment rulemaking to set tea standards is impracticable, contrary to the public interest, and unnecessary by virtue of the factors discussed above, i.e., the unique, longstanding procedures that apply to establishing a standard, the fact that standards are based principally on organoleptic examinations by tea experts, the public participation opportunities already provided, and the timeframes required for issuing annual standards. Hence, the agency is not following notice and comment rulemaking procedures in establishing the final tea standards for 1994.

Environmental Impact

The agency has determined under 21 CFR 25.24(b)(1) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The impact of this rule on small entities, including small businesses, was reviewed in accordance with the Regulatory Flexibility Act (Pub. L. 96–354) (5 U.S.C. 601). FDA has concluded that this action will not result in a significant economic impact on a substantial number of small entities. Therefore, FDA certifies, in accordance with section 605(b) of the Regulatory Flexibility Act, that no significant economic impact on a substantial number of small entities will derive from this action.

Interested persons may, on or before August 10, 1994, submit to the Dockets Management Branch (address above) written comments regarding this regulation. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. Any changes in this regulation justified by such comments will be the subject of a further amendment.

List of Subjects in 21 CFR Part 1220

Administrative practice and procedure, Customs duties and inspection, Imports, Public health, Tea.

Therefore, under the authority delegated to the Secretary of Health and Human Services by the Tea Importation Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 1220 is amended as follows:

PART 1220—REGULATIONS UNDER THE TEA IMPORTATION ACT

1. The authority citation for 21 CFR part 1220 continues to read as follows:

Authority: 21 U.S.C. 41–50; 19 U.S.C. 1311.

2. Section 1220.40 is amended by revising paragraph (a) to read as follows:

§ 1220.40 Tea standards.

(a) Samples for standards of the following teas, prepared, identified, and submitted by the Board of Tea Experts on February 25, 1994, are hereby fixed and established as the standards of purity, quality, and fitness for consumption under the Tea Importation Act for the year beginning May 1, 1994, and ending April 30, 1995:

(1) Black Tea (for all teas except those from the People's Republic of China (China), Taiwan (Formosa), Iran, Japan, Russia, Turkey, and Argentina).

(2) Black Tea (for Argentina teas).

(3) Black Tea (for teas from the People's Republic of China (China), Taiwan (Formosa), Iran, Japan, Russia, and Turkey).

(4) Green Tea (of all origins).

(5) Formosa Oolong.

(6) Canton Oolong (for all Canton types from the People's Republic of China (China) and Taiwan (Formosa)).

(7) Scented Black Tea.

(8) Spiced Tea.

These standards apply to tea shipped from abroad on or after May 1, 1994.

* * * * *

Dated: June 30, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–16616 Filed 7–8–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 791

[Docket No. R–94–1728; FR–3658–I–01]

RIN 2501–AB71

Allocation of Budget Authority for Housing Assistance

AGENCY: Office of the Secretary, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule amends the Department's existing regulations on allocation of budget authority for housing assistance to provide greater flexibility in the provision of housing assistance under the Headquarters Reserve authorized under section 213(d)(4) of the Housing and Community Development Act of 1974, as amended.

DATES: Effective date: August 10, 1994.

Comment due date: September 9, 1994.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: For the Public and Indian Housing program, and section 8 voucher, certificate, and moderate rehabilitation programs, William R. Minning, Director, Policy Division, Room 4234, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500, telephone (202) 708–0713. Hearing- or speech-impaired individuals may call HUD's TDD number (202) 708–0850.

For other assisted housing programs, Margaret Milner, Acting Director, Office of Elderly and Assisted Housing, Room 6130, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–4542. Hearing- or speech-impaired individuals may call HUD's TDD number (202) 755–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Background

This interim rule further implements section 213(d) of the Housing and Community Development Act of 1974, as amended, 42 U.S.C. 1439(d), so as to maximize flexibility in the provision of the Headquarters Reserve authorized under section 213(d)(4) of the Act.

Section 213(d)(4) permits the Secretary of HUD to retain not more than five percent of the financial assistance that becomes available under all programs authorized under the United States Housing Act of 1937 (except for public housing operating subsidy under section 9 and modernization funding under section 14). However, the current regulation implementing the Headquarters Reserve at § 791.407 is more delimited. It only permits a Headquarters Reserve of five percent of the total amount of budget authority which is "fair shared" pursuant to Part 791, Subpart D. The effect of the regulatory limitation is to narrow considerably the base upon which the five percent reserve is calculated, as compared to what the statute permits.

Under this interim rule, the base would be expanded by including not only the amount of funding which is fair shared pursuant to the formula at § 791.403(b)(2), but also all budget authority allocated for uses that the Secretary determines are incapable of geographic formula, as spelled out at § 791.403(b)(1). Examples of the latter category include amendments of existing contracts, renewals of assistance contracts, the section 8 loan management and property disposition accounts, assistance earmarked by the Congress in appropriation law line items, and uses of budget authority identified in the Department's Operating Plan submitted to the Appropriations Committee.

Although the amount of funding available under the Headquarters Reserve will be increased by this interim rule, the limited statutory purposes for which funding is permissible are maintained. Reserve funding can only be used for unforeseen housing needs resulting from natural and other disasters; housing needs resulting from emergencies, as certified by the Secretary, other than such disasters; housing needs resulting from the settlement of litigation; and housing in support of desegregation efforts.

The tragedies of recent disasters are a highly visible predicate for this interim rule. The confluence in 1993 of Hurricane Andrew, Hurricane Iniki, and Typhoon Omar and this year the Northridge earthquake in California have placed substantial pressure on the Department to provide prompt, efficient assisted housing relief for disaster victims.

Further, the Department finds itself involved in longstanding litigation for which equitable resolution frequently requires the delivery of housing assistance in order to achieve fair, reasonable settlement. Expanding the ranging of the Headquarters Reserve will facilitate handling these unpredictable pressures for disaster relief and litigation settlements, as well as for emergencies.

Precisely because the incidence of these types of housing assistance funding are unpredictable, the availability of readier resources through an increased Reserve is one which HUD will only call upon as needed. That is, although a greater amount of budget authority will be made available under this interim rule than is the case under the current regulation, this does not mean that HUD will use the full statutory maximum in this year or any year. The draw upon the Reserve will be carefully tempered to exigencies and real, immediate need.

HUD notes that the basis upon which the five percent can be calculated does not include the section 202 program of supportive housing for the elderly. Section 801(b) of the Cranston-Gonzalez National Affordable Housing Act (NAHA) removed the section 202 program from coverage under section 213(d). However, NAHA did not repeal a previous amendment to section 213(d)(1)(A)(i) made by section 101 of the Department of Housing and Urban Development Reform Act of 1989. This amendment requires that section 202 assistance be allocated in a manner that ensures that awards of that assistance are made for projects of sufficient size to accommodate facilities with supportive services appropriate to the needs of frail elderly residents. Moreover, the Department has elected to continue the fair sharing of section 202 housing assistance in order to promote fair and balanced geographic diversity. (The fair sharing formula for section 202 assistance is specifically tailored at § 791.402(c)(1) to reflect relevant characteristics of the elderly population.) Notwithstanding this retention of section 202 allocations in part 791, the statutory range for calculation of the five percent Headquarters Reserve is now effectively limited to programs under the United States Housing Act of 1937 which are covered by section 213(d). Therefore, the revision to § 791.407 under this interim rule limits—for calculation purposes—the Reserve to five percent under those 1937 Act programs.

II. Other Matters

A. Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this interim rule, and in so doing certifies that this interim rule does not have a significant economic impact on a substantial number of small entities. The interim rule revises existing procedures for the allocation of housing assistance funds and for local government and HUD review of applications for housing assistance, but will make no change in the economic impact of these procedures on small entities.

B. Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(k) of the HUD regulations, the policies and procedures contained in this interim rule relate only to internal administrative procedures whose content does not constitute a

development decision nor affect the physical condition of project areas or building sites, and therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

C. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this interim rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Specifically, this interim rule will not substantially alter the established roles of HUD and the States and local governments, including PHAs, in administering the affected programs. As a result, the interim rule is not subject to review under the Order.

D. Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this interim 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. No significant change in existing HUD policies or programs will result from promulgation of this interim rule, as those policies and programs relate to family concerns.

E. Regulatory Agenda

This interim rule was listed as item 1550 in the Department's Semiannual Agenda of Regulations published on April 25, 1994 (59 FR 20424, 20440), in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

F. The Catalog of Federal Domestic Assistance Program Numbers Are as Follows

14.156 Lower Income Housing Assistance Program (Section 8)
14.157 Housing for the Elderly or Handicapped
14.177 Housing Voucher Program
14.850 Public and Indian Housing
14.851 Low-Income Housing—Homeownership Opportunities for Low-Income Families

G. Justification for Interim Rulemaking

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking, 24 CFR Part 10. However, part 10 does provide for exceptions from the general rule where the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest." (24 CFR 10.1)

The Department finds that good cause exists to publish this interim rule for effect without first soliciting public comment, in that prior public comment is contrary to the public interest because immediate effectiveness of this interim rule will permit the Department to respond immediately to housing assistance needs brought on by natural and other disasters, housing needs resulting from emergencies arising from unpredictable and sudden circumstances causing housing deprivation or causing an unforeseen and significant increase in lower income housing demands in a housing market, and housing needs resulting from the settlement of litigation.

List of Subjects in 24 CFR Part 791

Grant programs—housing and community development, Intergovernmental relations, Public housing, Rent subsidies.

Accordingly, 24 CFR Part 791 is amended as follows:

PART 791—REVIEW OF APPLICATIONS FOR HOUSING ASSISTANCE AND ALLOCATIONS OF HOUSING ASSISTANCE FUNDS

1. The authority citation for Part 791 continues to read as follows:

Authority: 42 U.S.C. 1439; 42 U.S.C. 3535(d).

2. Section 791.407 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 791.407 Headquarters Reserve.

(a) A portion of the budget authority available for the housing programs listed in § 791.101(a), not to exceed an amount equal to five percent of the total amount of budget authority available for the fiscal year for programs under the United States Housing Act of 1937 listed in § 791.101(a), may be retained by the Assistant Secretary for subsequent allocation to specific areas and communities, and may only be used for:

* * * * *

Dated: June 10, 1994.

Henry G. Cisneros,

Secretary.

[FR Doc. 94–16639 Filed 7–8–94; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

Utah Permanent Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving, with an additional requirement, a proposed amendment to the Utah permanent regulatory program (hereinafter referred to as the "Utah program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Utah proposes revisions to its rules pertaining to the scope of rulemaking and promulgation of rules, petitions to initiate rulemaking, hearing requirements for designating areas unsuitable for coal mining, confidentiality of coal exploration information, permit application requirements pertaining to blasting and hydrology, and mining in special areas, specifically prime farmland and alluvial valley floors. The amendment incorporates the additional flexibility afforded by the revised Federal regulations, clarifies ambiguities, and improves operational efficiency.

EFFECTIVE DATE: July 11, 1994.

FOR FURTHER INFORMATION CONTACT: Thomas E. Ehmett, Telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program

On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program for the regulation of coal exploration and coal mining and reclamation operations on non-Federal and non-Indian lands. General background information on the Utah program, including the Secretary's findings, the disposition of comments, and an explanation of the conditions of approval of the Utah program can be found in the January 21, 1981, **Federal Register** (46 FR 5899). Actions taken subsequent to approval of the Utah program are codified at 30 CFR 944.15, 944.16, and 944.30.

II. Submission of Proposed Amendment

By letter dated August 2, 1993 (administrative record No. UT–851), Utah submitted to OSM a proposed amendment to its program pursuant to SMCRA, 30 U.S.C. 1201–1328, and the Federal regulations at 30 CFR Chapter

VII (the Federal regulations). Utah submitted the proposed amendment at its own initiative. Utah proposed revisions to the Utah Rules of Practice and Procedure of the Board of Oil, Gas and Mining (Board) at Utah Administrative Rules (Utah Admin. R.) 641–112–100, scope of rulemaking, and 641–112–200, promulgation of rules. Utah also proposed revisions to the Utah Coal Mining Rules at Utah Admin. R. 645–100–500, petitions to initiate rulemaking; 645–103–441, hearing requirement for designating areas unsuitable for coal mining and reclamation operations; 645–203–200, confidentiality of coal exploration information; 645–301–524.661, permit application blasting level chart; 645–301–731.760, permit application cross sections and maps showing hydrologic information; and 645–302–314.110 and 645–302–323.310, special areas of mining, specifically prime farmland and alluvial valley floors.

Utah proposed to delete the scope of rulemaking provision at Utah Admin. R. 641–112–100 that requires the Board to promulgate such procedural and substantive rules it deems useful or necessary to implement statutory duties, fulfill its statutory obligations, or interpret the statutory authority under which it operates. At Utah Admin. R. 641–112–200, Utah proposed to revise the procedures for promulgation of rules to provide that the Board will promulgate rules under the authority provided at Utah Code Annotated (UCA) Sections 40–6–5, 40–9–3.5(2), and 40–10–6(1). At Utah Admin. R. 645–100–500, Utah proposed that persons other than the Division of Oil, Gas and Mining (Division) or the Board may petition to initiate rulemaking pursuant to Utah Admin. R. 641 and the Utah Administrative Rulemaking Act, UCA 63–46–8. At Utah Admin. R. 645–103–441, Utah proposed that within 10 months after receipt of a complete petition to designate an area unsuitable for coal mining, the Board shall hold a public hearing in the locality of the area covered by the petition "unless the petitioners and intervenors agree." At Utah Admin. R. 645–203–200, Utah proposed to revise its coal exploration confidentiality provision to require that the Division will not make information available for public inspection, if the person submitting it requests in writing, at the time of submission, that it not be disclosed and the information is classified as being protected, private, or controlled under the Utah Government Records Access and Management Act (GRAMA) or confidential under other applicable State or Federal laws, rules, or regulations. At Utah Admin. R 645–301–524.661, Utah proposed to delete the reference to UCA 63–46a–3(7)(a) and reference only Figure 1 in the Federal regulations at 30 CFR 817.67, which shows the maximum allowable ground particle velocity for blasting operations. At Utah Admin. R. 645–301–731.760, Utah proposed to add to its hydrology permit application requirements that the Division may, depending on the structures and facilities located in the permit area, require other relevant cross sections and maps, in addition to those cross sections and maps already specifically required by the State's existing rules. At Utah Admin. R. 645–302–314.110, Utah proposed to revise its prime farmland permit application content requirements to indicate that U.S. Department of Agriculture (USDA) Soils Handbooks 436 (Soil Taxonomy) and 18 (Soil Survey Manual) are incorporated on the effective date, rather than the date of adoption, of Utah Admin. R. 645. Also, at Utah Admin. R. 645–302–314.110, Utah proposed to delete the statement that notices of changes made to the USDA handbooks will be periodically published in the **Federal Register**. At Utah Admin. R. 645–302–323.310, Utah proposed to revise its alluvial valley floor water quality requirement by adding language that incorporates by reference the specific publication by Maas and Hoffman, "Crop Salt Tolerance—Current Assessment," Table 1, "Salt Tolerance of Agricultural Crops."

OSM announced receipt of the proposed amendment in the August 27, 1993, **Federal Register** (58 FR 45305, administrative record No. UT–865), and in the same document, opened the public comment period and provided an opportunity for a public hearing on the substantive adequacy of the proposed amendment. The public comment period closed on September 27, 1993. The public hearing, scheduled for September 21, 1993, was not held because no one requested an opportunity to testify.

During its review of the amendment, OSM identified concerns for (1) Utah Admin. R. 641–112, regarding the incorrect reference to its rulemaking authority at UCA 40–9–3.5(2), which was repealed by Utah in 1993; (2) Utah Admin. R. 645–103–441, regarding the need for agreement between the petitioners and intervenors to change the location of a public hearing on a petition to designate lands unsuitable for mining; (3) Utah Admin. R. 645–203–200, regarding the proposed deletion of the phrase "and the information is confidential," which would impart a change in the criteria for determining coal exploration information that is or is not allowed to be held confidential under the Utah program, and the proposed reference to Utah's GRAMA in that certain aspects of GRAMA were previously found to be less effective than the Federal regulations with regard to the restrictions Utah's GRAMA imposes on the availability of coal exploration information; and (4) Utah Admin. R. 645–302–314.110, regarding the need to use the prime farmland soil survey standards in USDA Handbook 436, as it existed on October 5, 1982, and USDA Handbook 18, as it existed on November 16, 1982. OSM notified Utah of these concerns by letter dated December 9, 1993 (administrative record No. UT–878).

By letter dated January 7, 1994, Utah responded to OSM's concerns by submitting revisions to its proposed program amendment (administrative record No. UT–881). Utah proposed the following revisions to its existing rules. At Utah Admin. R. 641–112, Utah proposed to reference UCA 40–8–6(1), which applies to rulemaking authority under the Utah Mined Land Reclamation Act. At Utah Admin. R. 645–103–441, Utah proposed that (1) unless the petitioners and intervenors agree otherwise, the Board shall hold a public hearing within 10 months after receipt of a complete petition to designate lands unsuitable for mining; (2) if all petitioners and intervenors agree that a public hearing is not needed, the hearing need not be held; and (3) all hearings held under Utah Admin. R. 645–103–441 will be held in the locality of the area covered by the petition. At Utah Admin. R. 645–203–200, Utah proposed to require that the Division will not make coal information available for public inspection if the person submitting it requests in writing, at the time of submission, that it not be disclosed and the information is confidential under the standards of the Federal Act (SMCRA). At Utah Admin. R. 645–302–314.110, Utah proposed to require that USDA Soils Handbooks 436 and 18 are incorporated by reference as they respectively existed on October 5, 1982, and November 16, 1982.

OSM announced receipt of the revised amendment in the January 24, 1994, **Federal Register** (59 FR 3530, administrative record No. UT–887) and in the same document, reopened and extended the public comment period. The comment period closed February 8, 1994.

III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and the

Federal regulations at 30 CFR 732.15 and 732.17, finds, with an additional requirement, that the proposed program amendment as submitted by Utah on August 2, 1993, and as revised on January 7, 1994, is no less effective than the corresponding Federal regulations.

1. Nonsubstantive Revisions to Utah's Rules

Utah proposed revisions to the following previously-approved rules that are nonsubstantive in nature and consist of minor editorial and punctuation changes (corresponding Federal regulations are listed in parentheses):

Utah Admin. R. 645–103–441 (30 CFR 764.17), hearing requirements for designating areas unsuitable for coal mining and reclamation operations,

Utah Admin. R. 645–301–731.760 (30 CFR 779.24, 779.25, and 780.14 for surface mining, and 783.24, 783.25, and 784.23 for underground mining), permit application cross sections and maps showing hydrologic information, and

Utah Admin. R. 645–302–323.310 (30 CFR 785.19), special areas of mining, specifically alluvial valley floors.

Because the proposed revisions to these previously-approved Utah rules are nonsubstantive in nature, the Director finds that these proposed Utah rules are no less effective than the Federal regulations. The Director approves these proposed rules.

2. Substantive Revisions to Utah's Rules That Are Substantively Identical to the Corresponding Provisions of the Federal Regulations

In a parenthetical note, existing Utah Admin. R. 645–301–524.661 (1) incorporates by reference Figure 1 in the Federal regulations at 30 CFR 817.67, which shows the maximum allowable ground vibration for blasting operations, (2) cites its administrative procedures statute at UCA 63–46a–3(7)(a) as the authority for incorporating this figure into its rules, and (3) indicates that the figure can be viewed in the Division's office.

Utah proposed to delete the reference to its statutory authority for incorporating the figure from the Federal regulations into its rules. This deletion does not render Utah Admin. R. 645–301–524.661 less effective than the Federal regulations at 30 CFR 816.67(d)(4)(i). In fact, the proposed State rule includes requirements that are substantively identical to the requirements of the Federal regulation. Therefore, the Director approves the proposed rule.

3. Utah Admin. R. 641–112, Scope of Rulemaking and Promulgation of Rules

Utah proposed to delete Utah Admin. R. 641–112–100, relating to scope of rulemaking. The effect of this proposed deletion on the Utah program is nonsubstantive because (1) this rule only generally described Utah's authority to promulgate rules for its statutes and (2) the concepts contained in this rule are repeated with more specificity at Utah Admin. R. 641–112–200, which Utah proposed to recodify as Utah Admin. R. 641–112.

Utah proposed to revise recodified Utah Admin. R. 641–112, to indicate that the Board will promulgate rules under the authority of UCA 40–6–5, 40–8–6(1), and 40–10–6(1).

UCA 40–6–5, a provision of the Utah Oil and Gas Conservation Act, provides the statutory authority for jurisdiction of the Board over oil, gas, and mining operations. UCA 40–8–6(1), a provision of the Utah Mined Land Reclamation Act, provides that, in addition to the powers, functions, and duties provided to the Board in UCA 40–6, the Board has the power, function, and duty "to enact rules according to the procedures and requirements of Title 63, Chapter 46a, that are reasonably necessary to carry out the purposes of this chapter." UCA 40–10–6(1), a provision of the Utah Coal Mining and Reclamation Act, provides that, in addition to the powers, functions, and duties of the Board and Division provided in UCA 40–8, the Board and Division have the power, function and duty "to make and promulgate in accordance with Title 63, Chapter 46a, the Utah Administrative Rulemaking Act, such rules as are specifically necessary for the regulation of coal mining operations and reclamation operations."

The proposed references in Utah Admin. R. 641–112 to UCA 40–6–5, 40–8–6(1), and 40–10–6(1), which give the Board the necessary powers to enact rules regulating oil, gas and mining operations, are consistent with the Federal regulation at 30 CFR 732.15(b), which requires a State regulatory authority to possess the authority, under State law, to implement, administer, and enforce all of the applicable requirements of Subchapter K of the Federal regulations. Therefore, the Director approves the proposed rule.

4. Utah Admin. R. 645–100–500, Petition to Initiate Rulemaking

Utah proposed to revise Utah Admin. R. 645–100–500 to provide that "persons other than the Division or Board" may petition to initiate rulemaking pursuant to the Rules of Practice and Procedure of the Board at Utah Admin. R. 641 and the Utah Administrative Rulemaking Act at UCA 63–46–8.

Utah's definition of "person" at UCA 40–10–3(14) is substantively identical to the definition of "person" at section 701(19) of SMCRA. Also, Utah's definition of "person" at Utah Admin. R. 645–100–200 is substantively identical to the definition of "person" in the Federal regulations at 30 CFR 700.5. Both definitions include units and instrumentalities "of Federal, State, or local government," such as the Board and the Division.

The Federal regulations at 30 CFR 700.12 provide that *any* person may petition the Director to initiate a proceeding for the issuance, amendment, or repeal of any regulation under SMCRA. Utah's proposed revision would appear to prohibit the Division or Board from petitioning to initiate rulemaking. There is no similar prohibition provided in the Federal regulations at 30 CFR 700.12, which allow any person, including groups, organizations, and other entities, regardless of affiliation, to petition to initiate rulemaking.

However, at UCA 40–10–6(1) (Powers, Functions, and Duties of the Board and Division), the Board and Division have the authority to make and promulgate rules for the regulation of coal mining operations and reclamation operations. Therefore, it is not necessary for either the Board or the Division to have the right to petition to initiate rulemaking. Under UCA 40–10–6(1), the Board and Division, as the governmental entities entrusted with the regulation of surface coal mining in Utah, are the initiators of rulemaking.

OSM specifically interprets the proposed amendment, however, to allow an individual member of the Board or employee of the Division, in his or her capacity as an individual, to petition the Board to initiate rulemaking. Section 102(i) of SMCRA provides that one of its purposes is the protection of the right of the public to participate in the rulemaking process. Utah may not deny any member of the Board or any employee of the Division the right to petition the Board for rulemaking, as such a denial would render the State program inconsistent with section 102(i) of SMCRA.

On this basis, the Director (1) finds that Utah Admin. R. 645–100–500 is no less effective than the Federal regulations at 30 CFR 700.12 and (2) approves the proposed rule.

5. Utah Admin. R. 645–302–314.110, Permit Application Contents for Prime Farmland

Utah proposed to revise Utah Admin. R. 645–302–314.110 to provide that, with respect to prime farmland soil survey standards, the U.S. Department of Agriculture Handbooks 436 and 18 are incorporated by reference as they respectively existed on October 5, 1982, and November 16, 1982.

The Federal regulation at 30 CFR 785.17(c)(1)(i) provides that U.S. Department of Agriculture Handbooks 436 and 18 are incorporated by reference as they existed on October 5, 1982, and November 16, 1982. Therefore, the USDA handbooks incorporated by reference into Utah Admin. R. 645–302–314.110, and handbooks incorporated by reference into the Federal regulation, are the same. On the basis, the Director (1) finds that Utah Admin. R. 645–302–314.110 is no less effective than the Federal regulation at 30 CFR 785.17(c) (1)(i) and (2) approves the proposed rule.

6. Utah Admin. R. 645–203–200, Confidentiality of Coal Exploration Information

Utah proposed to revise Utah Admin. R. 645–203–200 to provide that the information submitted as part of a coal exploration permit is confidential (1) if the person submitting it requests in writing at the time of submission that it not be disclosed and (2) the information is confidential under the standards of the "Federal Act."

At Utah Admin. R. 645–100–200, Utah defines the "Federal Act" to mean SMCRA. The Federal regulation at 30 CFR 772.15(b), which implements SMCRA and corresponds to Utah's proposed rule, provides that information shall be kept confidential if (1) the person submitting it requests in writing at the time of submission that it not be disclosed and (2) the information concerns trade secrets or is privileged commercial or financial information relating to the competitive rights of the persons intending to conduct coal exploration.

The reference to the "Federal Act" in proposed Utah Admin. R. 645–203–200 lacks specificity and could be interpreted in a manner that is inconsistent with the second part of 30 CFR 772.15(b), which requires that information can be kept confidential only if it concerns trade secrets or is privileged commercial or financial information relating to the competitive rights of the persons intending to conduct coal exploration.

The Director, for the reasons stated above, approves proposed Utah Admin. R. 645–203–200, but requires Utah to submit an additional amendment providing that coal exploration permit application information may not be kept confidential unless it concerns trade secrets or is privileged commercial or financial information relating to the competitive rights of the persons intending to conduct coal exploration.

IV. Summary and Disposition of Comments

1. Public Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No public comments were received, and because no one requested an opportunity to testify at a public hearing, no hearing was held.

2. Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on Utah's proposed amendment from the Administrator of the U.S. Environmental Protection Agency (EPA), the Secretary of the U.S. Department of Agriculture, and various other Federal agencies with an actual or potential interest in the Utah program.

Mine Safety and Health Administration (MSHA).—By letter dated October 7, 1993, MSHA raised a concern that in one area Utah's proposed rules may conflict with MSHA's 30 CFR part 77 regulations (administrative record No. UT–873). MSHA stated that the proposed rules refer to tables and charts regarding allowable airblast, ground vibration, and particle velocity due to surface blasting but that MSHA's regulations do not specify and/or limit these values for surface blasting. MSHA also stated that, in addition, its regulation at 30 CFR 77.1303(j) provides for the protection of underground miners when surface blasting occurs.

With respect to MSHA's statement that its regulations at 30 CFR part 77 do not limit surface mines for airblast, ground vibration, and particle velocity, the Director, as discussed in finding No. 2, finds that Utah's surface mining blasting limitations at Utah Admin. R. 645–301–524.661 are substantively identical to, and no less effective than, OSM's regulations at 30 CFR 816.67(d).

With respect to MSHA's statement that its regulation at 30 CFR 77.1303(j) provides for the protection of underground miners when surface blasting occurs, the Director notes that existing rules in the Utah program, and the corresponding Federal regulations, provide for such protection.

With respect to MSHA's implication that Utah's surface mine blasting rules should also provide protection for underground miners, Utah Admin. R. 645–301–524 and 524.641, and the Federal regulations at 30 CFR 816.61(d)(1)(ii) and 816.67(d)(1), require that (1) blasting operations conducted within 500 feet of active underground mines must have MSHA approval and (2) underground mines must be protected from damage by establishment of a maximum allowable limit for ground vibration before initiation of blasting.

For the reasons discussed above, the Director is not requiring Utah to modify its rules in response to MSHA's comments.

By letter dated February 28, 1994 (administrative record No. UT–896), MSHA responded to the revisions proposed by Utah in its January 7, 1994, submittal (administrative record No. UT–881), by stating that "it appears there is no conflict with the requirements of 30 CFR."

Other Agencies.—By letters dated August 25, 1993, and January 27, 1994, the U.S. Army Corps of Engineers stated that it found the changes to Utah's regulatory program to be satisfactory (administrative record Nos. UT–863 and UT–890).

By letter dated August 26, 1993, the Bureau of Mines stated that it had no comment because the amendment would not affect minerals other than coal (administrative record No. UT–864).

By letters dated August 27, 1993, and February 1, 1994 (administrative record Nos. UT–867 and UT–892), EPA stated that it had no comments on the proposed amendment.

By letter dated February 14, 1994, the U.S. Fish and Wildlife Service stated it found nothing of significant concern to the Fish and Wildlife Service (administrative record No. UT–895).

3. Environmental Protection Agency (EPA) Concurrence

Pursuant to 30 CFR 732.17(h)(11)(ii), the Director is required to solicit the written concurrence of the Administrator of EPA with respect to those provisions of the proposed 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.*).

None of the revisions that Utah proposed to make in its rules pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence with the proposed amendment (administrative record No. UT–857).

4. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), the Director provided the proposed amendment to the SHPO and the ACHP for comment. Neither the SHPO nor the ACHP provided any comments to OSM.

V. Director's Decision

Based on the above findings, the Director approves, with an additional requirement, the proposed amendment that Utah submitted on August 2, 1993, as subsequently revised on January 7, 1994.

As discussed in finding Nos. 1, 2, 3, 4, and 5, the Director approves Utah Admin. R. 645–103–441, 645–301–731.760, 645–302–323.310; 645–301–524.661; 641–112; 645–100–500; and 645–302–314.110.

As discussed in finding No. 6, the Director approves Utah Admin. R. 645–203–200 but requires Utah to revise it to provide that coal exploration permit application information may not be kept confidential unless it concerns trade secrets or is privileged commercial or financial information relating to the competitive rights of the persons intending to conduct coal exploration.

The Director approves the rules as proposed by Utah with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR part 944, codifying decisions concerning the Utah 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 States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. Executive Order 12866

This final rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12886 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1291(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

VII. List of Subjects in 30 CFR 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 1, 1994.

Russell F. Price,

Acting Assistant Director, Western Support Center.

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

PART 944—UTAH

1. The authority citation for Part 944 continues to read as follows:

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

2. Section 944.15 is amended by adding paragraph (z) to read as follows:

§ 944.15 Approval of amendments to State regulatory program.

* * * * *

(z) Revisions to the following Utah Administrative Rules, as submitted to OSM on August 2, 1993, and revised on January 7, 1994, are approved effective July 11, 1994.

641–112 Promulgation of Rules
645–100–500 Petitions to Initiate Rulemaking
645–103–441 Hearing Requirements for Designating Areas Unsuitable for Coal Mining and Reclamation Operations
645–203–200 Confidentiality of Coal Exploration Information
645–301–524.661 Permit Application Blasting Level Chart
45–301–731.760 Permit Application Cross Sections and Maps Showing Hydrologic Information
645–302–314.110 Permit Application Contents for Prime Farmland
645–302–323.310 Special Areas of Mining, Specifically Alluvial Valley Floors

3. Section 944.16 is amended by adding paragraph (a) to read as follows:

§ 944.16 Required program amendments.

* * * * *

(a) By September 9, 1994, Utah shall submit a proposed amendment for Utah Admin. R. 645–203–200 to specify that coal exploration permit application information may not be kept confidential unless it concerns trade secrets or is privileged commercial or financial information relating to the competitive rights of the persons intending to conduct coal exploration.

* * * * *

[FR Doc. 94–16656 Filed 7–8–94; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 550

Libyan Sanctions Regulations; Specially Designated Nationals List

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final Rule; amendments to the list of specially designated nationals.

SUMMARY: The Office of Foreign Assets Control is amending the Libyan Sanctions Regulations to add Arab Turkish Bank and four other entities to appendix A, Organizations Determined to be Within the Term "Government of Libya" (Specially Designated Nationals of Libya), and to add nine individuals to appendix B, Individuals Determined to be Specially Designated Nationals of the Government of Libya.

EFFECTIVE DATE: July 7, 1994.

ADDRESS: Copies of the list of persons whose property is blocked pursuant to the Libyan Sanctions Regulations are available upon request at the following location: Office of Foreign Assets Control, U.S. Department of the Treasury, Annex, 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20220. The full list of persons blocked pursuant to economic sanctions programs administered by the Office of Foreign Assets Control is available electronically on *The Federal Bulletin Board* (see Supplementary Information).

FOR FURTHER INFORMATION CONTACT: J. Robert McBrien, Chief, International Programs Division, Office of Foreign Assets Control, tel.: 202/622–2420.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document is available as an electronic file on *The Federal Bulletin Board* the day of publication in the **Federal Register**. By modem dial 202/512–1387 or call 202/512–1530 for disks or paper copies. This file is available in Postscript, WordPerfect 5.1 and ASCII.

Background

The Office of Foreign Assets Control ("FAC") is amending the Libyan Sanctions Regulations, 31 CFR part 550 (the "Regulations"), to add new entries to appendices A and B. Appendix A, Organizations Determined to be Within the Term "Government of Libya" (Specially Designated Nationals of Libya), is a list of organizations determined by the Director of FAC to be within the definition of the term "Government of Libya," as set forth in § 550.304(a) of the Regulations, because they are owned or controlled by or act or purport to act directly or indirectly on behalf of the Government of Libya. Appendix B, Individuals Determined to be Specially Designated Nationals of the Government of Libya, lists individuals determined by the Director of FAC to be acting or purporting to act directly or indirectly on behalf of the Government of Libya, and thus to fall within the term "Government of Libya" in § 550.304(a).

Appendix A to part 550 is amended to provide public notice of the designation of Arab Turkish Bank, Libya Insurance Company, Maghreban International Trade Company, Saving and Real Estate Investment Bank, and Societe Maghrebine d'Investissement et de Participation as Specially Designated Nationals of Libya.

Appendix B to part 550 is amended to provide public notice of nine individuals determined to be Specially Designated Nationals of the Government of Libya: Yousef Abd–El–Razegh Abdelmulla, Ayad S. Dahaim, El Hadi M. El–Fighi, Kamel El–Khallas, Mohammed Mustafa Ghadban, Mohammed Lahmar, Ragiab Saad Madi, Bashir M. Sharif, and Kassem M. Sherlala. Six of these individuals are present or former directors or managers of Arab Turkish Bank.

All prohibitions in the Regulations pertaining to the Government of Libya apply to the entities and individuals identified in appendices A and B. All unlicensed transactions with such entities or persons, or transactions in property in which they have an interest, are prohibited unless otherwise exempted or generally licensed in the Regulations.

Determinations that persons fall within the definition of the term "Government of Libya" and are thus Specially Designated Nationals are effective upon the date of determination by the Director of FAC, acting under authority delegated by the Secretary of the Treasury. Public notice of such a determination is effective upon the date of **Federal Register** publication or upon earlier actual notice.

The list of Specially Designated Nationals in appendices A and B is a partial one, since FAC may not be aware of all agencies and officers of the Government of Libya, or of all persons that might be owned or controlled by, or acting on behalf of the Government of Libya within the meaning of § 550.304(a). Therefore, one may not rely on the fact that a person is not listed in appendix A or B as a Specially Designated National as evidence that it is not owned or controlled by, or acting or purporting to act directly or indirectly on behalf of, the Government of Libya. The Treasury Department regards it as incumbent upon all persons governed by the Regulations to take reasonable steps to ascertain for themselves whether persons with whom they deal are owned or controlled by, or acting or purporting to act on behalf of, the Government of Libya, or on behalf of other countries subject to blocking or transactional restrictions administered by FAC.

Section 206 of the International Emergency Economic Powers Act, 50 U.S.C. 1705, provides for civil penalties not to exceed $10,000 for each violation of the Regulations. Criminal violations of the Regulations are punishable by fines of up to $250,000 or imprisonment for up to 10 years per count, or both, for individuals and criminal fines of up to $500,000 per count for organizations. See 50 U.S.C. 1705; 18 U.S.C. 3571.

Because the Regulations involve a foreign affairs function, Executive Order 12866 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601–612, does not apply.

List of Subjects in 31 CFR Part 550

Administrative practice and procedure, Banks, Banking, Blocking of assets, Exports, Foreign investment, Foreign trade, Government of Libya, Imports, Libya, Loans, Penalties, Reporting and recordkeeping requirements, Securities, Services, Specially designated nationals, Travel restrictions.

PART 550—LIBYAN SANCTIONS REGULATIONS

For the reasons set forth in the preamble, 31 CFR part 550 is amended as set forth below:

1. The authority citation for part 550 continues to read as follows:

Authority: 50 U.S.C. 1701–1706; 50 U.S.C. 1601–1651; 22 U.S.C. 287c; 49 U.S.C. App. 1514; 22 U.S.C. 2349aa–8 and 2349aa–9; 3 U.S.C. 301; E.O. 12543, 3 CFR, 1986 Comp., p. 181; E.O. 12544, 3 CFR, 1986 Comp., p. 183; E.O. 12801, 3 CFR, 1992 Comp., p. 294.

2. Appendix A to part 550 is amended by adding the following entries in alphabetical order, to read as follows:

APPENDIX A TO PART 550—ORGANIZATIONS DETERMINED TO BE WITHIN THE TERM "GOVERNMENT OF LIBYA" (SPECIALLY DESIGNATED NATIONALS OF LIBYA)

* * * * *

ARAB TURKISH BANK,
(a.k.a. ARAP TURK BANKASI A.S.),
(a.k.a. ATB),
Vali Konagi Cad. No. 10, 80200 Nistantas, Istanbul, Turkey,
P.O. Box 380, 80223 Sisli, Istanbul, Turkey,
Ziyapasa Bulvari No. 14/A, 01130 Adana, Turkey,
P.O. Box 11, 01321, Adana, Turkey,
Havuzlu Sok. No. 3, 06540 Asagi Ayranci, Ankara, Turkey,

P.O. Box 38, 06552 Cankaya, Ankara, Turkey,
Gaziosmanpasa Bulvari No. 10/1, 35210 Alsancak, Izmir, Turkey,
P.O. Box 52, 35212 Pasaport, Izmir, Turkey.

* * * * *

LIBYA INSURANCE COMPANY,
P.O. Box 2438, Usama Bldg., 1st September St., Tripoli, Libya (7 main branches and 58 sub–branches in Libya),
Cyprus Office, Nicosia, Cyprus.

* * * * *

MAGHREBAN INTERNATIONAL TRADE COMPANY,
(a.k.a. MITCO),
25, Avenue Kheireddine Pacha, 1002 Tunis, Tunisia.

* * * * *

SAVING AND REAL ESTATE INVESTMENT BANK,
P.O. Box 2297, Shoman Street, Fashioum, Tripoli, Libya (24 branches in Libya).

* * * * *

SOCIETE MAGHREBINE D'INVESTISSEMENT ET DE PARTICIPATION,
(a.k.a. SMIP),
47, Avenue Kheireddine Pacha, 1002 Tunis, Tunisia.

3. Appendix B to part 550 is amended by adding the following entries in alphabetical order, to read as follows:

APPENDIX B TO PART 550—INDIVIDUALS DETERMINED TO BE SPECIALLY DESIGNATED NATIONALS OF THE GOVERNMENT OF LIBYA

* * * * *

ABDELMULLA, Yousef Abd–El–Razegh,
(a.k.a. ABDULMOLA, Yousef Abd–El–Razegh),
P.O. Box 4538, Maidan Masif El Baladi, Tripoli, Libya.

* * * * *

DAHAIM, Ayad S.,
Vali Konagi Cad. No. 10, 80200 Nistantas, Istanbul, Turkey.

* * * * *

EL–FIGHI, El Hadi M.,
P.O. Box 1114, Diplomatic Area, Manama, Bahrain,
Jamal Abdulnasser Street, P.O. Box 262, Nouakchott, Mauritania.

* * * * *

EL–KHALLAS, Kamel,
Vali Konagi Cad. No. 10, 80200 Nistantas, Istanbul, Turkey.

* * * * *

GHADBAN, Mohammed Mustafa,
P.O. Box 4647, Shuhada Square, Tripoli, Libya,
P.O. Box 452, Fadiel Abu Omar Square, El–Berkha, Benghazi, Libya,
Vali Konagi Cad. No. 10, 80200 Nistantas, Istanbul, Turkey.

* * * * *

LAHMAR, Mohammed,
Dat El Imad Administrative Complex Tower No. 2, P.O. Box 2542, Tripoli, Libya.

* * * * *

MADI, Ragiab Saad,
P.O. Box 2297, Shoman Street, Fashioum, Tripoli, Libya.

* * * * *

SHARIF, Bashir M.,
Dat El Imad Administrative Complex Tower No. 2, P.O. Box 2542, Tripoli, Libya,
Vali Konagi Cad. No. 10, 80200 Nistantas, Istanbul, Turkey.

* * * * *

SHERLALA, Kassem M.,
P.O. Box 2438, Usama Bldg., 1st September St., Tripoli, Libya.

Dated: June 22, 1994.

Steven I. Pinter,

Acting Director, Office of Foreign Assets Control.

Approved: June 22, 1994.

R. Richard Newcomb,

Acting Deputy Assistant Secretary (Law Enforcement).

[FR Doc. 94–16788 Filed 7–7–94; 11:46 am]

BILLING CODE 4810–25–F

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 369

[DoD Directive 5134.6]

Principal Deputy Under Secretary of Defense for Acquisition and Technology; Organizational Charter

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This part identifies the establishment of the position of Principal Deputy Under Secretary of Defense for Acquisition and Technology PDUSD(A&T) in accordance with 10 U.S.C. 113. The PDUSD (A&T) is empowered to act for the Under Secretary of Defense for Acquisition and Technology as directed by the Under Secretary of Defense or when the Under Secretary is absent or disabled.

EFFECTIVE DATE: June 8, 1994.

FOR FURTHER INFORMATION CONTACT:

Mr. R. Kennedy, Office of Organizational and Management Planning, telephone 703–697–1142.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 369

Organization and functions (Government agencies).

Accordingly, Title 32, Chapter I, Subchapter R is amended to add Part 369 to read as follows:

PART 369—PRINCIPAL DEPUTY UNDER SECRETARY OF DEFENSE FOR ACQUISITION AND TECHNOLOGY (PDUSD(A&T))

Sec.

369.1 Purpose.
369.2 Applicability.
369.3 Responsibilities, functions, relationships, and authorities.

Authority: 10 U.S.C. 113 and 133a.

§ 369.1 Purpose.

Pursuant to 10 U.S.C. 133a and the authority vested in the Secretary of Defense by 10 U.S.C. 113, this part establishes the position of PDUSD(A&T) with the responsibilities, functions, relationships, and authorities, as prescribed in this part.

§ 369.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Unified Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities.

§ 369.3 Responsibilities, functions, relationships, and authorities.

The Principal Deputy Under Secretary of Defense for Acquisition and Technology, as the primary assistant of the Under Secretary of Defense for Acquisition and Technology (USD(A&T)), advises and assists the USD(A&T) across the full range of responsibilities in providing staff advice and assistance to the Secretary and Deputy Secretary of Defense, particularly with regard to ensuring the integrity of Major Systems Acquisition oversight and processes, acquisition and procurement policy execution and oversight functions, and by law is empowered to act on behalf of the USD(A&T). As such the PDUSD(A&T) shall:

(a) Assist the USD(A&T) in carrying out the responsibilities, functions, relationships, and authorities contained in law and 32 CFR part 384.

(b) Exercise full power and authority to act for the USD(A&T) and to exercise the powers of the USD(A&T) upon any and all matters concerning which the USD(A&T) is authorized to act pursuant to law and 32 CFR part 384, as directed by the Under Secretary, or when the Under Secretary is absent or disabled.

(c) Exercise authority, direction, and control over organizations designated by the USD(A&T) for supervision by the PDUSD(A&T).

Dated: July 6, 1994.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–16686 Filed 7–8–94; 8:45 am]

BILLING CODE 5000–04–M

32 CFR Part 384

[DoD Directive 5134.1]

Under Secretary of Defense for Acquisition and Technology; Organizational Charter

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This part is issued to reflect changes in title, functions, responsibilities, and relationships, in organizational changes within the Department of Defense.

EFFECTIVE DATE: June 8, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. R. Kennedy, Office of Organizational and Management Planning, telephone 703–697–1142.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 384

Organization and functions (Government agencies).

Accordingly, Title 32, Chapter I, Subchapter R is amended to add Part 384 to read as follows:

PART 384—UNDER SECRETARY OF DEFENSE FOR ACQUISITION AND TECHNOLOGY

Sec.

384.1 Purpose.
384.2 Definition.
384.3 Applicability.
384.4 Responsibilities.
384.5 Functions.
384.6 Relationships.
384.7 Authorities.
Appendix A to Part 384—Delegations of Authority.

Authority: 10 U.S.C. 113 and 133.

§ 384.1 Purpose.

Pursuant to 10 U.S.C. 133 and the authority vested in the Secretary of Defense by 10 U.S.C. 113, this part updates the responsibilities, functions, relationships, and authorities of the USD(A&T).

§ 384.2 Definition.

Department of Defense Acquisition System. A single, uniform system whereby all equipment, facilities, and services are planned, designed, developed, acquired, maintained, and disposed of within the Department of Defense. The system encompasses establishing and enforcing policies and practices that govern acquisitions, to include documenting mission needs and establishing performance goals and baselines; determining and prioritizing resource requirements for acquisition programs; planning and executing acquisition programs; directing and controlling the acquisition review process; developing and assessing logistics implications; contracting; monitoring the execution status of approved programs; and reporting to Congress.

§ 384.3 Applicability.

This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff, the Unified Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components").

§ 384.4 Responsibilities.

The Under Secretary of Defense for Acquisition and Technology, as the senior acquisition executive of the Department of Defense, is the principal staff assistant and advisor to the Secretary and Deputy Secretary of Defense for all matters relating to the DoD Acquisition System, research and development, advanced technology, test and evaluation, production, logistics, military construction, procurement, economic security, environmental security, and atomic energy.

(a) The Under Secretary of Defense for Acquisition and Technology shall:

(1) Serve as the Defense Acquisition Executive with responsibility for supervising the performance of the DoD Acquisition System and enforcing the policies and practices in DoD Directive 5000.1 [1] and OMB Circular A–109.[2]

(2) Chair the Defense Acquisition Board (DAB) pursuant to DoD Directive 5000.49.[3]

(3) Serve as the DoD Procurement Executive, with responsibilities as prescribed in E.O. 12352, 47 FR 12125, 3 CFR, 1982 Comp., p. 137, and 41 U.S.C. 401–424.

(4) Serve as the United States representative at the North Atlantic Treaty Organization (NATO) Conference of National Armaments' Directors and other multinational forums of armaments' directors.

(5) Establish and publish policies and procedures governing the operations of the DoD Acquisition System and the administrative oversight of defense contractors.

(6) Prescribe the developmental testing and evaluation program (which excludes those statutory test and evaluation responsibilities assigned to the Director, Operational Test and Evaluation), including establishing and ensuring implementation of policies and program plans, including funding, for ranges and test facilities and also be responsible for the acquisition-related functions of weapons programs, including control of the elements of the OSD performing the acquisition-related function of strategic and theater nuclear forces programs and tactical warfare programs.

(7) Prescribe policies, in coordination with the IG, DoD, and the Comptroller of the Department of Defense (C, DoD), to ensure that audit and oversight of contractor activities are coordinated and carried out in a manner to prevent duplication by different elements of the Department. The exercise of this responsibility shall not affect the authority of the IG, DoD, under the Inspector General Act of 1978 (Pub. L. 95–452, 92 Stat. 1101).

(8) Coordinate research and development programs DoD-wide to eliminate duplication of effort and ensure that available resources are used to maximum advantage.

(9) Establish policies and programs that strengthen DoD Component technology development programs, encourage technical competition and technology-driven prototyping that promise increased military capabilities, and exploit the cost-reduction potential of innovative or commercially developed technologies.

(10) Develop acquisition plans, strategies, guidance, and assessments, including affordability assessments and investment area analyses, in support of the acquisition Milestone review and the Planning, Programming, and Budgeting Systems (PPBS) processes.

(11) Designate major defense acquisition programs as either DAB or Component programs, sign congressional certifications and reports, administer the Selected Acquisition Report and Unit Cost Report systems, and exercise the other specific authorities provided for in the delegations of authority in the Appendix A to this part.

(12) Develop, with the coordination of the Under Secretary of Defense for Policy (USD(P)), agreements with friendly and Allied Nations relating to

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] Copies may be obtained by written request to EOP Publications, 725 17th Street, N.W., New Executive Office Building, Washington, DC 20503.

[3] See footnote 1 to § 384.4(a)(1).

acquisition matters consistent with DoD Directive 5530.3.[4]

(13) Develop assessments of, and establish policies to maintain the capability of the U.S. defense industry to meet DoD needs.

(14) Supervise the management and performance of the Strategic and Critical Materials Program pursuant to E.O. 12626, 53 FR 47491, 3 CFR, 1988 Comp., p. 585.

(15) Establish policies and procedures, with the coordination of the Under Secretary of Defense (Personnel and Readiness), for the effective management of the acquisition workforce within the Department of Defense, including accession, education, training, and career development.

(16) Advise the Secretary and Deputy Secretary of Defense on technical and programmatic issues arising in Defense Resources Board matters.

(17) Establish and manage the cooperative research and development program.

(18) Manage the OSD Study Program.

(19) Establish policies and procedures for the management of the DoD environmental security strategy for cleanup, compliance, conservation, and pollution prevention.

(20) Supervise the Defense Science Board.

(21) Chair the Nuclear Weapons Council.

(b) For each assigned functional area identified in § 384.5, the Under Secretary of Defense for Acquisition and Technology shall:

(1) Direct planning and analyses activities to assess the technical, economic, and military worth of specific acquisition programs and investment areas.

(2) Establish policies, systems, and standards that promote more effective and efficient administration and management of acquisition resources, and monitor the execution of approved programs to ensure available resources are being applied in accordance with established policies and standards.

(3) Review and evaluate DoD Component plans, programs, and budget submissions to ensure adherence to established priorities, policies and procedures, standards, and resource guidance; and, as appropriate, develop recommended alternatives for Secretary and Deputy Secretary of Defense consideration during all phases of the PPBS process.

(4) Promote coordination, cooperation, and mutual understanding of all matters related to assigned activities, both inside and outside the Department of Defense.

(c) Perform such other duties as the Secretary or Deputy Secretary of Defense may prescribe.

§ 384.5 Functions.

The USD(A&T) shall carry out the responsibilities described in § 384.3, for the following functional areas:

(a) Acquisition management, including acquisition special access programs.

(b) Science and technology and the defense technology base.

(c) Design and engineering, and the development of weapon systems.

(d) Logistics acquisition and management, to include supply systems, weapons systems logistics elements, items standardization, transportation, energy, warehousing, distribution, and related activities.

(e) Procurement.

(f) Scientific and technical information.

(g) Production and manufacturing.

(h) Industrial base resources and productivity.

(i) Force modernization and sustainability and the availability of fielded major weapons systems.

(j) Developmental test and evaluation, as defined in DoD Directive 5000.1 and, to the extent permitted by law, review and approval of the Test and Evaluation Master Plan.

(k) Environmental policy, services, and related actions.

(l) Assignment and reassignment of research and engineering and acquisition responsibility for programs, systems, and activities.

(m) Codevelopment, coproduction, coprocurement, logistics support, wartime host-nation support, and research interchange with friendly and Allied Nations, in coordination with the Under Secretary of Defense for Policy (USD(P)).

(n) Installation management and base closures.

(o) Construction, including construction funded by host nations under the NATO Infrastructure Program and similar programs with other Allied countries.

(p) Strategic and critical materials, to include the acquisition, retention, and disposal of stocks and the conservation and development of sources of materials.

(q) Unique acquisition matters in support of special operations and low-intensity conflict programs, systems, and activities related to acquisition, in coordination with the USD(P).

(r) Defense Acquisition program protection measures and related counterintelligence and system security activities, in coordination with the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence (ASD(C3I)).

(s) Economic adjustment.

(t) Defense atomic energy, chemical warfare, and biological defense plans and programs.

§ 384.6 Relationships.

(a) In the performance of assigned functions and responsibilities, the USD(A&T) shall:

(1) Take precedence in the Department of Defense on acquisition matters after the Secretary and Deputy Secretary of Defense. On all other matters, the USD(A&T) shall take precedence after the Secretary and Deputy Secretary of Defense and the Secretaries of the Military Departments.

(2) Exercise authority, direction, and control over:

(i) The Principal Deputy Under Secretary of Defense for Acquisition and Technology (PDUSD(A&T)).

(ii) The Director of Defense Research and Engineering (DDR&E).

(iii) The Assistant Secretary of Defense for Economic Security (ASD(ES)).

(iv) The Assistant to the Secretary of Defense for Atomic Energy (ATSD(AE)).

(v) The Director, Advanced Research Projects Agency, through the DDR&E.

(vi) The Director, Defense Logistics Agency.

(vii) The Director, Defense Nuclear Agency, through the ATSD(AE).

(viii) The Director, Ballistic Missile Defense Organization.

(ix) The Director, On-Site Inspection Agency, through the ATSD(AE), to be exercised consistent with DoD Directive TS-5134.2.[5]

(x) The Director of Small and Disadvantaged Business Utilization.

(xi) The Director, Office of Economic Adjustment, through the ASD(ES).

(xii) The President, Defense Acquisition University.

(xiii) The Commandant, Defense Systems Management College.

(xiv) Such other organizations as may be established by the USD(A&T) within resources provided by the Secretary of Defense.

(3) Use existing facilities and services of the Department of Defense and other Federal Agencies, whenever practicable, to avoid duplication and to achieve an appropriate balance among modernization, readiness, sustainability, efficiency, and economy.

(b) The Secretaries of the Military Departments and the heads of other DoD Components shall consult the USD(A&T) before assigning an officer or

[4] See footnote 1 to § 384.4(a)(1).

[5] Classified document. Not releasable.

employee to serve as a Program Executive Officer or a Program Manager, or reassigning an officer or employee so serving, for any program subject to review by the DAB.

(c) The Secretaries of the Military Departments and the heads of other DoD Components shall consult the USD(A&T) on program objectives memoranda and budget estimate submissions that reflect a significant change to any program subject to review by the DAB, before their submission to the OSD.

(d) The USD(A&T) shall work directly with the Service Acquisition Executives.

(e) Other OSD officials and heads of the DoD Components shall coordinate with the USD(A&T) on all matters related to authorities, responsibilities, and functions assigned in this part.

§ 384.7 Authorities.

(a) The USD(A&T) is hereby granted the authority to direct the Secretaries of the Military Departments and heads of all other DoD Components on all matters of acquisition.

(b) The USD(A&T) shall decide upon the appropriate implementing actions to be taken as a result of DAB reviews, to include the establishment of specific exit criteria that must be satisfactorily demonstrated before an effort or program can progress to the next Milestone decision point. The USD(A&T)'s decisions shall be reflected in an Acquisition Decision Memorandum issued by the USD(A&T) for implementation by the heads of the DoD Components.

(c) The C, DoD, shall coordinate with the USD(A&T) prior to approving the transfer or reprogramming of funds into or from a program within the purview of the USD(A&T).

(d) The USD(A&T) may direct the C, DoD, to withhold the release of funds to an acquisition program when the USD(A&T) determines that such direction is necessary to ensure that the program meets the criteria established by DoD Directives for exiting the Milestone and all additional exit criteria for the program established by the Secretary of Defense, the Deputy Secretary of Defense, or the USD(A&T). The USD(A&T) may not delegate the authority granted by this subsection to anyone other than the PDUSD(A&T).

(e) The USD(A&T) shall:

(1) Issue DoD Instructions, DoD Publications, and one-time directive-type memoranda, consistent with DoD 5025.1–M,[6] that implement acquisition policies and procedures for the functions assigned to the USD(A&T). Instructions to the Military Departments shall be issued through the Secretaries of the Military Departments. Instructions to Unified Combatant Commands shall be communicated through the Chairman of the Joint Chiefs to Staff.

(2) Obtain reports, information, advice, and assistance, consistent with DoD Directive 8910.1,[7] as necessary, in carrying out assigned functions.

(3) Communicate directly with the heads of the DoD Components. Communications to Commanders of the Unified Combatant Commands shall be transmitted through the Chairman of the Joint Chiefs of Staff.

(4) Establish arrangements for DoD participation in nondefense governmental programs for which the USD(A&T) is assigned primary DoD cognizance.

(5) Communicate with other Government Agencies, representatives of the legislative branch, and members of the public, as appropriate, in carrying out assigned functions.

(6) Coordinate with and exchange information with other DoD officials exercising collateral or related responsibilities.

(7) Exercise the delegations of authority in Appendix A to this part.

(f) Nothing in this part limits or otherwise affects delegations of authority by the Secretary of Defense to the Deputy Secretary of Defense.

Appendix A to Part 384—Delegations of Authority

I. Pursuant to the authority vested in the Secretary of Defense, and subject to his direction, authority, and control, and in accordance with DoD policies, Directives, and Instructions, the USD(A&T) is hereby delegated authority to exercise, within his assigned responsibilities and functional areas, all authority of the Secretary of Defense derived from statute, Executive order, and interagency agreement, except where specifically limited by statute or Executive order to the Secretary of Defense, to include but not limited to:

1. Exercise all authorities delegated to the Secretary of Defense by the Department of Commerce for the Defense Priorities and Allocations System (DPAS Del. No. 1, as amended). In addition, exercise the authorities delegated to the Secretary of Defense by Executive Order 12742, dated January 8, 1991 (3 CFR, 1991 Comp., p. 309)

2. Act for the Secretary of Defense in the exercise of extraordinary contractual action authority under Pub. L. 85–804, as amended by Pub. L. 93–155 (50 U.S.C. 1431–1435), as amended—an Act to authorize the making, amendment, and modification of contracts to facilitate the national defense, August 28, 1958, in accordance with E.O. 10789, November 14, 1958, as amended, 23 FR 8897, 3 CFR, 1954–1958 Comp., p. 426 and 48 CFR part 50.

3. Make Secretarial determinations, justifications, and approvals on behalf of the Advanced Research Projects Agency, Ballistic Missile Defense Organization, Defense Contract Management Command, Defense Logistics Agency, the Defense Nuclear Agency, the On-Site Inspection Agency, the Office of Economic Adjustment, the Defense Acquisition University, and the Defense Systems Management College under title 10, United States Code, with the authority to redelegate to the Heads of those organizations, and other organizations as may be assigned to the USD(A&T), as appropriate.

4. Act for the Secretary of Defense in making determinations and authorizing waivers under the Buy American Act (41 U.S.C. 10a–10d).

5. Act for the Secretary of Defense on delegations of authority to him by the U.S. Trade Representative to waive the prohibition against procurement from certain countries, pursuant to title 3, Pub. L. 96–36, Trade Agreements Act of 1979 (19 U.S.C. 2511 et seq.), and E.O. 12260, December 31, 1980, 46 FR 1653, 3 CFR, 1980 Comp., p. 311.

6. Act for, and exercise the powers of, the Secretary of Defense on requests for waiver of the navigation and vessel inspection laws of the United States under Pub. L. 891, 81st Congress, 2nd Session, December 27, 1950 (64 Stat. 1120), except on those matters that have been delegated by the Secretary of Defense to the Secretary of the Army.

7. Make recommendations to the Department of Energy in connection with facilities for transmission of electric energy and natural gas across borders of the United States, pursuant to the authority given the Secretary of Defense in E.O. 10485, September 3, 1953, 18 FR 5397, 3 CFR, 1949–1953 Comp., p. 70, as amended by E.O. 12038, February 3, 1978, 11 FR 1809, 3 CFR 1943–1948 Comp., p. 508.

8. Exercise all responsibilities and authorities of the Secretary of Defense under 10 U.S.C. 2404, on the acquisition of petroleum.

9. Act for the Secretary of Defense in the implementation of OMB Circular A–109,[1] "Major System Acquisitions," April 5, 1976.

10. Make the determination required by 50 U.S.C. 1512(1), on transportation or testing of any lethal chemical or any biological warfare agent.

11. Make written determinations for conduct of all closed meetings of Federal Advisory Committees under his cognizance as prescribed by section 10(d) of the Act (5 U.S.C. Appendix II, 10(d)).

12. Act for the Secretary of Defense in the implementation of OMB Circular A–76,[2] "Performance of Commercial Activities," as revised, August 4, 1983.

13. With the exception of the determination of highly sensitive classified programs, which is retained by the Secretary of Defense, exercise the responsibilities and authorities of the Secretary of Defense to

[6] See footnote 1 to § 384.4(a)(1).

[7] See footnote 1 to § 384.4(a)(1).

[1] Copies may be obtained by written request to EOP Publications, 725 17th Street, NW., New Executive Office Building, Washington, DC 20503.

[2] See footnote 1 to section 9 of this Appendix.

designate major defense acquisition programs, as defined in title 10, United States Code, section 2430.

14. Act for the Secretary of Defense in preparing and revising an acquisition strategy for a major defense acquisition program throughout the period from the beginning of Full-Scale Development (Engineering and Manufacturing Development) through the end of production under Sections 2438 and 2439 of title 10, United States Code.

15. Act for the Secretary of Defense in making certifications, providing reports, and approving waivers for major defense acquisition programs required by Title 10, United States Code. This authority includes, but is not limited to, the following:

a. Submit Selected Acquisition Reports (SARs) (Section 2432), to include notifications of SAR waivers and research, development, test, and evaluation-only SARs.

b. Make and submit certifications required for Unit Cost Reports (Section 2433).

16. Exercise all authorities delegated to the Secretary of Defense by E.O. 12580, January 23, 1987, 52 FR 2923, 3 CFR, 1977 Comp., p. 193, on responses to releases of hazardous substances for DoD facilities and vessels under the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 et seq.) as amended by the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99–499, October 17, 1986) (100 Stat. 1613).

17. Exercise all responsibilities and authority of the Secretary of Defense under 10 U.S.C. 2701–2707 and 10 U.S.C. 2810 on conduct of the Defense Environmental Restoration Program.

18. Exercise the authority of the Secretary of Defense under 10 U.S.C. 2354 for the DoD Components other than the Military Departments.

19. Serve on and attend meetings of the Federal Acquisition Regulatory Council, established by section 25 of the Office of Federal Procurement Policy Act, as amended. The PDUSD(A&T) shall serve in the absence of the USD(A&T). This authority may be redelegated consistent with section 25 of the Office of Federal Procurement Policy Act, as amended (Pub. L. 93–400, 88 Stat 796), and section 809 of the National Defense Authorization Act for Fiscal Years 1992 and 1993, Pub. L. 102–190 (105 Stat. 1290).

20. Perform the functions and responsibilities set out at section 25(d) of the Office of Federal Procurement Policy Act, as amended. The authority to review and approve or disapprove regulations relating to procurement under subsection 25(d)(1) may not be redelegated to any person outside the Office of the USD(A&T).

21. Exercise the authority of the Secretary of Defense under 10 U.S.C. 2350b with respect to NATO Cooperative Projects as defined in section 27 of the Arms Export Control Act. (Pub. L. 90–629, 82 Stat. 1320) The authority to grant waivers as authorized in subsection 2340b(c) may not be redelegated.

22. Exercise all powers and duties of the Secretary of Defense under 10 U.S.C. 2535 to provide a comprehensive and continuous defense industrial reserve program.

23. Act for the Secretary of Defense in the exercise of authority under the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98 et seq.) in accordance with E.O. 12626, February 25, 1988, 53 FR 6114, 3 CFR, 1988 Comp., p. 552.

24. Act for the Secretary of Defense, under the authority of Federal Property Management Regulations, 41 CFR 101–33.002, or under nay other Delegation of Authority that may hereafter be made by the Administrator of General Services, to enter into contracts for public utility services for a period not to exceed 10 years. This authority may be delegated.

25. Act for the Secretary of Defense in establishing and exercising policy direction and oversight over a defense technology office in Japan, in compliance with section 248 of the National Defense Authorization Act for fiscal year 1991 (Pub. L. 101–510) (104 Stat. 1485).

26. Exercise the authority of the Secretary of Defense in 10 U.S.C. 2410i, section 9069 of the DoD Appropriations Act, 1993 (Pub. L. 102–396) (106 Stat. 1876), and section 8072A of DoD Appropriations Act, 1992 (Pub. L. 102–172) (105 Stat. 1150) to waive prohibitions on awarding contracts to foreign entities that have not certified that they do not comply with the secondary boycott of Israel.

II. The USD(A&T) may redelegate these authorities, as appropriate, except as otherwise specifically indicated in this Appendix or prohibited by law, Directive, or regulation.

Dated: July 6, 1994.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–16685 Filed 7–8–94; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AG70

Exclusions From Income (Just Debts)

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has amended its adjudication regulations concerning income exclusions in death cases. The purpose of the amendment is to make it clear that secured debts cannot be considered "just debts" for purposes of the income exclusion.

EFFECTIVE DATE: This amendment is effective August 5, 1993, the date of the General Counsel opinion upon which it is based.

FOR FURTHER INFORMATION CONTACT: Paul Trowbridge, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 233–3005.

SUPPLEMENTARY INFORMATION: Rates payable under VA's income-based benefit programs, pension and parents' dependency and indemnity compensation, are affected by the claimant's income. As countable income goes up, the rate payable goes down. The law does, however, provide certain exclusions from countable income.

38 U.S.C. 1503(a)(3) excludes amounts paid by a surviving spouse or child of a deceased veteran for the veteran's just debts from countable income; 38 U.S.C. 1315(f)(1)(H) provides a similar exclusion for a dependent parent of a deceased veteran who pays a deceased spouse's just debts. The term "just debts," however, is not currently defined by statute or regulation.

In a precedent opinion dated August 5, 1993 (OGC Prec 5–93), VA's General Counsel held that amounts paid by a surviving spouse on secured obligations incurred for the purchase of real or personal property could not be excluded as "just debts" under 38 U.S.C. 1503(a)(3)(A). Based on the principles in OGC Prec 5–93, we have amended 38 CFR 3.262(m), 3.262(o), and 3.272(h) to state that the term "just debts" does not include secured debts.

The Secretary hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of section 603 and 604.

The Catalog of Federal Domestic Assistance program numbers are 64.104, 64.105, and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: February 25, 1994.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is amended to read as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.262, paragraphs (m)(2) and (o)(2) are amended by adding new last sentences as follows:

§ 3.262 Evaluation of income.

* * * * *

(m) * * *

(2) * * * The term "just debts" does not include any debt that is secured by real or personal property. * * *

* * * * *

(o) * * *

(2) * * * The term "just debts" does not include any debt that is secured by real or personal property. * * *

* * * * *

3. In § 3.272, paragraph (h)(1)(ii) is amended by adding a new last sentence as follows:

§ 3.272 Exclusions from income.

* * * * *

(h) * * *

(1) * * *

(ii) * * * The term "just debts" does not include any debt that is secured by real or personal property. * * *

* * * * *

[FR Doc. 94–16625 Filed 7–8–94; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–5010–1]

Florida; Final Authorization of Revisions to State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Florida has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). Florida's revisions consist of the provisions contained in the rules promulgated between July 1, 1989, and June 30, 1990, otherwise known as Non-HSWA Cluster VI. These requirements are listed in Section B of this notice. The Environmental Protection Agency (EPA) has reviewed Florida's application and has made a decision, subject to public review and comment, that the Florida hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Florida's hazardous waste program revisions. Florida's application for program revisions is available for public review and comment.

DATES: Final authorization for Florida's program revisions shall be effective September 9, 1994 unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on Florida's program revision application must be received by the close of business, August 10, 1994.

ADDRESSES: Written comments should be sent to A.R. Hanke, Chief, State Programs Section, Waste Programs Branch, Waste Management Divison, U.S. EPA, 345 Courtland Street, NE, Atlanta, Georgia 30365. Copies of Florida's program revision application are available during normal business hours at the following addresses for inspection and copying: Florida Department of Environmental Protection, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400, phone (904) 488–0300; U.S. EPA Region IV, Library, 345 Courtland Street, NE, Atlanta, Georgia 30365; (404) 347–4216.

FOR FURTHER INFORMATION CONTACT: Al Hanke, Chief, State Programs Section, Waste Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365; (404) 347–2234.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under Section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Public Law 98–616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under Section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR Parts 260–268 and 124 and 270.

B. Florida

Florida initially received final authorization for its base RCRA program effective on February 12, 1985, (50 FR 3908, January 29, 1985). Florida received authorization for revisions to its program on April 6, 1992, for Non-HSWA III, IV, and V, and on January 10, 1994 for HSWA I without Corrective Action. Today, Florida is seeking approval of its program revisions in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Florida's application and has made an immediate final decision that Florida's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Florida. The public may submit written comments on EPA's immediate final decision up until August 10, 1994. Copies of Florida's application for these program revisions are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this notice.

Approval of Florida's program revisions shall become effective September 9, 1994, unless an adverse comment pertaining to the State's revisions discussed in this notice is received by the end of the comment period.

If an adverse comment is received EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

EPA shall administer any RCRA hazardous waste permits, or portions of permits that contain conditions based upon the Federal program provisions for which the State is applying for authorization and which were issued by EPA prior to the effective date of this authorization. EPA will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization.

Florida is today seeking authority to administer the following Federal requirements.

Checklist	Description	FR date and page	Florida rule
*64	Delay of Closure Period for Hazardous Waste Facilities	8/14/89; 54 FR 33376.	17–730.180(1) & (2) FAC 403.721(2) & (6) FS
65	Mining Waste Exclusion	9/1/89; 54 FR 36592.	17–730.030(1) FAC 403.72(1) FS
67	Testing and Monitoring Activities	9/29/89; 54 FR 40260.	17–730.021(1)(a) FAC 17–730.030(1) 403.704(15) FS 403.72(1)
70	Changes to Part 124	Various	17–730.184,220&280 FAC 17–4.080&100 403.704(16), 722FS (1) (3)(5)(a)&(b)(10)(b) 403.061(14)
71	Mining Waste Exclusion II	1/23/90; 55 FR 2322.	17–730.020(1) FAC .030(1), 160(1) 403.704(15) FS 403.72(1) 403.721(2)(3)
72	Modification of F019 Listing	2/14/90; 55 FR 5340.	17–730.030, 021 403.72(1) 403.704(15)
73	Testing and Monitoring Activities; Technical Corrections	3/9/90; 55 FR 8948.	17–730.021(1)(a) FAC 17–730.030(1) FAC 403.704(15) F.S 403.72(1) F.S
76	Criteria for Listing Toxic Wastes; Technical Amendment	5/4/90; 55 FR 18726.	17–730.030(1) 403.72(1)
**78	Land Dispsal Restrictions Third-Third Scheduled Wastes	6/1/90; 55 FR 22520.	17–730.030 403.72(1)

*Florida did not adopt 40 CFR 270.42 Appendix 1, "Permit Modifications for Hazardous Waste Management Facilities.
**Only the Non-HSWA portion of Checklist 78 is included here. The remainder of Checklist 78 will be included in HSWA Cluster II.

C. Decision

I conclude that Florida's application for these program revisions meet all of the statutory and regulatory requirements established by RCRA. Accordingly, Florida is granted final authorization to operate its hazardous waste program as revised, except where otherwise noted.

Florida now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitations of its program revision application, its previously approved authorities and where otherwise noted in this Notice. Florida also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under Section 3007 of RCRA and to take enforcement actions under Sections 3008, 3013, and 7003 of RCRA.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Florida's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities.

This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended (42 U.S.C. 6912(a), 6926, 6974(b)).

Dated: June 22, 1994.

John R. Barker,

Acting Regional Administrator.

[FR Doc. 94–16721 Filed 7–8–94; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7069

(CA–940–5440–10–ZBAF; CACA 30534)

Withdrawal of Public Land in Aid of the State of California To Study a Site for the Proposed Ward Valley Low-Level Radioactive Waste Facility, San Bernardino County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 1,000 acres of public land from agricultural entry and mining for a period of 3 years for the Bureau of Land Management to allow the State of California sufficient time to fully study its proposal to site a low-level radioactive waste facility on the land. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: July 11, 1994.

FOR FURTHER INFORMATION CONTACT: Douglas Romoli, BLM California Desert District Office, 6221 Box Springs Blvd., Riverside, California 92507, (909) 697–5237.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and

Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement or entry under the agricultural land laws and location under the United States mining laws (30 U.S.C. Ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect the land while the State of California conducts a study of the area to determine the feasibility of locating the proposed Ward Valley Low-Level Radioactive Waste Facility at the site, and for other purposes:

San Bernardino Meridian

T. 9 N., R. 19 E.,
Sec. 26, SW¼SW¼;
Sec. 27, S½S½;
Sec. 34;
Sec. 35, W½W½.

The area described contains 1,000 acres in San Bernardino County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 3 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: July 1, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94–16682 Filed 7–8–94; 8:45 am]

BILLING CODE 4310–40–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91–303; RM–6707, RM–6799, RM–7754, RM–7813, RM–7996, RM–7997, RM–7998 and RM–7999]

Radio Broadcasting Services; Butler, Evergreen and Jackson, AL, and Bay Springs, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document makes changes to the FM Table of Allotments in response to petitions filed by Butler Broadcasting Corp., Cotton Valley Broadcasting Co. and Wolff Broadcasting Corporation. *See* 56 FR 55648, October 29, 1991. We shall substitute Channel 228C2 for Channel 228A, Butler, Alabama, at coordinates 32–08–10 and 88–15–00; substitute Channel 232A for Channel 228A, Bay Springs, Mississippi, at coordinates 31–59–00 and 89–13–50; and substitute Channel 227C1 for Channel 227C2, Evergreen, Alabama, at coordinates 31–14–48 and 86–48–32. In response to a counterproposal filed by Radio Station WHOD, Inc., we will substitute Channel 233C2 for Channel 233C3 at Jackson, Alabama, at coordinates 31–30–35 and 88–02–39. The petition filed by G. Dean Pearce for Ellisville, Mississippi, has been withdrawn. The petition filed by Faulkner-Phillips for Bay Minette, AL, Butler, AL and Waynesboro, MS has also been withdrawn. The counterproposals filed by G. Dean Pearce, James Ducker and Thomas William Hickman, III and Newton Broadcasting Company, Inc., have been dismissed. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 19, 1994.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 91–303, adopted June 23, 1994, and released July 6, 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.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by removing Channel 228A and adding Channel 228C2 at Butler, removing Channel 227C2 and adding Channel 227C1 at Evergreen, and removing Channel 233C3 and adding Channel 233C2 at Jackson.

3. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by removing Channel 228A and adding Channel 232A at Bay Springs.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 94–16660 Filed 7–8–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Parts 80 and 87

[PR Docket No. 93–143; FCC 94–170]

Registration of 406 MHz Radiobeacons in the Marine Services and Aviation Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission will require registration of 406.025 MHz radiobeacons with the National Oceanic and Atmospheric Administration of the United States Department of Commerce (NOAA). This action is in response to a request from the United States Coast Guard (Coast Guard). The registration of 406.025 MHz radiobeacons aid search and rescue personnel.

EFFECTIVE DATE: September 13, 1994.

FOR FURTHER INFORMATION CONTACT: James Shaffer, (202) 632–7197, Private Radio Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* FCC 94–170, adopted June 13, 1994, and released July 6. The full text of this *Report and Order* is available for inspection and copying during normal business hours in the FCC Reference Center, Room 230, 1919 M Street NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, Suite 140, Washington, DC 20037, telephone (202) 857–3800.

Summary of Report and Order

1. The United States Coast Guard (Coast Guard) filed a petition (RM–8008), Public Notice No. 1894, requesting that the Commission amend Part 80 of the Rules, 47 CFR Part 80, to require registration of emergency position indicating radiobeacons (EPIRBs) operating on the frequency 406.025 MHz with the National Oceanic and Atmospheric Administration (NOAA). Additionally, in the *Report and Order* in PR Docket No. 92–125 (58 FR 30126, 5/26/93), the Commission

stated that it would address separately the issue of mandatory registration of emergency locator transmitters (ELTs) operating on the frequency 406.025 MHz in the Aviation Services.

2. Beacon registration is essential to realize the full benefit of the 406 MHz satellite system. The Air Force, Coast Guard, NOAA and National Aeronautics and Space Administration (NASA) agree that having access to registration information along with the improved location accuracy of the 406 MHz system can result in a reduction of the time needed to complete a SAR operation. NOAA and NASA estimate that registration will save on average 6 hours per mission. Further, NOAA states that its experience with voluntary registration of 406 EPIRBs shows that when 406 EPIRBs are registered in its database the Coast Guard has been able to avoid unnecessarily using SAR resources by screening false distress signals through telephone calls to registered owners. Typical mission costs of launching a single helicopter to locate and investigate a distress signal are approximately $4,000. The potential savings to the Federal government and SAR forces are substantial with no additional cost or burden to manufacturers and little burden to beacon users. The beacon user would be required to mail to NOAA the pre-paid, pre-addressed post card that the manufacturers currently provide requesting registration information. In view of the strong support, and because beacon registration can provide valuable distress information to SAR personnel concerning the type and size of the aircraft/vessel as well as prevent launching potentially dangerous missions on false distress signals, we will require that 406 MHz ELTs and 406 MHz EPIRBs be registered in NOAA's database.

3. We certify that the Regulatory Flexibility Act of 1980 does not apply to this rule making proceeding because if the proposed rule amendments are promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act. The change proposed herein will have a beneficial effect on the marine and aviation community by enhancing information available to SAR personnel for use in distress situations and will not have a significant economic impact on any entity. The Secretary shall send a copy of this Notice of Proposed Rule Making, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 605(b) of the Regulatory Flexibility Act. Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612 (1980).

List of Subjects

47 CFR Part 80

Communications equipment, Marine safety.

47 CFR Part 87

Communications equipment, Aviation safety.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

Final Rule

Parts 80 and 87 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 80—STATIONS IN THE MARITIME SERVICES

1. The authority citation for Part 80 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

2. Section 80.215(d) is amended by revising the second sentence in Note 3 to read as follows:

§ 80.215 Transmitter power.

* * * * *

(d) * * *

(1) * * *

Note 3 * * * For cable repair ships operating on radiodetermination frequencies, 15 watts; *see* § 80.375(b).

* * * * *

3. Section 80.1061 is amended by revising the last two sentences of paragraph (e) and revising paragraph (f) to read as follows:

§ 80.1061 Special requirements for 406.025 MHz EPIRBs.

* * * * *

(e) * * * With each marketable EPIRB unit the manufacturer or grantee must include a postage pre-paid registration card printed with the EPIRB identification code addressed to: NOAA/NESDIS, SARSAT Operations Division, E/SP3, Federal Building 4, Washington, DC 20233. The registration card must request the owner's name, address, telephone number, type of ship, alternate emergency contact and include the following statement: "WARNING—failure to register this EPIRB with NOAA before installation could result in a monetary forfeiture being issued to the owner."

(f) To enhance protection of life and property it is mandatory that each 406.025 MHz EPIRB be registered with NOAA before installation and that information be kept up-to-date. Therefore, in addition to the identification plate or label requirements contained in §§ 2.925, 2.926 and 2.1003 of this Chapter, each 406.025 MHz EPIRB must be provided on the outside with a clearly discernable permanent plate or label containing the following statement: "The owner of this 406.025 MHz EPIRB must register the NOAA identification code contained on this label with the National Oceanic and Atmospheric Administration (NOAA) whose address is: NOAA, NOAA/SARSAT Operations Division, E/SP3, Federal Building 4, Washington, D.C. 20233." Vessel owners shall advise NOAA in writing upon change of vessel or EPIRB ownership, transfer of EPIRB to another vessel, or any other change in registration information. NOAA will provide registrants with proof of registration and change of registration postcards.

* * * * *

PART 87—AVIATION SERVICES

4. The authority citation for Part 87 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–156, 301–609.

5. Section 87.138 is amended by revising paragraph (d) to read as follows:

§ 87.138 Emission limitations.

* * * * *

(d) Except for telemetry in the 1435–1535 MHz band, when the frequency is removed from the assigned frequency by more than 250 percent of the authorized bandwidth for aircraft stations above 30 MHz and all ground stations the attenuation must be at least $43+10 \log_{10}$ pY dB.

* * * * *

6. In Section 87.199 paragraphs (e) and (f) are revised to read as follows:

§ 87.199 Special requirements for 406.025 MHz ELTs.

* * * * *

(e) An identification code, issued by the National Oceanic and Atmospheric Administration (NOAA), the United States Program Manager for the 406.025 MHz COSPAS/SARSAT satellite system, must be programmed in each ELT unit to establish a unique identification for each ELT station. With each marketable ELT unit the manufacturer or grantee

must include a postage pre-paid registration card printed with the ELT identification code addressed to: NOAA/NESDIS, SARSAT Operations Division, E/SP3, Federal Building 4, Washington, DC 20233. The registration card must request the owner's name, address, telephone number, type of aircraft, alternate emergency contact and include the following statement: "WARNING—failure to register this ELT with NOAA before installation could result in a monetary forfeiture being issued to the owner."

(f) To enhance protection of life and property it is mandatory that each 406.025 MHz ELT must be registered with NOAA before installation and that information be kept up-to-date. In addition to the identification plate or label requirements contained in §§ 2.925, 2.926 and 2.1003 of this Chapter, each 406.025 MHz ELT must be provided on the outside with a clearly discernable permanent plate or label containing the following statement: "The owner of this 406.025 MHz ELT must register the NOAA identification code contained on this label with the National Oceanic and Atmospheric Administration (NOAA) whose address is: NOAA, NOAA/SARSAT Operations Division, E/SP3, Federal Building 4, Washington, D.C. 20233." Aircraft owners shall advise NOAA in writing upon change of aircraft or ELT ownership, or any other change in registration information. Fleet operators must notify NOAA upon transfer of ELT to another aircraft outside of the owners control, or an other change in registration information. NOAA will provide registrants with proof of registration and change of registration postcards.

* * * * *

[FR Doc. 94–16728 Filed 7–8–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 681

[Docket No. 940690–4190; I.D.061794B]

RIN 0648–AG73

Crustacean Fisheries of the Western Pacific Region

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

ACTION: Interpretive rule; regulatory amendment.

SUMMARY: NMFS publishes this interpretive rule to clarify the definition of the landing requirement in Federal regulations implementing the Fishery Management Plan for the Crustacean Fisheries of the Western Pacific Region (FMP). The purpose of this action is to remove an unintended barrier to fishermen who might have difficulty renewing their limited entry permits because there was no quota in 1993.

EFFECTIVE DATE: July 6, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. James J. Morgan at (310) 980–4036 or Mr. Alvin Z. Katekaru at (808) 541–2927.

SUPPLEMENTARY INFORMATION: The final rule implementing Amendment 7 (57 FR 10437, March 26, 1992) to the FMP established a limited entry program for the Northwestern Hawaiian Islands. Among the provisions implemented was the establishment of a landing requirement for renewing permits each year. The Code of Federal Regulations at 50 CFR 681.30(c)(2) states that a permit will be renewed for a subsequent year only if the permitted vessel was used to: (i) land the equivalent of at least four lobsters for each trap normally used, calculated over 1 calendar year [the landing requirement] and (ii) make the landings during at least one of the 2 years prior to the year for which the new permit would be valid.

If a permit were not renewed or were revoked, others could apply for the unused permit. The purpose of the rule was to ensure that only active fishermen held permits, thereby achieving the maximum benefit from the fishery.

Permit holders were notified by letter in December 1992 that the 1992 fishing year would be the first year to be considered as a qualifying year. However, in 1993, the quota was set at zero lobsters because the resource was not of a sufficient size to support a fishery. As a result, those fishermen who had not fished in 1992 would have been required by Federal regulations to land a minimum number of lobsters in 1993 to obtain a permit for the 1994 fishing season, but also were forbidden by Federal regulations to fish. Therefore, the rule is being amended to make the regulations clear that the landing requirement: (1) will not apply until at least 2 years of lobster fishing has occurred beginning in 1992; and (2) must be met in one of the 2 most recent years in which lobster fishing under the limited entry program was authorized. Since lobster fishing under the limited entry program was authorized in 1992, and will be authorized in 1994, the landing requirement will first be applied to permit renewals for the 1995 lobster season.

Classification

This final rule is issued under the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*

In that this rule merely interprets an existing regulation without creating any new rights or duties, it is not subject to the requirement of notice and an opportunity for public comment under 5 U.S.C. 553(b)(A). Similarly, as an interpretive rule, this rule is not subject to a 30 day delay in effective date pursuant to authority set forth at 5 U.S.C. 553(d)(2).

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

List of Subjects in 50 CFR Part 681

Fisheries, Reporting and recordkeeping requirements.

Dated: July 6, 1994.

Charles Karnella,

Acting Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 681 is amended as follows:

PART 681—WESTERN PACIFIC CRUSTACEAN FISHERIES

1. The authority citation for part 681 continues to read as follows:

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

2. In § 681.30, paragraph (c)(2)(ii) is revised to read as follows:

§ 681.30 Limited access management program.

* * * * *

(c) * * *

(2) * * *

(ii) Beginning with renewals for the 1995 fishing season, make the landings under paragraph (c)(2)(i) of this section during at least one of the 2 most recent years in which fishing was authorized under § 681.31.

* * * * *

[FR Doc. 94–16740 Filed 7–6–94; 4:42 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 59, No. 131
Monday, July 11, 1994

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

FEDERAL RESERVE SYSTEM

12 CFR Part 230

[Regulation DD; Docket No. R–0836]

Truth in Savings

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule and extension of comment period.

SUMMARY: On May 11, 1994, the Board requested comment on a proposal to amend Regulation DD (Truth in Savings) dealing with crediting and compounding practices and having the effect of producing an annual percentage yield (APY) that reflects the time value of money. The Board is extending the comment period for 60 days to give the public additional time to provide comments. In addition, the Board is publishing for comment a further alternative for APY calculations that would allow institutions to disclose an APY equal to the contract interest rate on time accounts with maturities greater than one year that do not compound interest but pay interest at least annually. This alternative would provide the Board with a more modest option as it considers a final resolution to problems with APY calculations.

DATES: Comments must be received on or before September 6, 1994.

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

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

SUPPLEMENTARY INFORMATION:

(1) Background

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

Because the current formula for calculating the APY assumes that interest remains on deposit until maturity, the resulting APY may—but does not always—reflect the time value of money. The formula produces an APY that is less than the contract interest rate for long-term certificates of deposit (CDs) that are noncompounding but pay interest periodically. On December 6, 1993, the Board published a proposal that called for an additional APY formula that would have factored into the APY calculation the specific time intervals for interest paid on the account—that is, the time value of money (58 FR 64190). The proposal was withdrawn on May 11, based on considerations of cost and regulatory burden (59 FR 24376).

In the context of deliberations about the December 1993 proposal, the Board considered related issues regarding depository institutions' compounding and crediting practices. On May 11, 1994, the Board proposed amendments to clarify the relationship between compounding and crediting and provide an alternative basis for eliminating anomalies produced by the current APY formula (59 FR 24378). The Board has received requests for an extension of the proposal's comment period, due to end on July 5, 1994; the Board is extending the comment period to September 6, 1994.

Alternative APY Resolution

In addition to extending the comment period on the current proposal, the Board has decided to solicit comment on an alternative approach for APY calculations. Under this alternative, the only institutions affected would be those offering noncompounding multi-year CDs that pay interest at least annually. Those institutions would disclose an APY equal to the interest rate, regardless of whether interest payments were made annually or more frequently. The APY for all other accounts would reflect the interest rate paid and any compounding. Interest payments by check or transfer would not be factored into the APY calculation.

This alternative (called Approach B in the December 1993 proposal) was considered by the Board in its deliberations on adding a new APY formula. The Board declined to adopt Approach B at that time, mainly based on concerns about the limited resolution of anomalies associated with the APY and costs associated with its implementation.

A number of factors have led the Board to reopen comments on this alternative. The Congress chose the APY as the primary uniform measurement for comparison shopping among deposit accounts. The Board believes the APY formula should produce a mathematical figure that is easily understood and readily reveals to consumers an account's comparative value. The Board also believes that regulatory compliance should be as simple and cost-effective as possible, and that reductions in product variety and consumer choice due to regulatory requirements should be minimized.

Taking all these factors into account, and recognizing that all formulas contain assumptions that are valid in some circumstances and not in others, the Board seeks comment on whether this limited approach would achieve a satisfactory resolution of the competing interests for accuracy, consumer understanding, product flexibility, and ease of compliance.

The Board also solicits comment on whether adoption of such an alternative would reduce the incentive for institutions to offer compounding multi-year CDs. For example, assume two

institutions offer a two-year CD with a 6.00% interest rate; one mandates monthly interest checks, the other offers annual compounding. Both could advertise a 6.00% APY, even though a consumer depositing $1,000 receives $120 if interest checks are paid annually and $123.60 if money is left in the account.

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

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

Section 230.4—Account Disclosures

Paragraph (b)(6)—Features of Time Accounts

The regulation requires a disclosure for institutions offering time accounts that compound interest and permit a consumer to withdraw accrued interest during the account term. The disclosure states that the APY assumes interest remains on deposit until maturity and that a withdrawal of interest will reduce earnings. The Board request comments on whether a similar disclosure would be helpful to consumers purchasing noncompounding multi-year CDs that pay interest at least annually and disclose an APY equal to the interest rate. For example, the disclosure would alert consumers that dollar earnings will be less than for a multi-year CD with the same maturity (and disclosing the same APY) that compounds annually. The Board solicits suggestions for text that would be most helpful to consumers.

Section 230.8—Advertising

Paragraph (c)(6)—Features of Time Accounts

The regulation requires institutions advertising APYs to disclose other key features about the account. The Board solicits comment on whether institutions advertising an APY equal to the interest rate on noncompounding multi-year accounts that make interest payments annually should be required also to make a disclosure like the one discussed above. If so, the Board solicits suggestions for text that would be helpful to consumers and take into account the constraints of advertising media.

Appendix A to Part 230—Annual Percentage Yield Calculation

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

A. *General rules.* Under the alternative approach, the proposed amendments to Appendix A only affect institutions that offer noncompounding multi-year CDs that pay interest at least annually. A new paragraph E is added to clarify how APYs shall be determined for such accounts. The Board requests comment on the proposed paragraph and accompanying example.

Appendix B—Model Clauses and Sample Forms

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

(3) Form of Comment Letters

Comment letters should refer to Docket No. R–0836, and, when possible, should use a standard typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text into machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document in paper form, comments may be submitted on 3½ inch or 5¼ inch computer diskettes in any IBM-compatible DOS-based format.

(4) Regulatory Flexibility Analysis and Paperwork Reduction Act

The Board's Office of the Secretary previously prepared an economic impact statement on the proposed alternative dealing with noncompounding multi-year CDs that pay interest at least annually. A copy of the analysis may be obtained from Publications Services, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–3245.

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 35; 5 CFR 1320.13), the proposed revisions will be reviewed by the Board under the authority delegated to the Board by the Office of Management and Budget after consideration of comments received during the public comment period.

List of Subjects in 12 CFR Part 230

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

Certain conventions have been used to highlight the proposed revisions to the regulation. New language is shown inside bold-faced arrows, while language that would be deleted is set off with bold-faced brackets.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 230 as follows:

PART 230—TRUTH IN SAVINGS (REGULATION DD)

1. The authority citation for part 230 would continue to read as follows:

Authority: 12 U.S.C. 4301, et seq.

2. In Part 230 Appendix A would be amended by revising the second sentence in the introductory text to Part I and the first sentence of paragraph A, and by adding a new paragraph E as follows:

Appendix A to Part 230—Annual Percentage Yield Calculation

* * * * *

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

* * * Special rules apply to accounts with tiered and stepped interest rates►, and to certain time accounts with a stated maturity greater than one year◄.

A. *General Rules*

►Except as provided in Part I.E. of this appendix, the ◄ [The] annual percentage yield shall be calculated by the formula shown below. * * *

* * * * *

►E. *Time accounts with a stated maturity greater than one year that compound interest less often than annually*

For time accounts with a stated maturity greater than one year that do not compound interest on an annual or more frequent basis, and that require (or permit) the consumer to withdraw interest at least annually, the annual percentage yield shall be equal to the interest rate.

Example:

(1) If an institution offers a $1,000 two-year certificate of deposit that credits interest semi-annually solely by check or transfer, and there is no compounding at a 6.00% interest rate, the annual percentage yield is 6.00%.◄

* * * * *

Board of Governors of the Federal Reserve System, July 5, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–16641 Filed 7–8–94; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 33

[Docket No. 94–ANE–18; Notice No. 33–08]

Special Conditions; General Electric Aircraft Engines Model(s) GE90–75B/–85B/–76B Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This document proposes special conditions for the General Electric (GE) Aircraft Engines Model(s) GE90–75B/–85B/–76B turbofan engines. The Federal Aviation Administration (FAA) has determined that the requirements of Federal Aviation Regulation (FAR) 14 CFR part 33, including the requirements of § 33.94, Blade Containment and Rotor Unbalance Test, relative to the location of fan blade fracture for the containment test, do not contain adequate or appropriate safety standards for the certification of the GE90–75B/–85B/–76B turbofan engines. This finding is based on a novel or unusual design feature of the GE90 fan blade. Therefore, this document proposes special conditions which the Administrator finds necessary to establish a level of safety equivalent to that established by the airworthiness standards of part 33 of the FAR.

DATES: Comments must be submitted on or before August 25, 1994.

ADDRESSES: Comments on this proposal may be submitted in triplicate to: Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attn: Rules Docket No. 94–ANE–18, 12 New England Executive Park, Burlington, Massachusetts 01803–5299. Comments must be marked: Docket No. 94–ANE–18. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Tim Mouzakis, Engine and Propeller Standards Staff, ANE–110, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, MA 01803–5229; telephone (617) 238–7114; fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under **ADDRESSES**. All communications received on or before the closing date for comments, specified under **DATES**, will be considered by the Administrator before taking action on the proposal. The proposal contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed special conditions. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this proposal will be filed in the docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 94–ANE–18." The postcard will be date stamped and returned to the commenter.

Background

On December 16, 1991, General Electric Aircraft Engines applied for type certification of Model(s) GE90–75B/–85B/–76B turbofan engines. These engines incorporate a first stage fan blade manufactured using carbon graphite composite material. This unusual design feature results in the GE90 fan blade having significant difference in material property characteristics when compared to conventionally designed fan blades using non-composite materials. For example, the probability that a composite fan blade will fail below the inner flowpath diameter is highly improbable, making inappropriate the requirement contained in § 33.94 paragraph (a) subparagraph (1) to show blade containment after a failure of the blade at the outermost retention feature.

The current requirements of § 33.94 are based on metallic blade characteristics and service history and are not appropriate for the unusual design features of the composite fan blade found on the GE90 series turbofan engines. The FAA has determined that a more realistic blade retention test will be achieved with a fan blade failure at the inner flowpath diameter (complete airfoil) instead of the outermost retention feature as is currently required by § 33.94 paragraph (a) subparagraph (1).

The FAA has also determined that the composite fan blade construction presents other factors that must be considered. Tests and analyses must account for the effects of in-service deterioration of, manufacturing and materials variations in, and environmental effects on the composite material. Further, tests and analyses must show that a lightning strike on the composite fan blade will not result in a hazardous condition to the aircraft and that the engine will meet the requirements of § 33.75. Therefore, these Special Conditions are proposed which define the additional requirements which the Administrator considers necessary to establish a level of safety equivalent to that established by the Airworthiness Standards of part 33.

Type Certification Basis

Under the provisions of § 21.101, General Electric Aircraft Engines must show that the GE Model(s) GE90–75B/–85B/–76B turbofan engines met the requirements of the applicable regulations in effect on the date of the application. Those Federal Aviation Regulations are § 21.21, as amended through Amendment 21–68, August 10, 1990, and part 33, as amended through Amendment 33–14, August 10, 1990.

The Administrator finds that the applicable airworthiness regulations in part 33, as amended, do not contain adequate or appropriate safety standards for the GE90 series turbofan engine because of its novel or unusual design feature. Therefore, the Administrator proposes these special conditions under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice and opportunity for comment, as required by § 11.28 and § 11.29(b), and become part of the type certification basis in accordance with § 21.101 paragraph (b) subparagraph (2).

Conclusion

This action affects only GE Model(s) GE90–75B/–85B/–76B turbofan engines. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these engines containing this novel or unusual design feature.

List of Subjects in 14 CFR Part 33

Air transportation, Aircraft, Aviation safety, safety.

The authority citation for these special conditions continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421, 1423; 49 U.S.C. 106(g); 14 CFR 21.16, and 14 CFR 11.28.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the General Electric Aircraft Engines GE90 series turbofan engines.

(a) The following must be shown by tests and analyses, or other methods acceptable to the Administrator, that, in

lieu of the fan blade containment test with the fan blade failing at the point specified in § 33.94 paragraph (a) subparagraph (1), a fan blade containment test with the fan blade failing at the inner flowpart diameter demonstrates:

(1) That the disk and fan blade retention system can withstand without failure a centrifugal load equal to two times the maximum load which the engine could experience within approved operating limitations, and

(2) That by a procedure approved by the Administrator an operating limitation must be established which specifies the maximum allowable number of start-stop stress cycles for the fan blade retention system. The fan blade retention system includes the portion of the fan blade from the inner flowpath diameter inward to the blade dovetail, the blade retention components, and the fan disk and fan blade attachment features.

(b) It must be shown that the probability of fan blade retention system failure, for any cause, during the service life of the engine to be extremely improbable.

(c) It must be shown by test or analysis that a lightning strike on the composite fan blade structure will not result in a hazardous condition, and that the engine will meet the requirements of § 33.75.

(d) The tests and analyses required by (a)(1) and (a)(2) of these special conditions must account for the effects of in-service deterioration, manufacturing and materials variations, and environmental effects.

Issued in Burlington, Massachusetts, on June 28, 1994.

Ronald L. Vavruska,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 94–16678 Filed 7–8–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM94–7–000]

Recovery of Stranded Costs by Public Utilities and Transmitting Utilities

June 29, 1994.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing to amend its regulations to establish provisions concerning the recovery of wholesale and retail stranded costs by public utilities and transmitting utilities under sections 205, 206, 211 and 212 of the Federal Power Act. The Commission seeks public comment concerning the issues raised by the proposed rulemaking.

DATES: Written comments must be received by the Commission by September 9, 1994. Reply comments must be received by the Commission by October 11, 1994.

ADDRESSES: Send comments to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

James H. Douglass, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426; Telephone: (202) 208–2143 (legal issues).

Michael A. Coleman, Office of Electric Power Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426; Telephone: (202) 208–1236 (technical issues).

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, at 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this order will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

Notice of Proposed Rulemaking

June 29, 1994.

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I. Introduction

The Federal Energy Regulatory Commission (Commission) seeks public comment on amending its regulations to establish provisions concerning the recovery of wholesale and retail stranded costs by public utilities and transmitting utilities under sections 205, 206, 211 and 212 of the Federal Power Act (FPA).[1] Wholesale stranded costs are defined as any legitimate, prudent and verifiable costs incurred by a public utility or a transmitting utility to provide service to a wholesale requirements customer that subsequently becomes, in whole or in part, an unbundled transmission services customer[2] of that public utility or transmitting utility. Retail stranded

[1] A public utility is defined under section 201(e) of the FPA as "any person who owns or operates facilities subject to the jurisdiction of the Commission under this Part (other than facilities subject to such jurisdiction solely by reason of section 210, 211, or 212)." A transmitting utility is defined under section 3(23) of the FPA as "any electric utility, qualifying cogeneration facility, qualifying small power production facility, or Federal power marketing agency which owns or operates electric power transmission facilities which are used for the sale of electric energy at wholesale." Not all transmitting utilities are public utilities. For instance, a municipally-owned electric utility that owns transmission facilities which are used for the sale of electric energy at wholesale is a transmitting utility, but is not a public utility.

[2] An unbundled transmission services customer is one who purchases transmission as a product that is separate from the purchase of generation.

costs are defined as any legitimate, prudent and verifiable costs incurred by a public utility or transmitting utility to provide service to a retail franchise customer that subsequently becomes, in whole or in part, directly or indirectly, an unbundled transmission services customer of that public utility or transmitting utility.

For recovery of wholesale stranded costs, the proposed rule distinguishes between stranded costs associated with wholesale requirements contracts executed after the date the proposed rule is published in the **Federal Register** ("new" contracts) and stranded costs associated with wholesale requirements contracts executed on or before that date ("existing" contracts).

The proposed rule would not allow a public utility or transmitting utility to seek recovery of stranded costs associated with "new" wholesale requirements contracts through transmission rates for section 205 or 211 transmission services. Recovery of such costs will not be allowed except through explicit stranded cost provisions contained in new wholesale requirements contracts.

If the seller under a new wholesale requirements contract is a public utility, and the new contract explicitly addresses stranded cost recovery, the public utility may seek recovery, in accordance with the contract, under sections 205–206 of the FPA.[3] The public utility may not seek recovery of wholesale stranded costs through any transmission rate for section 205 or 211 transmission services. If the seller under a new wholesale requirements contract is a transmitting utility subject to the Commission's jurisdiction under section 211, but not also a public utility subject to the Commission's section 205–206 jurisdiction,[4] there will be no Commission forum for addressing wholesale stranded costs associated with the new contract. Such utilities will not be able to seek recovery of wholesale stranded costs associated with such new contracts through rates for transmission services ordered under section 211, and the Commission does not have jurisdiction over their power sales contracts. Therefore, these utilities must address recovery of stranded costs through their new wholesale requirements contracts subject to the appropriate regulatory authority approval.

With regard to stranded costs associated with "existing" wholesale requirements contracts, the proposed rule provides a three-year transition period during which public utilities must attempt and non-public utilities are encouraged to attempt to renegotiate certain existing contracts, and during which they may seek recovery of stranded costs as follows:

(a) If an existing wholesale requirements contract explicitly addresses stranded costs through an exit fee or other stranded cost provision, no public utility or transmitting utility may seek recovery of stranded costs associated with that contract through transmission rates; the utility may recover such costs only as specified in the requirements contract.

(b) If an existing wholesale requirements contract does not explicitly address stranded costs through an exit fee or other stranded cost provision, the parties to the contract, within a three-year transition period, must make a good faith attempt to negotiate a stranded cost amendment to the contract. If the parties are able to negotiate an amendment, and the selling utility under the contract is a public utility, the amendment should be filed for Commission approval under section 205 or 206 of the FPA prior to the end of the three-year period. If the parties to the existing contract are not able to negotiate an amendment, and the selling utility under the contract is a public utility, the public utility may unilaterally file a proposed amendment, under section 205 or 206 of the FPA, prior to the end of the three-year period.[5] If an amendment is not filed and the customer leaves the public utility's system after the end of the three-year transition period, the Commission will deny any extra-contractual stranded cost claim in a section 205 or 206 requirements rate proceeding arising under the contract in question.

(c) If an existing wholesale requirements contract does not explicitly address stranded costs through an exit fee or other stranded cost provision, and if, prior to the end of the three-year transition period, the customer gives notice pursuant to the contract[6] that it will no longer purchase all or part of its requirements from the selling utility but instead will purchase from the selling utility unbundled section 205 or section 211 transmission services[7] that will begin prior to the end of the three-year period, then the selling utility may seek to recover stranded costs from that customer through jurisdictional transmission rates. This is the only circumstance in which the rule proposes to allow wholesale stranded cost recovery through transmission rates.

(d) If a utility does seek recovery of stranded costs as permitted by the proposed rule, and the existing wholesale requirements contract contains a notice provision, there will be a rebuttable presumption that the utility had no legitimate expectation of continuing to serve the customer beyond the period provided for in the notice provision.

With regard to retail stranded costs, the proposed rule adopts a strong policy preference that appropriate State or local regulatory authorities address, in whatever manner they deem appropriate, stranded cost recovery. The proposed rule provides alternative proposals for how the Commission will address retail stranded costs. The Commission expresses no preference in favor of either alternative. Under the first alternative, the rule provides that if the appropriate State or local authority does not explicitly address retail stranded costs,[8] or if there is conflict among authorities within a State or among different States, the Commission will entertain requests to recover stranded costs in section 205–206 rates for wholesale or retail transmission services in interstate commerce,[9] or in section 212 rates for wholesale transmission services ordered under

[3] For example, when a public utility files a new wholesale requirements contract that contains an explicit exit fee amount, it may request that the Commission allow it to recover the fee, in accordance with the contract, without having to make a subsequent section 205 filing, as long as the exit fee provision is sufficiently specific. Customers are contractually obligated to pay such exit fees previously approved by the Commission, and such an exit fee is part of the filed rate.

[4] *Compare* 16 U.S.C. 796(23) *with* 16 U.S.C. 824(e).

[5] If the selling utility is a transmitting utility that is not also a public utility, its wholesale requirements contracts are not subject to this Commission's jurisdiction. Therefore, such transmitting utility should within the three-year transition period take whatever steps are permitted or required under its regulatory requirements to unilaterally propose to its regulatory authority a stranded cost provision as an amendment to its existing contract. Under this proposal, it will not be permitted to seek stranded cost recovery from this Commission after the close of the three-year transition period.

[6] This refers to proper notice given in accordance with the contract. If the customer attempts to breach the contract, the utility will have the usual recourse.

[7] *I.e.*, services pursuant to a transmission tariff or agreement on file with the Commission under FPA section 205, or services pursuant to a request for an order under FPA section 211.

[8] *See* discussion, *infra*, section III.C.(6)(ii), regarding mechanisms by which states might explicitly address retail stranded costs.

[9] "Wholesale transmission services" means the transmission of electric energy sold, or to be sold, at wholesale in interstate commerce. This is the definition contained in FPA section 3(24).

For purposes of this proposed rulemaking, "retail transmission services" refers to the transmission of electric energy sold, or to be sold, in interstate commerce directly to a retail customer.

section 211. Under the second alternative, the rule provides that the Commission will not entertain any request for recovery of retail stranded costs. However, the Commission solicits comments on whether there should be exceptions to this alternative rule.

Finally, the proposed rule provides guidance as to the substantive criteria and evidentiary demonstration necessary for wholesale and retail stranded cost recovery.

The Commission requests the general views, comments and analyses of all interested persons, pursuant to the procedures herein. It has set forth enumerated questions in the Appendix attached hereto on which it solicits comment in particular.

II. Public Reporting Burden

The proposed rule specifies filing requirements to be followed by public utilities seeking to recover stranded costs. The information collection requirements of the proposed rule are attributable to FERC–516 "Electric Rate Filings". The current total annual reporting burden for FERC–516 is 783,700 hours.

The proposed rule requires public utilities seeking to recover stranded costs to provide certain information to the Commission. The public reporting burden for the information collection requirements contained in the proposed rule is estimated to average 50 hours per response. This estimate includes time for reviewing the requirements of the Commission's regulations, searching existing data sources, gathering and maintaining the necessary data, completing and reviewing the collection of information, and filing the required information.

There are approximately 200 public utilities. The Commission estimates that approximately ten of these utilities will respond to the information collection annually. The respondents would be public utilities who seek to recover stranded costs. The information will be collected on an annual basis. Accordingly, the public reporting burden is estimated to be no more than 500 hours.

Send comments regarding this burden estimate or any other aspect of the Commission's collection of information, including suggestions for reducing this burden, to the Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426 [Attention: Michael Miller, Information Services Division, (202) 208–1415], and to the Office of Information and Regulatory Affairs of the Office of Management and Budget [Attention: Desk Officer for Federal Energy Regulatory Commission].

III. Discussion

A. Background

Historically, electric utilities entered into long-term contracts to make wholesale requirements sales (bundled sales of generation and transmission) to municipal, cooperative and investor-owned utilities. Under these contracts, utilities often committed to provide all (full requirements) or part (partial requirements) of a customer's power needs for the contract period. Although these wholesale requirements contracts are typically for defined terms, they often were rolled over or extended when the contract term expired.

The historical supply relationship between utilities and their wholesale requirements customers, however, has begun to undergo significant change as a result of increased competition in wholesale power generation and greater customer access to transmission services.

Increased competition in wholesale power generation began with the enactment of the Public Utility Regulatory Policies Act of 1978 (PURPA).[10] PURPA provided incentives for the development of alternative generation sources known as qualifying facilities (QFs). In addition, state-approved competitive bidding programs paved the way for the growth of non-traditional utility generators. Finally, the Energy Policy Act of 1992 (Energy Policy Act)[11] provided regulatory exemptions to encourage a new class of wholesale power producers known as exempt wholesale generators (EWGs).

As competition in wholesale power generation has increased, so has the ability of customers to gain access to the transmission services necessary to reach competing suppliers. In earlier years, a few customers were able to obtain access as a result of court proceedings, beginning with the Supreme Court's decision in *Otter Tail Power Co.* v. *United States*, 410 U.S. 366 (1973). In recent years, a growing number of public utilities voluntarily agreed to file transmission tariffs of general applicability, *i.e.*, tariffs that permit transmission access for any entity that will be making sales for resale of electric energy.[12] In most instances, access was provided in order to obtain Commission approval of a merger or consolidation[13] or Commission authorization of market-based rates for generation services.[14] The Commission, in many instances, conditioned its approval of certain mergers upon transmission access in order to mitigate potential anticompetitive effects.[15]

The trend toward greater transmission access has been accelerated by the passage of the Energy Policy Act, which substantially expanded the Commission's authority to order transmission services. Under amended section 211 of the FPA, the Commission may order wholesale transmission services, upon application, to any electric utility, Federal power marketing agency, or any other person generating electric energy for sale for resale.[16] Thus far, the Commission has granted requests for mandatory transmission services pursuant to section 211 in five of the six cases it has acted on, including four proposed orders and one final order. In addition, several public utilities have filed voluntary wholesale transmission tariffs subsequent to the passage of the Energy Policy Act.[17]

During the transition to a fully competitive wholesale power market, some utilities may incur stranded costs as wholesale customers leave their systems to purchase power elsewhere. A utility may have built facilities or

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[10] 16 U.S.C. 2601, *et seq.*

[11] Pub. L. 102–486, 106 Stat. 2776 (1992).

[12] *See, e.g.*, Entergy Services, Inc., 58 FERC ¶ 61,234, *order on reh'g*, 60 FERC ¶ 61,168 (1992), *appeal pending sub nom.* Cajun Electric Power Cooperative, Inc., et al. v. FERC, Nos. 92–1461, *et al.* (D.C. Cir. filed Sept. 24, 1992) (*Entergy*).

[13] *See, e.g.*, Public Service Company of Colorado, 59 FERC ¶ 61,311 (1992), *reh'g denied*, 62 FERC ¶ 61,013 (1993).

[14] *See, e.g.*, Entergy, 58 FERC at 61,740.

[15] *See, e.g.*, Utah Power & Light Company, *et al.*, Opinion No. 318, 45 FERC ¶ 61,095 (1988), *order on reh'g*, Opinion No. 318–A, 47 FERC ¶ 61,209 (1989), *order on reh'g*, Opinion No. 318–B, 48 FERC ¶ 61,035 (1989), *aff'd in relevant part sub nom.* Environmental Action Inc., *et al.* v. FERC, 939 F.2d 1057 (D.C. Cir. 1991); Northeast Utilities Service Company (Re Public Service Company of New Hampshire), Opinion No. 364–A, 58 FERC ¶ 61,070, *reh'g denied*, Opinion No. 364–B, 59 FERC ¶ 61,042, *order granting motion to vacate and dismissing request for rehearing*, 59 FERC ¶ 61,089 (1992), affirmed in relevant part sub nom. Northeast Utilities Service Company v. FERC, Nos. 92–1165, *et al.* (1st Cir. May 19, 1993).

[16] Under section 212(h), no order issued by the Commission shall be conditioned on or require the transmission of electric energy to an ultimate consumer or to a "sham" wholesale customer. However, the Commission may order services to a "non-sham" wholesale customer, *e.g.*, a person having an obligation under State or local law to provide electric services to the public and who would utilize transmission or distribution facilities that it owns or controls to deliver all such electric energy to such electric consumer.

[17] *See, e.g.*, American Electric Power Service Corporation, 67 FERC ¶ 61,168 (1994); Commonwealth Edison Company, 65 FERC ¶ 61,288 (1993), *order on reh'g*, 67 FERC ¶ 61,325 (1994); Florida Power & Light Company, 64 FERC ¶ 61,361 (1993), order on policy issues, 66 FERC ¶ 61,227 (1994), *order on reh'g*, 67 FERC ¶ xxx (1994); Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin), 67 FERC ¶ 61,240 (1994).

entered into long-term fuel or purchased power supply contracts with the reasonable expectation, based on historical experience and the behavior of its customer, that its wholesale requirements contract to sell electric energy to that customer would be renewed, and that the customer would pay its proportionate share of long-term investments and other costs incurred. If the customer is able to obtain unbundled transmission service from the utility in order to reach other power suppliers, the utility may have "stranded costs." If the utility does not have an alternative buyer for the power previously sold to the departing wholesale requirements customer, or some other means of mitigating the stranded costs, the costs must be recovered from either thedeparting customer or the remaining customers or borne by the utility's shareholders.

Changes are also occurring in retail electric markets, which could also cause retail stranded costs.[18] For instance, as a result of recent action by the Massachusetts legislature, discussed *infra*, the Massachusetts Bay Transit Authority (MBTA) changed from being a retail franchise customer to a wholesale transmission customer of Massachusetts Electric Company. Another example is the California Public Utilities Commission's recent initiation of a proceeding to consider the restructuring of California's retail electric industry to allow all consumers to obtain direct access to competing generation service providers.[19] The Michigan Public Service Commission is also considering a plan to offer consumer access to competing generation suppliers on a limited basis.[20]

In summary, as a result of the transition to a competitive wholesale power market, we must be concerned with three ways in which stranded costs are most likely to occur:

Scenario 1: A wholesale requirements customer (*i.e.*, a wholesale purchaser of bundled generation and transmission services) may obtain unbundled transmission services from its existing supplier in order to reach an alternative generation supplier. It may obtain wholesale transmission services either through a voluntary bilateral agreement or voluntary open-access tariff filed by a utility under FPA section 205, or by obtaining a Commission order under FPA section 211;

Scenario 2: A retail franchise customer (or a group of retail franchise customers) may, through State or local government action, become a wholesale customer who obtains from its existing supplier either voluntary unbundled wholesale transmission services under section 205 agreements or tariffs as described above, or obtains such services pursuant to a Commission order under section 211;

Scenario 3: A retail franchise customer may obtain unbundled retail transmission services from its existing supplier in order to reach a new generation supplier, either through voluntary unbundled retail transmission services or as a result of a State or local action requiring the existing supplier to provide such retail transmission services.[21]

Below we discuss the Commission's precedent for each of these scenarios, and how we propose to deal with such stranded costs in the future.

B. Current Stranded Cost Policy

1. Wholesale Customers Leaving The System

The Commission has always permitted public utilities to include reasonable cancellation provisions in power sales contracts in order to protect themselves from stranded costs and to plan for the future needs of their systems.[22] Reasonable cancellation provisions may include specified "exit fees" or "termination charges" that must be paid by a purchaser if it terminates service prior to a contract's termination date. They may also include requirements that customers provide sufficient prior notice of cancellation to allow utilities to avoid stranded costs.

Contracts negotiated prior to the recent movement toward increased transmission access and competitive bulk power markets may not contain provisions requiring notice of termination and/or allocating responsibility for stranded costs. Accordingly, the Commission has permitted public utilities to include wholesale stranded investment cost recovery provisions in wholesale transmission rates when a public utility has filed a transmission tariff of general applicability.

In *Entergy*, public utilities sought to include provisions for the recovery of wholesale stranded investment costs as part of their proposed transmission tariff of general applicability. In that case, the Commission stated:

> If Entergy has made investment decisions based on a contractual commitment or reasonable expectation at that time that it would continue to serve these customers, it should be able to recover from them the legitimate and verifiable costs invested on their behalf.[23]

The Commission reasoned that the existence of a transmission tariff of general applicability could increase a public utility's risk of stranded investment far beyond what was contemplated when the public utility originally negotiated its power supply contracts.[24] The Commission further observed that public utilities may not voluntarily offer expanded transmission access if doing so means becoming subject to an increased risk of stranded investment.[25] Therefore, the Commission stated that it would be appropriate for Entergy to seek to recover legitimate and verifiable stranded investment costs through transmission rates, if such costs were associated with contracts entered into before the date of the Commission's order. However, the Commission stated that it would not allow the Entergy utilities to seek recovery of stranded costs associated with contracts entered into or extended after that date. The Commission further indicated in *Entergy* that while a public utility may seek to recover stranded costs, recovery

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[18] Retail stranded costs may occur when a retail franchise customer of a public utility or transmitting utility obtains unbundled transmission service from the utility; the franchise customer may become a wholesale transmission customer of the utility or a retail transmission customer of the utility. Retail stranded costs may also result from customer "self-help" actions such as customer self-generation, or a customer building its own transmission line, or a customer relocating to another utility's service territory. These types of retail stranded costs have long been a fact of life for utilities. This proceeding is not intended to address stranded costs resulting from customer "self-help" actions.

[19] Order Instituting Rulemaking and Order Instituting Investigation on the Commission's Proposed Policies Governing Restructuring California's Electric Services Industry and Reforming Regulation, California Public Utilities Commission Nos. R. 94-04-031, I. 94-04-052 (April 20, 1994).

[20] In the matter of the application of the Association of Businesses Advocating Tariff Equity for approval of an experimental retail wheeling tariff for Consumers Power Company, *et al.*, MPSC Case Nos. U-10143 and U-10176 Opinion and Interim Order Remanding to the Administrative Law Judge for Further Proceedings, Michigan Public Service Commission, 150 P.U.R.4th 409 (April 11, 1994), *appeal dismissed for lack of jurisdiction*, Attorney General v. Michigan Public Service Commission, No. 175245 (Mich. Ct. App. June 15, 1994).

[21] The Commission takes no position in this proceeding regarding the legal issue of whether States have the authority to order retail wheeling in interstate commerce.

[22] *See* Kentucky Utilities Company, Opinion No. 169, 23 FERC ¶ 61,317 at 61,668, *order on reh'g*, Opinion No. 169-A, 25 FERC ¶ 61,205 (1983), *vacated and remanded on other grounds*, Kentucky Utilities Co. v. FERC, 766 F.2d 239 (6th Cir. 1985) (remanded for lack of evidence supporting the length of the notice provision), *order on remand*, 37 FERC ¶ 61,299 (1986).

[23] *Entergy*, 60 FERC at 61,631.

[24] *Entergy*, 58 FERC at 61,770.

[25] *Id.*

is by no means guaranteed. The public utility bears the heavy burden of showing, among other things, that it made relevant investment decisions based on a "contractual commitment or reasonable expectation" that it would continue to serve its existing wholesale power customers.[26]

2. Retail-Turned-Wholesale Customers Leaving The System

The Commission has been presented with the question of whether it should permit public utilities to seek recovery in *wholesale* transmission rates of stranded investment costs incurred to serve former *retail* franchise customers.[27] In *United Illuminating Company*, the Commission held that retail franchise matters are state matters that should be handled, in the first instance, by the appropriate state regulatory bodies or courts.[28] In *Massachusetts Electric Company*, the Commission accepted for filing and set for hearing the reasonableness of a proposed stranded cost charge involving a utility seeking to recover stranded costs in transmission rates from a former retail franchise customer that became a wholesale requirements customer and then became a transmission-only wholesale customer.[29]

3. Retail Customers Leaving The System

The Commission has not been presented with the question of whether it can or should permit public utilities to seek recovery, in rates for unbundled interstate transmission services provided to *retail* customers, of stranded costs incurred to serve retail franchise customers. However, this issue could arise as a result of voluntary retail wheeling or State or local actions resulting in retail wheeling arrangements such as those being considered in California, Michigan and elsewhere.

[26] *Entergy*, 60 FERC at 61,631.

[27] For example, stranded costs may occur if a newly-formed municipal utility reduces or terminates service from its current supplier.

[28] *See* United Illuminating Company, 63 FERC ¶ 61,212 at 62,583, *reh'g denied*, 64 FERC ¶ 61,087 (1993) (*UI*).

[29] Massachusetts Electric Company, 66 FERC ¶ 61,036 (1994) (*Mass Electric*). The Massachusetts Department of Public Utilities (Massachusetts Commission) recently requested that the Commission suspend the hearing it ordered in this proceeding for six months to allow time for its investigation of the utility's stranded cost claims. On June 6, 1994, the presiding administrative law judge denied the Massachusetts Commission's motion. On June 29, 1994, the Massachusetts Commission filed an interlocutory appeal to the Commission of the presiding judge's June 22, 1994 denial of the motion.

C. The Proposed Regulations

Consistent with the policy objectives of Congress in enacting the electric provisions of the Energy Policy Act, the Commission is committed to developing a competitive, open transmission access, wholesale bulk power market. Our goal is to facilitate the development of competitively priced generation supply options, and to ensure that wholesale purchasers of electric energy can reach alternative power suppliers and vice versa. We therefore believe it is important at this stage of the evolution of the electric industry to address stranded costs.

The financial stability of the electric industry during the transition to a competitive wholesale generation market will depend in large part on: (1) Whether the transition to a competitive environment, at either the wholesale or retail level, will leave utility companies without an adequate opportunity to recover costs invested to serve customers under less competitive circumstances; and (2) whether and how regulators address recovery of some or all of those "stranded" costs. While there is no universally accepted estimate of the potential magnitude of stranded costs, some observers have suggested that stranded costs could total tens of billions of dollars, while others have suggested $200 billion or more. These estimates are based, to a large degree, on the difference between the book value of generating assets and their presumed market value.[30]

In addition to concerns about the financial stability of the industry, we believe it is important to provide as much regulatory certainty as possible, as early as possible, to buyers and sellers of electric energy and transmission, regarding the recovery of these potentially significant costs. Buyers seeking competitive generation alternatives need to know the costs associated with leaving their existing suppliers in order to make reasoned decisions. Likewise, sellers need to know the extent, if any, to which they will be obligated to provide requirements service on an extra-contractual basis so that they can plan their participation in competitive generation markets.

Accordingly, the Commission believes it can best fulfill its regulatory responsibilities by addressing the issue of stranded costs during the initial stages of the transition to a competitive wholesale generation market.[31] The Commission therefore is proposing to establish generic policies and procedures covering the treatment of stranded costs by public utilities and transmitting utilities.

The Commission believes that stranded cost recovery is a transition problem. In the past, costs may have been incurred by wholesale suppliers under an implicit regulatory "bargain," *i.e.*, based on a reasonable expectation that captive customers would continue taking service beyond the term of their contracts and that the utility would continue to plan for their needs.[32] This regulatory "bargain," particularly in the context of the recovery of extra-contractual stranded costs, may not be sustainable in the face of wholesale market forces. The expectation is that market forces will ensure adequate supply and wholesale customers will be able to contract for services from alternative suppliers.

Whereas any obligation to serve requirements customers at the wholesale level is a contractual one, the traditional obligation to serve at the retail level arises through utility monopoly franchise rights. The traditional retail regulatory compact has ensured the utility's financial integrity by granting it an opportunity to recover prudently incurred costs plus a fair rate of return, in exchange for regulation by the State regulatory authority and the duty to provide safe, reliable, reasonably priced electric service on demand. Some states have recently considered whether the traditional franchise duty to serve all customers within the boundaries of the designated franchise area ought to evolve and whether this duty should be modified by the State.[33]

The Commission notes that new generating capacity can be built and operated at costs that are less than many utilities' current embedded generating costs. This simple fact of current economic conditions is encouraging many users to seek access to the new lower cost sources of supply. Utilities traditionally have been obligated to

[30] These estimates include both wholesale and retail stranded costs. It has been suggested that the potential amount of retail stranded costs may be an order of magnitude larger than the potential amount of wholesale stranded costs, given that only 10–15 percent of generating investment by investor-owned utilities is in wholesale rate base.

[31] Indeed, our experience during the regulatory restructuring of the gas pipeline industry, including the issue of "take-or-pay" contracts, tells us that reasoned decisionmaking requires thorough consideration of the effects of regulatory and statutory changes, including stranded costs. *See* Associated Gas Distributors v FERC, 824 F.2d 981, 1021–1030 (D.C. Cir. 1987).

[32] *See also* 18 CFR 35.15 (requiring utilities to make a filing with the Commission before terminating a rate schedule); Pacific Gas & Electric Company, 25 FERC ¶ 61,142 at 61,381 (1983) ("termination is a change in service for which notice is statutorily required").

[33] *See, e.g.*, California Commission Order Instituting Rulemaking, *supra*, section III.A. & n.19.

serve all retail customers within their franchise territory and all wholesale requirements customers to whom they have contractually agreed to provide service. They have constructed or contracted for generating capacity sufficient to meet these service obligations. If existing customers leave their current utility suppliers, the utilities may not be able to recover all of their prudently incurred costs. In light of the utilities' status as regulated entities with retail franchise service obligations and contractual (and perhaps extra-contractual) wholesale service commitments, the Commission believes it is appropriate to provide a mechanism for utilities to seek to recover prudently incurred costs that are stranded during the transition to a competitive electricity supply market.

However, the amount of and responsibility for any costs stranded in the transition to competitive markets should be resolved in as short a time as possible, so as not to inhibit customers from taking advantage of the competitive market and so that sellers can restructure their marketing strategy to reflect competitive markets.[34]

The Commission assumes that stranded costs will be dominated by generating capacity. However, we believe that it is appropriate to consider stranded costs more broadly, including the possibility that fuel supply costs, purchased power costs, nuclear decommissioning costs, regulatory assets and possibly other costs that the utility seller is obligated to pay may be stranded. *The Commission seeks public comment on what categories of costs, in addition to investment costs, should be eligible for stranded cost recovery. The Commission also seeks comment concerning how stranded costs should be allocated to specific customers.*

The proposed regulations discussed below would allow utilities the opportunity to seek to directly assign stranded costs to the departing wholesale and perhaps retail customers. However, an alternative policy might assign wholesale or retail stranded costs more broadly. For example, some stranded cost proposals would require all transmission customers (including native load which takes bundled service) to pay an access charge related to use of the transmission system. *The Commission invites comments on the direct assignment and alternative methods of stranded cost recovery. The Commission also invites comments on whether alternative methods, e.g., an access charge, might give customers reasonable certainty on the scope of their stranded cost obligation more quickly than a direct assignment approach would, and thus might expedite the transition to a more competitive wholesale market.*

The proposed regulations are discussed in detail below.

1. Recovery of Stranded Costs Associated With New Wholesale Power Sales Contracts

The Commission believes that future wholesale contracts should explicitly address the mutual obligations of the seller and buyer, including the seller's obligation to continue to serve the buyer, if any, and the buyer's obligation, if any, if it changes suppliers. Therefore, the proposed regulations regarding wholesale stranded costs encourage the resolution of future stranded cost issues through negotiated agreement. At the same time, we are aware that many existing contracts, entered into prior to the time that unbundled transmission access became more widely available, may not have adequately addressed the potential for stranded costs.

The proposed regulations regarding wholesale stranded costs distinguish between new and existing wholesale requirements contracts. New contracts are defined as contracts executed after the date that the proposed rule is published in the **Federal Register**. Existing contracts are defined as contracts executed on or before the date that the proposed rule is published in the **Federal Register**.

The proposed regulations would disallow extra-contractual recovery of wholesale stranded costs associated with any new requirements contract. That is, we will not allow any request for recovery unless the contract contains specific provisions allowing stranded cost recovery when it is accepted by the Commission.[35] In addition, the Commission will not allow any stranded costs associated with new requirements contracts to be recovered through transmission rates.

Therefore, in the future, wholesale power suppliers and their customers must address stranded cost issues by including appropriate notice and exit fee provisions, or any other explicit statement related to stranded cost recovery, in their new requirements contracts. For example, sellers may wish to require adequate notice in contracts to reflect the realities of supply planning, and may wish to include exit fees that buyers would be required to pay if the buyer prematurely exits the system. Similarly, buyers may wish to preserve the rights to exit contracts when market conditions warrant it.

In addition to encouraging parties to explicitly address their mutual obligations in new wholesale requirements contracts, the Commission believes it is important to address any future regulatory obligation to serve at the wholesale level. Competitive generation markets not only require that customers be able to freely shop for competitively priced generation, but that sellers be free to enter new markets and to exit markets. Asymmetrical rights and obligations that allow existing customers to leave their current suppliers consistent with their existing contractual obligations, but that require sellers to continue to serve those customers beyond the terms of their existing contracts, would not be efficient or fair. Therefore, the Commission does not believe that it is appropriate to impose on wholesale requirements suppliers a regulatory obligation to continue to serve their existing requirements customers beyond the end of the contract term. This means that a requirements customer is responsible for planning to meet its power needs beyond the end of the contract term. It may re-contract with its existing supplier, or it may contract with new suppliers, using its existing supplier's transmission system.

The Commission invites public comment on the extent to which there is or should be a regulatory obligation to continue to serve wholesale requirements customers beyond the end of the contract term and the source of any such obligation. The Commission also seeks comment concerning whether section 35.15 of the Commission's regulations, which concerns notice of termination, should be deleted in its entirety, or only in certain circumstances (e.g., when the seller provides transmission access on a comparable basis to the seller's own uses of its system).

2. Recovery of Stranded Costs Associated With Existing Wholesale Power Sales Contracts

Because stranded costs are a transitional problem, and neglecting their recovery could delay the realization of a fully competitive bulk power market, it is important to set a date beyond which the Commission will no longer permit extra-contractual recovery of stranded costs that result from existing requirements contracts.

[34] In competitive markets, sellers can recover their costs, whether prudently incurred or not, only up to the market price.

[35] Proposed provisions to allow stranded cost recovery will, of course, be subject to the approval of the Commission and must be just and reasonable and not unduly discriminatory or preferential.

The proposed regulations would establish a three-year transition period during which utilities must make a good faith effort to negotiate with their customers to add appropriate stranded cost provisions to their existing contracts that do not already contain exit fee or other explicit stranded cost provisions. For purposes of this rule, if an existing contract contains an exit fee provision, that provision will be deemed to be an explicit stranded cost provision which cannot be renegotiated unless explicitly provided for in the contract.

One purpose of setting a time limit for renegotiation is to provide an incentive for utilities and their customers to attempt to promptly renegotiate existing requirements contracts that do not address stranded costs, so that the contracts reflect the new realities of emerging competitive generating markets. In these situations, the Commission expects utilities and their customers to make a good-faith effort to reach a mutually agreeable resolution. If the parties negotiate such a provision and the seller is a public utility, the utility must file the provision as an amendment to the existing power sales contract prior to the end of the three-year period.

If the parties to an existing wholesale requirements contract cannot negotiate a stranded cost provision, the selling utility, if it is a public utility, may, before the end of the three-year transition period, unilaterally file under FPA section 205 or 206 a proposed stranded cost provision as an amendment to the existing contract.[36] This is discussed in further detail below.

Alternatively, as discussed in the following section, if the customer under the existing wholesale requirements contract: (1) Gives notice pursuant to the contract, before the end of the three-year transition period, that it will no longer purchase all or part of its requirements from the selling utility, but instead will purchase unbundled section 205 or section 211 transmission services from the utility in order to reach a different supplier of electric energy; and (2) the transmission services will commence prior to the end of the three-year transition period, the selling utility may file before the end of the three-year transition period a proposal to recover stranded costs through rates for the requested wholesale transmission services. This is the only circumstance under which the Commission will allow utilities to seek wholesale stranded cost recovery through transmission rates.[37]

Existing requirements contracts are highly variable with respect to exit conditions. While some existing contracts may have explicit exit fee or other stranded cost provisions, many others may be totally silent with respect to exit conditions. Yet others may have notice provisions, but may not be explicit as to stranded cost recovery.

If a contract includes an explicit provision for payment of stranded costs or an exit fee, it will be assumed that the parties fully intended the contract to cover the contingency of the buyer leaving the system. Therefore, as a matter of policy announced here, the Commission proposes to reject stranded cost amendments to existing contracts that already contain such provisions. If existing contracts permit renegotiation of existing stranded cost provisions, the parties may renegotiate in accordance with the contract. However, if existing contracts prohibit stranded cost recovery, or explicitly prohibit renegotiation of an existing stranded cost or exit fee provision, or prohibit renegotiation until after the three-year period has expired, the parties will not be required to renegotiate within the three-year period. *The Commission invites comments on what other types of contractual provisions, if any, might demonstrate a sufficient "meeting of the minds" between parties so that renegotiation should be barred. The Commission also solicits comments on whether to apply these rules regarding existing contracts only to contracts between unaffiliated entities.*

If a contract does not include an exit fee or other explicit stranded cost provision, but does contain a notice provision, there will be a rebuttable presumption that the selling utility had no reasonable expectation of continuing to serve the customer beyond the period provided for in the notice provision. This presumption will apply when public utilities propose unilateral amendments to requirements contracts, as described above, as well as when public utilities or transmitting utilities seek stranded cost recovery through transmission rates, as described above. *The Commission solicits comment on whether the rebuttable presumption should also be applied to any contract entered into after the date of enactment of the Energy Policy Act, even though such contract does not contain an exit fee or other explicit stranded cost provision, or a notice provision.*

For existing contracts that do not contain specific exit fee or other explicit stranded cost provisions, the Commission proposes to require parties to make a good faith attempt at renegotiation. This is because many of these contracts were negotiated twenty years ago, or more, when the parties likely did not foresee the advent of competition in wholesale generation markets and the ability of transmission-dependent utilities to gain access to their supplier's transmission system to reach other sellers.

The Commission recognizes that new requirements contracts and renegotiated existing requirements contracts may contain contractual features that have heretofore not been included in requirements contracts. Buyers and sellers will seek to protect themselves from contingencies made more likely as a result of increased competition in power markets. The Commission will not impose a preconceived notion of what those contract provisions should look like, and does not necessarily believe that a "one size fits all" approach is appropriate.

We recognize that some utilities' existing contracts may be *Mobile-Sierra* contracts that prohibit unilateral rate changes.[38] Under the *Mobile-Sierra* doctrine, for instance, a customer may waive its right to challenge the contract and/or the utility may waive its right to make unilateral rate changes. However, the parties may not waive the indefeasible right of the Commission to alter rates that are contrary to the public interest.[39] Accordingly, the Commission could permit public utilities that have contracts containing *Mobile-Sierra* provisions an opportunity to file unilateral rate changes if the Commission finds that such an action is required in the public interest.[40]

The Commission believes that a failure to permit public utilities to address stranded costs through negotiation or unilateral rate changes could harm the public interest in at least two ways. First, the inability to seek recovery of stranded costs could impair the financial ability of a utility to continue to provide reliable service.

[36] *See, supra*, n.5, regarding transmitting utilities that are not also public utilities.

[37] We note that the rebuttable presumption we are proposing for contracts with notice provisions, *infra*, p. 30, also applies in this instance. We clarify further that, under this proposal, in order for utilities to protect themselves against a customer exercising (inside or outside the three-year transition period) a notice of termination provision which takes effect *outside* of the three-year transition period, utilities must propose to change their existing contracts *within* the three-year period. However, the rebuttable presumption will apply in this instance as well.

[38] *See* United Gas Pipeline Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956); FPC v. Sierra Pacific Power Co., 350 U.S. 348 (1956).

[39] Papago Tribal Utility Authority v. FERC, 723 F.2d at 950, 953 (D.C. Cir. 1983).

[40] 350 U.S. at 355.

This will depend on the magnitude of stranded costs and the prospect or lack thereof for recovering such costs from ratepayers. The prospect of not recovering from ratepayers significant amounts of stranded costs could seriously erode a utility's access to capital markets, or could drive the utility's cost of capital to unprecedented levels. This high cost of capital could precipitate other customers leaving the system which, in turn, could cause others to leave. Such a spiral could be difficult to stop once begun. Second, if some customers are permitted to leave their suppliers without paying for stranded costs, this may cause an excessive burden on the remaining customers who for whatever reason cannot leave and therefore may have to bear those costs. For these reasons, our preliminary view is that it is in the public interest to permit public utilities with *Mobile-Sierra* contracts a limited opportunity to unilaterally propose contract changes to address stranded costs, if those contracts do not already explicitly address stranded costs.[41]

We clarify that if a public utility unilaterally files a proposed stranded cost amendment under either section 205 or 206, this does not necessarily mean that the Commission ultimately will find it appropriate to allow any amendment. The same is true for customer complaints under section 206. In addition, the Commission intends to allow the customer to the contract to present any other proposed stranded cost amendment which it believes reasonable.[42] Further, in analyzing what is an appropriate stranded cost amendment in the particular circumstances, we will take into account the other contractual provisions and hear arguments as to why other contractual provisions may also need to be amended.

The Commission invites public comment on the proposal to establish a transition period during which utilities may renegotiate their existing contracts. The Commission also invites public comment on whether public utilities or customers with Mobile-Sierra contracts should be able to make unilateral filings or file complaints. The Commission also invites comments on whether the Commission should make a Mobile-Sierra public interest finding based on company-specific findings instead of generic industry-wide findings.

The Commission is uncertain how long the proposed transition period should be. On the one hand, the renegotiation process is likely to be time-consuming, since difficult issues are at stake and some utilities have multiple contracts and may therefore be engaged in negotiations with a number of parties at the same time. On the other hand, we do not want to extend the transition period more than is necessary, since the uncertainty concerning stranded cost recovery may inhibit wholesale customers from pursuing more efficient or cheaper supply alternatives. The Commission's preliminary view is that a transition period of three years strikes an appropriate balance. *However, the Commission invites comment on the appropriate length of the proposed transition period.*

The Commission requests that utility commenters include in their comments an estimate of the number of requirements contracts that they would seek to renegotiate to address stranded cost issues. How many of these contracts are silent on this question? How many have notice provisions, and of what duration? The Commission requests that responding utilities estimate the amount of stranded costs associated with such contracts, the relationship of the estimated stranded costs to the utility's total costs or revenues, and the potential cost shift to remaining customers.

3. Recovery of Wholesale Stranded Costs in Wholesale Transmission Rates

The Commission has previously authorized provisions that permit public utilities to seek recovery of stranded costs in wholesale transmission rates in the context of utilities filing transmission tariffs of general applicability, *e.g., Entergy.*

As discussed in the prior section, during the transition period the proposed regulations would permit utilities to file rates for transmission services that include stranded costs associated with existing wholesale requirements contracts, but only if: (1) the wholesale requirements customer gives notice pursuant to the contract, prior to the end of the three-year transition period, that it will no longer purchase all or part of its requirements from the selling utility but instead will purchase unbundled section 205 or section 211 transmission services from the utility in order to reach a different supplier of electric energy and (2) the transmission services will begin prior to the end of the three-year transition period. After the transition period, public utilities and transmitting utilities would no longer be permitted to recover wholesale stranded costs in rates for transmission services under section 205 or 211 of the FPA.

The Commission believes that utilities should retain the option of seeking recovery of stranded costs in rates for transmission services during the transition period, but only in the limited circumstance described.[43] The Commission is proposing this limitation in order to encourage utilities and their customers to negotiate stranded cost provisions in accordance with the other provisions of the proposed regulations.

The Commission proposes to apply the above limitations on recovery of stranded costs in wholesale transmission rates to all utilities, whether or not they currently have on file transmission tariffs containing stranded cost provisions.[44] *The Commission seeks comment on this proposal.*

Filings to recover stranded costs in transmission rates during the transition period will be permitted regardless of whether the service is voluntarily provided (under section 205 of the FPA pursuant to an open-access tariff, a tariff of general applicability or an individual contract) or mandated under section 211 of the FPA. *However, the Commission invites public comment on the issue of whether stranded cost recovery should be different depending on whether transmission service is under section 205 or 211.*

As noted earlier, *supra*, section III.C., the proposed regulations allow utilities an opportunity to seek direct assignment of stranded costs to the departing wholesale customer. *We request comment on whether, in lieu of direct assignment, utilities should be able to seek a general surcharge to all of their transmission customers to cover the costs stranded by a departing customer.*[45]

The Commission does not in this proposed rulemaking address who will

[41] Customers with *Mobile-Sierra* contracts that do not explicitly address stranded costs may also file complaints under section 206 of the FPA, within the three-year transition period to propose to address stranded costs in existing contracts.

[42] If the customer is the initial proponent of the change, it will bear the burden under section 206 of the FPA.

[43] *See also, supra*, n.1 (discussing transmitting utilities that are not public utilities).

[44] *See, e.g., Entergy.*

[45] For example, the Commission followed this type of approach in Order No. 636 with respect to gas supply realignment charges. *See* Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 57 FR 13267 (Apr. 16, 1992), III FERC Stats. & Regs. Preambles ¶ 30,939 at 30 457–460 (Apr. 8, 1992), *order on reh'g*, Order No. 636–A, 57 FR 36128 (Aug. 12, 1992), III FERC Stats. & Regs. Preambles ¶ 30,950 (Aug 3 1992), *order on reh'g*, Order No. 636–B, 57 FR 57911 (Dec. 8 1992), 61 FERC ¶ 61,272 (1992), *appeal re-docketed sub nom.*, Atlanta Gas Light Company and Chattanooga Gas Company *et al.* v. FERC No 94–1171 (D.C. Cir. May 27, 1994)

bear the stranded costs caused by a departing customer if the Commission finds that the utility had no reasonable expectation of continuing to serve that customer. Under the proposed rule, the costs cannot be recovered from the departing customer through transmission rates for that customer or through a unilateral exit fee amendment in that customer's power sales contract. We anticipate that in such a case a public utility will seek in subsequent requirements rate cases to have the costs reallocated among the remaining customers on its system.

The Commission recognizes that stranded costs can occur when a customer fails to renew its requirements contract and, instead of obtaining unbundled transmission services from its former requirements supplier, obtains unbundled transmission services from another utility. We anticipate that in such a case any prudent costs that are stranded as a result of the customer's departure would be reallocated to remaining customers in the utility's next requirements rate case. This results in the departing customer bearing none of the costs which it may have caused to be stranded. *We request comments on how the Commission should deal with such costs.*

4. Filing Requirements for Wholesale Stranded Cost Recovery

The Commission proposes to amend Part 35, Chapter I, Title 18 of the *Code of Federal Regulations* to establish filing requirements for public utilities (as defined in FPA section 201(e)) and transmitting utilities (as defined in FPA section 3(23)) that seek stranded cost recovery. Our view is that the only circumstance in which transmitting utilities that are not also public utilities may seek stranded cost recovery from this Commission is through rates for transmission services under FPA sections 211 and 212.

The proposed regulations define "wholesale stranded cost" as "any legitimate, prudent and verifiable cost incurred by a public utility or transmitting utility to provide service to a wholesale requirements customer that subsequently becomes, in whole or in part, an unbundled transmission customer of such public utility or transmitting utility."[46]

The proposed regulations would permit a public utility or transmitting utility to seek recovery of wholesale stranded costs as follows. First, for stranded costs associated with new wholesale requirements contracts (*i.e.*, any wholesale requirements contract executed after the date that this order is published in the **Federal Register**), the proposed regulations would allow recovery of stranded costs only if the contract explicitly provides for recovery of stranded costs.

Second, for existing wholesale requirements contracts (*i.e.*, any wholesale requirements contract executed on or before the date that this order is published in the **Federal Register**), the proposed regulations would specify that a utility may not recover stranded costs associated with such contract if recovery is explicitly prohibited by the contract (including associated settlements) or by any power sales or transmission tariff on file with the Commission.[47]

Third, for existing wholesale requirements contracts that do not address stranded costs through exit fee or other explicit stranded cost provisions, the proposed rule would allow a public utility to seek recovery of stranded costs only if: (1) The existing contract contains a specific provision allowing recovery of stranded costs; or (2) the parties to the existing contract renegotiate the contract in accordance with this rule and file an amendment dealing with stranded costs prior to the expiration of the three-year transition period; or (3) if the parties to the existing contract do not renegotiate a stranded cost amendment, the selling utility unilaterally files, no later than the end of the transition period, a proposed stranded cost amendment to the parties' existing contract; or (4) if the parties to the existing contract do not renegotiate an amendment, the public utility files a request to recover stranded costs in its transmission rates under FPA sections 205–206, or 211–212, under the limited circumstance described in section III.C.(3) herein.

Fourth, if the selling utility under an existing wholesale requirements contract is a transmitting utility but not also a public utility, and the contract does not address stranded costs through an explicit exit fee or other stranded cost provision, the transmitting utility may file a request to recover stranded costs in transmission rates under FPA sections 211–212, as described in section III.C.(3) herein.

5. Evidentiary Demonstration Necessary for Wholesale Stranded Cost Recovery

In *Entergy* and subsequent cases, the Commission provided guidance concerning the evidentiary demonstration that utilities must make to recover stranded costs in wholesale transmission rates. The Commission believes that this demonstration is still relevant and appropriate. We therefore propose to apply it to any proposal for extra-contractual recovery in accordance with this proposed rule.[48]

The following is the proposed demonstration that a public utility or transmitting utility must satisfy in order to recover stranded costs in wholesale transmission rates, and that a public utility must satisfy if it proposes a unilateral amendment to its wholesale requirements contract:

(1) A utility must show that it incurred stranded costs based on an expectation that was reasonable when the costs were incurred that the applicable contract would be extended;

(2) A utility must show that the stranded costs it incurred are not more than the customer would have contributed to the utility had the customer remained a wholesale requirements customer of the utility;

(3) A utility must show that it has taken and will take reasonable and prudent measures to mitigate stranded costs.

The question of whether a utility had a reasonable expectation of continuing to serve a customer is a factual matter that will depend on the evidence produced in each case. Whether the utility's expectation was reasonable will depend on the circumstances at the time that stranded costs were incurred, including, for instance, whether the customer at that time had access to alternative suppliers. A utility also must offer evidence that its expectation was based on the actual conduct or course of dealing of the two parties (the utility and its customer). However, the Commission does not believe it is in the public interest to have prolonged litigation on these issues. Therefore, we will provide general guidance as to the type of evidence that would tend to prove or disprove the existence of a reasonable expectation.

When a public utility seeks to include certain types of construction-work-in-

[46] In theory, a utility's stranded costs could include transmission and distribution facilities. However, when a customer switches from being a requirements customer and becomes a transmission service-only customer, the public utility or transmitting utility probably will continue to provide roughly equivalent amounts of transmission services and, if relevant, distribution services. Thus, the Commission's preliminary view is that stranded costs will primarily be related to power production, *i.e.*, generation costs.

[47] See Maine Public Service Company 61 FERC ¶ 61 319 (1992) *reh'g denied*, 62 FERC ¶ 61,226 (1993).

[48] This would include public utilities who unilaterally seek to amend an existing wholesale requirements contract as described herein and public utilities and transmitting utilities that seek to recover stranded costs through transmission rates.

progress (CWIP) in rate base for a particular customer, the utility must use forward-looking cost allocators (estimates of the customer's cost responsibility when the facility will be in service).[49] Therefore, the fact that a utility has recovered CWIP from a particular customer (without the customer's objection) may provide persuasive evidence of a reasonable expectation that it would continue to serve that customer for a certain term. The Commission is aware, however, that few utilities have taken advantage of the CWIP rule, perhaps because few utilities have been undertaking major construction projects.

A reasonable expectation that a contract would be extended could also be shown by communications between supplier and customer concerning system planning. For example, if a buyer has indicated that the seller should continue to include the buyer's load in the seller's resource planning beyond the contract term or has indicated to the seller that it has not taken active steps to secure a new supplier, the seller may have legitimately had a reasonable expectation of continuing the service, particularly if the parties have routinely extended the contract in the past.

On the other hand, a utility very likely would have no reasonable expectation that a contract would be extended if the contract includes a notice of cancellation provision. Therefore, there will be a rebuttable presumption that if a contract contains a notice provision, the utility had no reasonable expectation of serving the customer beyond the period provided for in the notice provision. *The Commission invites comments on all aspects of the evidence necessary to demonstrate a reasonable expectation. We specifically request comments on our proposal that any notice provision creates a rebuttable presumption of no reasonable expectation, or whether we should adopt a minimum notice period that would provide a presumption that the utility had no reasonable expectation of continuing to provide service beyond the notice period, e.g., a five-year notice period.*

The second element described above concerns reasonable compensation for stranded costs. *We request comments on what is reasonable compensation:*

(a) Would it be reasonable for the Commission to limit the annual amount of stranded costs that a former requirements customer must pay to be no more than what the customer would have contributed to the utility's capital (customer revenues minus variable costs), or would some alternative concept be appropriate?

(b) Would it be reasonable for the Commission to limit the future time period over which a customer's liability for stranded costs would be determined? That is, the present value of the customer's liability could be the discounted value of an annual amount for a limited time period. This total amount could be paid in a lump sum or over any mutually agreeable period. The limited time period over which the customer's liability is determined could be called the reasonable compensation period. If so:

(i) Would the Commission apply the reasonable compensation period to assess the reasonableness of an exit fee in a revised requirements contract as well as a transmission surcharge?

(ii) How long should such a time period be, e.g., five years or ten years or some other period; and

(iii) When should such a period begin, e.g., if five years is a reasonable time over which a customer is liable for stranded costs, does the five-year period begin when the Commission adopts a final rule or when the utility files for stranded cost recovery in the future?

(c) Should the length of a reasonable compensation period be based on what would constitute a reasonable notice period in requirements contracts or would some other concept be appropriate?

(d) Establishing a reasonable compensation period effectively would also establish a future date beyond which requirements customers would no longer have any liability for stranded costs, either as an exit fee in revised requirements contracts or as a surcharge on transmission rates. Would this be appropriate? In responding, commenters should keep in mind that the concept of a reasonable time period for computing stranded cost liability is independent of the proposed three-year recontracting period for which the Commission is also requesting separate comments.

The third element described above concerns mitigation measures. Adequate mitigation measures might include: (1) Evidence that the utility has tried to market the asset or assets, market the generating capacity, reconfigure or delay investment in or purchase of new generating capacity, or reform fuel supply contracts that form the basis for the stranded costs charge, and that such measures to mitigate stranded costs will continue for the entire period for which the stranded costs charge will be paid; or (2) the utility has given the customer the option to market the generating capacity or supply of fuel or purchased power that forms the basis for the stranded costs charge in order to afford the customer an opportunity to lower its stranded costs charge.

The Commission expects the utility to use its best efforts to market its existing generating capacity as one way of mitigating costs. The Commission would expect to require revenues generated from sales of the capacity to be credited against the stranded costs to be recovered through transmission rates to the departing customer.

The Commission invites comment on the requirement that a utility must demonstrate reasonable measures to mitigate stranded costs and what such measures may include.

The Commission also invites comment on how to determine the amount of stranded costs that the departing customer may be liable to pay. In *Entergy*, the Commission said that stranded costs could be no more than the revenues the departing customer would pay to the seller over the life of the contract. However, given that parties to requirements contracts are encouraged to include exit conditions (including notice provisions) in new contracts and renegotiated existing requirements contracts, it can be argued that stranded cost recovery should be capped at the revenues that the departing customer would pay after having given notice to the seller that it wishes to end all or some portion of its purchase. The problem then becomes what is a reasonable notice period, given the needs of sellers to adequately plan supply and the ability of sellers to find alternative buyers for power not taken by existing buyers. This issue pertains not only to determining stranded cost recovery in transmission rates but also to determining appropriate stranded cost provisions in new requirements contracts. *The Commission invites comments on reasonable notice periods.*

6. Recovery of Retail Stranded Costs

As discussed earlier, there are two general ways in which retail stranded costs are likely to occur:[50] (1) A retail franchise customer may, through State or local government action, become a wholesale customer who can then obtain unbundled transmission services in order to reach a new power supplier; [51] (2) a retail franchise customer may obtain voluntary unbundled retail transmission services from its existing power supplier in order to reach a new power supplier, or there may be a State or local action that results in the existing supplier

[49] *See* 18 CFR 35.25(c)(4).

[50] Retail stranded costs may result from "self-help" actions such as customer self-generation, and this has long been a fact of life for utilities. *See, supra*, n.18. This proceeding does not address these situations.

[51] In addition, certain retail customers may become retail customers of a newly-created wholesale entity.

providing such retail transmission services.

In the first example (a retail franchise customer becomes an unbundled wholesale power and transmission customer), the Commission clearly has exclusive jurisdiction under sections 201, 205 and 206, or section 212 of the FPA, over the rate for the wholesale interstate transmission services[52] used by the new wholesale entity in order to reach its new generation supplier. In the second example, in which a retail franchise customer becomes a retail unbundled transmission customer of its former franchise utility, and a retail power customer of another utility, we conclude that we also have exclusive jurisdiction over the rates, terms and conditions for the retail interstate transmission services.[53]

(i) Jurisdictional Analysis

The Commission's jurisdiction over the rates, terms and conditions of transmission in interstate commerce derives from Congress' power to regulate interstate commerce under the United States Constitution[54] and the FPA. When Congress enacted the FPA, it gave the Commission exclusive jurisdiction over the rates, terms and conditions of transmission in interstate commerce by public utilities. The Supremacy Clause of the Constitution provides that federal laws enacted pursuant to the powers delegated to the federal government by the United States Constitution are the supreme law of the land.[55] Accordingly, to the extent that retail wheeling involves transmission in interstate commerce by public utilities, the rates, terms and conditions of such service are subject to the exclusive jurisdiction of the Commission, and the rates for such service must be filed with the Commission.[56]

Section 201 of the FPA, by its very words, does not limit the Commission's jurisdiction over transmission to transmission of electric energy in interstate commerce sold at wholesale.

Subsection 201(b)(1) of the FPA provides:

> (b)(1) The provisions of this Part shall apply to the transmission of electric energy in interstate commerce and to the sale of electric energy at wholesale in interstate commerce * * * The Commission shall have jurisdiction over all facilities for such transmission or sale of electric energy * * *

16 U.S.C. § 824(b)(1).

Much of the legislative history of the FPA indicates that Congress intended the Commission's jurisdiction to extend only to those matters which the *Attleboro* decision[57] held to be beyond the reach of the States. For instance, the report accompanying the Senate bill states that subsection (b) "leaves to the States the authority to fix local rates even in cases where the energy is brought in from another state."[58] The Senate report also states:

> The rate-making powers of the Commission are confined to those wholesale transactions which the Supreme Court held in [*Attleboro*] to be beyond the reach of the States. Jurisdiction is asserted also over all interstate transmission lines whether or not there is sale of the energy carried by those lines. * * *

S. Rep. No. 621, 74th Cong., 1st Sess. 48 (1935). Thus, federal jurisdiction over transmission lines is not dependent on whether those lines are used to effect a sale, wholesale or otherwise.

While the provisions of section 201 reserving certain regulatory authority to the States have been interpreted narrowly,[59] the courts have construed "in interstate commerce" broadly. The term does not turn on whether the contract path for a particular power or transmission sale crosses state lines, but rather follows the physical flow of electricity. Because of the highly integrated nature of the electric system, this results in most transmission of electric energy being "in interstate commerce."

For example, in *Jersey Central Power & Light Co.* v. *FPC*, 319 U.S. 61 (1943), the Court stated:

> It is impossible for us to conclude that this definition [of transmission in interstate commerce] means less than it says and applies only to the energy at the instant it crosses the state line and so only to the facilities which cross the line and only to the company which owns the facilities that cross the line.

319 U.S. at 71. Thus, a critical question regarding the jurisdictional status of a wheeling transaction is whether the facilities used to provide the service transmit electric energy in interstate commerce. *See also Connecticut Light & Power Co.* v. *FPC*, 324 U.S. 515 (1945) (*CL&P*); *FPC* v. *Florida Power & Light Co.*, 404 U.S. 453 (1972). In *CL&P*, the Court emphasized that whether certain facilities transmit electric energy in interstate commerce is more a technical than a legal question. The Court stated, "[f]ederal jurisdiction was to follow the flow of electric energy, an engineering and scientific, rather than a legalistic or governmental, test." 324 U.S. at 529.

In all of the above cases, the Court's decisions turned on whether energy flowed in interstate commerce as a technical matter. The decisions did not turn on whether the energy flowing in interstate commerce was being sold for resale or was being sold to an end user. However, under FPA section 201(b), the Commission does not have jurisdiction over facilities used in local distribution. In *CL&P*, the Court stated that local distribution facilities are exempt from Commission jurisdiction even if those facilities "carry no energy except extra-state energy." 324 U.S. at 531. The Court rejected the argument that transmission and local distribution facilities could be distinguished by the proportion or amount of interstate energy that they carried:

> We do not find that Congress has conditioned the jurisdiction of the Commission upon any particular volume or proportion of interstate energy involved, and we do not think it would be appropriate to supply such a jurisdictional limitation by construction.

324 U.S. at 536. The determination of whether facilities are local distribution facilities remains a factual matter to be decided in the first instance by the Commission. *See FPC* v. *Southern California Edison Co.*, 376 U.S. 205 (1964).

While the precise demarcation between transmission and local distribution remains unclear, and the Commission has not yet definitively addressed this issue, there is nothing in the statute, its legislative history, or the case law to indicate that the Commission's jurisdiction over rates, terms and conditions of transmission in interstate commerce extends only to

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[52] Under FPA section 211, the Commission's authority to order wheeling does not turn on whether the transmission services will be in interstate commerce.

[53] We make no determination here regarding the physical or jurisdictional distinctions between transmission and local distribution. Section 201(b)(1) of the FPA states that the Commission has no jurisdiction, except as specifically provided in Parts II and III of the FPA, over facilities used for local distribution. Nor do we address here whether States have authority to order retail wheeling in interstate commerce.

[54] U.S. Const. Art. I, § 8, cl.3.

[55] U.S. Const. Art. VI, cl.2.

[56] *See* Montana-Dakota Utilities Co. v. Northwestern Public Service Co., 341 U.S. 246, 251–52 (1951) (*Montana-Dakota*).

[57] Public Utilities Commission v. Attleboro Steam & Electric Co., 273 U.S. 83 (1927) (*Attleboro*). In *Attleboro*, the Supreme Court held that State regulation of the interstate sale of electricity was barred by the Commerce Clause because such regulation would impose a "direct burden" on interstate commerce.

[58] S. Rep. No. 621, 74th Cong., 1st Sess. 48 (1935). *See also* H.R. Rep. No. 1318, 74th Cong., 1st Sess. 8 (1935).

[59] While Congress may exercise its Commerce Clause authority to grant the States that "ability to restrict the flow of interstate commerce that they would not otherwise enjoy," Lewis v. BT Investment Managers, Inc., 447 U.S. 27, 44 (1980), States may not exercise such regulatory powers unless Congress has expressly stated its intention to make such an affirmative grant of power. New England Power Co. v. New Hampshire, 55 U.S. 331, 343 (1982).

wholesale transmission and not retail transmission.

(ii) Treatment of Retail Costs

Because the Commission has jurisdiction over the rates, terms and conditions of both wholesale and retail transmission services in interstate commerce by public utilities, arguably it may allow retail stranded cost recovery in rates for either wholesale or retail transmission services. There nevertheless may be important legal or policy reasons to exclude retail stranded costs from transmission rates. As noted earlier, however, the Commission has been presented only with the question of whether it should permit public utilities to seek recovery in *wholesale* transmission rates of stranded investment costs incurred to serve former retail customers (Scenario 2, section III.A.). The Commission has not been presented with the question of whether it should permit public utilities to seek recovery in *retail* transmission rates of stranded costs incurred to serve the customer when it was a retail customer (Scenario 3, section III.A.).

While we believe the Commission has the authority to address retail stranded costs through its jurisdiction over the rates, terms and conditions of interstate transmission services used by retail or newly-created wholesale customers, we also believe that the recovery of the costs of transition to competition at the retail level is a matter that should be addressed by State authorities. This is because retail stranded costs will occur primarily as a result of State and local decisionmaking regarding retail franchise areas and the creation of new wholesale entities. In particular, the Commission believes it is incumbent upon states to deal with the consequences of stranded costs that occur as a result of retail wheeling. Our strong policy preference is that states explicitly address the issue. State and local decisionmakers have a first-hand understanding of the regulatory bargain with respect to stranded costs incurred to serve retail customers, and they are familiar with the planning, investment and purchase activities of the utilities they regulate.

There are a number of procedural mechanisms which we believe States can use to address retail stranded costs. For example, a State that permits a retail franchise customer to become a wholesale entity may consider whether to impose an exit fee prior to, or as a condition of, creating the wholesale entity. Similarly, a State may consider whether to require payment of an exit fee prior to a franchise customer being permitted to obtain unbundled retail wheeling. In situations in which local distribution facilities are used by a retail wheeling customer, the State may consider whether to allow recovery of stranded costs through rates for local distribution services. If a State decides not to impose exit fees, or a surcharge through distribution rates, it may consider whether to allow recovery of stranded costs from remaining customers.

In situations in which a new wholesale entity obtains ownership or control of a franchise utility's transmission or distribution facilities, it is possible that State condemnation proceedings will provide a forum for a utility to seek recovery of any stranded costs. *What types of payments, if any, do new municipal utilities make to prior service providers? Do these reimbursements allow for recovery of stranded generation costs? Is there variation among the States as to the legal ability of local entities to municipalize? Is there variation among the States as to the payments made by new municipal utilities to previous suppliers?*

There may, of course, be other mechanisms which States can use to determine whether to allow stranded cost recovery, and from whom to allow recovery. *The Commission solicits comments on what other mechanisms might be used, and whether these mechanisms are adequate to deal with retail stranded costs.*

While our strong preference is for States to address retail stranded costs in whatever way they deem appropriate, we are willing to explore whether there are circumstances under which this Commission should consider claims for recovery of retail stranded costs. *We will therefore present two proposed alternatives regarding retail stranded costs, and seek comment on both.* However, as noted above, we express no preference in favor of either alternative.

Under the first alternative, the proposed rule provides that if in a specific circumstance an appropriate State authority explicitly considers and deals with retail stranded costs and there is no conflict within or among State regulatory bodies regarding a State's disposition of the issue, this Commission will not entertain a request for retail stranded cost recovery. However, in the absence of a clear expression by an appropriate State authority that it has dealt with the issue, or in the event of a conflict between States [60] or among State officials within a single state, the Commission proposes to entertain requests to recover retail stranded costs.

Under the second alternative, the proposed rule provides that the Commission will not entertain any request for recovery of retail stranded costs. Under this proposal, State or local authorities will be the only forum for addressing the issue. The aforementioned preference for States to address retail stranded costs in whatever way they deem appropriate, the need for regulatory certainty, and the States' knowledge and expertise regarding utility planning, investment and purchase activities arguably favors the second alterative. *However, we solicit comment on whether there should be limited exceptions to the second alternative rule.*

As to both alternatives, the Commission solicits comments on the following questions.

Are there circumstances under which it is not necessarily appropriate to defer to the States (e.g., where one State takes an action regarding retail stranded costs which has adverse consequences for another State)? Are there circumstances under which a State may not have an adequate mechanism for addressing retail stranded costs, and may want the Commission to provide a forum?

If a State does not explicitly address stranded costs resulting from an action that allows retail customers to purchase from a supplier other than the franchised utility, should this Commission entertain requests from the utilities left with the stranded costs? Beyond silence from the State, are there other factors that the Commission should consider before accepting requests for retail stranded cost recovery? Specifically, would financial health and possible adverse impacts on reliability be sufficient reason for Federal action?

The Commission further solicits comments on the following questions:

(1) Does the Commission have legal authority to allow retail stranded costs in rates for wholesale transmission services? Should the Commission do so as a matter of policy? If so, which costs?

(2) Does the Commission have legal authority to allow retail stranded costs

[60] For example, a conflict between States could result if State A's legislature allows a former retail customer to become a wholesale entity and the wholesale entity obtains transmission services so that it now takes only one half of its 100 MW load from its current utility supplier, which is a multistate utility. As a result of State A's action, the utility has retail stranded costs for 50 MW of generation. State A's commission allocates the utility's retail costs so that State A's retail customers are responsible for only one half of the stranded costs. State B's commission, the other State in which the utility operates, allocates the utility's retail costs so that none of the retail stranded costs are allocated to State B's retail customers.

in rates for retail transmission service? Should the Commission do so as a matter of policy? If so, which costs?

(3) Does FPA section 212 give the Commission legal authority to allow recovery of retail stranded costs in rates for wholesale transmission services under FPA section 211?

(4) Are there legal or policy reasons why in Scenario 2 (p. 15), the Commission should entertain requests for recovery of retail stranded costs in wholesale transmission rates, but should not entertain requests for recovery of retail stranded costs in retail transmission rates in Scenario 3 (section III.A.)?

If the Commission determines that it will entertain requests for recovery of retail stranded costs through rates for wholesale or retail transmission in interstate commerce, the Commission proposes not to apply the "reasonable expectation" test used for wholesale stranded costs. To apply such a test would require a hearing on whether the franchise utility had a reasonable expectation, *e.g.*, of having its franchise renewed, of municipalization occurring, or of a section 212(h) non-sham wholesale entity being created by the State or local authority. No such test appears warranted because, in general, there is at the retail level an obligation to serve which is much stronger than any contractual obligation to serve at the wholesale level. The regulatory compact that has governed provision of retail service includes an implicit obligation to purchase concomitant with the utility's obligation to serve.

The Commission requests comments on whether these assumptions are correct, i.e., is the reasonable expectation test inapplicable to retail stranded costs? Are there situations, for instance, in which utilities could have expected municipalization to occur based on an established course of dealing?

Based on these assumptions, if the Commission determines that it will entertain requests for retail stranded costs, the proposed regulations for retail stranded costs would require only a showing of the dollar amounts that have been stranded as a result of the retail customer no longer taking bundled service from the franchise utility's system. In essence, this results in direct assignment of retail stranded costs to the former franchise customer. *The Commission requests comments on how to determine retail stranded costs as a general matter. Is there a future time when a retail customer's action of leaving a local franchise no longer has any adverse economic consequences on the franchise utility? If so, what is an appropriate way to make such a determination?*

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)[61] requires that rulemakings contain either a description and analysis of the effect the proposed rule will have on small entities or a certification that the rule will not have a substantial economic effect on a substantial number of small entities. Because the entities that would be required to comply with the proposed rule are public utilities and transmitting utilities that do not fall within the RFA's definition of small entities,[62] the Commission certifies that this rule will not have a "significant economic impact on a substantial number of small entities."

V. Environmental Statement

Commission regulations require the preparation of an environmental assessment or an environmental impact statement for any Commission action that may have a significant effect on the human environment.[63] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment.[64] No environmental consideration is necessary for the promulgation of a rule that involves electric rate filings submitted by public utilities under sections 205 and 206 of the FPA.[65] The proposed rule specifies the standards and procedures that public utilities must follow in a rate filing proceeding in order to seek recovery of stranded costs. Accordingly, no environmental consideration of the proposed rule is necessary.

VI. Information Collection Statement

The Office of Management and Budget's (OMB) regulations[66] require that OMB approve certain information and recordkeeping requirements imposed by an agency.

The information collection requirements in the proposed regulations are contained in FERC–516, "Electric Rate Filings" (OMB approval No. 1902–0096). The Commission uses the data collected in this information collection to carry out its responsibilities under Part II of the FPA. The Commission's Office of Electric Power Regulation uses the data to review electric rate filings. The data enable the Commission to examine and evaluate the utility's costs and rate of return.

The Commission is submitting notification of this proposed rule to OMB. Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426 [Attention: Michael Miller, Information Services Division, (202) 208–1415]. Comments on the requirements of the proposed rule can also be sent to the Office of Information and Regulatory Affairs of OMB [Attention: Desk Officer for Federal Energy Regulatory Commission].

VII. Public Comment Procedures

The Commission invites comments on the proposed rule from interested persons. An original and 14 copies of written comments on the proposed rule must be filed with the Commission no later than September 9, 1994.

The Commission will also permit interested persons to submit reply comments in response to the initial comments filed in this proceeding. Reply comments should be submitted no later than October 11, 1994.

In addition, commenters are requested to submit a copy of their comments on a 3½ inch diskette in ASCII II format. All comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, and should refer to Docket No. RM94–7–000.

All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's public reference room at 941 North Capitol Street, NE., Washington, DC, 20426, during regular business hours.

List of Subjects in 18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

By direction of the Commission.

Lois D. Cashell,

Secretary.

In consideration of the foregoing, the Commission proposes to amend Part 35, Chapter I, Title 18 of the Code of Federal Regulations, as set forth below.

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[61] 5 U.S.C. 601–612.

[62] 5 U.S.C. 601(3) (citing section 3 of the Small Business Act, 15 U.S.C. 632). Section 3 of the Small Business Act defines a "small-business concern" as a business which is independently owned and operated and which is not dominant in its field of operation. 15 U.S.C. 632(a).

[63] Regulations Implementing National Environmental Policy Act, FERC Statutes & Regulations ¶ 30,783 (1987), 52 FR 47897 (Dec. 17, 1987).

[64] 18 CFR 380.4.

[65] 18 CFR 380.4(a)(15).

[66] 5 CFR 1320.13.

PART 35—FILING OF RATE SCHEDULES

1. The authority citation for Part 35 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

2. Part 35 is amended by adding § 35.26 consisting of paragraphs (a), (b), (c), and one of two proposed alternative paragraphs (d), to read as follows:

§ 35.26 Recovery of stranded costs by public utilities and transmitting utilities.

(a) *Purpose.* This section establishes the standards that a public utility or transmitting utility must satisfy in order to recover stranded costs.

(b) *Definitions.* (1) *Wholesale stranded cost* means any legitimate, prudent and verifiable cost incurred by a public utility or a transmitting utility to provide service to a wholesale requirements customer that subsequently becomes, in whole or in part, an unbundled transmission services customer of that public utility or transmitting utility.

(2) *Wholesale requirements customer* means a customer for whom a public utility or transmitting utility provides by contract any portion of its bundled wholesale power requirements.

(3) *Wholesale transmission services* has the same meaning as provided in section 3(24) of the Federal Power Act: the transmission of electric energy sold, or to be sold, at wholesale in interstate commerce.

(4) *Wholesale requirements contract* means a contract under which a public utility or transmitting utility provides any portion of a customer's bundled wholesale power requirements.

(5) *Retail stranded cost* means any legitimate, prudent and verifiable cost incurred by a public utility or transmitting utility to provide service to a retail franchise customer that subsequently becomes, in whole or in part, directly or indirectly, an unbundled transmission services customer of that public utility or transmitting utility.

(6) *Retail transmission services* means the transmission of electric energy sold, or to be sold, in interstate commerce directly to a retail customer.

(7) *New contract* means any contract executed after July 11, 1994.

(8) *Existing contract* means any contract executed on or before July 11, 1994.

(c) *Recovery of Wholesale Stranded Costs.*

(1) *General requirement.* A public utility or transmitting utility will be allowed to seek recovery of wholesale stranded costs only as follows:

(i) No public utility or transmitting utility may seek recovery of wholesale stranded costs if such recovery is explicitly prohibited by a contract or settlement agreement, or by any power sales or transmission rate schedule or tariff.

(ii) If wholesale stranded costs are associated with a new wholesale requirements contract containing an exit fee or other explicit stranded cost provision, and the seller under the contract is a public utility, the public utility may seek recovery of such costs, in accordance with the contract, through rates for electric energy under sections 205–206 of the FPA. The public utility may not seek recovery of such costs through any transmission rate for section 205 or 211 transmission services.

(iii) If wholesale stranded costs are associated with a new wholesale requirements contract, and the seller under the contract is a transmitting utility but not also a public utility, the transmitting utility may not seek an order from the Commission allowing recovery of such costs.

(iv) If wholesale stranded costs are associated with an existing wholesale requirements contract, if the seller under such contract is a public utility, and if the contract does not contain an exit fee or other explicit stranded cost provision, the parties to the contract must make a good faith attempt to negotiate an explicit stranded cost amendment to the contract by [a date three years from the date a final rule is published in the **Federal Register**]. If the parties negotiate a proposed amendment, the public utility seller under the contract must file the proposed amendment under section 205 or 206 of the FPA no later than [the end of the three-year period]. If the parties do not negotiate an explicit stranded cost amendment, the public utility seller may unilaterally file a proposed stranded cost amendment no later than [the end of the three-year transition period]. In such case, the customer may propose an alternate amendment. The filing or proposal of such amendment(s) will not affect any contractual rights the customer may have to continue taking service beyond [the end of the three-year transition period].

(v) If a customer under an existing wholesale requirements contract, prior to [the end of the three-year period], gives notice pursuant to the contract that it will no longer purchase requirements service under the contract but will purchase unbundled section 205 or section 211 transmission services from the selling utility in order to reach a different supplier of electric energy, and the transmission services will commence prior to [the end of the transition period], a public utility or transmitting utility may file by [the end of the transition period] a proposal to recover stranded costs in rates for the wholesale transmission services.

(2) *Evidentiary Demonstration for Wholesale Stranded Cost Recovery.* A public utility or transmitting utility seeking to recover wholesale stranded costs in accordance with paragraphs (c)(1) (iv) and (v) of this section must demonstrate that:

(i) it incurred stranded costs on behalf of its wholesale requirements customer based on an expectation that was reasonable when the costs were incurred that the customer's contract would be extended;

(ii) the stranded costs are not more than the customer would have contributed to the utility had the customer remained a wholesale requirements customer of the utility; and

(iii) it has and will take reasonable measures to mitigate stranded costs.

(3) *Rebuttable Presumption.* If a public utility or transmitting utility seeks recovery of wholesale stranded costs associated with an existing contract, as permitted in paragraph(c)(1) of this section, and the existing contract contains a notice provision, there will be a rebuttable presumption that the utility had no reasonable expectation of continuing to serve the customer beyond the term of the notice provision.

Alternative A:

(d) *Recovery of Retail Stranded Costs.*

(1) General requirement.

A public utility or transmitting utility may seek to recover retail stranded costs through rates for wholesale or retail transmission services only if: (i) an appropriate State or local regulatory body has not explicitly considered and addressed retail stranded costs; or (ii) an appropriate State or local regulatory body has explicitly addressed stranded costs, but there is a conflict within or among State regulatory bodies regarding the State or local authority's disposition of the issue.

(2) *Evidentiary Demonstration Necessary for Retail Stranded Cost Recovery.*

A public utility or transmitting utility seeking to recover retail stranded costs must demonstrate that:

(i) the stranded costs are not more than the customer would have contributed to the utility had the customer remained a retail customer of the utility; and

(ii) it has and will take reasonable measures to mitigate stranded costs.

Alternative B:

(d) *Recovery of Retail Stranded Costs.*

(1) General requirement.

No public utility or transmitting utility may seek recovery of retail stranded costs from the Commission.

[Note: The following appendix will not appear in the Code of Federal Regulations.]

Appendix

For the ease of those submitting comments, the following is a compendium of the questions contained in the proposed rule:

Index of Questions

1. What categories of costs, in addition to investment costs, should be eligible for stranded cost recovery? How should stranded costs be allocated to specific customers?

2. The Commission invites comments on the direct assignment and alternative methods of stranded cost recovery. Would alternative methods, *e.g.*, an access charge, give customers reasonable certainty on the scope of their stranded cost obligation more quickly than a direct assignment approach would, and thus expedite the transition to a more competitive wholesale market?

3. To what extent is there or should there be a regulatory obligation to continue to serve requirements customers beyond the end of the contract term and the source of any such obligation? Should section 35.15 of the Commission's regulations, which concerns notice of termination, be deleted in its entirety, or only in certain circumstances (*e.g.*, when the seller provides transmission access on a comparable basis to the seller's own uses of its system)?

4. What types of contractual provisions (in addition to notice provisions), if any, might demonstrate a sufficient "meeting of the minds" between parties so that renegotiation of existing contracts should be barred? Should the proposed rules regarding existing contracts apply only to contracts between unaffiliated entities?

5. Should the rebuttable presumption which would apply to contracts containing notice provisions also be applied to any contract entered into after the date of enactment of the Energy Policy Act, even though such contract does not contain an exit fee or other explicit stranded cost provision, or a notice provision?

6. Should there be a transition period during which utilities may renegotiate their existing contracts? Should utilities or customers with *Mobile-Sierra* contracts be able to make unilateral filings or file complaints? Should the Commission make a *Mobile-Sierra* public interest finding based on company-specific findings instead of generic industry-wide findings?

7. What is the appropriate length for a transition period.

8. The Commission requests that utility commenters include in their comments an estimate of the number of power sales contracts that they would seek to renegotiate to address stranded cost issues. How many of these contracts are silent on this question? How many have notice provisions, and of what duration? The Commission requests that responding utilities estimate the amount of stranded costs associated with such contracts, the relationship of the estimated stranded costs to the utility's total costs or revenues, and the potential cost shift to remaining customers.

9. Should the limitations on recovery of stranded costs in wholesale transmission rates apply to all utilities, whether or not they currently have on file transmission tariffs containing stranded cost provisions?

10. Should stranded cost recovery be different depending on whether transmission service is under section 205 or 211?

11. In lieu of direct assignment, should utilities be able to seek a general surcharge to all of their transmission customers to cover the costs stranded by a departing customer?

12. The Commission recognizes that stranded costs can occur when a customer fails to renew its requirements contract and, instead of obtaining unbundled transmission service from its former requirements supplier, obtains unbundled transmission service from another utility. We anticipate that in such a case any prudent costs that are stranded as a result of the customer's departure would be reallocated to remaining customers in the utility's next requirements rate case. This results in the departing customer bearing none of the costs which it may have caused to be stranded. How should the Commission deal with such costs?

13. The Commission invites comments on all aspects of the evidence necessary to demonstrate a reasonable expectation of continuing to serve a customer beyond the period provided for in a notice provision. Should there be a rebuttable presumption that the existence of a notice provision means the utility had no reasonable expectation of serving the customer beyond the end of that notice period? Should we adopt a minimum notice period that would provide a presumption that the utility had no reasonable expectation of continuing to provide service beyond the notice period, *e.g.*, a five-year notice period?

14. In seeking stranded cost recovery, a utility must show that the stranded costs it incurred are not more than the customer would have contributed to the utility had the customer remained a wholesale requirements customer of the utility. This required evidentiary demonstration concerns the reasonable compensation for stranded costs. We request comments on what is reasonable compensation:

(a) Would it be reasonable for the Commission to limit the annual amount of stranded costs that a power customer must pay to be no more than what the customer would have contributed to the utility's capital (customer revenues minus variable costs), or would some alternative concept be appropriate?

(b) Would it be reasonable for the Commission to limit the future time period over which a customer's liability for stranded costs would be determined? That is, the present value of the customer's liability could be the discounted value of an annual amount for a limited time period. This total amount could be paid in a lump sum or over any mutually agreeable period. The limited time period over which the customer's liability is determined could be called the reasonable compensation period. If so:

(1) Would the Commission apply the reasonable compensation period to assess the reasonableness of an exit fee in a revised power contract as well as a transmission surcharge?

(2) How long should such a time period be, *e.g.*, five years or ten years or some other period; and

(3) When should such a period begin, *e.g.*, if five years is a reasonable time over which a customer is liable for stranded costs, does the five-year period begin when the Commission adopts a final rule or when the utility files for stranded cost recovery in the future?

(c) Should the length of a reasonable compensation period be based on what would constitute a reasonable notice period in power contracts or would some other concept be appropriate?

(d) Establishing a reasonable compensation period effectively would also establish a future date beyond which existing power customers would no longer have any liability for stranded costs, either as an exit fee in revised power contracts or as a surcharge on transmission rates. Would this be appropriate? In responding, commenters should keep in mind that the concept of a reasonable time period for computing stranded cost liability is independent of the proposed three year recontracting period for which the Commission is also requesting separate comments.

15. Should the Commission require that a public utility demonstrate reasonable measures to mitigate stranded costs? What should such measures include?

16. How should the Commission determine the amount of stranded costs that the departing customer may be liable to pay?

17. What are reasonable notice periods for requirements contracts?

18. What types of payments, if any, do new municipal utilities make to prior service providers? Do these reimbursements allow for recovery of stranded generation costs? Is there variation among the States as to the legal ability of local entities to municipalize? Is there variation among the States as to the payments made by new municipal utilities to previous suppliers?

19. What mechanisms can States use to allow retail stranded cost recovery? Are these mechanisms *adequate* to deal with retail stranded costs?

20. The Commission solicits comments on the two proposed alternatives regarding retail stranded costs. The first proposed alternative provides that if in a specific circumstance an appropriate State authority explicitly considers and deals with retail stranded costs and there is no conflict within or among State regulatory bodies regarding a State's disposition of the issue, this Commission will not entertain a request for retail stranded cost recovery. However, in the absence of a clear expression by an appropriate State authority that it has dealt with the issue, or in the event of a conflict between States or among State officials within a single State, the Commission proposes to entertain requests to recover retail stranded costs. Is this proposal reasonable? Is it preferable to the second alternative proposal?

21. Should there be limited exceptions to the second alternative rule?

22. As to both alternatives, the Commission further solicits comments on the following questions.

Are there circumstances under which it is not necessarily appropriate to defer to the States (*e.g.*, where one State takes an action regarding retail stranded costs which has adverse consequences for another State)? Are there circumstances under which a State may not have an adequate mechanism for addressing retail stranded costs, and may want the Commission to provide a forum?

If a State does not explicitly address stranded costs resulting from an action that allows retail customers to purchase from a supplier other than the franchised utility, should this Commission entertain requests from the utilities left with the stranded costs? Beyond silence from the State, are there other factors that the Commission should consider before accepting requests for retail stranded cost recovery? Specifically, would financial health and possible adverse impacts on reliability be sufficient reason for Federal action?

The Commission further solicits comments on the following questions:

(1) Does the Commission have legal authority to allow retail stranded costs in rates for wholesale transmission services? Should the Commission do so as a matter of policy? If so, which costs?

(2) Does the Commission have legal authority to allow retail stranded costs in rates for retail transmission service? Should the Commission do so as a matter of policy? If so, which costs?

(3) Does FPA section 212 give the Commission legal authority to allow recovery of retail stranded costs in rates for wholesale transmission services under FPA section 211?

(4) Are there legal or policy reasons why in Scenario 2, the Commission should entertain requests for recovery of retail stranded costs in wholesale transmission rates, but should not entertain requests for recovery of retail stranded costs in retail transmission rates in Scenario 3?

23. Are the Commission's assumptions concerning the reasonable expectations of utilities with respect to retail customers correct, *i.e.*, is the reasonable expectation test inapplicable to retail stranded costs? Are there situations, for instance, in which utilities could have expected municipalization to occur based on an established course of dealing?

24. The Commission requests comments on how to determine retail stranded costs as a general matter. Is there a future time when a retail customer's action of leaving a local franchise no longer has any adverse economic consequences on the franchise utility? If so, what is an appropriate way to make such a determination?

[FR Doc. 94–16626 Filed 7–8–94; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

Maryland Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Maryland regulatory program (hereinafter the "Maryland program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment establishes minimum engineering design standards to provide the 1.3 minimum static safety factor for a normal pool with steady state seepage conditions in lieu of engineering tests for small impoundments that are not a safety hazard. The amendment will provide an optional approach to determine the 1.3 minimum static factor for small, non-hazardous impoundments not built of or impounding coal mine waste. The amendment is intended to revise the Maryland program to be consistent with the corresponding Federal regulations.

DATES: Written comments must be received by 4:00 p.m., [E.D.T.], August 10, 1994. If requested, a public hearing on the proposed amendment will be held on August 5, 1994. Requests to speak at the hearing must be received by 4:00 p.m., [E.D.T.], on July 26, 1994.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to George Rieger, Acting Director, at the address listed below.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Copies of the Maryland program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Harrisburg Field Office.

George J. Rieger, Acting Director, Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, Harrisburg Transportation Center, Third Floor, Suite 3C, 4th and Market Streets, Harrisburg, Pennsylvania 17101, Telephone: (717) 782–4036.

Maryland Bureau of Mines, 160 South Water Street, Frostburg, Maryland 21532, Telephone: (301) 689–4136.

FOR FURTHER INFORMATION CONTACT: George Rieger, Acting Director, Harrisburg Field Office, Telephone: (717) 782–4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Maryland Program

On February 18, 1982, the Secretary of the Interior approved the Maryland program. Background information on the Maryland program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the February 18, 1982, **Federal Register** (47 FR 7214). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 920.15 and 920.16.

II. Description of the Proposed Amendment

On June 22, 1993, OSM published a final rule (58 FR 33910) for Maryland program amendment (Administrative Record Numbers MD–549.00 and MD–539.16) concerning hydrologic balance, ponds and sediment control measures, and civil penalties. The Director approved the program amendment except for COMAR 08.09.13.24H(3)(c). The intent of proposed 08.09.13.24H(3)(c) was to establish engineering design standards in lieu of engineering tests to ensure a 1.3 minimum safety factor for small non-hazardous impoundments that are not constructed with or impound coal mine waste and not subject to the requirements of 30 CFR 77.216(a).

The Director found that COMAR 08.13.09.24H(3)(c) was deficient in two areas. First, the soil strength values used in the stability analysis defined dry density and optimum moisture content values associated with them but did not specify the moisture content of the fill material necessary to achieve the required density through compaction. Secondly, the phreatic surface defined in the analysis did not reflect normal pool conditions under a "worst case" scenario.

By letters dated May 16, 1994, and June 23, 1994 (Administrative Record Number MD–569.00), Maryland submitted a program amendment to satisfy OSM's concerns delineated in the June 22, 1993, final rule. The amendment adds COMAR 08.13.09.24h(1)(q) requiring the material

used in the construction of the impoundment to have sufficient moisture content to achieve proper compaction. The amendment also revises the stability analysis to support COMAR 08.13.09.24H(3)(c) to represent normal pool conditions under a worst case scenario.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Maryland program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Harrisburg Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., [E.D.T.] on July 26, 1994. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 920

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 1, 1994.

Robert J. Biggi,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 94–16657 Filed 7–8–94; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–94–072]

RIN 2115–AA97

Safety Zone; Fireworks Display, Westhampton Beach, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a safety zone in Moneybogue Bay, around the Marine Towing Company fireworks barge located approximately in the center of Moneybogue Bay, Westhampton Beach, NY from 9:45 p.m. through 10:45 p.m. on August 20, 1994. This safety zone is needed to protect the maritime community from possible navigation hazards associated with a fireworks display. Entry into this zone will be prohibited unless authorized by the Captain of the Port, Long Island Sound.

DATES: Comments must be received on or before August 10, 1994.

ADDRESSES: Comments may be mailed to the Captain of the Port, 120 Woodward Avenue, New Haven, CT 06512 or may be delivered to the Port Operations office at the above address between 8 a.m. and 4 p.m., Monday through Friday, except federal holidays. The telephone number is (203) 468–4464.

The Captain of the Port maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at the Port Operations office at the above address.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander T.V. Skuby, Chief of Port Operations, Captain of the Port, Long Island Sound at (203) 468–4464.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this rulemaking [CGD01 94–072] and the specific section of this proposal to which each comment applies, and give a reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Project Officer at the address under "**ADDRESSES.**" If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are LCDR T.V. Skuby, Project Officer, Captain of the Port, Long Island Sound, and LCDR J. Stieb, Project Attorney, First Coast Guard District, Legal Office.

Background and Purpose

On May 26, 1994, the sponsor, Mr. Ronald Feldstein, Westhampton Beach, NY requested that a fireworks display be permitted in the port of Westhampton Beach in the vicinity of Moneybogue Bay, Westhampton Beach, NY, from 9:45 p.m. through 10:45 p.m. on August 20, 1994. The safety zone will cover all waters of Moneybogue Bay within a 1200 foot radius of the Marine Towing Company fireworks barge, which will be located approximately in the center of Moneybogue Bay. This zone is required to protect the maritime community from the dangers and potential hazards to navigation associated with the fireworks display. Entry into or movement within this zone will be prohibited unless authorized by the Captain of the Port or his on scene representative. Good cause exists for providing a comment period of less than 60 days. Due to the date the application was received, only a 30 day comment period can be provided.

Regulatory Evaluation

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

The Coast Guard expects the economic impact to be minimal due to the limited duration of the fireworks display, the small size of the safety zone, the low level or nonexistent commercial vessel traffic expected in the area during the effective time of the zone, and the broadcast of marine safety advisories the day of the event.

Small Entities

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

For the reasons addressed in the Regulatory Evaluation above, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

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

Environment

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

List of Subjects in 33 CFR Part 165

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

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—[AMENDED]

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

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

2. A temporary § 165.T01–072 is added to read as follows:

§ 165.T01–072 Safety Zone; Fireworks Display, Westhampton Beach, NY.

(a) *Location.* The safety zone includes all waters of Moneybogue Bay within a 1200 foot radius of the Marine Towing Company barge, the fireworks launching platform, which will be located approximately in the center of Moneybogue Bay, Westhampton Beach, NY in approximate position 40°48′05″ N; 072°38′20″ W.

(b) *Effective date.* This section is effective from 9:45 p.m. through 10:45 p.m. on August 20, 1994, unless terminated sooner by the Captain of the Port. In case of inclement weather, this regulation will be effective on the rain date of August 27, 1994, at the same times.

(c) *Regulations.* The general regulations covering safety zones contained in section 165.23 of this part apply.

Dated: June 23, 1994.

T.W. Allen,

Captain, U.S. Coast Guard, Captain of the Port, Long Island Sound.

[FR Doc. 94–16690 Filed 7–8–94; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[AMS–FRL–5009–5]

Air Pollution Control; Ozone Transport Commission; Recommendation That EPA Adopt Low Emission Vehicle Program for the Northeast Ozone Transport Region; Reopening of Comment Period

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: This document reopens the public comment period for the proposed rule published on April 26, 1994. The proposal addressed the issues EPA is considering in deciding whether to approve, disapprove, or partially approve and partially disapprove a recommendation by the Ozone Transportation Committee (OTC) that EPA require all State members of the OTC to adopt an Ozone Transport Commission Low Emission Vehicle program for the entire Ozone Transportation Region. The Environmental Protection Agency (EPA) re-opened Air Docket No. A–94–11 on June 8, 1994. This docket includes the OTC recommendation and supporting materials as well as comments submitted by interested parties. The docket was reopened in order to allow interested parties a chance to submit relevant information that might be generated as a result of the series of the public roundtable meetings being held in the Ozone Transport Region this summer. The docket will close on July 20, 1994.

DATES: The comment period is reopened from June 8, 1994 to July 20, 1994.

ADDRESSES: Written comments should be submitted (in duplicate if possible) to the Air and Radiation Docket and Information Center (LE–131), room M–1500, 401 M Street SW., Washington, DC 20460. The phone number of the docket office is (202) 260–7548 or (202) 260–7549, fax number (202) 260–4100. The hours of operation are Monday through Friday, including all non-government holidays, from 8 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mike Shields, Office of Mobile Sources, U.S. EPA, 401 M Street SW., Washington, DC 20460; telephone (202) 260–3450.

SUPPLEMENTARY INFORMATION: The Agency has previously issued a Federal Register Notice of Proposed Rulemaking describing the framework for EPA's action on the OTC's recommendation as well as the issues EPA is considering in deciding whether to approved, disapprove, or partially approve and partially disapprove the recommendation. See **Federal Register,** Vol. 59, No. 80, Tuesday, April 26, 1994, pp. 21720–21738. Additionally, the Agency has issued a Notice of Round-Table Meetings setting out the various meeting times, places, and agenda for the three rountable meetings to be held in the OTR in June and July. See **Federal Register,** Vol. 59, No. 105, Thursday, June 2, 1994, pp. 28520–28522.

Dated: June 16, 1994.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 94–16710 Filed 7–8–94; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94–67, RM–8481]

Radio Broadcasting Services; Collegeville, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Saint John's University requesting the allotment of Channel 260A at Collegeville, Minnesota, and reservation of the channel for noncommercial educational use. The coordinates for Channel *260A are 45–31–24 and 94–18–48. There is a site restriction 8.8 kilometers (5.5 miles) southeast of the community.

DATES: Comments must be filed on or before August 27, 1994, and reply comments on or before September 13, 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: Richard J. Bodorff, Todd M. Stansbury, Wiley, Rein & Fielding, 1776 K Street, NW., Washington, DC 20006.

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. 94–67, adopted June 23, 1994, and released July 6, 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. 94–16661 Filed 7–8–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 94–73, RM–8489]

Radio Broadcasting Services; Clarksdale, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Leroy P. Jenkins, Jr., d/b/a Delta Blues Broadcasting, proposing the allotment of Channel 221A to Clarksdale, Mississippi, as the community's fourth local FM service. Channel 221A can be allotted to Clarksdale in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.8 kilometers (3.0 miles) west to avoid a short-spacing conflict with a construction permit for Station WUMS–FM, Channel 221A University, Mississippi. The coordinates for Channel 221A at Clarksdale are 34–11–42 and 90–37–38.

DATES: Comments must be filed on or before August 27, 1994, and reply

comments on or before September 13, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Leroy P. Jenkins, Jr., d/b/a Delta Blues Broadcasting, P.O. Box 139, Gunnison, Mississippi 38746 (Petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 94–73, adopted June 23, 1994, and released July 6, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC'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 contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

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* contacts.

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 Communication Commission,

John A. Karousos,

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

[FR Doc. 94–16662 Filed 7–8–94; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 94–69, RM–8490]

Radio Broadcasting Services; Grenada, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Delta Radio, Inc., proposing the allotment of Channel 295A to Grenada, Mississippi, as the community's second local FM service. Channel 295A can be allotted to Grenada in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 295A at Grenada are 33–46–36 and 89–48–42.

DATES: Comments must be filed on or before August 27, 1994, and reply comments on or before September 13, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Larry G. Fuss, President, Delta Radio, Inc., P.O. Box 1438, Cleveland, Mississippi 38732 (Petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 94–69, adopted June 23, 1994, and released July 6, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

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* contacts.

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. 94–16663 Filed 7–8–94; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 94–68, RM–8486]

Radio Broadcasting Services; Billings, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Bruce L. Erickson proposing the allotment of Channel 286A to Billings, Montana. The coordinates for Channel 286A are 45–46–58 and 108–30–13.

DATES: Comments must be filed on or before August 27, 1994, and reply comments on or before September 13, 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 R. Wilner, Bryan Cave, 700 13th Street, NW, Suite 600, Washington, DC 20005–3960.

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. 94–68, adopted June 23, 1994, and released July 6, 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. 94–16664 Filed 7–8–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF ENERGY

48 CFR Parts 926, 952, and 970

[Regulatory Information Number: 1991–AB11]

Acquisition Regulation: Implementation of Section 3021 of the Energy Policy Act of 1992

AGENCY: Department of Energy (DOE).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy proposes to amend the Department of Energy Acquisition Regulation (DEAR) to establish DOE policies and procedures for establishing a program to achieve a ten percent goal for awards of prime contracts and subcontracts for specific types of universities and of small disadvantaged concerns, including women-owned businesses, in the implementation of section 3021 of the Energy Policy Act of 1992.

DATES: Written comments on this proposed rule must be received by September 9, 1994.

ADDRESSES: Comments should be addressed to: Robert M. Webb, Office of Policy (HR–521), Office of Procurement and Assistance Management, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Robert M. Webb, Office of Policy (HR–521), Office of Procurement and Assistance Management, U.S. Department of Energy, Washington, D.C. 20585, (202) 586–8264.

SUPPLEMENTARY INFORMATION:

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

I. Background

A. Discussion

Section 3021(a) of Energy Policy Act of 1992 (Pub. L. 102–486) requires that DOE, to the extent practicable, provide that the obligation of not less than 10 percent of the total combined amounts obligated for contracts and subcontracts pursuant to competitive procedures be expended with small business concerns owned and controlled by socially and economically disadvantaged individuals or by women, historically Black colleges and universities, or colleges and universities having a student body in which more than 20 percent of the students are Hispanic Americans or Native Americans.

DOE today proposes to amend the DEAR to establish DOE policies and procedures for implementing section 3021 of the Energy Policy Act. The proposed amendments would add a new Part 926, Other Socioeconomic Programs, as the primary regulatory coverage concerning section 3021 requirements. Part 952 would also be amended to add solicitation provisions and contract clauses needed to effect section 3021 requirements in procurement actions. Finally, Part 970 would be amended to address the application of section 3021 to DOE management and operating (M&O) contracts. The specific amendments to the DEAR needed to implement the requirements of section 3021 of the Energy Policy Act are described below. This rulemaking provides changes to the DEAR that will supersede an earlier internal DOE directive that provided guidance to DOE employees on the implementation of section 3021.

The policies implementing the legislation are tailored to achieve the intent of Congress in enacting section 3021, but they go beyond previous contracting and subcontracting mechanisms which have been used to meet participation goals for small disadvantaged business DOE contracts and subcontracts. DOE interprets section 3021 of EPACT as requiring the accomplishment of expanded contracting and subcontracting goals and as providing DOE with the discretion to find appropriate methods to do this.

DOE believes that its approach to implementing the requirements of section 3021 is consistent with both the intent of the Congress in passing the legislation and the long-standing policies of the Government to place a fair proportion of contracts with small businesses and small disadvantaged business and to offer maximum practicable opportunity to those organizations to participate as subcontractors.

B. Section-by-Section Analysis

The regulations at 48 CFR Part 9 are proposed to be amended to add a new part 926, Other Socioeconomic Programs, consisting of Subpart 926.70, Implementation of Section 3021 of the Energy Policy Act of 1992.

A section 926.7001 is proposed to state DOE policy, as set forth in section 3021 of the Energy Policy Act, concerning the award of contracts and subcontracts to organizations meeting the three target group designations. In addition, this section would establish the primary mechanisms that DOE would use in meeting its Energy Policy Act 10 percent goal through the competitive procurement process, as follows:

1. Competitive Energy Policy Act requirements set aside for small disadvantaged businesses, including women-owned businesses, under the Section 8(a) program; and

2. Competitive awards that provide an evaluation preference to offerors from among one of the three Energy Policy Act target groups.

A section 926.7002 is proposed to establish that the requesting organization has the principal obligation to identify which procurements are subject to the Energy Policy Act. In that determination, a program office would use as its standard whether the instant requirement directly satisfies an Energy Policy Act program or requirement.

A section 926.7003 is proposed to direct the use of DOE Small Business/ Labor Surplus Area Set-Aside and 8(a) Program Review Procedures as a mechanism to ensure that full consideration be given to identifying entities from among the Energy Policy Act target groups.

A section 926.7004 is proposed to recognize the statutory change (as set forth in section 3021(b) of the Energy Policy Act) to the size standard for engineering services under Energy Policy Act procurements.

A section 926.7005 is proposed to create an evaluation preference to be used in competitive procurements for Energy Policy Act requirements, where such procurements have not been conducted under Section 8(a) competitive procedures. The evaluation preference would take the form of an evaluation criterion providing that award shall be made to an entity from among the Energy Policy Act target groups where such entity is among those under consideration for final selection and is ranked as essentially equal to the best other proposal.

Also, at section 926.7005 it is proposed to provide consideration of the proposer's subcontracting opportunities to entities from among the Energy Policy Act target groups as part of the business management proposal evaluation and, in Energy Policy Act requirements valued at more than $500,000, as part of the evaluation of the Small Business and Small Business Subcontracting Plan.

A section 926.7006 is proposed to provide guidance on reporting requirements needed to measure DOE performance in meeting the 10 percent Energy Policy Act goal. In addition, this section identifies the types of contract awards that will be counted toward the DOE goal.

Instructions pertaining to the use of solicitation provisions and contract clauses relating to DOE section 3021 implementation are proposed to be contained in section 926.7007. The text of the solicitation provisions and contract clauses relating to DOE implementation of section 3021 are provided in Subpart 952.2.

A solicitation provision is proposed at 952.226–70, entitled Subcontracting goals under section 3021(a) of the Energy Policy Act of 1992 (Pub. L. 102–486), to set out the subcontracting evaluation preference. Most importantly, the provision requires offerors, that are not one of the three section 3021 target groups, to propose individual subcontracting goals for each of the three target groups. In addition, the provision explains how the evaluation preference will be applied.

A contract clause at 952.226–72 is proposed to be added to facilitate implementation of the subcontracting program goals and reporting requirements.

A clause is proposed to be added at section 952.226–73, entitled Energy Policy Act Target Group Certification, establishing the certification to be used by entities from among the Energy Policy Act target groups to clearly establish their qualification.

Use of the clause at FAR 52.219–14 in all awards to entities from among the Energy Policy Act target groups would place a contractual limitation on the amount of subcontracting that can be used by a minority college or university or a woman-owned business in performance of a contract for an Energy Policy Act requirement. The limitation, which restricts subcontracted effort to less than 50 percent of the cost incurred for personnel, mirrors a similar provision now applied to small disadvantaged business under the Federal acquisition system.

Subpart 970.26 provides guidance on the application of section 3021 to M&O contracts which may be used to accomplish DOE responsibilities under the Energy Policy Act.

III. Procedural Requirements

A. Review Under Executive Order 12866

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

B. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation: specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. This proposed rule would, when adopted as a final rule, have no preemptive effect; will not have any effect on existing Federal laws; and would only clarify the existing regulations on this subject. The revised clauses would apply only to contracts which would be awarded after the effective date of the final rule, and, thus, would have no retroactive effect. Therefore, DOE certifies that this proposed rule meets the requirements of sections 2(a) and (b) of Executive Order 12778.

C. Review Under the Regulatory Flexibility Act

This proposed rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

D. Review Under the Paperwork Reduction Act

This rule will require only an insignificant addition to the data collection required for the Standard Forms 294 and 295. Accordingly, no OMB clearance is required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*).

E. Review Under Executive Order 12612

Executive Order 12612, 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the national government and the States, and in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

Today's proposed rule, when finalized, will revise certain policy and procedural requirements. However, DOE has determined that none of the revisions will have a substantial direct effect on the institutional interests or traditional functions of States.

F. Review Under the National Environmental Policy Act

DOE has concluded that this rule falls into a class of actions (categorical exclusion A5) that are categorically excluded from NEPA review because they would not individually or cumulatively have significant impact on the human environment, as determined by the Department's regulations (10 CFR Part 1021, Subpart D) implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321, 4331–4335, 4341–4347 (1976)). Therefore, this rule does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

IV. Public Comment

A. Public Hearing

The Department has concluded that this proposed rule does not involve a substantial issue of fact or law and that the rule should not have a substantial impact on the nation's economy or large numbers of individuals or businesses. Therefore, pursuant to Pub. L. 95–91, the DOE Organization Act, and the Administrative Procedures Act (5 U.S.C. 553), the Department does not plan to

hold a public hearing on this proposed rule.

B. Public Comments

Interested persons are invited to participate by submitting data, views or arguments with respect to the proposed DEAR amendments set forth in this notice. Three copies of written comments should be submitted to the address indicated in the "ADDRESS" section of this notice. All comments received will be available for public inspection in the DOE Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

All written comments received within the comment period will be carefully considered prior to publication of this proposed amendment as a final rule. Any person submitting information which that person believes to be confidential and which may be exempt from public disclosure should submit one complete copy, as well as an additional copy from which the information claimed to be confidential has been deleted. DOE reserves the right to determine the confidential status of the information or data and to treat it according to its determination. The generally applicable procedures of DOE for handling information that has been submitted in a document and may be exempt from public disclosure, are set forth in 10 CFR 1004.11.

List of Subjects in 48 CFR Parts 926, 952, and 970

Government procurement.

Issued in Washington, DC, on June 6, 1994.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

For the reasons set forth in the Preamble, 48 CFR Chapter 9 is proposed to be amended as set forth below:

1. A new Part 926, Other Socioeconomic Programs, consisting of Subpart 926.70, Implementation of Section 3021 of the Energy Policy Act of 1992, is added to read as set forth below:

PART 926—OTHER SOCIOECONOMIC PROGRAMS

Subpart 926.70—Implementation of Section 3021 of the Energy Policy Act of 1992

Sec.

926.7001 Policy.
926.7002 Responsibilities.
926.7003 Review of the procurement request.
926.7004 Size standard for Energy Policy Act procurements.
926.7005 Preferences under the Energy Policy Act.
926.7006 Goal measurement and reporting requirements.
926.7007 Solicitation provisions and contract clauses.

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

Subpart 926.70—Implementation of Section 3021 of the Energy Policy Act of 1992

926.7001 Policy.

(a) Pursuant to section 3021(a) of the Energy Policy Act of 1992 (Pub. L. 102–486), the Department of Energy (DOE) shall, to the extent practicable, provide that not less than 10 percent of the total combined amounts obligated for contracts and subcontracts pursuant to competitive procedures be expended with—

(1) small business concerns controlled by socially and economically disadvantaged individuals or by women;

(2) historically Black colleges and universities; or,

(3) colleges and universities having a student body in which more than 20 percent of the students are Hispanic Americans or Native Americans.

(b) These three groups are collectively referred to in this section as "Energy Policy Act target groups."

(c) DOE shall vigorously pursue the objectives of section 3021 of the Energy Policy Act in the award of contracts and subcontracts to the Energy Policy Act target groups.

(d) The DOE implementation of the requirements of section 3021 with regard to the award of Energy Policy Act procurements consists of the following, ranked in descending order of preference:

(1) Competitive awards to small disadvantaged businesses, including women-owned businesses, for Energy Policy Act requirements under the Small Business Administration's section 8(a) program;

(2) Competitive awards that provide an evaluation preference, in accordance with 926.7006, to offerors from the Energy Policy Act target groups.

(e) The DOE implementation of section 3021 requirements with regard to the award of subcontracts under Energy Policy Act procurements is discussed at 926.7006.

(f) Competitive procedures, for purposes of Energy Policy Act implementation, are competitive procedures in accordance with FAR 15.6 and DEAR 915.6.

926.7002 Responsibilities.

Offices initiating procurement requests have primary responsibility to identify potential contract requirements falling within the scope of section 3021 of the Energy Policy Act. Identification shall occur at the earliest possible point in time in the acquisition cycle, but not later than the submission of the procurement request to the contracting officer. For purposes of section 3021, a contract requirement is any award that directly satisfies an Energy Policy Act program or requirement.

926.7003 Review of the procurement request.

Any Energy Policy Act procurement, including basic research contracts with educational institutions, shall be reviewed in accordance with the Small Business/Labor Surplus Area Set-Aside and 8(a) Program Review Procedures in order to ensure that full consideration is given to the potential for making Energy Policy Act awards.

926.7004 Size standard for Energy Policy Act procurements.

The size standard for Energy Policy Act engineering services procurements (SIC 8711) shall be the size standard specified for military and aerospace equipment and military weapons.

926.7005 Preferences under the Energy Policy Act.

(a) *Prime contracts.* Solicitations for all competitive Energy Policy Act procurements not for 8(a) firms and in excess of the small purchase threshold shall provide for an evaluation preference for offers received from entities from among the Energy Policy Act target groups. The evaluation criteria shall provide that in instances in which two or more proposals being considered for final selection are ranked as essentially equal, after consideration of all technical and cost evaluation factors, and one of these proposals is from an offeror from among an Energy Policy Act target group, that offeror will be selected for award.

(b) *Subcontracts.* (1) The contracting officer shall assure that all competitive Energy Policy Act solicitations over the small purchase threshold contain:

(i) A solicitation provision providing for consideration, as part of the evaluation of the business management proposal, of the extent to which the offerors have provided for subcontracting opportunities to entities from among the Energy Policy Act target groups; and

(ii) A clause providing for the maximum utilization of entities from among Energy Policy Act target groups

in the performance of Energy Policy Act contracts.

(2) The contracting officer shall assure that all competitive Energy Policy Act procurements expected to exceed $500,000 ($1,000,000 for construction) include:

(i) A solicitation provision providing for consideration of the extent to which the offeror has provided for subcontracting opportunities to entities from among the Energy Policy Act target groups before award as part of the effort, and

(ii) A clause for reporting after award as part of the Small Business and Small Disadvantaged Business Subcontracting Plan process.

926.7006 Goal measurement and reporting requirements.

(a) *General.* The following types of contract awards for Energy Policy Act procurements shall be counted toward achievement by DOE of the 10 percent goal:

(1) Any competitive section 8(a) award;

(2) Any competitive award to one of the three target groups under an unrestricted procurement;

(3) Any award to one of the three target groups conducted under small purchase procedures; and,

(4) Any competitively awarded subcontract to one of the three target groups under a prime award.

(b) *Prime contract awards.* Award values and dollars obligated under prime contracts and modifications to prime contracts for Energy Policy Act requirements shall be reported through the Department of Energy Procurement and Assistance Data System.

(c) *Subcontract awards.* The contractor shall be required to report, on an annual Federal Government fiscal year basis, its progress against the section 3021 goals by providing the actual dollar value of subcontract payments, and the relationship of those payments to the incurred contract cost. If the contract includes reporting requirements under FAR 52.219–9, Small Business and Small Disadvantaged Business Subcontracting Plan, the contractor's progress against the section 3021 goals shall be included as an addendum to Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, as applicable, for the period that corresponds to the end of the Federal Government fiscal year.

926.7007 Solicitation provisions and contract clauses.

(a) The Contracting Officer shall insert the provision at 952.226–70, Subcontracting Goals under Section 3021(a) of the Energy Policy Act of 1992 (Pub. L. 102–486) (Energy Policy Act), in solicitations for Energy Policy Act procurements.

(b) The Contracting Officer shall insert the clause at 952.226–71, Utilization of Energy Policy Act Target Entities, in contracts for EPACT requirements with an award value in excess of $25,000 but not in excess of $500,000 ($1,000,000 in the case of construction).

(c) The Contracting Officer shall insert the clause at 952.226–72, Energy Policy Act Subcontracting Goals and Reporting Requirements, in contracts for Energy Policy Act requirements with an award value in excess of $500,000 ($1,000,000 in the case of construction.

(d) The Contracting Officer shall insert the provision at 952.226–73, Energy Policy Act Target Group Certification, in solicitations for Energy Policy Act procurements.

(e) The Contracting Officer shall insert the clause at FAR 52.219–14, Limitation on Subcontracting, in contracts for Energy Policy Act requirements with an entity from among the Energy Policy Act target groups.

PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

2. The authority citation for Part 952 continues to read as follows:

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

3. Subpart 952.2 is amended by adding sections 952.226–70, 952.226–71, 952.226–72, and 952.226–73 to read as follows:

Subpart 952.2—Text of Provisions and Clauses

* * * * *

Sec.

952.226–70 Subcontracting goals under section 3021(a) of the Energy Policy Act of 1992.

952.226–71 Utilization of Energy Policy Act target entities.

952.226–72 Energy Policy Act subcontracting goals and reporting requirements.

952.226–73 Energy Policy Act target group certification.

* * * * *

952.226–70 Subcontracting goals under section 3021(a) of the Energy Policy Act of 1992.

As prescribed in 926.7007(a), insert the following provision:

Subcontracting Goals Under Section 3021(a) of the Energy Policy Act of 1992 (Pub. L. 102–486) (XXX 199X)

(a) *Definition.—Energy Policy Act target groups,* as used in this provision means:

(1) An institution of higher education that meets the criteria of 34 CFR 602.2(a), and has a student enrollment that consists of at least 20 percent:

(i) Mexican American, Puerto Rican, Cuban, or other Hispanic students, or any combination thereof, or

(ii) American Indian, Eskimos, Aleuts, native Hawaiians, or any combination thereof.

(2) Institutions of higher learning determined by the Secretary of Education to be Historically Black Colleges and Universities pursuant to 34 CFR 608.2.

(3) Small business concerns, as defined under section 3 of the Small Business Act (15 U.S.C. 632), that are owned and controlled by individuals who are both socially and economically disadvantaged within the meaning of section 8(d) of the Small Business Act (15 U.S.C. 637(d)) or by a woman or women.

(b) Section 3021 of the Energy Policy Act (Pub. L. 102–486) establishes a goal of award of 10 percent of the contract dollar value for prime and subcontract Energy Policy Act awards to Energy Policy Act target groups.

(c) The offeror, if other than one of the three groups specified in paragraph (a) of this clause, shall submit, as part of its business management proposal or, if this solicitation requires the submission of a Small Business and Small Disadvantaged Business Subcontracting Plan, then as part of that plan, unless otherwise stated in the proposal preparation instructions, individual subcontracting goals for each of the three Energy Policy Act target groups. Individual goals shall be expressed in terms of a percentage of the offeror's proposed contract dollar value. In addition, the offeror shall provide a description of the nature of the effort to be performed by each of the three groups, and if possible, the identity of the contemplated subcontractor(s).

(d) Unless otherwise stated, such goals shall be considered in the evaluation of the Business Management Proposal as discussed in Section M of this solicitation or, if applicable, as part of the evaluation of the Small Business and Small Disadvantaged Business Subcontracting Plan.

(End of provision)

952.226–71 Utilization of Energy Policy Act target entities.

As prescribed in 926.7007(b), insert the following clause:

Utilization of Energy Policy Act Target Entities (XXX 199X)

(a) *Definition.—Energy Policy Act target groups,* as used in this provision means:

(1) An institution of higher education that meets the requirements of 34 CFR 602.2(a), and has a student enrollment that consists of at least 20 percent:

(i) Mexican American, Puerto Rican, Cuban, or other Hispanic students, or any combination thereof, or populations for Hispanic Americans, or

(ii) American Indian, Eskimos, Aleuts, native Hawaiians, or any combination thereof.

(2) Institutions of higher learning determined to be Historically Black Colleges and Universities by the Secretary of Education pursuant to 34 CFR 608.2.

(3) Small business concerns, as defined under section 3 of the Small Business Act (15 U.S.C. 632), that are owned and controlled by individuals who are both socially and economically disadvantaged within the meaning of section 8(d) of the Small Business Act (15 U.S.C. 637(d)) or by a woman or women.

(b) *Obligation.* In addition to its obligations under the clause of this contract entitled Utilization of Small Business Concerns and Small Disadvantaged Business Concerns, the contractor, in performance of this contract, agrees to provide its best efforts to competitively award subcontracts entities from among the Energy Policy Act target groups.

(End of clause)

952.226–72 Energy Policy Act subcontracting goals and reporting requirements.

As prescribed in 926.7007(c), insert the following clause:

Energy Policy Act Subcontracting Goals and Reporting Requirements (XXX 199X)

(a) *Definition.—Energy Policy Act target groups,* as used in this provision means:

(1) An institution of higher education that meets the requirements of 34 CFR 602.2(a), and has a student enrollment that consists of at least 20 percent:

(i) Mexican American, Puerto Rican, Cuban, or other Hispanic students, or any combination thereof, or populations for Hispanic Americans, or

(ii) American Indian, Eskimos, Aleuts, native Hawaiians, or any combination thereof.

(2) Institutions of higher learning determined to be Historically Black Colleges and Universities by the Secretary of Education pursuant to 34 CFR 608.2.

(3) Small business concerns, as defined under section 3 of the Small Business Act (15 U.S.C. 632), that are owned and controlled by individuals who are both socially and economically disadvantaged within the meaning of section 8(d) of the Small Business Act (15 U.S.C. 637(d)) or by a woman or women.

(b) *Goals.* The contractor, in performance of this contract, agrees to provide its best efforts to award subcontracts to the following classes of entities:

(1) Small business concerns controlled by socially and economically disadvantaged individuals or women: * * * percent;

(2) Historically Black colleges and universities: * * * percent;

(3) Colleges or universities having a student body in which more than 20 percent of the students are Hispanic Americans or Native Americans: * * * percent.

[* * * These goals will appear elsewhere in this contract.]

(c) *Reporting requirements.* (1) The contractor agrees to report, on an annual Federal Government fiscal year basis, its progress against the goals by providing the actual annual dollar value of subcontract payments for the preceding 12 month period, and the relationship of those payments to the incurred contract costs for the same period. Reports submitted pursuant to this clause must be received by the Contracting Officer (or designee) not later than 45 days after the end of the reporting period.

(2) If the contract includes reporting requirements under FAR 52.219–9, Small Business and Small Disadvantaged Business Subcontracting Plan, the contractor's progress against the goals stated in paragraph (b) of this clause shall be included as an addendum to Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, as applicable, for the period that corresponds to the end of the Federal Government fiscal year.

(End of clause)

952.226–73 Energy Policy Act target group certification.

As prescribed in 926.7007(e), insert the following provision:

Energy Policy Act Target Group Certification (XXX 199X)

(a) *Certification.* The offeror certifies that it is:

(1) _____ An institution of higher education that meets the requirements of 34 CFR 602.2(a), and has a student enrollment that consists of at least 20 percent:

(i) Mexican American, Puerto Rican, Cuban, or other Hispanic students, or any combination thereof, or populations for Hispanic Americans, or

(ii) American Indian, Eskimos, Aleuts, native Hawaiians, or any combination thereof; or

(2) _____ An institution of higher learning determined to be a Historically Black College and University by the Secretary of Education pursuant to 34 CFR 608.2; or

(3) _____ A small business concern, as defined under section 3 of the Small Business Act (15 U.S.C. 632), that is owned and controlled by individuals who are both socially and economically disadvantaged within the meaning of section 8(d) of the Small Business Act (15 U.S.C. 637 (d)) or by a woman or women.

(b) By submission of an offer, the offeror agrees to provide to the Contracting Officer, upon request, evidence satisfactory to the Contracting Officer that the offeror is an entity from the Energy Policy Act target group identified.

(End of provision)

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS [AMENDED]

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

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

5. Part 970 is amended to add a new subpart 970.26, Other Socioeconomic Programs, consisting of section 970.2601, Implementation of Section 3021 of the Energy Policy Act of 1992, to read as follows:

Subpart 970.26—Other Socioeconomic Programs

970.2601 Implementation of section 3021 of the Energy Policy Act of 1992.

The goal requirements of section 3021 of the Energy Policy Act of 1992, and the attendant reporting requirements, shall be included in the subcontracting plan for the management and operating contract and shall apply to the annual dollar obligations specifically provided to the M&O contractor for competitively awarded subcontracts that fulfill Energy Policy Act requirements. See 970.7104–12(f).

Subpart 970.71—Management and Operating Contractor Purchasing

6. Section 970.7104–12 is amended by redesignating paragraph (f) as (g) and adding a new paragraph (f) as follows:

970.7104–12 Small business and small disadvantaged business concerns.

* * * * *

(f) Management and operating contractors may provide in their purchasing systems and methods for the application of preferences to Energy Policy Act target groups, taking into consideration the provisions of 926.70, Implementation of Section 3021 of the Energy Policy Act of 1992.

* * * * *

[FR Doc. 94–16701 Filed 7–8–94; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 94–56; Notice 1]

RIN 2127–AF01

Federal Motor Vehicle Safety Standards; Air Over Hydraulic Brake Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice responds to a petition submitted by John Kourik. The notice proposes to amend the requirements in Standard No. 121, *Air Brake Systems,* to include a definition of air-over-hydraulic brake subsystems. The agency believes that this proposed definition would clarify the classification of vehicles equipped with these subsystems and thus eliminate the need for manufacturers to request, and the agency to respond to, interpretations about them.

DATES: *Comments.* Comments must be received on or before September 9, 1994.

Proposed Effective Date. The proposed amendments in this notice would become effective 30 days after publication of a final rule in the **Federal Register.**

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted to: Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Tinto, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202–366–5229).

SUPPLEMENTARY INFORMATION:

Background

Air-over-hydraulic brake systems typically consist of an air brake system from the treadle valve to an air brake chamber that provides the mechanical force to actuate a hydraulic-operated master cylinder. In turn, the hydraulic master cylinder actuates the brake shoes or pads. The air brake chamber unit combined with the hydraulic-operated master cylinder is called the "power cluster" and generally serves as the separating point between the air- and hydraulic-actuated portions of the air-over-hydraulic brake system.

Air-over-hydraulic brake systems are installed on about one percent of medium and heavy trucks sold in the United States. This percentage represents about 2,000 vehicles, most of which are Class 6 vehicles with gross vehicle weight ratings (GVWRs) between 19,501 and 26,000 pounds.

Federal motor vehicle safety standard No. 121, *Air brake systems,* currently defines "air brake system" to mean

> a system that uses air as a medium for transmitting pressure or force from the driver control to the service brake, but does not include a system that uses compressed air or vacuum only to assist the driver in applying muscular force to hydraulic or mechanical components. (49 CFR § 571.121)

Part 570, *Vehicle In Use Inspection Standards,* defines "Air-over-hydraulic brake system" to mean

> *a subsystem of the air brake* that uses compressed air to transmit a force from the driver control to a hydraulic brake system to actuate the service brakes. (49 CFR Part 570, emphasis added)

The italic portion of the definition of air-over-hydraulic subsystem explicitly states that an air-over-hydraulic brake subsystem means a subsystem of the air brake system.

In initially issuing Standard No. 121, NHTSA stated that "it should be noted that the term 'air brake system' as defined in the standard applies to the brake configuration commonly referred to as 'air-over-hydraulic,' in which failure of either medium can result in complete loss of braking ability." (36 FR 3817, February 27, 1971). The agency reiterated its position that an air-over-hydraulic brake system is subject to Standard No. 121, stating that "Standard No. 105a [Hydraulic Brake Systems] does not apply to vehicles equipped with 'air-over-hydraulic' systems, which remain within the purview of Standard No. 121 * * *." (37 FR 17970, September 2, 1972.) Moreover, NHTSA has issued several interpretations stating that a vehicle equipped with an air-over-hydraulic brake system must comply with the requirements in Standard No. 121.

NHTSA received a petition from Mr. John Kourik, requesting that the agency amend Standard No. 121 to specify that an air-over-hydraulic brake subsystem is subject to that Standard. The petitioner stated that such an amendment would avoid the need for manufacturers to request interpretations about air-over-hydraulic brake systems.

After reviewing the petition, NHTSA has decided to propose amending Standard No. 121 by expanding the current definition of air brake system to incorporate the definition of air-over-hydraulic brake subsystem. The agency notes that even though the definition of an air brake system currently includes a description of an air-over-hydraulic subsystem, it is not explicitly clear on the face of the standard that such a subsystem is classified as an air-braked system and that a vehicle equipped with such a subsystem would thus have to comply with the requirements in Standard No. 121. NHTSA believes that it would be appropriate to clarify the classification of air-over-hydraulic brake systems. By amending the definition of an air brake system to state explicitly that an air-over-hydraulic brake subsystem is classified as an air brake system, the agency would eliminate the need felt by some manufacturers to request interpretations regarding the standard's applicability to vehicles equipped with air-over-hydraulic brake subsystems.

Rulemaking Analyses and Notices

1. Executive Order 12866 (Federal Regulation Planning and Review) and DOT Regulatory Policies and Procedures

This proposal was not reviewed under E.O. 12866. NHTSA has analyzed this proposal and determined that it is not "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. A full regulatory evaluation is not required because the rule, if adopted, would have no mandatory effects. Instead, the proposal would only codify a longstanding agency interpretation. Therefore, this rulemaking would not have any cost impacts.

2. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the proposed amendment would not have a significant economic impact on a substantial number of small entities. Vehicle and brake manufacturers typically would not qualify as small entities. This amendment would affect small businesses, small organizations, and small governmental units to the extent that these entities purchase vehicles. However, this amendment would have no significant cost impact on vehicles. For these reasons, vehicle manufacturers, small businesses, small organizations, and small governmental units which purchase motor vehicles would not be significantly affected by the proposed requirements. Accordingly, no regulatory flexibility analysis has been prepared.

3. Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule would not have sufficient Federalism implications to warrant preparation of a Federalism Assessment. No State laws would be affected.

4. National Environmental Policy Act

Finally, the agency has considered the environmental implications of this proposed rule in accordance with the National Environmental Policy Act of 1969 and determined that the proposed

rule would not significantly affect the human environment.

Public Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Incorporation by reference, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, the agency proposes to amend Standard No. 121, *Air Brake Systems*, in Title 49 of the Code of Federal Regulations at part 571 as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. In § 571.121, S4 would be amended by revising the definition of "Air Brake System" and by adding the definition of "Air-over-hydraulic brake subsystem" to read as follows:

§ 571.121 Standard No. 121; Air brake systems.

* * * * *

S4 * * *

Air brake system means a system, including an air-over-hydraulic brake subsystem, that uses air as a medium for transmitting pressure or force from the driver control to the service brake, but does not include a system that uses compressed air or vacuum only to assist the driver in applying muscular force to hydraulic or mechanical components.

* * * * *

Air-over-hydraulic brake subsystem means a subsystem of the air brake that uses compressed air to transmit a force from the driver control to a hydraulic brake system to actuate the service brakes.

Issued on: July 5, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94–16613 Filed 7–8–94; 8:45 am]

BILLING CODE 4910–59–P

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49 CFR Part 571

[Docket No. 89–26; Notice 5]

RIN 2127–AF31

Federal Motor Vehicle Safety Standard; Convex Cross View Mirrors on School Buses

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: In response to a petition for rulemaking submitted by the Blue Bird Body Company (Blue Bird), NHTSA has decided to propose amending Standard No. 111, *Rearview Mirrors*, with respect to the field-of-view around school buses. Specifically, the agency is proposing to rescind a provision in the Standard so that certain driving mirrors would no longer be required to provide a field-of-view of the ground forward of cylinders by the bus's rear wheels to areas directly beneath the mirror surface. The agency is concerned that the current requirement may compromise safety either by making it more difficult for the driver to use the driving mirror when the bus is in motion as the result of having a more distorted image from a more convex mirror or by reducing the driver's direct line of sight as the result of creating a larger blind spot near the bus.

DATES: *Comment Date:* Comments must be received by August 10, 1994.

Effective Date: If adopted, the proposed amendments would become effective 30 days following publication of the final rule.

ADDRESSES: Comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. (Docket Room hours are 9:30 a.m.–4 p.m., Monday through Friday.)

FOR FURTHER INFORMATION CONTACT: Mr. Charles Hott, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202) 366–0247.

SUPPLEMENTARY INFORMATION:

I. Previous Agency Rulemakings

On December 2, 1992, NHTSA published a final rule amending Federal Motor Vehicle Safety Standard No. 111, *Rear-View Mirrors*, to ensure that a school bus provides an adequate field-of-view around a stopped school bus, thus reducing the risk of school buses striking students as the students are approaching the buses in order to board them or as they are leaving the buses. (57 FR 57015) The final rule requires each school bus to be equipped with two mirror systems on each side of the bus: (1) "System A," which consists of a flat driving mirror of unit magnification and typically a convex driving mirror; and (2) "System B," which consists of convex cross view mirrors for spotting students during the loading and unloading of students. The System A mirror system must provide, among other things, a view of the area of the ground extending rearward from the area below the mirror surface. The System B convex cross view mirrors must provide, among other things, a view of the ground that overlaps with the view of the ground provided by System A. System A and System B mirrors in combination are required to provide the driver with a view of the ground in front of and along both sides of the bus and extending at least 200 feet rearward from the driving mirror. This final rule took effect on December 2, 1993.

NHTSA again evaluated the field-of-view requirements for System A mirrors

in response to a petition for reconsideration of the final rule submitted by Ford Motor Company (Ford). (58 FR 60399, November 16, 1993) Ford stated that requiring System A mirrors to provide a view of the ground immediately beneath them fails to meet the need for safety and may make impracticable the use of currently designed flat unit magnification mirrors. Ford requested that NHTSA amend the requirement in Standard No. 111 that System A mirrors provide an extended rearward view of the ground starting from the area beneath the mirror (S9.2(b)(1), (2)).

NHTSA decided not to adopt Ford's requested revision, because the agency was concerned that Ford's suggested System A mirrors might have had blind spots in the area of the ground directly below the driver's mirrors and forward of the rear edge of the side windows. The agency explained that it is permissible to use a combination of convex and flat mirrors to meet the System A requirements, and that the convex portion of the mirror system can be used for the view beneath the System A mirror. 57 FR at 57005.

II. Blue Bird Petition

Blue Bird Body Company (Blue Bird) petitioned the agency to amend Standard No. 111 with respect to the field-of-view requirements for System A mirrors. Blue Bird stated that to comply with the final rule's requirements, either a small radius of curvature convex mirror or a second convex mirror would have to be attached to the System A mirror. Blue Bird argued that either approach would be impracticable and inconsistent with motor vehicle safety. According to the petitioner, a small radius of curvature mirror would provide unreasonably small and distorted images that would be unsafe for driving, while a second convex mirror would create a larger blind spot for the driver. Blue Bird also stated that any convex mirror added to a system A mirror should have a radius of curvature of at least 35 inches, since convex mirrors with low radii of curvature would provide unreasonably small and distorted images thus causing problems for the school bus driver, while the vehicle is in motion.

Blue Bird stated that the requirement, as adopted, is inconsistent with previous agency statements about problems associated with using highly convex mirrors for driving. Blue Bird further stated that none of the discussions in the NPRM explaining the requirements for System A mirrors implies the need for driving mirrors to see the area directly below them. Blue Bird requested the agency immediately amend the wording of S9.2(b)(1) and S9.2(b)(2) to require that System A mirrors provide views of the area of the ground that extend rearward from the test cylinders near the rear axles to not less than 200 feet measured from the rear surface of the mirrors. As the result of such an amendment, the System A mirrors would no longer be required to provide a view of the ground between those cylinders and the ground beneath the mirror.

On January 13, 1994, agency personnel met with representatives of Blue Bird and Mirror Lite Company, a mirror manufacturer, to evaluate the field-of-view provided by various mirror configurations on school buses. At that meeting, Blue Bird stated that the installation and use of a driving mirror with a small radius of curvature may result in unsafe driving practices since it distorts images, thus making it difficult for a driver to judge the distance between his or her bus and following vehicles when the driver is attempting to change lanes. Similarly, Blue Bird alleged that, with a small radius of curvature mirror, other vehicles appear to approach suddenly (*i.e.*, images of oncoming vehicles at the rear of the bus that are very small and difficult to recognize suddenly appear greatly distorted as the vehicles get closer to the mirror).

Thomas Built Bus, another manufacturer of school buses, has contacted the agency to express its opposition to Blue Bird's petition. After spending significant amounts of time and money reconfiguring and retesting its buses and mirrors to comply with the final rule, Thomas Built believes that it would be inappropriate for the agency now to amend the standard to accommodate a specific school bus or mirror design of another manufacturer. Memoranda memorializing these contacts have been placed in the docket.

III. Agency Proposal

After reviewing the petition, NHTSA has decided to propose amending Standard No. 111 so that System A mirrors would no longer be required to provide a field-of-view of the ground forward of cylinders by the bus's rear wheels to areas directly beneath the mirror surface. The agency tentatively believes that the current requirement makes it necessary for school bus manufacturers to install either a small radius of curvature convex mirror or a second convex mirror. NHTSA is concerned that the current requirement may compromise safety either by making it more difficult for the driver to use the driving mirror when the bus is in motion as the result of having a more distorted image from a more convex mirror or by reducing the driver's direct line of sight as the result of creating a larger blind spot near the bus, based on Blue Bird's demonstration and other available information. The agency has tentatively concluded that the driveability problems resulting from requiring System A mirrors to have a view of the ground directly beneath them outweigh the safety benefits obtained by having a redundant view of this area. Specifically, the agency believes that the proposed amendment would not adversely affect pedestrian safety because System B mirrors would still be required to have a view of the ground directly below the System A mirrors, as well as the areas alongside the bus to the rear axles.

NHTSA did not anticipate that there would be a driveability problem associated with the System A mirror requirements when it issued the final rule. The requirement that the driving mirrors provide a view of the ground from beneath the mirror surface to 200 feet rearward was considered necessary because several pedestrian fatalities have occurred near the front entrance doors and the rear tires. In issuing the final rule, NHTSA was aware that the System B convex crossview mirror already provides a view of these areas. The agency's intention was to reduce the number of pedestrian fatalities by providing the school bus driver with the largest field-of-view possible. Redundant views of these areas seemed logical and the view of the test grid was comprehensive. However, the school buses with complying System A mirrors were not actually driven as part of the agency evaluation of the new mirror system requirements in connection with the final rule.

NHTSA requests comments about the potential safety problems discussed in this notice. To what extent does adding a second convex mirror to a System A mirror increase the blind spot? How significant a safety problem is caused by the increase in the blind spot? How significant a safety problem is caused by the driver's inability to use the entire mirror system, particularly with mirrors with a radius of curvature less than 35 inches, while operating a moving bus? If a manufacturer added a second convex mirror to a System A mirror system, couldn't the driver use the preexisting high radius of curvature driving mirror?

As to Blue Bird's request for the agency to "immediately issue" its requested change to the Standard, NHTSA has determined that it cannot legally accommodate Blue Bird's

request. The Administrative Procedure Act generally requires an agency to issue a notice for public comment before issuing a final rule such as a rescission of a requirement. (5 U.S.C 553) There is one narrow exception to this requirement which provides that an agency may forego notice-and-comment procedures upon a finding that such procedures are "impracticable, unnecessary, or contrary to the public interest." (5 U.S.C. 553(b)(B)) However, the courts have construed this exception very narrowly, emphasizing that:

> circumstances justifying reliance on this exception are "indeed rare" and will be accepted only after the court has "examine[d]" closely proffered rationales justifying the elimination of public procedures. *Council of Southern Mountains, Inc.* v. *Donovan*, 653 F.2d 573 (DC Cir. 1981) citing *American Federation of Government Employees* v. *Block*, 655 F.2d 1153 (DC Cir 1981).

This case law and previous agency experience indicate that foregoing notice-and-comment is a disfavored approach to be used only in emergency situations involving great urgency. The agency has determined that the circumstances surrounding Blue Bird's petition do not rise to this level of urgency.

Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This notice was not reviewed under E.Q. 12866, "Regulatory Planning and Review." NHTSA has considered the impact of this rulemaking action under the Department of Transportation's regulatory policies and procedures. The agency believes that a full regulatory evaluation is not required because the rule would have only minimal economic impacts. The proposal, if adopted, would not result in any cost savings or cost increases since to comply, the small radius of curvature mirrors would be replaced by larger radius of curvature mirrors.

B. Regulatory Flexibility Act

NHTSA has also considered the impacts of this notice under the Regulatory Flexibility Act. I hereby certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. School bus manufacturers are generally not small businesses within the meaning of the Regulatory Flexibility Act. Small governmental units and small organizations are generally affected by amendments to the Federal motor vehicle safety standards as purchasers of new school buses. However, any impact on small entities from this action would be minimal since it would make a minimal change that would not impose additional costs. Accordingly, the agency has determined that preparation of a regulatory flexibility analysis is unnecessary.

C. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), NHTSA notes that there are no requirements for information collection associated with this proposed rule.

D. National Environmental Policy Act

NHTSA has also analyzed this proposed rule under the National Environmental Policy Act and determined that it would not have a significant impact on the human environment.

E. Executive Order 12612 (Federalism)

NHTSA has analyzed this proposal in accordance with the principles and criteria contained in E.O. 12612, and has determined that this proposed rule would not have significant federalism implications to warrant the preparation of a Federalism Assessment.

F. Civil Justice Reform

This proposed rule would not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (Safety Act; 15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. Section 105 of the Safety Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Submission of Comments

Interested persons are invited to submit comments on the proposal. It is requested, but not required, that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicle.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, 49 CFR part 571 would be amended, as follows:

1. The authority citation for part 571 of title 49 would continue to read as follows:

> **Authority:** 15 U.S.C 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. In § 571.111, S9.2, S9.2(a), S9.2(b), S9.2(b)(1), and S9.2(b)(2) would be revised to read as follows:

§ 571.111 Standard No. 111; rearview mirrors.

* * * * *

S9.2 System A shall be located with stable supports so that the portion of the

system on the bus's left side, and the portion on its right side, each:

(a) Includes at least one mirror of unit magnification with not less than 322.60 square centimeters (50 square inches) of reflective surface; and

(b) Includes one or more mirrors which together provide, at the driver's eye location, a view of:

(1) For the mirror system on the right side of the bus, the entire top surface of cylinder N in Figure 2, and that area of the ground which extends rearward from cylinder N to a point not less than 60.93 meters (200 feet) from the mirror surface.

(2) For the mirror system on the left side of the bus, the entire top surface of cylinder M in Figure 2, and that area of the ground which extends rearward from cylinder M to a point not less than 60.93 meters (200 feet) from the mirror surface.

* * * * *

Issued on July 5, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94–16614 Filed 7–8–94; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of 90-Day and 12-Month Findings on a Petition to Reclassify Spikedace (Meda Fulgida) and Loach Minnow (Tiaroga Cobitis) From Threatened to Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition findings.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces 90-day and 12-month findings for a petition to amend the List of Endangered and Threatened Wildlife and Plants. The Service finds that the petitioners have presented substantial information indicating reclassification of spikedace and loach minnow from threatened to endangered may be warranted. The Service has previously found that reclassification of spikedace and loach minnow is warranted, but is precluded by work on other pending listing actions of higher priority on which expeditious progress is being made.

DATES: The findings announced in this document were made on June 30, 1994. Comments and materials may be submitted until further notice.

ADDRESSES: Information, comments, or questions concerning the petitioned actions may be submitted to the State Supervisor, Arizona Ecological Services State Office, U.S. Fish and Wildlife Service, 3616 West Thomas Road, Suite 6, Phoenix, Arizona 85109. The petitions, findings, supporting information, and comments will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Sally Stefferud at the above address (Telephone 602/379–4720).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires the Service to make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of receipt of the petition, and notice of the finding is to be published promptly in the **Federal Register**. If the finding is positive, the Service is also required to promptly commence a status review of the species involved. Section 4(b)(3)(B) requires that the Service make a further finding as to whether or not a petition presenting substantial information in support of listing, delisting, or reclassification of a species is (i) warranted, (ii) not warranted, or (iii) warranted but precluded by work on other pending listing actions of higher priority on which expeditious progress is being made. This finding is to be made within 12 months of receipt of the petition. Depending upon the conclusion of the finding, the Service must promptly publish in the **Federal Register** either a notice of the finding or a proposal on the petitioned action.

On September 22, 1993, the Department of the Interior received a petition, dated September 17, 1993, from David Hogan, Silver City, New Mexico; Peter Galvin, Silver City, New Mexico; the Greater Gila Biodiversity Project, Silver City, New Mexico; the Southwest Center for Biological Diversity, Phoenix, Arizona; and the Biodiversity Legal Foundation, Boulder, Colorado. The petitioners requested the Service to reclassify the spikedace (*Meda fulgida*) and loach minnow (*Tiaroga cobitis*), from threatened to endangered. On November 10, 1993, the Service informed the petitioners that their correspondence had been accepted as a valid petition.

These 90-day and 12-month findings are based on published and unpublished biological and commercial information, inter- and intra-agency communications, and communications with experts. All information used in these findings is on file in the Service's Arizona Ecological Services State Office in Phoenix.

Spikedace and loach minnow are two small minnows which inhabit isolated stretches of stream in the upper reaches of the Gila River basin in Arizona and New Mexico (Minckley 1973, Propst *et al.* 1986, Propst *et al.* 1988, Propst and Bestgen 1991, Rinne 1991). Their historic range included most of the Gila River basin; however, both species have undergone dramatic declines since the late 1800's. These declines were due to water developments such as impoundment, diversion, channelization, and groundwater pumping; to watershed degradation and erosion caused by activities such as livestock grazing, timber harvest, road building, and recreation; and to effects of the introduction and spread of nonnative fish species. Both species live in relatively fast flowing water in perennial stream stretches.

Spikedace are presently known only from isolated stretches of the Gila River, Grant and Catron Counties, New Mexico; Aravaipa Creek, Graham and Pinal Counties, Arizona; Eagle Creek, Greenlee County, Arizona; and the Verde River, Yavapai County, Arizona. Loach minnow are presently known only from isolated stretches of the Gila River, Grant and Catron Counties, New Mexico; Aravaipa Creek, Graham and Pinal Counties, Arizona; the East Fork and mainstem White Rivers, Navajo and Gila Counties, Arizona; the San Francisco and Tularosa Rivers and Dry Blue Creek, Catron County, New Mexico; and the Blue and San Francisco Rivers and Campbell Blue Creek, Greenlee County, Arizona.

The spikedace was listed as a threatened species on July 1, 1986, and the loach minnow was listed as a threatened species on October 28, 1986. Critical habitat was designated for both species on March 8, 1994. A threatened species is defined by the Act as a species "which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." An endangered species is defined by the Act as one "which is in danger of extinction throughout all or a significant portion of its range."

In 1991, the status of spikedace and loach minnow were reviewed as part of the 5-year review of the status of listed species as required by section 4(c)(2) of

the Act. That review showed that the status of the two species had become more precarious over the previous five years due to substantial increases in threats. As a result, the Service found that both species met the requirements for endangered status. The Desert Fishes Recovery Team and the Arizona Game and Fish Department have recommended reclassification to endangered for both species.

At the same time that threats to the species are increasing, new genetic information suggests a need to preserve each of the fragmented populations of spikedace and loach minnow in order to maintain as much genetic diversity in the species as possible (Tibbets 1992). Four of the five remaining loach minnow populations have been subjected to genetic analyses and each appears to be distinctive. Genetic analyses on the four remaining spikedace populations indicate that each of the four populations is quite different, with the Verde River population being most distinct.

Petition Findings

After reviewing the petition and all other pertinent information, the Service finds that the petition presents substantial information to indicate that reclassification to endangered may be warranted for spikedace and loach minnow. A positive 90-day finding generally requires that a status review be conducted on the petitioned species. However, as previously mentioned, a status review was conducted in 1991, resulting in a finding that endangered status is appropriate, but that higher-priority listing actions precluded the rulemaking process to reclassify the species.

Benefits to the spikedace and loach minnow from reclassification to endangered status would include recognition of the more precarious status of the species and increased penalties for conducting activities prohibited under section 9 of the Act. However, these benefits would be incremental to the protection under the Act already applied to these threatened species. This incremental protective increase is of lesser priority than providing protection to species with no current legal protection under the Act.

After reviewing all available scientific and commercial information on the spikedace and loach minnow and their status and after consideration of other listing actions and their priorities, the Service finds that the reclassification of spikedace and loach minnow to endangered is warranted, but is precluded by work on pending listing actions of higher priority on which expeditious progress is being made.

References Cited

Minckley, W.L. 1973. Fishes of Arizona. Arizona Game and Fish Department. Phoenix, AZ. 293 pp.

Propst, D.L. and K.R. Bestgen. 1991. Habitat and biology of the loach minnow. Copeia 1991(1):29–38.

Propst, D.L., K.R. Bestgen, and C.W. Painter. 1986. Distribution, status, biology, and conservation of the spikedace (*Meda fulgida*) in New Mexico. U.S. Fish and Wildlife Service Endangered Species Report No. 15. 93 pp.

Propst, D.L., K.R. Bestgen, and C.W. Painter. 1988. Distribution, status, biology, and conservation of the loach minnow, *Tiaroga cobitis* Girard, in New Mexico. U.S. Fish and Wildlife Service Endangered Species Report No. 17. 75 pp.

Rinne, J.N. 1991. Habitat use by spikedace, *Meda fulgida* (Pisces: Cyprinidae) in southwestern streams with reference to probable habitat competition by red shiner, *Notropis lutrensis* (Pisces:Cyprinidae). Southwestern Naturalist 37(2):117–125.

Tibbets, C.A. 1992. Allozyme variation in populations of the spikedace (*Meda fulgida*) and the loach minnow (*Tiaroga cobitis*). Proceedings of the Desert Fishes Council 24:37.

Author

The primary author of this document is Sally Stefferud of the Arizona Ecological Services State Office, Phoenix (see ADDRESSES section).

Authority: The authority for this action is 16 U.S.C. 1531–1544.

Dated: June 30, 1994.

Mollie H. Beattie,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 94–16642 Filed 7–8–94; 8:45 am]

BILLING CODE 4310–55–P

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding and Commencement of a Status Review for a Petition To List the Plant Lathyrus Grimesii (Grimes Vetchling)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding and status review.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day finding on a petition to list the plant *Lathyrus grimesii* (Grimes vetchling) under the Endangered Species Act of 1973, as amended (Act). The petition was found to present substantial information indicating the requested action may be warranted. The Service requests information regarding the status of this species.

DATES: The finding announced in this notice was made on June 27, 1994. Comments and information concerning this finding must be submitted by August 10, 1994 to be considered in the 12-month finding for this petition.

ADDRESSES: Data, information, comments, or questions concerning this finding should be sent to the Field Supervisor, Nevada Field Office, U.S. Fish and Wildlife Service, 4600 Kietzke Lane, Building C, Room 125, Reno, Nevada 89502. The petition, finding, and supporting data are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Janet J. Bair, Botanist, at the above Nevada Field Office address (702/784–5227).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Act (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the requested action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register**. This finding is based on information contained in the petition and otherwise available to the Service at the time the finding is made. If the finding is that substantial information was presented, the Service also is required to promptly commence a review of the status of the species involved, if one has not already been initiated under the Service's internal candidate assessment process.

On May 19, 1993, the Service received a petition dated May 10, 1993, from Ms. Mary Pat Matheson, Director of the University of Utah's Red Butte Garden and Arboretum, to list *Lathyrus grimesii* as an endangered species using the emergency provisions of the Act. The Red Butte Arboretum is a Participating Institution of the Missouri Botanic Garden's Center for Plant Conservation, a network of 20 botanical gardens and arboreta dedicated to the conservation of rare and endangered plants in the United States.

A member of the pea family (Fabaceae), *L. grimesii* is a prostrate perennial herb. The distribution and habitat of the species are limited. It is an endemic species, known only from the central portion of the Independence Mountains of Elko County, Nevada. *Lathyrus grimesii* is generally restricted to steep, barren slopes with stony-clay talus substrates at high (7,000 to 8,000 foot) elevations. The species was originally collected in vegetative condition in 1941, but was not recognized as a previously undescribed species until it was collected in reproductive condition in 1980. The technical description of *Lathyrus grimesii* was published in 1989 (Cronquist *et al.* 1989).

At the time the petition was submitted, *L. grimesii* was known from a 1-square mile area in the Dorsey Creek drainage of the Independence Mountains. More recent information indicates that the species' distribution is more extensive. Aerial surveys conducted in August 1993 resulted in new findings north of the Dorsey Creek drainage, in the following drainages and tributaries: Deep Creek, Ott Creek, Sheep Creek, Frost Creek, and Cap Winn Creek; and in the Bull Run Mountains, located west of the Independence Mountains (John C. Parks, Independence Mining Company, Elko, Nevada, in litt.). *Lathyrus grimesii* is located on appropriate substrates scattered within an area of approximately 50 square miles to the north and northwest of the Dorsey Creek drainage, and several isolated populations are located outside of this area.

The petition and accompanying documentation state that the species is subject to impacts by proposed mineral exploration and potential open pit heap leach gold mine development. Mine exploration roads have been constructed through existing populations. With plants occurring on steep, barren slopes at high elevations, disturbance due to further mining exploration and potential development could produce long term destabilization and erosion of slope habitat which would reduce or eliminate populations of *L. grimesii*. The toxic effects of open pit heap leach gold mine development also have the potential to further reduce populations.

Lathyrus grimesii is not currently protected by any regulatory mechanism, as it is not included on the U.S. Forest Service "Sensitive" or State of Nevada "Critically Endangered" species lists. The available information suggests that the species' restricted range and small population size increase the chance of extirpation resulting from stochastic (i.e. random) or localized events such as rock slides, erosion, disease, toxic effects of contaminant spills, or predation.

The Service has reviewed the petition and other information available in the Service's files. On the basis of the best scientific and commercial information available, the Service finds that substantial information has been presented indicating that listing of *Lathyrus grimesii* may be warranted. This species was included as a category 2 candidate for listing in the notice of review published in the **Federal Register** on September 30, 1993 (58 FR 51144). Although a status review of this species was initiated upon its inclusion in category 2, the Service hereby announces its formal review of the species' status pursuant to this 90-day petition finding. The Service requests any additional data, comments, and suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties concerning the status of *L. grimesii*. Of particular interest is information regarding (1) The existence and status of additional populations, (2) environmental factors determining distribution, (3) pollinators, (4) toxic effects of cyanide on the species, and (5) genetic variability in known populations.

References Cited

Cronquist, A., A.H. Holmgren, N.H. Holmgren, J.L. Reveal, and P.K.Holmgren. 1989. Intermountain Flora—Vascular Plants of the Intermountain West, U.S.A. Volume Three, Part B—Fabales by R.C. Barneby. New York Botanical Garden, Bronx, New York. 279 pp.

Author

This notice was prepared by Janet J. Bair, Nevada Field Office (see **ADDRESSES** section above).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*)

Dated: June 27, 1994.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 94–16644 Filed 7–8–94; 8:45 am]

BILLING CODE 4310–55–P

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day and 12-Month Findings for a Petition To List 83 Mollusc Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition findings.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces 90-day and 12-month findings on a petition to list 83 mollusc species under the Endangered Species Act of 1973, as amended (Act). After careful assessment of the best scientific and commercial information available regarding the present and future threats facing the petitioned species, the Service either finds that the petition did not present substantial information indicating that the requested action may be warranted (90-day finding) or determines that the petitioned action is not warranted at this time (12-month finding).

DATES: The finding announced in this document was made on June 28, 1994. Comments and materials related to this petition finding may be submitted until further notice to the Assistant Regional Director for Ecological Services at the address listed below.

ADDRESSES: Data, information, comments, or questions concerning the status of the petitioned species described below should be submitted to the Assistant Regional Director for Ecological Services, U.S. Fish and Wildlife Service, Regional Office, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181. The petition, findings, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Chief, Division of Listing and Recovery, at the address above or 503/231–6131.

SUPPLEMENTARY INFORMATION:

Background

Section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1533) (Act), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. The finding is to be based on all information available to the Service at the time the finding is made. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If the Service finds that a petition presents substantial information indicating the requested action may be warranted, then the Service initiates a status review on that species. Section 4 (b)(3)(b) of the Act requires that for any petition that presents substantial scientific and

commercial information, a finding be made within 12 months of the date of receipt of the petition on whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted but precluded from immediate proposal by other pending proposals to list, delist, or reclassify species. Such 12-month findings are to be published promptly in the **Federal Register**.

The Service has made a negative 90-day finding for 75 noncandidate species referenced in a petition to list 83 mollusc species as threatened or endangered. The Service has made a positive 90-day finding, but not warranted 12-month finding for the eight category 2 candidate species contained in the petition to list 83 mollusc species as threatened or endangered. The Service has been assessing the status of these eight species since their designation as category 2 candidates. Minimal new information was received or available to the Service beyond that used to assign these species to category 2. As a result, the Service determines that the petitioned action is not warranted at this time. These eight species will be retained in category 2. This notice also serves to announce a negative 90-day finding on a previous petition to list the giant Columbia River limpet (short-faced lanx) (*Fisherola nuttalli*) as threatened or endangered.

On August 18, 1993, the Service received a petition from the Oregon Natural Resources Council (ONRC) to list 83 mollusc species as threatened or endangered. The petition was dated August 16, 1993. The document used to support the petition was the report "Mollusc Species of Special Concern within the Range of the Northern Spotted Owl" (Frest and Johannes 1993) prepared for the President's Proposed Forest Plan. On November 6, 1987 the Service received a petition from Dr. Peter Bowler of Laguna Beach, California, to list the giant Columbia River limpet as endangered. The giant Columbia River limpet, or short-faced lanx, was one of the species included in the ONRC petition and was evaluated along with the other petitioned species.

The petition involves 36 land snails, 7 slugs, 37 freshwater snails, and 3 freshwater clams. The species are found primarily in the states of Washington, Oregon, California, and Idaho. Most of these species are associated with late-successional forests or riparian areas.

The Service's finding is based on information in the petition, references in the petition, Service files, and consultations with malacologists, Service, and other Federal and State personnel. All documents are on file in the Service's Regional Office in Portland, Oregon.

Adequate rangewide surveys have not been completed for any of the species, except for the Trinity bristlesnail (*Monadenia setosa*) (a category 2 candidate). The Service also lacks evidence of specific threats throughout the ranges of any of the petitioned taxa, especially any threat associated with a population decline. Many of the species covered by this petition may be sensitive to ecological perturbations resulting from the impacts of human activities. However, information was not presented to show correlations between the species' ecological sensitivity and any declines in population numbers. The taxonomic distinctiveness or validity of many of the species has not been determined.

The Service encourages all interested parties to investigate the population status of and threats to all the species considered in this petition. The Service also encourages all interested parties to submit information that may provide additional specific information on the status of these species or specific threats to their survival.

The petition has been reviewed by staff at the Regional Office in Portland, Oregon. The Service finds that the listing of the eight category 2 candidates (Dalles sideband (*Monadenia fidelis minor*), rocky coast sideband (*Monadenia fidelis pronotis*), Trinity bristlesnail, Shasta sideband (*Monadenia troglodytes*), Karok hesperian (*Vespericola karokorum*), Columbia pebblesnail (*Fluminicola columbiana*), California floater (*Anodonta californiensis*), montane peaclam (*Pisidium ultramontanum*) is not warranted at this time. The Service finds that the petitioner has not presented substantial information indicating that listing of the remaining 75 species may be warranted (Hooded lancetooth (*Ancotrema voyanum*), Puget oregonian (*Cryptomastix devia*), Columbia oregonian (*Cryptomastix hendersoni*), mountain shoulderband (*Helminthoglypta arrosa monticola*), Oregon shoulderband (*Helminthoglypta hertleini*), intermediate shoulderband (*Helminthoglypta intercessa*), Klamath shoulderband (*Helminthoglypta talmadgei*), California megomphix (*Megomphix californicus*), Oregon megomphix (*Megomphix hemphilli*), *Monadenia callipeplus* (no common name), short-crested sideband (*Monadenia cristulata*), traveling sideband (*Monadenia fidelis celeuthia*), green sideband (*Monadenia fidelis flava*), *Monadenia fidelis klamathica* (no common name), tawny sideband (*Monadenia fidelis leonina*), yellow-base sideband (*Monadenia fidelis ochromphalus*), Salmon River sideband (*Monadenia fidelis salmonensis*), Wheel sideband (*Monadenia rotifer*), Scott River sideband (*Monadenia scottiana*), Chace sideband (*Monadenia chaceana*), Klamath sideband (*Monadenia churchi*), Chelan mountainsnail (*Oreohelix* n. sp. 1), Crater Lake tightcoil (*Pristiloma arcticum crateris*), crowned tightcoil (*Pristiloma pilsbryi*), Hanna spot (*Punctum hannai*), Shasta chaparral (*Trilobopsis roperi*), Tehama chaparral (*Trilobopsis tehamana*), Hoko vertigo (*Vertigo* n. sp. 1), Dalles hesperian (*Vespericola depressa*), *Vespericola eritrichius* (no common name), large hesperian (*Vespericola euthales*), Marin hesperian (*Vespericola marinensis*), Pressley hesperian (*Vespericola pressleyi*), Shasta hesperian (*Vespericola shasta*), Sasquatch hesperian (*Vespericola* n. sp. 1), Reeves Bar hesperian (*Vespericola* n. sp. 2), Klamath hesperian (*Vespericola* n. sp. 3), Siskiyou hesperian (*Vespericola sierrana*), evening fieldslug (*Deroceras hesperium*), Burrington jumping-slug (*Hemphillia burringtoni*), warty jumping-slug (*Hemphillia glandulosa*), Malone jumping-slug (*Hemphillia malonei*), panther jumping-slug (*Hemphillia pantherina*), blue-grey tail-dropper (*Prophysaon coeruleum*), shortface lanx (*Fisherola nuttalli*), *Klamath pebblesnail (Fluminicola* n. sp. 1), tall pebblesnail (*Fluminicola* n. sp. 2), nerite pebblesnail (*Fluminicola* n. sp. 4), toothed pebblesnail (*Fluminicola* n. sp. 5), diminutive pebblesnail (*Fluminicola* n. sp. 6), topaz pebblesnail (*Fluminicola* n. sp. 7), Fall Creek pebblesnail (*Fluminicola* n. sp. 8), lunate pebblesnail (*Fluminicola* n. sp. 9), nugget pebblesnail (*Fluminicola* seminalis), Great Basin rams-horn (*Helisoma newberryi*), scalloped juga (*Juga acutifilosa*), topaz juga (*Juga occata*), Dalles juga (*Juga hemphilli dallesensis*), brown juga (*Juga* n. sp. 1), Chace juga (*Juga chacei*), *Juga* n. sp. 1 (no common name), *Juga* n. sp. 2 (no common name), *Juga* n. sp. 3 (no common name), redwood juga (*Juga orickensis*), highcap lanx (*Lanx alta*), scale lanx (*Lanx klamathensis*), kneecap lanx (*Lanx patelloides*), rotund lanx (*Lanx subrotundata*), Columbia duskysnail (*Lyogyrus* n. sp. 1), Washington duskysnail (*Lyogyrus* n. sp. 2), canary duskysnail (*Lyogyrus* n. sp. 3), Klamath duskysnail (*Lyogyrus* n. sp. 4), nodose duskysnail (*Lyogyrus* n. sp. 5), rotund physa (*Physella (Physella) columbiana*), Archimedes pyrg (*Pyrgulopsis archimedis*), Crooked Creek springsnail (*Pyrgulopsis intermedia*), Klamath rams-horn (*Vorticifex*

klamathensis), Sinitsin rams-horn (*Vorticifex klamathensis sinitsini*), knobby rams-horn (*Vorticifex* n. sp.1), nerite rams-horn (*Vorticifex neritoides*), and the Willamette floater (*Anodonta wahlametensis*). This finding is based on the scientific and commercial information contained in the petition, referenced in the petition, and otherwise available to the Service at this time. If information becomes available indicating that listing as endangered or threatened is appropriate, the Service would propose to list any such mollusc.

References Cited

Frest, T. and E. Johannes. 1993. Mollusc species of concern within the range of the northern spotted owl. Deixis Consultants. Seattle, WA. 98 pp. plus addendum.

Author

The primary author of this notice is Allan Pfister, Division of Listing and Recovery, U.S. Fish and Wildlife Service, Regional Office, 911 N.E. 11th Avenue, Portland, Oregon, 97232–4181; (503) 231–6131.

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: June 28, 1994.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 94–16650 Filed 7–8–94; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB75

Endangered and Threatened Wildlife and Plants; Notice of Six-Month Extension and Reopening of Public Comment Period on the Proposed Rule To List the Northern Copperbelly Water Snake (Nerodia Erythrogaster Neglecta) as a Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of extension and reopening of comment period on proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice that the deadline to determine whether the northern copperbelly water snake (*Nerodia erythrogaster neglecta*) is a threatened species is being extended to allow time for additional field surveys and data analysis. This species now persists in isolated populations in southern Michigan and adjacent Indiana and Ohio, as well as southern Indiana, southeastern Illinois, and adjacent Kentucky. It occurs in lowland swamps and adjacent woodland and upland areas. During prior comment periods, new questions were raised by herpetologists and State conservation departments as to the merits of including intergrades in the listing and the sufficiency of information on the boundaries between intergrade and pure populations. The comment period on the proposal is reopened.

DATES: The new deadline for determining whether the northern copperbelly water snake is a threatened species is February 18, 1995. The comment period now closes November 1, 1994.

ADDRESSES: Comments and materials concerning this proposal should be sent to the U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: David Hudak, Supervisor, U.S. Fish and Wildlife Service, Ecological Services, Field Office, 620 S. Walker Street, Bloomington, Indiana 47403–2121 (phone 812/334–4261; fax 812/334–4273).

SUPPLEMENTARY INFORMATION:

Background

The northern copperbelly water snake was proposed for listing as a threatened species due to strong evidence that its range and numbers have declined dramatically, primarily as a result of the destruction of its habitat, and that the threats to the habitat and to the snakes are continuing.

The **Federal Register** notice proposing the northern copperbelly water snake for classification as a threatened species was published on August 18, 1993 (58 FR 43860). During the subsequent comment period, the Service received several letters from herpetologists and State conservation departments regarding intergradation between *N. e. neglecta* and *N. e. flavigaster* (yellow-bellied water snake). The latter subspecies occurs in southwestern Illinois and in the western portions of Kentucky and Tennessee, and also is widespread in the Gulf Coast States and the southern Atlantic Coast States.

Where the ranges of the two subspecies come into contact there are numerous individuals having characteristics intermediate between the two subspecies. These individuals are referred to as intergrades. There are also localized populations which are largely composed of intergrades known as intergrade populations.

Some of the concerns that were expressed during the comment period dealt with two inter-related issues: (1) the merits of including intergrade populations and/or intergrade individuals in the listing and thus giving them protection as threatened, and (2) the insufficiency of currently available information on the locations of boundaries between intergrade populations and "pure" populations of *N. e. neglecta*. These concerns are particularly acute in southern Illinois where the Department of Conservation believes that additional surveys are critical to an adequate understanding of the status of *N. e. neglecta* and its relationship to *N. e. flavigaster*. Results from these surveys are expected to be placed on review at the Service Office listed in the **ADDRESSES** section, when they become available.

The Endangered Species Act allows an extension of the normal 1-year deadline for taking final actions on a proposal to list a species for up to 6 months when there is a "substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination." The Service believes that there is substantial disagreement regarding the status of *N. e. neglecta*.

In order to collect additional data on the extent and locations of intergrade populations, to resolve questions regarding the most appropriate taxonomic entity to protect under the Act, and to obtain current data on the status of *N. e. neglecta* in Illinois, the Service is extending the deadline for the listing determination until February 18, 1995.

The comment period on the proposed rule originally closed October 18, 1993. It was reopened March 22 and closed April 22, 1994. The Service is reopening the comment period until November 1, 1994. Written comments should be submitted to the Service office in the Addresses section.

Author

The primary author of this notice is Ronald L. Refsnider, Division of Endangered Species, Bishop Henry Whipple Federal Building, 1 Federal Drive, Ft. Snelling, Minnesota 55111–4056 (phone 612–725–3276; fax 612–725–3526).

Authority: The Authority for this action is: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544;

16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Sta. 3500; unless otherwise noted.

Dated: June 30, 1994.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 94–16643 Filed 7–8–94; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 644

[I.D. 070194C]

Atlantic Billfish Fisheries

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

ACTION: Date change for scoping meeting, and extension of comment period.

SUMMARY: NMFS previously announced scoping meetings for Atlantic billfish 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. NMFS announces a change of meeting date for a previously announced billfish scoping meeting and extends the comment period for the scoping meetings.

DATES: Written scoping comments must be received by October 1, 1994. The scoping meeting originally announced for August 15, 1994, in Morehead City, NC, will be held on August 3, 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 meeting will be held at the following location:

August 3, 1994, Morehead City, NC, 7 to 10 p.m.

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

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

SUPPLEMENTARY INFORMATION:

Scoping Meeting

NMFS previously announced scoping meetings on February 9, 1994 (59 FR 5978), March 1, 1994 (59 FR 9720), April 5, 1994 (59 FR 15882) and June 16, 1994 (59 FR 30903). 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 for subsequent hearings, based on written and oral comments. 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**).

Dated: July 6, 1994.

David S. Crestin,

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

[FR Doc. 94–16714 Filed 7–8–94; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 59, No. 131
Monday, July 11, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Special Provision for Frozen Concentrated Orange Juice Under the North American Free Trade Agreement Implementation Act

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice of determination of existence of price conditions necessary for imposition of temporary duty on frozen concentrated orange juice from Mexico.

SUMMARY: Pursuant to Section 309(a) of the North American Free Trade Agreement Implementation Act ("NAFTA Implementation Act"), this is a notification that for 5 consecutive business days the daily price for frozen concentrated orange juice was less than the trigger price.

FOR FURTHER INFORMATION CONTACT: Joseph Somers, Horticultural and Tropical Products Division, Foreign Agricultural Service, U.S. Department of Agriculture, Washington, DC 20250–1049 or telephone at (202) 720–2974.

SUPPLEMENTARY INFORMATION: The NAFTA Implementation Act authorizes the imposition of a temporary duty (snapback) for Mexican frozen concentrated orange juice when certain conditions exist. Mexican articles falling under subheading 2009.11.00 of the Harmonized Tariff Schedule of the United States (HTS) are subject to the snapback duty provision.

Under Section 309(a) of the NAFTA Implementation Act, certain price conditions must exist before the United States can apply a snapback duty on imports of Mexican frozen concentrated orange juice. In addition, such imports must exceed specified quantities before the snapback duty can be applied. The price conditions exist when for each period of 5 consecutive business days the daily price for frozen concentrated orange juice is less than the trigger price.

For the purpose of this provision, the term "daily price" means the daily closing price of the New York Cotton Exchange, or any successor as determined by the Secretary of Agriculture (the "Exchange"), for the closest month in which contracts for frozen concentrated orange juice are being traded on the Exchange. The term "business day" means a day in which contracts for frozen concentrated orange juice are being traded on the Exchange. The term "trigger price" means the average daily closing price of the Exchange for the corresponding month during the previous 5-year period, excluding the year with the highest average price for the corresponding month and the year with the lowest average price for the corresponding month.

Price conditions no longer exist when the Secretary determines that for a period of 5 consecutive business days the daily price for frozen concentrated orange juice has exceeded the trigger price.

Whenever the price conditions are determined to exist or to cease to exist the Secretary is required to immediately notify the Commissioner of Customs of such determination. Whenever the determination is that the price conditions exist and the quantity of Mexican articles of frozen concentrated orange juice entered exceeds (1) 264,978,000 liters (single strength equivalent) in any of calendar years 1994 through 2002, or (2) 340,560,000 liters (single strength equivalent) in any of calendar years 2003 through 2007, the rate of duty on Mexican articles of frozen concentrated orange juice that are entered after the date on which the applicable quantity limitation is reached and before the date of publication in the **Federal Register** of the determination that the price conditions have ceased to exist shall be the lower of—(1) the column 1—General rate of duty in effect for such articles on July 1, 1991; or (2) the column 1—General rate of duty in effect on that day. For the purpose of this provision, the term "entered" means entered or withdrawn from warehouse for consumption in the customs territory of the United States.

Issued at Washington, DC the 28th day of June, 1994.

Richard B. Schroeter,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 94–16638 Filed 7–8–94; 8:45 am]

BILLING CODE 3410–10–M

Forest Service

Committee of State Foresters

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Committee of State Foresters will meet in Washington, DC, on August 10, 1994, from 10 a.m. to 2 p.m. The Committee is comprised of 7 members of the Executive Committee of the National Association of State Foresters. The meeting provides an opportunity for Committee members to consult with the Secretary of Agriculture regarding the administration and application of various parts of the Cooperative Forestry Assistance Act of 1978. The Assistant Secretary for Natural Resources and Environment will chair this meeting. The meeting is open to public attendance; however, participation is limited to Forest Service personnel and Committee members. Persons who wish to bring cooperative forestry matters to the attention of the Committee may file written statements with the Executive Secretary of the Committee before or after the meeting.

DATES: The meeting will be held August 10, 1994.

ADDRESSES: The meeting will be held at the U.S. National Arboretum, 3501 New York Avenue NE., Washington, DC, in the Administration Building Auditorium. Members of the public who wish to attend must register in advance with Jerilyn Levi, Office of the Deputy Chief for State and Private Forestry.

Send written comments to Joan M. Comanor, Executive Secretary, Committee of State Foresters, c/o Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090, (202) 205–1657.

FOR FURTHER INFORMATION CONTACT: Jerilyn Levi, Office of the Deputy Chief for State and Private Forestry, Forest Service, (202) 205–1041.

Dated: July 5, 1994.

Joan M. Comanor,

Deputy Chief.

[FR Doc. 94–16659 Filed 7–8–94; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1995 Census Test – Field Verification Operation.

Form Number(s): DG–121(ADP), DG–131(ADP).

Agency Approval Number: None.

Type of Request: New collection.

Burden: 310 hours.

Number of Respondents: 6,190.

Avg Hours Per Response: 3 minutes.

Needs and Uses: A critical component in conducting a census is a current and accurate address list of all living quarters. The Census Bureau will use two primary methods to create and update its address files: precanvass in urban areas (enumerators systematically canvass census blocks to verify or update addresses on the census address list) and prelist in rural areas (enumerators systematically canvass census blocks to obtain the physical location address and/or the mailing address of all structures where people live or could live). In addition to these methods the Census Bureau will receive additional address update information from outside sources including the United States Postal Service, local governments, and the "Be Counted!" campaign. The added addresses from these outside sources will be field verified to confirm their existence before being added to the census address list. The 1995 Census Test – Field Verification Operation will help verify the accuracy and completeness of the Census Bureau's address control file that we will use for the delivery of census test questionnaires.

Affected Public: Individuals or households.

Frequency: One time only.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 6, 1994.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94–16713 Filed 7–8–94; 8:45 am]

BILLING CODE 3510–07–F

International Trade Administration

[A–570–831]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Fresh Garlic From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 11, 1994.

FOR FURTHER INFORMATION CONTACT: John Beck, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC, 20230; telephone (202) 482–3464.

Preliminary Determination

We preliminarily determine that fresh garlic from the People's Republic of China (PRC) is being, or is 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).

Case History

Since the notice of initiation on February 22, 1994 (59 FR 9470, February 28, 1994), the following events have occurred.

On March 17, 1994, the U.S. International Trade Commission (ITC) issued an affirmative preliminary determination.

Departmental Efforts to Obtain Information

During March and April 1994, the Department requested information relating to producers/exporters of the subject merchandise in the PRC, as follows:

- On March 3, 1994, we sent an abbreviated section A questionnaire to China's Ministry of Foreign Trade and Economic Cooperation (MOFTEC);
- On March 4, 1994, we sent a cable to the American Embassy in Beijing;
- On March 11, 1994, we sent a cable to the American Embassy in Tokyo, and to the U.S. consulate in Hong Kong; and
- On April 7, 1994, we sent an abbreviated section A questionnaire to the China Chamber of Commerce of Imports & Exports of Foodstuffs, Native Produce, and Animal By-Products (China Chamber)

Having received no response to our initial inquiries, follow-up requests for information were made as follows:

- On April 7, 1994, to MOFTEC; and
- On April 15, 1994, to the American Embassies in Beijing and Tokyo, and to the U.S. consulate in Hong Kong.

Respondents and Status of Questionnaires

On May 11 and 12, 1994, the Department received information from MOFTEC and the American Embassy in Beijing, respectively, containing the names and addresses of 40 producers/exporters of the subject merchandise in the PRC. Based on an analysis of ships' manifest data (PIERS), the Department estimated that the named respondents accounted for approximately 40 percent of exports of the subject merchandise to the United States during the period of investigation. Consequently, on May 18, 1994, the Department sent 40 antidumping questionnaires to the named firms, with additional copies sent to MOFTEC and the China Chamber.

Following an entry of appearance by counsel for a previously unnamed producer/exporter, the Department sent a questionnaire to this additional firm on May 31, 1994. Finally, at the request of a second previously unnamed producer/exporter, the Department sent a questionnaire to this additional firm on June 21, 1994.

Other Events

On June 2, 1994, the Department issued a decision memorandum which stated that we would not postpone our preliminary determination.

Based on reasonably supported allegations submitted by petitioner on June 10, 1994, the Department initiated an investigation on June 14, 1994, of whether critical circumstances exist with respect to imports of fresh garlic from the PRC. On June 14 and 21, 1994, the Department requested monthly shipment data for exports to the United States from questionnaire recipients.

Scope of Investigation

The products covered by this investigation are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved,

or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing and level of decay.

The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.0000, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9500 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

The scope description provided above differs from the scope description used by the Department in its notice of initiation of this investigation (59 FR 9470, February 28, 1994). Changes to the scope include (a) the addition of more concise language (and additional HTS subheadings) related to the packing of the subject merchandise, and (b) additional language to exclude further processed products. The revisions are a result of comments received from the Customs Service on March 17 and June 30, 1994, and from counsel for petitioner on June 29 and 30, 1994.

Period of Investigation

The period of investigation (POI) is August 1, 1993, to January 31, 1994.

Best Information Available

We have determined, in accordance with section 776(c) of the Act, that the use of best information available (BIA) is appropriate for sales of the subject merchandise in this investigation. In deciding whether to use BIA, section 776(c) provides that the Department may take into account whether the respondent was able to produce information requested in a timely manner and in the form required. In this case, exporters of fresh garlic from the PRC did not respond to our requests for information.

As outlined in the "Case History" section of this notice, the Department made several attempts to obtain information from a number of sources. We have not received any responses to our questionnaire with which to perform our antidumping analysis. Consequently, we based our preliminary determination in this investigation on BIA.

In determining what to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns lower margins to those respondents who cooperate in an investigation, and margins based on more adverse assumptions for those respondents who do not cooperate in an investigation. Since the potential respondents in this case have not cooperated, we assigned a BIA margin based on the most adverse assumptions.

In this case, BIA is the highest margin contained in the petition (*see Initiation of Antidumping Duty Investigation: Fresh Garlic from the People's Republic of China*, 59 FR 9470, February 28, 1994), and is listed below for all manufacturers, producers and exporters of fresh garlic in the PRC.

Critical Circumstances

Petitioner alleges that "critical circumstances" exist with respect to imports of fresh garlic from the PRC. Section 733(e)(1) of the Act provides that there is a reasonable basis to believe or suspect that critical circumstances exist if:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of investigation at less than its fair value, and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Regarding criterion (A) above, we normally consider margins of 25 percent or more as sufficient to impute knowledge of dumping. Since the preliminary estimated dumping margin for all exporters of fresh garlic in the PRC is in excess of 25 percent, we can impute knowledge of dumping under section 733(e)(1)(A)(ii) of the Act.

Regarding criterion (B) above, pursuant to 19 CFR 353.16(f), we generally consider the following factors in determining whether imports have been massive over a short period of time: (1) the volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by the imports. If imports during the period immediately following the petition increase by 15 percent over imports during a comparable period immediately preceding the filing of a petition, we consider them massive. Respondents have failed to respond to the Department's questionnaire, as well as to our request for monthly export data. As a result, the Department has assumed, as BIA, that there have been massive imports over a relatively short period of time.

Accordingly, because the dumping margin is sufficient to impute knowledge of dumping, and because we have determined that imports of fresh garlic have been massive, we preliminarily determine that critical circumstances do exist in this investigation.

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 fresh garlic from the PRC, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date 90 days before 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 margin amount by which the foreign market value of the subject merchandise exceeds the United States price as shown below. The suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Weighted-average margin percent
All Manufacturers/Producers/Exporters	376.67

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of this 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 by no later than August 26, 1994, and rebuttal briefs by no later that September 2, 1994. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to give interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on September 7, 1994, at 10:00 a.m. 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 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 in

the **Federal Register**. 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.

This notice is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)) and 19 CFR 353.15(a)(4).

Dated: July 6, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–16741 Filed 7–8–94; 8:45 am]

BILLING CODE 3510–DS–P

National Institute of Standards and Technology

[Docket No. 940684–4184]

RIN 0693–AB32

Proposed Revision of Federal Information Processing Standard (FIPS) 21–3, COBOL

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; Request for comments.

SUMMARY: This proposed revision of Federal Information Processing Standard (FIPS) 21–3, COBOL, which adopts ANSI X3.23–1985, and ANSI X3.23a 1989, is being proposed for Federal use. This revision will adopt the forthcoming amendment (ANSI X3.23b–1993) to American National Standard for COBOL which adds corrections and clarification to the language. The proposed amendment is upwardly compatible with the current standard except for the reserved word FUNCTION.

Prior to the submission of this proposed revision to FIPS PUB 21–3 to the Secretary of Commerce for review and approval, it is essential to assure that consideration is given to the needs and views of manufacturers, the public, and state and local governments. The purpose of this notice is to solicit such views.

This proposed FIPS contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) a specifications section which deals with the technical requirements of the standard. Only the announcement section of the standard is provided in this notice. Interested parties may obtain copies of the specifications (ANSI X3.23–1985, ANSI X3.23a–1989, and ANSI X3.23b–1993) from American National Standards Institute (ANSI), 11 West 42nd Street, 13th Floor, New York, NY 10036, (212) 642–4900.

DATES: Comments on this proposed revision must be received on or before October 11, 1994.

ADDRESSES: Written comments concerning the adoption of this proposed revision as FIPS 21–4 should be sent to: Director, Computer Systems Laboratory, ATTN: Proposed Revision of FIPS 21–3, COBOL, Technology Building, Room B–154, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. Arnold Johnson, National Institute of Standards and Technology, Gaithersburg, MD 20899, (301) 975–3247.

Dated: July 5, 1994.

Samuel Kramer,

Associate Director.

Federal Information Processing Standards Publication 21–4

[proposed]

Announcing the Standard for COBOL

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology (NIST) after approval by the Secretary of Commerce pursuant to Section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100–235.

1. *Name of Standard.* COBOL (FIPS PUBS 21–4)

2. *Category of Standard.* Software Standard, Programming Language.

3. *Explanation.* This publication announces the adoption of American National Standard COBOL, as specified in ANSI X3.23–1985, X3.23a–1989 and ANSI X3.23b–1993, as a Federal Information Processing Standard (FIPS) This revision supersedes FIPS PUB 21–3 and reflects corrections and clarifications to the COBOL specifications. The American National Standards define the elements of the COBOL programming language and the rules for their use. The purpose of the standards is to promote portability of COBOL programs for use on a variety of data processing systems. The standards are used by implementors as the reference authority in developing processors and by users who need to know the precise syntactic and semantic rules of the standard language.

4. *Approving Authority.* Secretary of Commerce.

5. *Maintenance Agency.* Department of Commerce, National Institute of Standards and Technology (NIST).

6. *Cross Index.*

a. American National Standard for Information Systems—Programming Language—COBOL, ANSI X3.23–1985, ISO 1989–1985.

b. American National Standard for Information Systems—Programming Language—Intrinsic Function Module for COBOL, ANSI X3.23a–1989.

c. American National Standard for Information Systems—Programming Language—Correction and Clarification Amendment for COBOL, ANSI X3.23b–1993.

7. *Related Documents.**

a. Federal Information Resources Management Regulation (FIRMR) Subpart 201.20.303, Standards, and Subpart 201.39.1002, Federal Standards.

b. Federal Information Processing Standards Publication 29, Interpretation Procedures for Federal Information Processing Standards for Software.

c. NBS Special Publication 500–117, Selection and Use of General-Purpose Programming Languages.

8. *Objectives.* Federal standards for high level programming languages permit Federal departments and agencies to exercise more effective control over the production, management, and use of the Government's information resources. The primary objectives of Federal programming language standards are:

—To encourage more effective utilization and management of programmers by insuring that programming skills acquired on one job are transportable to other jobs, thereby reducing the cost of programmer re-training;

—To reduce the cost of program development by achieving the increased programmer productivity that is inherent in the use of high level programming languages;

—To reduce the overall software costs by making it easier and less expensive to maintain programs and to transfer programs among different computer systems, including replacement systems; and

—To protect the existing software assets of the Federal Government by insuring to the maximal feasible

* References to most recent revision of FIPS PUBS.

extent that Federal programming language standards are technically sound and that subsequent revisions are compatible with the installed base.

9. *Applicability.*

a. Federal standards for high level programming languages should be used for computer applications and programs that are either developed or acquired for government use. FIPS COBOL is one of the high level programming language standards provided for use by all Federal departments and agencies. FIPS COBOL is especially suited for applications that emphasize the manipulation of characters, records, files, and input/output (in contrast to those primarily concerned with scientific and numeric computations).

b. The use of FIPS high level programming languages is strongly recommended when one or more of the following situations exist:

—It is anticipated that the life of the program will be longer than the life of the presently utilized equipment.

—The application or program is under constant review for updating of the specifications, and changes may result frequently.

—The application is being designed and programmed centrally for a decentralized system that employs computers of different makes, models and configurations.

—The program will or might be run on equipment other than for which the program is initially written.

—The program is to be understood and maintained by programmers other than the original ones.

—The advantages of improved program design, debugging, documentation and intelligibility can be obtained through the use of this high level language regardless of interchange potential.

—The program is or is likely to be used by organizations outside the Federal Government (i.e., State and local governments, and others).

c. Nonstandard language features should be used only when the needed operation or function cannot reasonably be implemented with the standard features alone. Although nonstandard language features can be very useful, it should be recognized that their use may make the interchange of programs and future conversion to a revised standard or replacement processor more difficult and costly.

d. It is recognized that programmatic requirements may be more economically and efficiently satisfied through the use of report generation, database management, or text processing languages. The use of any facility should be considered in the context of system life, system cost, data integrity, and the potential for data sharing.

e. Programmatic requirements may be also more economically and efficiently satisfied by the use of automatic program generators. However, if the final output of a program generator is a COBOL source program, then the resulting program should conform to the conditions and specifications of FIPS COBOL.

f. When it is determined that a programming language that has been adopted as a FIPS is to be used for an application or program, a processor conforming to the FIPS programming language shall be used, if available. It is not intended that existing programs be rewritten solely for the purpose of conforming to a FIPS programming language. If a program is to be part of an existing application written in a programming language not conforming to a FIPS, the language processor used for the existing application may be used for the new program.

10. *Specifications.* FIPS COBOL specifications are the same as American National Standard COBOL as specified in ANSI X3.23–1985, ANSI X3.23a–1989 and ANSI X3.23b–1993.

ANSI X3.23–1985, ANSI X3.23a–1989 and ANSI X3.23a–1993 specify the form of a program written in COBOL, formats for data, and rules for program and data interpretation.

The standards do not specify limits on the size of programs, minimum system requirements, the means of supervisory control of programs, or the means of transforming programs internally for processing.

In addition, the following requirements apply:

a. For purposes of FIPS COBOL, the modules defined in ANSI X3.23–1985 and ANSI X3.23a–1989 are combined into three subsets and four optional modules. The three subsets are identified as Minimum, Intermediate, and High. The four optional modules are Report Writer, Communication, Debug, and Segmentation. These four optional modules may be associated with any of the subsets.

The high subset is composed of all language elements of the highest level of all required modules. The intermediate subset is composed of all language elements of level 1 of all required modules except the Intrinsic Function module. The minimum subset is composed of all language elements of level 1 of the Nucleus, Sequential I–O, and Inter-Program Communication modules.

The following table reflects the composition of the required subsets and the relationship of the subsets and the optional modules. The numbers in the table refer to the level within a module as designated in ANSI X3.23–1985 and ANSI X3.23A–1989, and a dash denotes the corresponding module is omitted or may be omitted.

Modules	COBOL subsets		
	Minimum	Intermediate	High
Required:			
Nucleus	1	1	2.
Sequential I–O	1	1	2.
Relative I–O	–	1	2.
Indexed I–O	–	1	2.
Inter-Program Communication	1	1	2.
Sort-Merge	–	1	1.
Source Text Manipulation	–	1	2.
Intrinsic Function	–	–	1.
Optional:			
Report Writer	–, or 1	–, or 1	–, or 1.
Communication	–, 1, or 2	–, 1, or 2	–, 1, or 2.
Debug	–, 1, or 2	–, 1, or 2	–, 1, or 2.
Segmentation	–, 1, or 2	–, 1, or 2	–, 1, or 2.

b. A facility must be available in the processor for the user to optionally specify monitoring of the source program at compile time. The monitoring may be specified for a FIPS COBOL subset, for any of the optional modules, for all of the obsolete language elements included in the processor, or for a combination of a FIPS COBOL subset, optional modules, and all obsolete elements. The monitoring may be specified for any FIPS COBOL subset at or below the highest subset for which the processor is implemented and for a level of an optional module at or below the level of the optional module for which the processor is implemented. The monitoring is an analysis of the syntax used in the source program against the syntax included in the user selected FIPS COBOL subset and optional modules. Any syntax used in the source program that does not conform to that included in the user selected FIPS COBOL subset and optional modules will be diagnosed and identified to the user through a message on the source program listing. Any syntax for an obsolete language element included in the processor and used in the source program will also be diagnosed and identified through a message on the source program listing. The determination of the need to flag any given source program syntax in accordance with these requirements cannot be logically resolved until the syntactic correctness of the source program has been established. The message provided will identify:

—The level indicator, clause, statement or header that directly contains the nonconforming or obsolete syntax. (For the purpose of this requirement the definitions of level indicator, clause, statement and header contained in American National Standard COBOL, ANSI X3.23–1985, Section III, Glossary, and the definition of syntax contained in American National Dictionary for Information Processing Systems, (ANDIS), ANSI X3.172–1990, apply.)

–The source program line and an indication of the beginning location within the line of the level indicator, clause, statement or header which contains the nonconforming or obsolete syntax.

–The syntax as "nonconforming standard" if the nonconforming syntax is included in the processor but is not within the user selected FIPS COBOL subset or optional modules unless monitoring is selected for the obsolete category; in that case obsolete language elements are only flagged as "obsolete".

—The syntax as "nonconforming nonstandard" if the nonconforming syntax is a nonstandard extension included in the processor.

—The syntax as "obsolete" if the syntax identified is in the obsolete category within a FIPS COBOL subset or optional module included in the processor.

11. *Implementation.* The implementation of FIPS COBOL involves three areas of consideration: acquisition of COBOL processors, interpretation of FIPS COBOL, and validation of COBOL processors.

11.1 *Acquisition of COBOL Processors.* This publication is effective [insert a date 90 days after the approval date]. COBOL processors acquired for Federal use after this date should implement at least one of the required subsets of FIPS COBOL. If the functionality of one or more of the optional modules meets programmatic requirements, then those optional modules also should be acquired. Each optional module that is needed to meet programmatic requirements should be explicitly cited as a requirement in the order for the processor. Conformance to FIPS COBOL should be considered whether COBOL processors are developed internally, acquired as part of an ADP system procurement, acquired by separate procurement, used under an ADP leasing arrangement, or specified for use in contracts for programming services.

A transition period provides time for industry to produce COBOL processors conforming to the standard. The transition period begins on the effective date and continues for one (1) year thereafter. The following apply during the transition period:

a. The provisions of FIPS PUB 21–3 apply to processors ordered before the effective date but delivered subsequent to the effective date.

b. The provisions of this publication apply to orders placed after the effective date; however, a processor conforming to FIPS PUB 21–4, if available, may be acquired for use prior to the effective date. If a conforming processor is not available, a processor conforming to FIPS PUB 21–3 may be acquired for interim use during the transition period.

11.2 *Interpretation of FIPS COBOL.* NIST provides for the resolution of questions regarding FIPS COBOL specifications and requirements, and issues official interpretations as needed. All questions about the interpretation of FIPS COBOL should be addressed to: National Institute of Standards and Technology, Attn: COBOL Interpretation, Technology Building, Room B–154, Gaithersburg, MD 20899.

11.3 *Validation of COBOL Processors.* NIST provides a service for the purpose of validating the conformance to this standard of processors offered for Federal procurement. The validation system reports the nature of any deviations that are detected. This service is offered on a reimbursable basis. Further information about the validation service can be obtained from the Software Standards Validation Group, COBOL Validation, National Institute of Standards and Technology, Gaithersburg, MD 20899 (301) 975–3247.

12. *Waivers.* Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of Title 44, United States Code. Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Cause a major adverse financial impact on the operator which is not offset by Government-wide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis on which the agency head made the required finding(s). A copy of each such decision, with procurement-sensitive or classified portions clearly identified, shall be sent to: National Institute of Standards and Technology; ATTN: FIPS Waiver Decisions, Technology Building, Room B–154; Gaithersburg, MD 20899.

In addition notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the **Federal Register**.

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the *Commerce Business Daily* as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. Sec. 552(b), shall be part of the procurement documentation and retained by the agency.

13. *Where to Obtain Copies.* Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. (Sale of the included specifications document is by arrangement with the American National Standards Institute.) When ordering, refer to Federal Information Processing Standards Publication 21–4 (FIPSPUB21–4), and title. Payment may be made by check, money order, or deposit account.

[FR Doc. 94–16665 Filed 7–8–94; 8:45 am]
BILLING CODE 3510–CN–M

National Institute of Standards and Technology

[Docket No. 940669–4169]

RIN 0693–AB25

Proposed Revision of Federal Information Processing Standards (FIPS) 119, ADA

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; Request for comments.

SUMMARY: This proposed revision of Federal Information Processing Standard (FIPS) 119, Ada, will adopt the revised voluntary industry specifications, American National Standard and the International Organization for Standardization Reference Manual for the Ada Programming Language, ANSI/ISO/IEC 8652:1994, as a Federal Information Processing Standard (FIPS). American National Standard and the International Organization for Standardization Reference Manual for the Ada Programming Language, ANSI/ISO/IEC 8652:1994, specifies the form and meaning of programs written in Ada. The purpose of the standard is to promote portability of Ada programs for use on a variety of data processing systems. The standard is for use by implementors as the reference authority in developing compilers, interpreters, or other forms of high level language processors; and by other computer professionals who need to know the precise syntactic and semantic rules of the standard.

Prior to the submission of this proposed revision to the Secretary of Commerce for review and approval, it is essential to assure that consideration is given to the needs and views of manufacturers, the public, and state and local governments. The purpose of this notice is to solicit such views.

This proposed FIPS contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) a specifications section which deals with the technical requirements of the standard. Only the announcement section of the standard is provided in this notice. Interested parties may obtain copies of the technical specifications from the Standards Processing Coordinator (ADP), National Institute of Standards and Technology, Technology Building, Room B64, Gaithersburg, MD 20899, telephone (301) 975–2816.

DATES: Comments on this proposed revision must be received on or before October 11, 1994.

ADDRESSES: Written comments concerning the proposed revision should be sent to: Director, Computer Systems Laboratory, ATTN: Proposed FIPS 119–1, Ada, Technology Building, Room B–154, National Institute of Standards and Technology, Gaithersburg, MD 20899. Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Dr. William H. Dashiell, National Institute of Standards and Technology, Gaithersburg, MD 20899, (301) 975–2490.

Dated: June 30, 1994.

Samuel Kramer,

Associate Director.

Proposed Federal Information Processing Standards Publication 119–1

DRAFT 1994 June 7 DRAFT

Announcing the Standard for Ada

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology (NIST) after approval by the Secretary of Commerce pursuant to Section 111(d) of the Federal Property and Administrative Services Act of 1949, as amended by the Computer Security Act of 1987, Public Law 100–235.

1. Name of Standard. Ada (FIPS PUB 119–1).

2. Category of Standard. Software Standard, Programming Language.

3. Explanation. This publication is a revision of FIPS PUB 119 and supersedes that document in its entirety.

This publication announces the adoption of American National Standard and the International Organization for Standardization Reference Manual for the Ada Programming Language, ANSI/ISO/IEC 8652:1994, as a Federal Information Processing Standard (FIPS). American National Standard and the International Organization for Standardization Reference Manual for the Ada Programming Language, ANSI/ISO/IEC 8652:1994, specifies the form and meaning of programs written in Ada. The purpose of the standard is to promote portability of Ada programs for use on a variety of data processing systems. The standard is for use by implementors as the reference authority in developing compilers, interpreters, or other forms of high level language processors; and by other computer professionals who need to know the precise syntactic and semantic rules of the standard.

4. Approving Authority. Secretary of Commerce.

5. Maintenance Agency. U.S. Department of Commerce, National Institute of Standards and Technology (NIST), Computer Systems Laboratory (CSL).

6. Cross Index. American National Standard and the International Organization for Standardization Reference Manual for the Ada Programming Language, ANSI/ISO/IEC 8652:1994.

7. Related Documents.

a. Federal ADP and Telecommunications Standards Index, U.S. General Services Administration, Information Resources Management Service, April 1994 (updated periodically).

b. Federal Information Resources Management Regulations (FIRMR) subpart 201.20.303, Standards, and subpart 201.39.1002, Federal Standards.

c. FIPS PUB 29–3, Interpretation Procedures for FIPS Software, 29 October 1992.

d. NBS Special Publication 500–117, Selection and Use of General-Purpose Programming Languages.

e. NIST, Validated Products List, (republished quarterly). Available by subscription from the National Technical Information Service (NTIS).

f. ISO 6429: 1992(E)—Information Technology—Control Functions for Coded Character Sets.

g. ISO 646 Information Processing—7-bit Single-Byte Coded Character Set.

h. ISO 8859–1:1987(E)—Information Processing—8 bit Single-Byte Coded Character Sets—Part 1: Latin Alphabet No. 1.

i. ISO 10646–1:1993 Information Technology—Universal Multiple-Octet Coded Character Set (UCS)—Part 1: Architecture and Balic Multilingual Plane.

8. Objectives. Federal standards for high level programming languages permit Federal departments and agencies to exercise more effective control over the production, management, and use of the Government's information resources. The primary objectives of Federal programming language standards are:

—To encourage more effective utilization and management of programmers by insuring that programming skills acquired on one job are transportable to other jobs, thereby reducing the cost of programmer re-training;

—To reduce the cost of program development by achieving the increased programmer productivity that is inherent in the use of high level programming languages;

—To reduce the overall software costs by making it easier and less expensive to maintain programs and to transfer programs among different computer systems, including replacement systems;

—To protect the existing software assets of the Federal Government by insuring to the maximal feasible extent that Federal programming language standards are technically sound and that subsequent revisions are compatible with the installed base.

Government-wide attainment of the above objectives depends upon the widespread availability and use of comprehensive and precise standard language specifications.

9. Applicability.

a. Federal standards for high level programming languages should be used for computer applications that are either developed or acquired for government use. FIPS Ada is one of the high level programming language standards provided for use by all Federal departments and agencies. FIPS Ada is suitable for use in programming and any applications for which there is no specific language available specifically targeted to that application.

b. The use of FIPS Ada is recommended for the following applications and situations:

—Those involving control of real-time or parallel processes.

—Very large systems.

—Systems with requirements for very high reliability.

—Systems which are to be developed with reusable software packages.

—When it is anticipated that the life of an application will be longer than the life of the presently utilized equipment.

—The application or program is under constant review for updating of the specifications, and changes may result frequently.

—The application is being designed and programmed centrally for a decentralized system that employs computers of different makes, models and configurations.

—The program will or might be run on equipment other than that for which the program is initially written.

—The program is to be understood and maintained by programmers other than the original ones.

—The advantages of improved program design, debugging, documentation and intelligibility can be obtained through the use of this high level language.

—The program is or is likely to be used by organizations outside the Federal Government (i.e., State and local governments, and others).

10. Specifications. FIPS Ada specifications are the language specifications contained in American National Standard and the International Organization for Standardization Reference Manual for the Ada Programming Language, ANSI/ISO/IEC 8652:1994 standard.

The American National Standard and the International Organization for Standardization Reference Manual for the Ada Programming Language, ANSI/ISO/IEC 8652:1994 standard document specifies the form of a program written in Ada, the effect of translating and executing a program, predefined library entities that must be supplied, and detection of compilation and/or link errors.

The standard does not specify limits on the size or complexity of programs, the results when the rules of the standard fail to establish an interpretation, the means of supervisory control of programs, or the means of transforming programs for processing.

11. Implementation. The implementation of FIPS Ada involves four areas of consideration: the effective date, acquisition of Ada processors, interpretation of FIPS Ada, and validation of processors.

11.1 Effective Date. This revised standard becomes effective ninety (90) days after the publication in the Federal Register announcing approval by the Secretary of Commerce. Ada Processors acquired for Federal use after this date should conform to FIPS PUB 119–1.

A transition period provides time for industry to produce Ada language processors conforming to the standard. The transition period begins on the effective date and ends March 1, 1997. The provisions of FIPS PUB 119–1 apply to orders placed after the effective date of this publication. If, during the transition period, a processor conforming to FIPS PUB 119–1 is not available, a processor conforming to FIPS PUB 119 may be acquired for interim use during the transition period.

This transition period is intended to give implementations that conform to FIPS PUB 119 time to make the enhancements necessary to enable conformance to FIPS PUB 119–1. No further transitional period is necessary.

11.2 Acquisition of Ada Processors. Conformance to FIPS Ada should be considered whether Ada processors are developed internally, acquired as part of an ADP system procurement, acquired by separate procurement, used under an ADP leasing arrangement, or specified for use in contracts for programming services. Recommended terminology for procurement of FIPS Ada is contained in the U.S. General Services Administration publication Federal ADP & Telecommunications Standards Index, Chapter 4 Part 1.

11.3 Interpretation of FIPS Ada. The National Institute of Standards and Technology provides for the resolution of questions (see FIPS PUB 29–3, Interpretation Procedures for FIPS Software, 29 October 1992) regarding the specifications and requirements, and issues official interpretations as needed. All questions about the interpretation of this standard should be addressed to: Director, Computer Systems Laboratory, Attn: FIPS Ada Interpretation, National Institute of Standards and Technology, Gaithersburg, MD 20899, Voice: 301–975–2490, FAX: 301–948–6213, e-mail: dashiell@ecf.ncsl.nist.gov.

11.4 Validation of Ada Processors. Implementations of FIPS Ada shall be validated in accordance with the NIST Computer Systems Laboratory (CSL) validation procedures for FIPS Ada. Recommended procurement terminology for validation of FIPS Ada is contained in the U.S. General Services Administration (GSA) publication *Federal ADP & Telecommunications Standards Index*,

Chapter 4 Part 2. This GSA publication provides terminology for three validation options: Delayed Validation, Prior Validation Testing, and Prior Validation. The agency shall select the appropriate validation option and shall specify whether a Validation Summary Report or Certificate of Validation is required. The agency shall specify appropriate time frames for validation and correction of nonconformities. The agency is advised to refer to the NIST publication *Validated Products List* for information about the validation status of Ada products. This information may be used to specify validation time frames that are not unduly restrictive of competition.

The agency shall specify the criteria used to determine whether a Validation Summary Report (VSR) or Certificate is applicable to the hardware/software environment of the Ada implementation offered. The criteria for applicability of a VSR or Certificate should be appropriate to the size and timing of the procurement. A large procurement may require that the offered version/release of the Ada implementation shall be validated in a specified hardware/software environment and that the validation shall be conducted with specified hardware/software features or parameter settings; e.g., the same parameter settings to be used in a performance benchmark.

An agency with a single/license procurement may review the *Validated Products List* to determine the applicability of existing VSRs or Certificates to the agency's hardware/software environment.

Ada implementations shall be evaluated using a NIST approved test suite.

For further information contact: Director, Computer Systems Laboratory, Attn: FIPS Ada Validation, National Institute of Standards and Technology, Gaithersburg, MD 20899, Voice: 301–975–2490, FAX: 301–948–6213, e-mail: dashiell@ecf.ncsl.nist.gov.

12. Waivers. Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may re-delegate such authority only to a senior official designated pursuant to section 3506(b) of Title 44, U.S. Code. Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Cause a major adverse financial impact on the operator which is not offset by Government wide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis on which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive classified portions clearly identified, shall be sent to: National Institute of Standards and Technology, ATTN: FIPS Waiver Decisions, Technology Building, Room B–154, Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the **Federal Register**.

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the Commerce Business Daily as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. 552(b), shall be part of the procurement documentation and retained by the agency.

13. Where to Obtain Copies. Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161, telephone (703) 487–4650. When ordering, refer to Federal Information Processing Standards Publication 119–1 (FIPSPUB119–1), and title. Payment may be made by check, money order, or deposit account.

[FR Doc. 94–16620 Filed 7–8–94; 8:45 am]
BILLING CODE 3510–CN–M

[Docket No. 940675–4175]

RIN 0693–AB33

Proposed Revision of Federal Information Processing Standard (FIPS) 180, Secure Hash Standard

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; Request for comments.

SUMMARY: A revision of Federal Information Processing Standard (FIPS) 180, Secure Hash Standard (SHS), is being proposed. This proposed revision corrects a technical flaw that made the standard less secure than had been thought. The algorithm is still reliable as a security mechanism, but the correction returns the SHS to the original level of security.

The SHS produces a 160-bit output called a message digest for a message of any size. This message digest can be used with FIPS 186, Digital Signature Standard (DSS), to compute a signature for the message. The same message digest should be obtained by the verifier of the signature when the received version of the message is used as input to the Secure Hash Algorithm (SHA). Any change to the message in transmit should produce a different message digest, indicating to the verifier that a change has been made to the message.

The purpose of this notice is to solicit views from the public, manufacturers, and Federal, state, and local government users prior to submission of this proposed revision to the Secretary of Commerce for review and approval.

The proposed revision contains two sections: (1) An announcement, which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) specifications which deal with the technical aspects of the standard. Only the announcement section of the standard is provided in this notice. Interest parties may obtain copies of the specifications section from the Standards Processing Coordinator (ADP), National Institute of Standards and Technology, Technology Building, Room B–64, Gaithersburg, MD 20899, telephone (301) 975–2816.

DATES: Comments on this proposed revision must be received on or before October 11, 1994.

ADDRESSES: Written comments concerning the proposed revision should be sent to: Director, Computer Systems Laboratory, ATTN: Proposed Revision of FIPS 180, SHS, Technology Building, Room B–154, National Institute of Standards and Technology, Gaithersburg, MD 20899

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT:

Mr. Miles Smid, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975–2938.

SUPPLEMENTARY INFORMATION: NIST has been notified that Department of Defense authorities have approved the use of the SHS with the DSS to sign unclassified data processed by "Warner Amendment" systems (10 U.S.C. 2315 and 44 U.S.C. 3502(2)) as well as classified data in selected applications.

Dated: July 5, 1994.

Samuel Kramer,

Associate Director.

Proposed Federal Information Processing Standards Publication 180–1

1994 May 31

Announcing the Secure Hash Standard

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology (NIST) after approval by the Secretary of Commerce pursuant to Section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100–235.

Name of Standard: Secure Hash Standard.

Category of Standard: Computer Security.

Explanation: This Standard specifies a secure hash algorithm, SHA–1, for computing a condensed representation of a message or a data file. When a message of any length $<2^{64}$ bits is input, the SHA–1 produces a 160-bit output called a message digest. The message digest can then be input to the Digital Signature Algorithm (DSA) which generates or verifies the signature for the message (see Figure 1). Signing the message digest rather than the message often improves the efficiency of the process because the message digest is usually much smaller in size than the message. The same hash algorithm must be used by the verifier of a digital signature as was used by the creator of the digital signature.

The SHA–1 is called secure because it is computationally infeasible to find a message which corresponds to a given message digest, or to find two different messages which produce the same message digest. Any change to a message in transit will, with very high probability, result in a different message digest, and the signature will fail to verify. SHA–1 is a technical revision of SHA (FIPS 180). A circular left shift operation has been added to the specifications in section 7, line b, page 9 of FIPS 180 and its equivalent in section 8, line c, page 10 of FIPS 180.* This revision improves the security provided by this standard. The SHA–1 is based on principles similar to those used by Professor Ronald L. Rivest of MIT when designing the MD4 message:

**Modification*

In Section 7 of [1] (page 9), the line which reads

(b) For t=16 to 79 let $W_t = W_{t-3}$ XOR W_{t-8} XOR W_{t-14} XOR W_{t-16}.

is to be replaced by

(b) For t=16 to 79 let $W_t = S^1(W_{t-3}$ XOR W_{t-8} XOR W_{t-14} XOR W_{t-16}.

where S^1 is a left circular shift by one bit as defined in Section 3 of [1] (page 6), namely $S^1(X) = (X << 1) \vee (X >> 31)$.

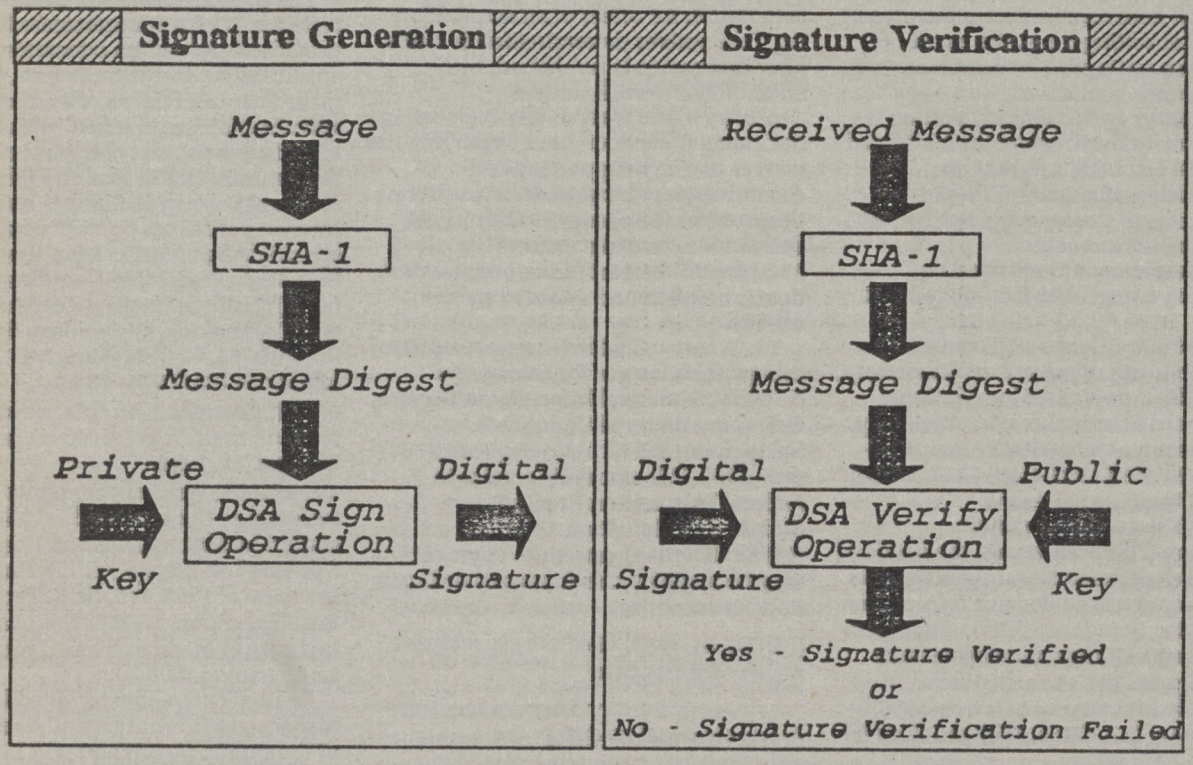


Figure 1: Using the SHA-1 with the DSA

BILLING CODE 3510-CN-C

Applications: The SHA–1 may be used with the DSA in electronic mail, electronic funds transfer, software distribution, data storage, and other applications which require data integrity assurance and data origin authentication. The SHA–1 may also be used whenever it is necessary to generate a condensed version of a message.

Implementations: The SHA–1 may be implemented in software, firmware, hardware, or any combination thereof. Only implementations of the SHA–1 that are validated by NIST will be considered as complying with this standard. Information about the requirements for validating implementations of this standard can be obtained from the National Institute of Standards and Technology, Computer Systems Laboratory, Attn: SHS Validation, Gaithersburg, MD 20899.

Export Control: Implementations of this standard are subject to Federal Government export controls as specified in Title 15, Code of Federal Regulations, Parts 768 through 799. Exporters are advised to contact the Department of Commerce, Bureau of Export Administration for more information.

Patents: Implementations of the SHA–1 in this standard may be covered by U.S. and foreign patents.

Implementation Schedule: This standard becomes effective (insert 90 days after approval by the Secretary of Commerce).

Specifications: Federal Information Processing Standards (FIPS 180–1) Secure Hash Standard (affixed).

Cross Index:

a. FIPS PUB 46–1, Data Encryption Standard.

b. FIPS PUB 73, Guidelines for Security of Computer Applications.

c. FIPS PUB 140–1, Security Requirements for Cryptographic Modules.

d. FIPS PUB 186, Digital Signature Standard.

e. Federal Information Resources Management Regulations (FIRMR) subpart 201.20.303, Standards, and subpart 201.39.1002, Federal Standards.

Objectives: The objectives of this standard are to:

a. Specify the secure hash algorithm required for use with the Digital Signature Standard (FIPS 186) in the generation and verification of digital signatures;

b. Specify the secure hash algorithm to be used whenever a secure hash algorithm is required for Federal applications; and

c. Encourage the adoption and use of the specified secure hash algorithm by private and commercial organizations.

Qualifications: While it is the intent of this standard to specify a secure hash algorithm, conformance to this standard does not assure that a particular implementation is secure. The responsible authority in each agency or department shall assure that an overall implementation provides an acceptable level of security. This standard will be reviewed every five years in order to assess its adequacy.

Waiver Procedure: Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of Title 44, United States Code. Waiver shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system; or

b. Compliance with a standard would cause a major adverse financial impact on the operator which is not offset by Government-wide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standing cannot be met. Agency heads may approve waivers only by a written decision which explains the basis on which the agency head made the required finding(s). A copy of each decision, with procurement sensitive or classified portions clearly identified, shall be sent to: National Institute of Standards and Technology; ATTN: FIPS Waiver Decisions, Technology Building, Room B–154, Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Government Affairs of the Senate and shall be published promptly in the **Federal Register.**

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the Commerce Business Daily as part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any accompanying documents, with such deletions as the agency is authorized and decides to make under 5 United States Code Section 552(b), shall be part of the procurement documentation and retained by the agency.

Where to Obtain Copies of the Standard: Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. When ordering, refer to Federal Information Processing Standards Publication 180–1 (FIPS PUB 180–1), and identify the title. When microfiche is desired, this should be specified. Prices are published by NTIS in current catalogs and other issuances. Payment may be made by check, money order, deposit account or charged to a credit card accepted by NTIS.

[FR Doc. 94–16666 Filed 7–8–94; 8:45 am]
BILLING CODE 3510–CN–M

[Docket No. 940689–4189; Notice 2]

National Fire Codes: Request for Proposals for Revision of Standards

AGENCY: National Institute of Standards and Technology, DOC.

ACTION: Notice of request for proposals.

SUMMARY: The National Fire Protection Association (NFPA) proposes to revise some of its fire safety standards and requests proposals from the public to amend existing NFPA fire safety standards. The purpose of this request is to increase public participation in the system used by NFPA to develop its standards. The publication of this notice of request for proposals by the National Institute of Standards and Technology (NIST) on behalf of NFPA is being undertaken as a public service; NIST does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

DATES: Interested persons may submit proposals on or before the dates listed with the standards.

ADDRESSES: Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269–9101.

FOR FURTHER INFORMATION CONTACT: Arthur E. Cote, P.E., Secretary, Standards Council, at above address, (617) 770–3000.

SUPPLEMENTARY INFORMATION:

Background

The National Fire Protection Association (NFPA) develops fire safety standards which are known collectively as the National Fire Codes. Federal agencies frequently use these standards

as the basis for developing Federal regulations concerning fire safety. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR part 51.

Request for Proposals

Interested persons may submit amendments, supported by written data, views, or arguments to Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269–9101. Proposals should be submitted on forms available from the NFPA Standards Administration Office.

Each person must include his or her name and address, identify the document and give reasons for the proposal. Proposals received before or by 5:00 PM local time on the closing date indicated will be acted on by the Committee. The NFPA will consider any proposal that it receives on or before the date listed with the standard.

At a later date, each NFPA Technical Committee will issue a report which will include a copy of written proposals that have been received and an account of their disposition of each proposal by the NFPA Committee as the Report on Proposals. Each person who has submitted a written proposal will receive a copy of the report.

Authority: 15 U.S.C. 272.

Dated: July 5, 1994.

Samuel Kramer,

Associate Director.

NFPA No.	Title	Proposal closing date
NFPA 13–1994	Installation of Sprinkler Systems	1/20/95
NFPA 13D–1994	Installation of Sprinklers in One- and Two-Family Dwellings and Manufactured Homes	1/20/95
NFPA 13R–1994	Installation of Sprinkler Systems in Residential Occupancies Up to and Including Four Stories in Height	1/20/95
NFPA 14–1993	Installation of Standpipe and Hose Systems	7/15/94
NFPA 15–1990	Water Spray Fixed Systems for Fire Proteciton	7/15/94
NFPA 20–1993	Installation of Centrifugal Fire Pumps	1/20/95
NFPA 22–1993	Water Tanks for Private Fire Protection	7/15/94
NFPA 31–1992	Oil-Burning Equipment	1/20/95
NFPA 32–1990	Drycleaning Plants	1/20/95
NFPA 45–1991	Fire Protection for Laboratories Using Chemicals	1/20/95
NFPA 46–1990	Storage of Forest Products	7/15//94
NFPA 51–1992	Oxygen-Fuel Gas Systems for Welding, Cutting and Allied Processes	5/19/95
NFPA 54–1992	National Fuel Gas Code	1/20/95
NFPA 59A–1994	Liquefied Natural Gas (LNG)	7/15/94
NFPA 68–1994	Venting of Deflagrations	7/21/95
NFPA 69–1992	Explosion Prevention Systems	7/21/95
NFPA 72–1993	National Fire Alarm Code	1/5/95
NFPA 80A–1993	Protection of Buildings from Exterior Fire Exposures	1/20/95
NFPA 81–1986	Fur Storage, Fumigation, and Cleaning	7/15/94
NFPA 92A–1993	Smoke-Control Systems	1/20/95
NFPA 97–1992	Chimneys, Vents, and Heat-Producing Appliances	1/20/95
NFPA 101–1994	Safety to Life from Fire in Buildings and Structures	4/7/95
NFPA 105–1993	Smoke-Control Door Assemblies	1/20/95
NFPA 110–1993	Emergency and Standby Power Systems	7/15/94
NFPA 111–1993	Stored Electrical Energy Emergency and Standby Power Systems	7/15/94
NFPA 121–1990	Self-Propelled and Mobile Surface Mining Equipment	7/15/94
NFPA 140–P*	Motion Picture and Television Industry	7/15/94
NFPA 204M–1991	Smoke and Heat Venting	1/20/95
NFPA 211–1992	Chimneys, Fireplaces, Vents and Solid Fuel-Burning Appliances	1/20/95
NFPA 231E–1989	Storage of Baled Cotton	7/15/94
NFPA 231F–1987	Storage of Roll Paper	7/15/94
NFPA 241–1993	Safeguarding Construction, Alteration, and Demolition Operations	1/20/95
NFPA 268–P*	Ignitibility of Exterior Wall Assemblies Using a Radiant Heat Energy Source	7/15/94
NFPA 321–1991	Classification of Flammable and Combustible Liquids	1/20/95
NFPA 328–1992	Flammable and Combustible Liquids and Gases in Manholes, Sewers, and Similar Underground Structures.	1/15/96
NFPA 329–1992	Underground Releases of Flammable and Combustible Liquids	1/15/96
NFPA 385–1990	Tank Vehicles for Flammable and Combustible Liquids	1/20/95
NFPA 386–1990	Portable Shipping Tanks for Flammable and Combustible Liquids	1/20/95
NFPA 497A–1992	Classification of Class I Hazardous (Classified) Locations for Electrical Installations in Chemical Process Areas.	1/20/95
NFPA 497B–1991	Classification of Class II Hazardous (Classified) Locations for Electrical Installations in Chemical Processing Plants.	1/20/95
NFPA 497M–1991	Classification of Gases, Vapors, and Dusts for Electrical Equipment in Hazardous (Classified) Locations	1/20/95
NFPA 501C–1993	Recreational Vehicles	7/15/94
NFPA 501D–1993	Recreational Vehicle Parks and Campgrounds	7/15/94
NFPA 502–1992	Limited Access Highways, Tunnels, Bridges, Elevated Roadways, and Air Right Structures	7/15/94
NFPA 505–1992	Powered Industrial Trucks Including Type Designations, Areas of Use, Maintenance, and Operation	1/20/95
NFPA 555–P*	Methods for Decreasing the Probability of Flashover	9/16/94
NFPA 600–1992	Industrial Fire Brigades	7/15/94
NFPA 601–1992	Guard Service in Fire Loss Prevention	7/15/94
NFPA 650–1990	Pneumatic Conveying Systems for Handling Combustible Materials	7/15/94
NFPA 704–1990	Identification of the Fire Hazards of Materials	1/20/95
NFPA 750–P*	Water Mist Systems	1/20/95
NFPA 850–1992	Electric Generating Plants	7/15/94
NFPA 851–1992	Hydroelectric Generating Plants	7/15/94
NFPA 910–1991	Protection of Libraries and Library Collections	1/19/96

NFPA No.	Title	Proposal closing date
NFPA 911–1991	Protection of Museums and Museum Collections	1/20/95
NFPA 1126–1992	Use of Pyrotechnics before a Proximate Audience	1/20/95
NFPA 1401–1989	Fire Service Training Reports and Records	7/15/94
NFPA 1404–1989	Fire Department Self-Contained Breathing Apparatus Program	7/15/94
NFPA 1405–1990	Land-Based Fire Fighters Who Respond to Marine Vessel Fires	7/15/94
NFPA 1500–1992	Fire Department Occupational Safety and Health Program	1/19/96
NFPA 1914–1991	Testing Fire Department Aerial Devices	1/20/95
NFPA 1971–1991	Protective Clothing for Structural Fire Fighting	7/1/94
NFPA 1972–1992	Helmets for Structural Fire Fighting	7/1/94
NFPA 1973–1993	Gloves for Structural Fire Fighting	7/1/94
NFPA 1974–1992	Protective Footwear for Structural Fire Fighting	7/1/94
NFPA 1976–1992	Protective Clothing for Proximity Fire Fighting	7/1/94
NFPA 2001–1994	Clean Agent Fire Extinguishing Systems	7/15/94
NFPA 8504–1993	Atmospheric Fluidized-Bed Boiler Operation	1/20/95

*Proposed NEW drafts are available from the NFPA Standards Administration Department, 1 Batterymarch Park, Quincy, MA 02269.

[FR Doc. 94–16668 Filed 7–8–94; 8:45 am]
BILLING CODE 3510–13–M

[Docket No. 940688–4188; Notice 1]

National Fire Codes: Request for Comments on NFPA Technical Committee Reports

AGENCY: National Institute of Standards and Technology, DOC.

ACTION: Notice of request for comments.

SUMMARY: The National Fire Protection Association (NFPA) revises existing standards and adopts new standards twice a year. At its Fall Meeting in November or its Annual Meeting in May, the NFPA acts on recommendations made by its technical committees.

The purpose of this notice is to request comments on the technical reports which will be presented at NFPA's 1995 Annual Meeting. The publication of this notice by the National Institute of Standards and Technology (NIST) on behalf of NFPA is being undertaken as a public service; NIST does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

DATES: The National Electrical Code (NEC) is published in a separate Report on Proposals and is available about June 17, 1994. Comments received on or before October 21, 1994 will be considered by the National Electrical Code Committee before NFPA takes final action on the proposals.

Sixty-one Reports are published in the 1995 Annual Meeting Report on Proposals and will be available on August 5, 1994. Comments received on or before October 14, 1994 will be considered by the respective NFPA Committees before final action is taken on the proposals.

ADDRESSES: The 1995 Annual Meeting Report on Proposals are available from NFPA, Publications Department, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269–9101. Comments on the reports should be submitted to Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269–9101.

FOR FURTHER INFORMATION CONTACT: Arthur E. Cote, P.E., Secretary, Standards Council, at above address, (617) 770–3000.

SUPPLEMENTARY INFORMATION:

Background

Standards developed by the technical committees of the National Fire Protection Association (NFPA) have been used by various Federal Agencies as the basis for Federal regulations concerning fire safety. The NFPA standards are known collectively as the National Fire Codes. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR part 51.

Revisions of existing standards and adoption of new standards are reported by the technical committees at the NFPA's Fall Meeting in November or at the Annual Meeting in May each year. The NFPA invites public comment on its Report on Proposals.

Request for Comments

Interested persons may participate in these revisions by submitting written data, views, or arguments to Arthur E. Cote, P.E., Secretary, Standards Council, NFPA 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269–9101. Commenters may use the forms provided for comments in the Reports on Proposals. Each person submitting a comment should include his or her name and address, identify the notice, and give reasons for any recommendations. Comments received on or before October 14, 1994 for the 1995 Annual Meeting Report on Proposals, and October 21, 1994 for the NEC Report on Proposals, will be considered by the NFPA before final action is taken on the proposals.

Copies of all written comments received and the disposition of those comments by the NFPA committees will be published at the 1995 Annual Meeting Report on Comments by March 31, 1995, and the NEC Report on Comments by April 14, 1995, prior to the Annual Meeting.

A copy of the Report on Comments will be sent automatically to each commenter. Action on the reports of the Technical Committees (adoption or rejection) will be taken at the Annual Meeting, May 22–25, 1995 in Denver, Colorado, by NFPA members.

Authority: 15 U.S.C. 272.

Dated: July 5, 1994.

Samuel Kramer,

Associate Director.

1995 Annual Meeting Report on Proposals

[P=Partial revision; W=Withdrawal; R=Reconfirmation; N=New; C=Complete Revision]

DOC No.	Title	Action
NFPA 11C	Mobile Foam Apparatus	P
NFPA 12B	Halon 1211 Fire Extinguishing Systems	W

1995 ANNUAL MEETING REPORT ON PROPOSALS—Continued

[P=Partial revision; W=Withdrawal; R=Reconfirmation; N=New; C=Complete Revision]

DOC No.	Title	Action
NFPA 18	Wetting Agents	R
NFPA 24	Installation of Private Fire Service Mains and Their Appurtenances	P
NFPA 26	Supervision of Valves Controlling Water Supplies for Fire Protection	W
NFPA 33	Spray Application Using Flammable and Combustible Materials	C
NFPA 34	Dipping and Coating Processes Using Flammable or Combustible Liquids	C
NFPA 43A	Liquid and Solid Oxidizers (Will be renumbered NFPA 430	C
NFPA 52	Compressed Natural Gas (CNG) Vehicular Fuel Systems	P
NFPA 61	Standard for the Prevention of Fire and Dust Explosions in Agricultural and Food Product Facilities (Combining and Redesignating NFPA 61A, 61B, 61C and 61D).	C
NFPA 70	National Electrical Code	P
NFPA 75	Electronic Computer/Data Processing Equipment	P
NFPA 80	Fire Doors and Fire Windows	P
NFPA 85C	Furnace Explosions/Implosions in Multiple Burner Boiler-Furnaces (Will be renumbered NFPA 8502)	P
NFPA 86	Ovens and Furnaces	P
NFPA 86C	Industrial Furnaces Using a Special Processing Atmosphere	P
NFPA 86D	Industrial Furnaces Using Vacuum as an Atmosphere	P
NFPA 88A	Parking Structures	P
NFPA 88B	Repair Garages	P
NFPA 92B	Smoke Management Systems in Malls, Atria, and Large Areas	P
NFPA 115	Laser Fire Protection	N
NFPA 130	Fixed Guideway Transit Systems	P
NFPA 150	Fire Safety in Racetrack Stables	P
NFPA 203	Roof Coverings and Roof Deck Constructions	P
NFPA 220	Types of Building Construction	P
NFPA 232	Protection of Records	P
NFPA 232AM	Fire Protection for Archives and Records Centers (Will be renumbered 232A)	P
NFPA 251	Fire Tests of Building Construction and Materials	P
NFPA 253	Critical Radiant Flux of Floor Covering Systems Using a Radiant Heat Energy Source	P
NFPA 264	Heat Release Rates for Materials and Products Using an Oxygen Consumption Calorimeter	C
NFPA 269	Toxic Hazard Modeling	N
NFPA 291	Fire Flow Testing and Marking of Hydrants	P
NFPA 297	Telecommunications Systems—Principles and Practices for Rural and Forestry Services	C
NFPA 303	Marinas and Boatyards	P
NFPA 307	Marine Terminals, Piers, and Wharves	P
NFPA 312	Vessels During Construction, Repair, and Lay-Up	P
NFPA 407	Aircraft Fuel Servicing	P
NFPA 409	Aircraft Hangars	P
NFPA 414	Aircraft Rescue and Fire Fighting Vehicles	P
NFPA 418	Heliports	P
NFPA 481	Titanium	C
NFPA 560	Storage, Handling, and Use of Ethylene Oxide for Sterilization and Fumigation	N
NFPA 701	Fire Tests for Flame-Resistant Textiles and Films	C
NFPA 703	Fire Retardant Impregnated Wood and Flame Retardant Coatings for Building Materials	R
NFPA 720	Household Carbon Monoxide (CO) Warning Equipment and Fuel Gas Warning Equipment	N
NFPA 780	Lightning Protection Code	P
NFPA 804	Advance Lightwater Reactor Electric Generating Plants	N
NFPA 820	Wastewater Treatment and Collection Facilities	C
NFPA 901	Uniform Coding for Fire Protection	C
NFPA 902M	Fire Reporting Field Incident Manual	W
NFPA 903	Fire Reporting Property Survey Guide	W
NFPA 904	Incident Follow-up Report Guide	W
NFPA 1051	Wildland Fire Management Personnel Professional Qualifications	N
NFPA 1123	Outdoor Display of Fireworks	P
NFPA 1127	High Power Rocketry	N
NFPA 1561	Fire Department Incident Management System	P
NFPA 1581	Fire Department Infection Control Program	C
NFPA 1583	Fire Fighter Physical Performance	N
NFPA 1600	Disaster Management	N
NFPA 1983	Fire Service Life Safety Rope, Harnesses, and Hardware	C
NFPA 8506	Heat Recovery Steam Generators	N

[FR Doc. 94–16667 Filed 7–8–94; 8:45 am]

BILLING CODE 3510–13–M

Prospective Grant of Exclusive Patent License

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Extension of Time Period for Notice of Prospective Grant of Exclusive Patent License.

SUMMARY: In the Federal Register on January 20, 1994 (59 FR 3072), the National Institute of Standards and

Technology ("NIST"), U.S. Department of Commerce, issued a notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that NIST was contemplating the grant of an exclusive license in the United States to practice the invention embodied in U.S. Patent Number 5,295,176, titled "Method and Apparatus for Precisely Measuring Voltages Applied to X-Ray Sources" to Radcal Corporation, having a place of Business in Monrovia, California. In the course of negotiations with Radcal Corporation, additional matters have arisen which may affect the prospective license, and which NIST wishes to bring to the attention of potential respondents through this notice.

ADDRESSES: Bruce E. Mattson, National Institute of Standards and Technology, Industrial Partnerships Program, Building 221, Room B–256, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: Bruce E. Mattson (301) 975–6501.

DATES: Any party wishing to apply for a license under U.S. Patent Number 5,295,176 or wishing to oppose the grant of the license to Radcal Corporation should write to the address shown above no later than August 10, 1994.

SUPPLEMENTARY INFORMATION: As announced in the earlier Federal Register notice, the prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty days from the date of this published notice, NIST receives written evidence and argument that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

NIST now wishes to inform the public that in addition to the above identified license, NIST is willing to enter into a Cooperative Research and Development Agreement ("CRADA") to perform further research on the invention for the purposes of commercialization. This CRADA will be conducted by NIST without any additional charge to whatever party or parties license the patent. Further, NIST is willing to grant to the licensee or licensees an option to negotiate for royalty-free exclusive licenses for any jointly owned patents which occur under the CRADA which are improvements on U.S. Patent Number 5,295,176, as well as an option to negotiate for exclusive royalty-bearing licenses for NIST employee inventions which occur under the CRADA.

U.S. Patent Number 5,295,176 provides a method of precisely measuring the accelerating voltage applied to an x-ray tube using a simple apparatus with a direct reading taken from a spectrographic image of the radiation produced by the x-ray tube.

The availability of the invention for licensing was published in the Federal Register, Vol. 58, No. 93 (May 17, 1993). A copy of the patent may be obtained from NIST at the foregoing address.

Dated: June 30, 1994.

Samuel Kramer,

Associate Director.

[FR Doc. 94–16621 Filed 7–8–94; 8:45 am]

BILLING CODE 3510–13–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

New Transshipment Charges for Certain Cotton Textile Products Produced or Manufactured in the People's Republic of China

July 5, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs charging transshipments to 1994 limits.

EFFECTIVE DATE: July 11, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

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).

In a notice published in the **Federal Register** on June 28, 1993 (58 FR 34568), CITA announces that Customs would be conducting other investigations of transshipments of textiles produced in China and exported to the United States. Based on these investigations, the U.S. Customs Service has determined that textile products in Categories 339 and 352, produced or manufactured in China and entered into the United States with the incorrect country of origin, were transshipped in circumvention of the Memorandum of Understanding dated January 17, 1994 between the Governments of the United States and the People's Republic of China. Consultations were held between the Governments of the United States and the People's Republic of China on this matter on June 9 through 10, 1994. Accordingly, in the letter published below, the Chairman of CITA directs the Commissioner of Customs to charge the following amounts to the 1994 quota levels for the categories listed below:

Category	Amounts to be charged
339	59,165 dozen of which 55,004 dozen are in Category 339–S.
352	1,343,603 dozen.

As a result of the charges, the current limit for Category 352 will be filled.

U.S. Customs continues to conduct other investigations of such transshipments of textiles produced in China and exported to the United States. The charges resulting from these investigations will be published in the **Federal Register.**

The U.S. Government is taking this action pursuant to the U.S. letters dated July 1, 1994, U.S. diplomatic note, the Memorandum of Understanding dated January 17, 1994 between the Govenments of the United States and the People's Republic of China, and in conformity with Paragraph 16 of the Protocol of Extension and Article 8 of the Arrangement Regarding International Trade in Textiles, done at Geneva on December 20, 1973 and extended on December 14, 1977, December 22, 1981, July 31, 1986, December 9, 1992 and December 9, 1993.

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).

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 5, 1994.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: To facilitate implementation of the Memorandum of Understanding dated January 17, 1994, between the Governments of the United States and the People's Republic of China, I request that, effective on July 11, 1994, you charge the following amounts to the following categories for the 1994 restraint period (see directive dated January 24, 1994):

Category	Amount to be charged to 1994 limit
339	59,165 dozen of which 55,004 dozen are in Category 339–S [1].

Category	Amount to be charged to 1994 limit
352	1,343,603 dozen.

[1] Category 339–S: all HTS numbers except 6109.10.0040, 6109.10.0045, 6109.10.0060 and 6109.10.0065.

This letter will be published in the **Federal Register**.

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc 94–16742; Filed 7–8–94; 8:45 am]

BILLING CODE 3510–DR–F

Establishment of a New Export Visa Arrangement for Silk Apparel Produced or Manufactured in the People's Republic of China

July 5, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing export visa requirements for silk apparel.

EFFECTIVE DATE: July 15, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

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 Governments of the United States and the People's Republic of China reached agreement, effected by exchange of notes dated June 23, 1994 and June 27, 1994, to establish an export visa arrangement for certain silk apparel products, produced or manufactured in China and exported from China on and after July 15, 1994. Goods exported during the period July 15, 1994 through August 15, 1994 shall not be denied entry for lack of a visa. All goods exported after August 15, 1994 must be accompanied by a visa.

A description of the apparel categories in terms of HTS numbers is available in the 1994 U.S. CORRELATION: Silk Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 15381, published on April 1, 1994).

Interested persons are advised to take all necessary steps to ensure that such silk apparel products that are entered into the United States for consumption, or withdrawn from warehouse for consumption, will meet the visa requirements set forth in the letter published below to the Commissioner of Customs.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 5, 1994.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Silk Visa Arrangement, effected by exchange of notes dated June 23, 1994 and June 27, 1994, between the Governments of the United States and the People's Republic of China; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on July 15, 1994, entry into the Customs territory of the United States (i.e., the 50 states, the District of Columbia and the Commonwealth of Puerto Rico) for consumption and withdrawal from warehouse for consumption of silk apparel products in Categories 733–736, 738–748, 750–752, 758 and 759, produced or manufactured in China and exported from China on and after July 15, 1994 for which the Government of the People's Republic of China has not issued an appropriate export visa fully described below. Should additional categories, merged categories or part categories be added to the bilateral agreement or become subject to import quotas, the entire category(s) or part category(s) shall be included in the coverage of this arrangement on an agreed effective date. Goods exported during the period July 15, 1994 through August 15, 1994 shall not be denied entry for lack of a visa.

A visa must accompany each commercial shipment of the aforementioned textile products. A circular stamped marking in blue ink will appear on the front of the original export license/commercial invoice or successor document. The license will be printed on a purple guilloche pattern background. The original visa shall not be stamped on duplicate copies of the invoice. The original invoice with the original visa stamp will be required to enter the shipment into the United States. Duplicates of the invoice and/or visa may not be used for this purpose.

Each visa stamp shall include the following information:

1. The visa number. The visa number shall be in the standard nine digit letter format, beginning with one numerical digit for the last digit of the year of export, followed by the two character alpha country code specified by the International Organization for Standardization (ISO)(the code for China is "CN"), and a six digit numerical serial number identifying the shipment; e.g., 4CN123456.

2. The date of issuance. The date of issuance shall be the day, month and year on which the visa was issued.

3. The signature of the issuing official.

4. The correct category(s), merged category(s), part category(s), quantity(s) and unit(s) of quantity in the shipment as set forth in the U.S. Department of Commerce Correlation and in the Harmonized Tariff Schedule of the United States (HTS or successor documents) shall be reported in the spaces provided within the visa stamp (e.g., "Cat. 340–510 DOZ").

Quantities must be stated in whole numbers. Decimals or fractions will not be accepted. Merged category quota merchandise may be accompanied by either the appropriate merged category visa or the correct category visa corresponding to the actual shipment (e.g., Categories 347/348 may be visaed as 347/348 or if the shipment consists solely of 347 merchandise, the shipment may be visaed as "Cat. 347," but not as "Cat. 348").

U.S. Customs shall not permit entry if the shipment does not have a visa, or if the visa number, date of issuance, signature, category, quantity or units of quantity are missing, incorrect or illegible, or have been crossed out or altered in any way. If the quantity indicated on the visa is less than that of the shipment, entry shall not be permitted. If the quantity indicated on the visa is more than that of the shipment, entry shall be permitted and only the amount entered shall be charged to any applicable quota.

If the visa is not acceptable then a new visa must be obtained from the Government of the People's Republic of China, replacement visa issued by the Embassy of the People's Republic of China in Washington, D.C., or a visa waiver may be issued by the Committee for the Implementation of Textile Agreements at the request of the Embassy of the People's Republic of China in Washington, D.C., and presented to the U.S. Customs Service before any portion of the shipment will be released. The waiver, if used, only waives the requirement to present a visa with the shipment. It does not waive the quota requirement.

The replacement visa shall consist of a Textile Export Visa/Invoice form bearing an official Chinese Embassy embossed stamp on the front and include the standard information required on an export visa and the signature of an official authorized by the Government of the People's Republic of China to issue replacement visas. The signature must match one of two original signatures of authorized officials provided to the Government of the United States by the Government of the People's Republic of China. U.S. Customs shall not permit entry of the shipment if any of the information required on the replacement visa is missing, incorrect or illegible, or has been crossed out or altered in any way.

If import quotas are in force, U.S. Customs Service shall charge only the actual quantity in the shipment to the correct category limit. If a shipment from the People's Republic of China has been allowed entry into the commerce of the United States with either an incorrect visa or no visa, and redelivery is requested but cannot be made, U.S. Customs shall charge the shipment to the correct category limit whether or not a replacement visa or visa waiver is provided.

The complete name and address of a company actually involved in the manufacturing process of the textile product covered by the visa shall be provided on the textile visa document.

Merchandise imported for the personal use of the importer and not for resale, regardless of value, and properly marked commercial sample shipments valued at U.S.$250 or less, do not require a visa for entry.

The visa stamp remains unchanged.

The actions taken concerning the Government of the People's Republic of China with respect to imports of textiles and textile products in the foregoing categories have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1). This letter will be published in the **Federal Register**.

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–16711 Filed 7–8–94; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of Suspension of Enforcement of Import Restraint Limits, Guaranteed Access Levels and Export Visa Requirements for Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Haiti

July 5, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs suspending the enforcement of limits, guaranteed access levels and export visa requirements.

EFFECTIVE DATE: July 6, 1994.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 12917 of May 21, 1994; Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Based on Executive Order 12917, in the letter published below, the Chairman of CITA directs the Commissioner of Customs to prohibit the importation of any textile or apparel product, produced or manufactured in Haiti and exported from Haiti to the United States after May 21, 1994. Also, U.S. Customs will neither accept nor sign the ITA–370P form for shipments of U.S. formed and cut parts destined for assembly in Haiti and re-entry into the United States under the Special Access Program.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 5, 1994.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Effective on July 6, 1994, you are directed to prohibit the importation of any textile or apparel product, produced or manufactured in Haiti and exported from Haiti to the United States.

Also, you are directed to neither accept nor sign the ITA–370P form for shipments of U.S. formed and cut parts destined for assembly in Haiti and re-entry into the United States under the Special Access Program.

The Committee for the Implementation of Textile Agreements has determined that these actions fall 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. 94–16712 Filed 7–8–94; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF ENERGY

Golden Field Office; Notice of Grant Award to Colorado State University

AGENCY: Department of Energy.

ACTION: Notice of Noncompetitive Financial Assistance Award.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7, is announcing its intention to award a grant to Colorado State University, for continuing research in support of the DOE Office of Building Energy Research programs. The project seeks to develop and improve solar domestic hot water systems.

ADDRESSES: Questions regarding this announcement may be addressed to the U.S. Department of Energy, Golden Field Office, 1617 Cole Blvd., Golden, Colorado 80401, Attention: John W. Meeker, Contract Specialist, 303–275–4748.

SUPPLEMENTARY INFORMATION: The proposed basic research will contribute to the DOE mission by assisting in the development of improved solar water heating technologies for use in buildings.

Successful completion of this research would advance the goal of wide commercialization of solar water heating systems. Deploying these technologies will reduce energy use in buildings which, in the U.S., accounts for about 40% of annual national energy consumption.

DOE has performed a review in accordance with 10 CFR 600.7 and has determined that the activity to be funded is necessary to satisfactorily complete the current research. DOE Funding for the Grant is estimated at $212,000 and the anticipated period of performance is twelve (12) months.

Issued in Golden, Colorado on June 28, 1994.

John W. Meeker,

Chief, Procurement, Golden Field Office.

[FR Doc. 94–16703 Filed 7–8–94; 8:45 am]

BILLING CODE 6450–01–M

Pittsburgh Energy Technology Center; Noncompetitive Financial Assistance; Electric Power Research Institute

AGENCY: Pittsburgh Energy Technology Center, Department of Energy.

ACTION: Notice of Intent.

SUMMARY: The U.S. Department of Energy (DOE), Pittsburgh Energy Technology Center (PETC) announces that pursuant to 10 CFR 600.7(b)(2)(i), it intends to award a Cooperative Agreement to Electric Power Research Institute for "Cofunding of the EPRI Upgraded Coal Interest Group Program" This activity would be conducted by the applicant using its own resources or those donated or provided by third parties; however, DOE support of this activity would enhance the public benefits to be derived and DOE knows of no other entity which is conducting or is planning to conduct such an activity.

ADDRESSES: U.S. Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–118, Pittsburgh, PA 15236–0940.

FOR FURTHER INFORMATION CONTACT: David L. Hunter, Contract Specialist, 412/892–4872.

SUPPLEMENTARY INFORMATION:

Cooperative Agreement No.: DE–FC22–94PC94153.

Title of Research Effort: Cofunding of the EPRI Upgraded Coal Interest Group Program.

Awardee

Electric Power Research Institute

Term of Assistance Award: 18 months

Cost of Assistance Effort: The total estimated project value is $570,000.

Objective: The objective of this project is to form a working group consisting of electric power producers, state and federal agencies, and private vendors that is interested in funding studies that promote the commercial availability of upgraded coal technologies and utilization of products derived therefrom.

Dated: June 20, 1994.

Richard D. Rogus,

Contracting Officer.

[FR Doc. 94–16702 Filed 7–8–94; 8:45 am]

BILLING CODE 6450–01–M

Golden Field Office; Notice of Cooperative Agreement Award to the Florida Solar Energy Center

AGENCY: Department of Energy.

ACTION: Notice of Noncompetitive Financial Assistance Award.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7, is announcing its intention to award a cooperative agreement to the Florida Solar Energy Center, University of Central Florida for continuing research efforts in support of the DOE Office of Building Energy Research programs. The project will assist in developing ratings, standards, labels, installation guidelines and utility monitoring programs for solar domestic hot water systems.

ADDRESSES: Questions regarding this announcement may be addressed to the U.S. Department of Energy, Golden Field Office, 1617 Cole Blvd., Golden, Colorado 80401, Attention: Cidney L. Bippus, Contract Administrator, 303–275–4793. The Contracting Officer is John W. Meeker. The Project Officer is Heather L. Collins, 303–275–4730.

SUPPLEMENTARY INFORMATION: The proposed basic research will contribute to the DOE mission by assisting in the development of improved solar heating technologies for use in buildings. Successful completion of this research would advance the goal of wide commercialization of solar water heating systems. Deploying these technologies will reduce energy use in buildings which, in the U.S., accounts for about 40% of annual national energy consumption.

DOE has performed a review in accordance with 10 CFR 600.7 and has determined that the activity to be funded is necessary to satisfactorily complete the current research. DOE funding for the Cooperative Agreement is estimated at $354,031 and the anticipated period of performance is twelve (12) months.

Issued in Golden, Colorado on June 29, 1994.

John W. Meeker,

Chief, Procurement, Golden Field Office.

[FR Doc. 94–16704 Filed 7–8–94; 8:45 am]

BILLING CODE 6450–01–M

Golden Field Office; Notice of Financial Assistance Award to International Geothermal Association

AGENCY: Department of Energy.

ACTION: Notice of financial assistance award in response to a non-competitive financial assistance application.

SUMMARY: The U.S. Department of Energy (DOE) pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7(b)(2) is announcing its intention to make a financial assistance award to the International Geothermal Association to organize, convene and market the World Geothermal Congress 1995, which is to be held in Florence, Italy.

ADDRESSES: Questions regarding this announcement may be addressed to the U.S. Department of Energy, Golden Field Office, 1617 Cole Blvd., Golden, CO 80401, Attention: Ruth E Adams, Contract Specialist, or at phone number (303) 275–4722. The Contracting Officer for this action is John W. Meeker. The Project Officer for this action is Jeff Hahn.

SUPPLEMENTARY INFORMATION: This proposal was a solicited application. The primary purpose of the World Geothermal Conference (WGC) 1995 is to provide a forum for international exchange of scientific and technological information on geothermal development during the period 1990–1995. The International Geothermal Association (IGA) is convening and organizing the WGC. The Department believes that the proposed effort will benefit the public, and that providing financial assistance through a grant mechanism is an appropriate method for providing funding. Through this financial assistance the U.S. Department of Energy will be listed as a sponsor of the WGC. Competition for this effort would have an adverse effect on the urgency and completion of the activities.

The proposed project will contribute to the DOE mission of ". . . providing the scientific and educational foundation and technology . . . necessary to achieve efficiency in energy use, diversity in energy sources, and access to technical information . . .". The IGA will do this by providing a forum on an international scale where the U.S. geothermal industry can exchange scientific and technological information.

The objective of this effort is to convene an international conference where governments and industry can meet and share scientific and technological information as well as their relevant experiences. The WGC '95 will provide the forum for presentations of world-wide electrical and direct use, country updates, reports on international cooperative projects and other invited papers. Pre-congress courses will be taught by experts in the field on subjects such as: Drafting a Geothermal Project for Financing by International Organizations, Injections, Drilling Technology and Regulation, Software for Geothermal Applications, Geothermal Heat Pumps, Small Power Plants, Direct Uses and Environmental Aspects of Geothermal Development

The probability of meeting the objectives listed above are very high, given that the IGA has been successful in the past for similar endeavors.

The staff of the International Geothermal Association is qualified and positioned to provide this service. The IGA is an international association for the geothermal industry. Its membership includes 1,971 organizations and individuals.

The IGA's base of operations is an office in Berkeley, California, and is fully capable of meeting their needs.

The budget proposed for the anticipated work was reviewed and is considered to be appropriate and adequate.

The public benefit to be derived from the World Geothermal Conference is the opportunity for the geothermal industry to meet and exchange information and experiences, as well as to encourage research, development and use of geothermal energy world wide.

The services provided through this proposed grant fully support the program's direction and objectives. The International Geothermal Association is taking the lead role in organizing, convening and marketing the World Geothermal Conference 1995. The IGA is qualified and positioned to undertake this task since they organized the last WGC in New Zealand in 1993. Competition for this effort would have a significant adverse impact on the urgency and completion of the proposed activities.

Issued in Golden, Colorado on: June 23, 1994.

John W. Meeker,

Chief, Procurement, Golden Field Office.

[FR Doc. 94–16705 Filed 7–8–94; 8:45 am]

BILLING CODE 6450–01–M

Golden Field Office; Notice of Financial Assistance Award to National Geothermal Association

AGENCY: Department of Energy.

ACTION: Notice of financial assistance award in response to a non-competitive financial assistance application.

SUMMARY: The U.S. Department of Energy (DOE) pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7(b)(2) is announcing its intention to make a financial assistance award to the National Geothermal Association to provide a service to the geothermal community and foster business relationships and to distribute informational material.

ADDRESSES: Questions regarding this announcement may be addressed to the U.S. Department of Energy, Golden Field Office, 1617 Cole Blvd., Golden CO 80401, Attention: Ruth E. Adams, Contract Specialist or at (303) 275–4722. The Contracting Officer for this action is John W. Meeker. The Project Officer is Jeffrey L. Hahn.

SUPPLEMENTARY INFORMATION: This proposal was a solicited application. The National Geothermal Association (NGA) will be merging with the Geothermal Resources Association (GRA) in the spring of 1994 and together will represent, through membership, practically the entire geothermal industry. The newly formed industry association will be called the Geothermal Energy Association (GEA). The Department believes that the proposed effort will benefit the public, and that providing financial assistance through a grant mechanism is an appropriate method to providing funding. Competition for this effort would have an adverse effect on continuity and completion of the activities.

The proposed project will contribute to the DOE mission of "* * * providing the scientific and educational foundation and technology * * * necessary to achieve efficiency in energy use, diversity in energy sources, and access to technical information * * *" (quotation from the Energy Mission Statement). The National Geothermal Association (NGA) will do this by providing services to support the geothermal industry through various activities and will work to create a business environment in which the industry can thrive.

Through this financial assistance the NGA (a non-profit organization) will mount an aggressive campaign of information dissemination, technology transfer and outreach. The objectives for this grant are as follows:

(1) Geothermal Energy Conference—The second annual conference on geothermal energy will be held in the Washington, D.C. area approximately 1 month after this Agreement is in place.

(2) Geothermal EPACT/Climate-Change Action Group—This group will be comprised of representatives of the geothermal industry, the utility industry, utility regulators and environmental- and energy-advocacy groups. The purpose of the group will be to devise initiatives that the geothermal industry and DOE could undertake through cost-sharing arrangements and that address accelerated use of geothermal resources in the United States, thereby helping to reduce greenhouse gases.

(3) Utility Outreach Program—The NGA will provide the data and documentation that utilities and utility commissioners need in order to understand geothermal power generation better and incorporate it into their portfolios.

(4) Develop information on Exporting Goods and Services—Information will be developed that will aid the U.S. geothermal industry in exporting its goods and services.

(5) Environmental Brochure—A brochure will be developed with the theme "Geothermal is Clean Air".

(6) Quarterly Newsletter—A quarterly newsletter on geothermal energy will be published and widely distributed.

(7) Educational Cooperative-Action Alliance—Formation of an alliance to exchange information and coordinate activities of the various entities in the geothermal community who are producing educational materials.

(8) Washington, D.C. Office—The NGA will maintain an office in the Washington, D.C. area. The purpose of this office is to develop and maintain the contacts that are necessary for the operation of a domestic as well as an international export program, to provide educational assistance to various environmental, public interest, and government groups, and to be able to respond rapidly to problems and opportunities that arise in Washington, D.C. No lobbying activities will be supported through the funds provided by this grant.)

The probability of meeting the objectives listed above are very high, given that the NGA has been successful in the past for similar endeavors

The staff of the National Geothermal Association is qualified and positioned to provide this service. The NGA President and President elect, respectively, is Tsvi Meidav and Phillip Michael Wright. After the merger of the NGA and GRA into the Geothermal Energy Association, the Chairman position will be shared jointly by Phillip Michael Wright and David R. Cox (Chairman of the GRA). David Anderson will serve as the Western Executive Director; he has been the Executive Director of the NGA since it was established in 1985. These individuals are highly respected throughout the geothermal industry.

The NGA's base of operation is an office in Davis, California, and is fully capable of meeting their needs.

The budget proposed for the anticipated work was reviewed and is considered to be appropriate and adequate.

The public benefit to be derived from the above mentioned projects and activities are an enhanced awareness of the benefits of geothermal energy. All of the NGA's proposed activities, projects and efforts are to enhance the competitive position of the U.S. geothermal industry in the domestic and international energy markets, to develop and conduct educational programs on geothermal energy and to distribute information. Through this program the NGA will be supporting the U.S. geothermal industry's efforts to bring more clean, domestic geothermal energy on line.

The services provided through the proposed grant fully support the program's direction and objectives. The National Geothermal Association is qualified and positioned to perform the above mentioned tasks. The NGA is an accepted and respected industry association and has about 40 member companies, largely from the geothermal service industries. The NGA has established an information network which is continually growing. Competition for this effort would have a significant adverse impact on the accomplishment and completion of the proposed activities.

Issued at Golden, Colorado, on: June 23, 1994.

John W. Meeker,

Chief, Procurement, Golden Field Office.

[FR Doc. 94–16706 Filed 7–8–94; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. QF87–128–001]

Bear Mountain Limited Partnership; Notice of Amendment To Filing

July 5, 1994.

On June 29, 1994, Bear Mountain Limited Partnership (Applicant) tendered for filing an amendment to its filing in this docket.

The amendment provides additional information pertaining to the ownership and technical aspects of its cogeneration facility. No determination has been made that the submittal constitutes a complete filing.

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 by July 26, 1994, 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. 94–16669 Filed 7–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER91–195–016, et al.]

Western Systems Power Pool, et al.; Electric Rate and Corporate Regulation Filings

June 30, 1994

Take notice that the following filings have been made with the Commission:

1. Western Systems Power Pool

[Docket No. ER91–195–016]

Take notice that on May 21, 1994, the Western Systems Power Pool (WSPP) filed certain information as required by Ordering Paragraph (D) of the Commission's June 27, 1991 Order (55 FERC ¶ 61,495) and Ordering Paragraph (C) of the Commission's June 1, 1992 Order on Rehearing Denying Request Not To Submit Information, and Granting In Part and Denying In Part Privileged Treatment. Pursuant to 18 CFR 385.211, WSPP has requested privileged treatment for some of the information filed consistent with the June 1, 1992 order. Copies of WSPP's informational filing are on file with the Commission, and the non-privileged portions are available for public inspection.

2. New England Power Co.

[Docket No. ER94–110–000]

Take notice that New England Power Company, on June 24, 1994, tendered an amendment to its filing in this proceeding.

Comment date: July 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Madison Gas & Electric Company

[Docket No. ER94–1147–000]

Take notice that on May 31, 1994, Madison Gas & Electric Company (Madison) tendered for filing an amendment to its April 11, 1994 filing in the above-referenced docket.

Comment date: July 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. C.C. Pace Energy Services, a Division of C.C. Pace Resources, Inc.

[Docket No. ER94–1181–000]

Take notice that on June 21, 1994 and June 23, 1994, C.C. Pace Energy Services, a Division of C.C. Pace Resources, Inc. tendered for filing an amendment and an Application Clarification, respectively in the above-referenced docket.

Comment date: July 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. NorAm Energy Services, Inc.

[Docket No. ER94–1247–000]

Take notice that on June 10, 1994 NorAm Energy Services, Inc. (NES) has tendered for a supplemental filing in support of its petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its Substitute F.E.R.C. Electric Rate Schedule No. 1 to be effective May 11, 1994.

NES intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where NES sells electric energy it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. NES is not in the business of generating, transmitting, or distributing electric power.

Comment date: July 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Boston Edison Company

[Docket No. ER94–1383–000]

Take notice that on June 20, 1994, Boston Edison Company (Edison) filed a letter agreement between itself and thirteen Massachusetts municipal electric systems further extending the deadline for the Municipal's submission of objections to Edison's 1992 bills for services rendered under each municipal system's Pilgrim power purchase contract in 1992. On May 16, 1994, Boston Edison filed a letter agreement in Docket No. ER94–1269–000 extending the deadline from May 19, 1994 until June 20, 1994 until July 31, 1994. The letter agreement makes no other changes to the rates, terms and conditions of the affected Pilgrim contracts.

Edison states that it has served copies of this filing upon each of the affected customers and upon the three other Pilgrim power purchasers: Reading Municipal Light Department, Montaup Light Department, Montaup Electric Company and Commonwealth Electric Company; as well as the Massachusetts Department of Public Utilities.

Comment date: July 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Dixie Valley, L.P.

[Docket No. QF93–148–000]

On June 27, 1994, Dixie Valley, L.P. tendered for filing an amendment to its filing in this docket.

The amendment pertains to information relating to the technical aspects of the small power production facility. No determination has been made that this submittal constitutes a complete filing.

Comment date: July 15, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16627 Filed 7–8–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP94–639–000]

Columbia Gas Transmission Corp.; Application

July 5, 1994.

Take notice that on July 1, 1994, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed an application with the Commission in Docket No. CP94–639–000 pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA) for permission and approval to abandon deteriorated pipe on Line 1740 in Doddridge and Harrison Counties, West Virginia, and to replace the abandoned facilities, all as more fully set forth in the application which is open to the public for inspection.

Columbia proposes to abandon approximately 6.5 miles of deteriorated 20-inch diameter pipe [1] in Doddridge and Harrison Counties, and replace with approximately 6.5 miles of 20-inch diameter pipe and 0.1 mile of 16-inch diameter pipe as an auxiliary crossover pipeline on five segments of Line 1740. Columbia does not request authorization for any new or additional service. Columbia states that the proposed pipeline sections would have equivalent design delivery capacity and the facilities proposed for abandonment are obsolete due to class location changes or are physically deteriorated to the extent that replacement is deemed advisable. The proposed construction would cost approximately $6,624,000 and the estimated net debit to retirement associated with the abandonment is $331,000.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 12, 1994, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (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 §§ 7 and 15 of the NGA 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 permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Columbia to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16670 Filed 7–8–94; 8:45 am]

BILLING CODE 6717–01–M

[1] See order at 6 FPC 627 (1947).

[Docket No. CP94–633–000]

NorAm Gas Transmission Co.; Notice of Request Under Blanket Authorization

July 5, 1994.

Take notice that on June 29, 1994, NorAm Gas Transmission Company (NGT), formerly Arkla Energy Resources Company, 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP94–633–000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon certain facilities in Oklahoma under NGT's blanket certificate issued in Docket Nos. CP82–384–000 and CP82–384–001 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

NGT states that it proposes to abandon a 1-inch inactive delivery tap and metering facilities originally installed to serve a customer of Arkansas Louisiana Gas Company, Sunray Midcontinent—T. Lusty Lease, located on NGT's Line 634–8 in Seminole County, Oklahoma.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16628 Filed 7–8–94; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures and Solicitation of Comments.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding a total of $521,200.64 (plus accrued interest) in settlement funds to members of the public. The funds are being held in escrow pursuant to settlement agreements involving Western Asphalt Service, Inc., Case No. LEF–0047; Gray Trucking Company, Case No. LEF–0120; and William Valentine & Sons, Inc., Case No. LEF–0123.

DATES AND ADDRESSES: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should conspicuously display a reference to Case Nos. LEF–0047 *et al.*

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–2860.

SUPPLEMENTARY INFORMATION: In accordance with Section 205.282(b) of the procedural regulations of the

Department of Energy, 10 C.F.R. § 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set forth below. The Proposed Decision relates to settlement agreements entered into by the DOE and Western Asphalt Service, Inc., Gray Trucking Company and William Valentine & Sons, Inc., which settled alleged violations of the DOE price regulations involving these firms' sales of crude oil during the period August 19, 1973 through January 27, 1981.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute funds remitted by these firms and being held in escrow. The DOE has proposed to distribute the funds in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986) (the MSRP). Under the MSRP, crude oil overcharge monies are divided between the federal government, the states, and injured purchasers of refined petroleum products. Refunds to the states would be distributed in proportion to each state's consumption of petroleum products during the price control period. Refunds to eligible purchasers would be based on the number of gallons of petroleum products which they purchased and the degree to which they can demonstrate injury.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in these proceedings will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Dated: July 1, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Names of Firms: Western Asphalt Service, Inc., Gray Trucking Company, William Valentine & Sons, Inc.

Dates of Filing: July 17, 1992; December 7, 1993; April 13, 1994.

Case Numbers: LEF–0047, LEF–0120, LEF–0123.

In accordance with the procedural regulations of the Department of Energy (DOE), 10 C.F.R. Part 205, Subpart V, the Economic Regulatory Administration (ERA) of the DOE filed three Petitions for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) on July 17, 1992, December 7, 1993 and April 13, 1994, respectively. The Petitions request that OHA formulate and implement procedures for the distribution of funds received pursuant to settlement agreements entered into by the DOE and Western Asphalt Service, Inc. (Western), Gray Trucking Company (Gray) and William Valentine & Sons, Inc. (Valentine).

I. Background

During the period of Federal petroleum price controls, Western was engaged in crude oil refining and reselling.[1] The firm was therefore subject to regulations governing the pricing of crude oil set forth at 10 C.F.R. Parts 205, 210, 211, and 212 of the Mandatory Petroleum Price and Allocation Regulations. As a result of an ERA audit of its operations, a Proposed Remedial Order (PRO) was issued to Western on April 4, 1984 pursuant to 10 C.F.R. Part 205, Subpart O (ERA Docket No. 940X00182). The PRO alleged violations of the pricing and certification rules that applied to crude oil resellers. Essentially, the firm was charged with selling price-controlled crude oil as uncontrolled stripper well crude oil at unlawfully high prices in violation of the provisions of 10 C.F.R. Part 212, Subpart L and 10 C.F.R. § 212.131. In another enforcement proceeding, on May 7, 1981, a Notice of Probable Violation was issued to Western which alleged that the firm unlawfully received Small Refiner Bias Entitlements (ERA Docket No. N00S90197) in April and May 1977. These alleged violations of DOE crude oil regulations by Western were settled by a Consent Order between the firm and DOE on May 30, 1984. The PRO was therefore withdrawn and the NOPV was rescinded. Western agreed to remit $300,000, plus interest, to the DOE for deposit in an interest-bearing escrow account. Western has complied with this obligation, remitting a total of $390,059.12 to the DOE. In return, the DOE has released Western from any liability regarding its failure to comply with the Federal petroleum price and allocation regulations during the period August 19, 1973 through January 27, 1981, with the sole exception of any potential violations of the Entitlements Program after September 30, 1980.

Gray was also a crude oil reseller during the period of price controls. On March 29, 1982, Gray and the DOE entered into a Consent Order whereby Gray would remit $31,500, plus interest, to the DOE for deposit in an interest-bearing escrow account. The DOE agreed not to pursue its claim that, during the period March 1977 through January 1980, Gray overcharged its customers by charging unlawfully high prices for crude oil in violation of 10 C.F.R. Part 212, Subparts F and L. Despite its agreement with the terms of the Consent Order, Gray failed to comply fully with its financial obligations to the DOE, and remitted only $4,738.86 to the DOE. On October 15, 1985, the U.S. District Court for the Northern District of Texas, Amarillo Division, granted the DOE an Amended Judgment against Gray for an additional $34,625. However, the Amended Judgment has not resulted in any additional payments to DOE by Gray. ERA has petitioned that the $4,738.86, plus accrued interest, obtained from Gray be distributed by OHA in accordance with the Subpart V regulations.

Valentine was engaged in crude oil reclamation during the period May 1979 through December 1980.[2] Through an unincorporated subsidiary, Big Muddy Oil Processors Inc. (Big Muddy), Valentine obtained waste crude oil from oil spills, pipeline ruptures, waste oil pits and oil tank bottoms. After numerous separation and filtering processes, the waste oil was mixed with various blending agents (naphthas, natural gasoline, natural gas by-products, etc.) and the resulting product was sold as pipeline-quality crude oil. Big Muddy, and by extension Valentine, was therefore a reseller of crude oil, subject to the provisions of 10 C.F.R. Part 212, Subpart L, which governed the resales of crude oil.

An ERA audit uncovered evidence that Valentine sold crude oil at unlawfully high prices during the period May 1979 through December 1980. On December 2, 1987, OHA issued a Remedial Order to Valentine directing the firm to refund $1,454,876

[1] Western Asphalt Service, Inc., W.F. Moore and Son, Inc., and Gibson Oil and Refining Company, were all controlled by Wilfred Paige van Loben Sels during the price controls period. Textual references to "Western" in this Decision include all parties to the consent order.

[2] William Valentine and Sons, Inc., Valentine Construction, Inc., Dale L. Valentine, Verna Valentine, and James L. Marchant are collectively referred to as "Valentine" in the text. All are parties to the Settlement Agreement which resolved DOE claims against them.

in overcharges, plus interest. *See William Valentine and Sons, Inc.*, 16 DOE ¶ 83,025 (1987). Valentine appealed OHA's determination to the Federal Energy Regulatory Commission (FERC). On March 23, 1989, FERC rejected Valentine's Appeal of the Remedial Order and upheld OHA's findings. *See William Valentine and Sons, Inc.*, 46 FERC ¶ 61,252 (1989). Valentine appealed that decision and, on January 24, 1990, the U.S. District Court for the District of Wyoming ruled that Valentine's challenge to DOE's Remedial Order and to FERC's ruling was without merit. At the same time, the Court also approved a Settlement Agreement in which Valentine agreed to remit to DOE no less than $108,739 plus interest. In return, DOE agreed to deem Valentine in full compliance with the price control program and to release all administrative and civil claims against the firm. Valentine has paid $126,402.66 into an interest-bearing DOE escrow account in compliance with the Settlement Agreement.

II. Jurisdiction and Authority

On July 28, 1986, the DOE issued a Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 Fed. Reg. 27899 (August 4, 1986) (The MSRP). The MSRP, issued as a result of a court-approved Settlement Agreement (the Stripper Well Agreement) in *In re: The Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378 (D.Kan. 1986), provides that crude oil overcharge funds will be divided among the states, the federal government, and injured purchasers of refined petroleum products. Under the MSRP, up to twenty percent of these crude oil overcharge funds will be reserved to satisfy valid claims by injured purchasers of petroleum products. Eighty percent of the funds, and any monies remaining after all valid claims are paid, are to be disbursed equally to the states and federal government for indirect restitution.

Shortly after the issuance of the MSRP, the OHA issued an Order that announced its intention to apply the MSRP in all Subpart V proceedings involving alleged crude oil violations. Order Implementing the MSRP, 51 Fed. Reg. 29689 (August 20, 1986). In that Order, the OHA solicited comments concerning the appropriate procedures to follow in processing refund applications in crude oil refund proceedings. On April 6, 1987, the OHA issued a Notice analyzing the numerous comments and setting forth generalized procedures to assist claimants that file refund applications for crude oil monies under the Subpart V regulations. 52 Fed. Reg. 11737 (April 10, 1987) (the April Notice).

The OHA has applied these procedures in numerous cases since the April Notice, *e.g.*, *New York Petroleum, Inc.*, 18 DOE ¶ 85,435 (1988) (*NYP*); *Shell Oil Co.*, 17 DOE ¶ 85,204 (1988); *Ernest A. Allerkamp*, 17 DOE ¶ 85,079 (1988) (*Allerkamp*), and the procedures have been approved by the United States District Court for the District of Kansas as well as the Temporary Emergency Court of Appeals. Various states filed a Motion with the Kansas District Court, claiming that the OHA violated the Stripper Well Agreement by employing presumptions of injury for end-users and by improperly calculating the refund amount to be used in those proceedings. On August 17, 1987, Judge Frank G. Theis issued an Opinion and Order denying the States' Motion in its entirety. *In re: The Department of Energy Stripper Well Exemption Litigation*, 671 F. Supp. 1318 (D. Kan. 1987), *aff'd*, 857 F. 2d 1481 (Temp. Emer. Ct. App. 1988). Judge Theis concluded that the Stripper Well Agreement "does not bar [the] OHA from permitting claimants to employ reasonable presumptions in affirmatively demonstrating injury entitling them to a refund." *Id.* at 1323. He also ruled that, as specified in the April Notice, the OHA could calculate refunds based on a portion of the M.D.L. 378 overcharges. *Id.* at 1323–24.

The general guidelines which the OHA may use to formulate and implement a plan to distribute refunds are set forth in 10 C.F.R. Part 205, Subpart V. The Subpart V process may be used in situations where the DOE cannot readily identify the persons who may have been injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981). After reviewing the records submitted in support of the three Petitions, we have concluded that a Subpart V proceeding is an appropriate mechanism for distributing the $521,200.64 in funds obtained from Western, Gray and Valentine. We therefore propose to grant the ERA's Petitions and assume jurisdiction over distribution of the funds.

III. Proposed Refund Procedures

A. Refund Claims

We propose to apply the procedures discussed in the April Notice to the crude oil Subpart V proceedings that are the subject of the present determination. As noted above, the monies deposited with the DOE in settlement of the alleged crude oil violations totalling $521,200.64, plus accrued interest, are covered by this Proposed Decision. We have decided to reserve the full twenty percent of the alleged crude oil violation amount, or $104,240.13 plus interest, for direct refunds to claimants, in order to insure that sufficient funds will be available for refunds to injured parties.

The process which the OHA will use to evaluate claims based on alleged crude oil violations will be modeled after the process the OHA has used in Subpart V proceedings to evaluate claims based upon alleged overcharges involving refined products. *E.g.*, *Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 (1986). As in non-crude oil cases, applicants will be required to document their purchase volumes of covered products and prove that they were injured as a result of the alleged violations. Generally, we will presume that an applicant incurred a crude oil overcharge in the purchase of a product if the product was either identified as a covered product in the Emergency Petroleum Allocation Act of 1973, 15 U.S.C. §§ 751–760, or if the product was purchased from a crude oil refinery or originated in a crude oil refinery and was purchased from a reseller. *Notice of General Interest Concerning DOE's Crude Oil Overcharge Refund Program*, 57 Fed. Reg. 30731, 30732 (July 10, 1992); *Great Lakes Carbon Corp.*, 22 DOE ¶ 85,248, at 88,662 (1993). Applicants who were end-users or ultimate consumers of petroleum products, whose businesses are unrelated to the petroleum industry, and who were not subject to the DOE price regulations are presumed to have been injured by any alleged crude oil overcharges. In order to receive a refund, end-users need not submit any further evidence of injury beyond the volume of petroleum products purchased during the period of price controls. *See, e.g., A. Tarricone, Inc.*, 15 DOE ¶ 85,495 at 88,893–96 (1987). However, the end-user presumption of injury can be rebutted by evidence which establishes that the specific end-user in question was not injured by the crude oil overcharges. *See, e.g., Berry Holding Co.*, 16 DOE ¶ 85,405 at 88,797 (1987). If an interested party submits evidence that is sufficient to cast serious doubt on the end-user presumption, the

applicant will be required to produce further evidence of injury. *See, e.g., NYP*, 18 DOE at 88,701–03.

Reseller and retailer claimants must submit detailed evidence of injury, and may not rely on the presumption of injury utilized in refund cases involving refined petroleum products. They may, however, use econometric evidence of the type employed in the *OHA Report to the District Court in the Stripper Well Litigation, reprinted in* 6 Fed. Energy Guidelines ¶ 90,507.

Applicants who executed and submitted a valid waiver pursuant to one of the escrows established in the Stripper Well Agreement have waived their rights to apply for a crude oil refund under Subpart V. *Mid-America Dairyman Inc., v. Herrington*, 878 F. 2d 1448 (Temp. Emer. Ct. App. 1989); *accord, Boise Cascade Corp.*, 18 DOE ¶ 85,970 (1989).

As we have stated in previous Decisions, a crude oil refund applicant will only be required to submit one application for its share of all available crude oil overcharge funds. *E.g., Allerkamp*, 17 DOE at 88,176. Any party that has previously submitted a refund Application in the crude oil refund proceedings need not file another Application. That previously filed Application will be deemed to be filed in all crude oil refund proceedings as the procedures are finalized. The DOE has established June 30, 1994 as the final deadline for filing an Application for Refund from the crude oil funds. *Anchor Gasoline Corp.*, 22 DOE ¶ 85,071 (1992); 58 Fed. Reg. 26318 (May 3, 1993). It is the policy of the DOE to pay all crude oil refund claims filed before June 30, 1994, at the rate of $0.0008 per gallon. However, while we anticipate that applicants who filed their claims within the original June 30, 1988 deadline will receive a supplemental refund payment, we will decide in the future whether claimants that filed later Applications should receive additional refunds. *See, e.g., Seneca Oil Co.*, 21 DOE ¶ 85,327 (1991). Notice of any additional amounts available in the future will be published in the **Federal Register**.

B. Payments to the Federal Government and the States

Under the terms of the MSRP, the remaining eighty percent of the alleged crude oil violation amounts subject to this Proposed Decision, or $416,960.51, plus interest, should be disbursed in equal shares to the states and federal government, for indirect restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Stripper Well Agreement. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Stripper Well Agreement.

It Is Therefore Ordered That:

The refund amounts remitted to the Department of Energy by Western Asphalt Service, Inc., W.F. Moore and Son, Inc., Gibson Oil and Refining Co., and Wilfred Paige van Loben Sels, pursuant to the Consent Order signed on May 30, 1984; by Gray Trucking Company pursuant to the Consent Order signed on March 29, 1982; and by William Valentine and Sons, Inc., Valentine Construction, Inc., Dale L. Valentine, Verna Valentine, and James L. Marchant, pursuant to the Settlement Agreement signed on January 24, 1990, will be distributed in accordance with the foregoing Decision.

[FR Doc. 94–16707 Filed 7–8–94; 8:45 am]

BILLING CODE 6450–01–P

Southeastern Power Administration

Proposed Power Marketing Policy for Georgia-Alabama-South Carolina System of Projects

AGENCY: Southeastern Power Administration (Southeastern), DOE.

ACTION: Notice.

SUMMARY: Southeastern has developed the following proposed power marketing policy for its Georgia-Alabama-South Carolina System of Projects pursuant to Notice published in the **Federal Register** of September 8, 1993, 58 FR 47273, and in accordance with Procedure for Public Participation in the Formulation of Marketing Policy published July 6, 1978, 43 FR 29186. In the Notice, Southeastern proposed a System Policy which would deal with the complete Georgia-Alabama-South Carolina System of Projects including systems both east and west of the Savannah River. Based on analysis of proposals and recommendations received, consultations with interested parties and further studies and considerations, Southeastern decided to develop a policy applying to the system effective with the expiration of existing contracts, or as soon thereafter as is practical. The policy, when finalized, will constitute written guidelines for future disposition of power from the system. The policy is developed under authority of Section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, and Section 302(a) of the Department of Energy Organization Act of 1977, 42 U.S.C. 7152. Interested persons are invited to submit written comments directly to Southeastern and/or present written or oral views, or data at the public comment forums on the proposed policy.

DATES: Written comments are due on or before September 16, 1994. Public comment forums will be held in Atlanta, Georgia on August 29, 1994, and in Columbia, South Carolina on August 31, 1994.

ADDRESSES: Five copies of written comments should be submitted to: Administrator, Southeastern Power Administration, Department of Energy, 2 South Public Square, Samuel Elbert Building, Elberton, Georgia 30635.

The public comment forums will each begin at 10:30 a.m. at the following locations: August 29, 1994, Sheraton Gateway Hotel, 1900 Sullivan Road, Atlanta, Georgia 30337; August 31, 1994, Sheraton Hotel & Conference Center, 2100 Bush River Road, Columbia, South Carolina 29210.

FOR FURTHER INFORMATION CONTACT: Mr. John A. McAllister, Jr., Administrator, Southeastern Power Administration, Department of Energy, 2 South Public Square, Samuel Elbert Building, Elberton, Georgia 30635, 706–283–9911.

SUPPLEMENTARY INFORMATION: Southeastern received only one response to its September 8, 1993, solicitation for proposed and recommendations contained in its Notice of Intent to Formulate Power Marketing Policy. This response was carefully considered as were facts gathered from those who consulted with Southeastern.

Major issues raised by the proposed policy are determination of marketing area, allocation of power among area customers, handling of energy at pump-storage installations, utilization of area utility systems for power integration, firming, wheeling, exchange and other essential relationships, wholesale rates, handling of resale relationships, and conservation measures. An Environmental Assessment and Finding of No Significant Impact have been prepared indicating that the proposed power marketing policy will not have a significant effect upon the quality of the human environment. A copy may be obtained by contacting the Administrator at the address or telephone number listed above.

The public comment forums will not be adjudicative in nature. The Administrator shall act as or appoint a forum chairman. At the start of the

forums the chairman shall briefly explain procedures and rules. Customers and the public shall be allowed to make oral statements and comments, introduce relevant documents, and ask questions regarding the proposed power marketing policy of Southeastern representatives at the forum. Persons requesting to speak shall notify Southeastern at which forum or forums they desire to speak at least 3 days before the particular forum is scheduled so that a list of forum participants can be prepared. If necessary, the chairman may establish time limitations for oral presentations by these participants to assure that all who register to speak shall have an opportunity to do so. Others will be permitted to speak if time allows. Those unable to speak because of time limitations and others who so desire may submit written comments. The chairman and Southeastern representatives may question forum participants and, the chairman, at his discretion, may permit other participants a like privilege. Questions not answered by Southeastern representatives during a forum shall be specifically identified by the chairman in the transcript and shall be subsequently responded to by Southeastern in writing. All documents introduced and written answers to questions shall be available for inspection and copying at Southeastern headquarters in accordance with the Freedom of Information Act. Forum proceedings shall be transcribed. Copies of the transcript may be purchased from the reporter.

Customers and the public may consult or file written comments and questions with Southeastern regarding the proposed marketing policy on or before September 16, 1994. All such questions shall receive expeditious response, September 16, 1994. All such questions shall receive expeditious response, and all such comments, questions and answers shall be available at Southeastern headquarters for inspection or copying in accordance with the Freedom of Information Act. The forum transcripts will likewise be available for inspection at Southeastern headquarters in Elberton, Georgia.

Issued at Elberton, Georgia, June 21, 1994.

John A. McAllister, Jr.,

Administrator.

General. The projects and power subject to this policy are:

Projects	Capacity (kw) (name-plate)	Energy (mwh) (av-erage an-nual)
Allatoona	74,000	156,000
Buford	86,000	193,000
Carters:		
(1)	250,000	[3] 198,000
(2)	250,000	
J. Strom Thurmond	280,000	729,000
Hartwell	344,000	483,000
Robert F. Henry	68,000	343,000
Millers Ferry	75,000	397,000
Walter F. George	130,000	436,000
West Point	73,375	208,000
Richard B. Russell:		
(1)	300,000	[3] 484,000
(2)	340,000	

[1] Carters has 2 generating units rated at 125,000 kw each. Russell has 4 generating units rated at 75,000 kw each.

[2] Carters has 2 pumping units rated at 125,000 kw each. Russell has 4 pumping units rated at 85,000 kw each.

[3] Natural stream flow energy only.

There will be one policy for the Georgia-Alabama-South Carolina System of projects progressively implemented. It will become effective upon publication in the **Federal Register** and will be applicable to the sale of system power in respective utility areas as then existing contracts, or necessary extensions, expire.

The policy will be implemented through negotiated contracts for terms not to exceed 10 years.

Transmission facilities owned by utilities within the marketing area will be used for all necessary purposes including transmitting power to load centers. Deliveries may be made at the projects, at utilities' interconnections or at customer substations, as determined by Southeastern. The projects will be hydraulically, electrically, and financially integrated, and will be operated to make maximum contribution to the power supply of the selected utility areas. Preference in the sale of the power shall be given to public bodies and cooperatives.

Marketing Area. The marketing area shall consist of the approximate 112,000 square mile area generally known as The Southern Company service area, and the approximate 40,000 square mile area generally known as the service areas of the South Carolina Public Service Authority and the South Carolina Electric and Gas Company plus that portion of the Duke Power Company's service area within a radius of 150 miles of the Hartwell, Russell or Thurmond projects. Eligible public bodies and cooperatives in this marketing area are listed in Appendix A attached hereto.

Allocations of Existing Power. Existing power available under this policy for allocation from the Georgia-Alabama-South Carolina System will primarily be peaking power. The power will be allocated as follows:

Customer	KW
Alabama Electric Cooperative	91,000
South Carolina Public Service Authority	215,000
South Mississippi Electric Power Association	61,000
Customers in Duke Power Company service area	238,000
Customers in S.C. Electric & Gas Co. service area	16,000
Customers in The Southern Company service area	1,296,000

Except where duplication of allocation would result, each public body and cooperative within the marketing areas as shown in Appendix A will be eligible for an allocation of existing power, except for the City of Oxford, Georgia. No reallocation of existing power for the benefit of Oxford is proposed at this time. Existing preference customers within the marketing area will retain their present allocations of capacity and essentially the same energy accompaniment. It is Southeastern's goal to allocate all available and useful system power (that power remaining after provision for an appropriate capacity margin and losses) to preference customers, except power that may be used for pumping.

Allocation of Power From Russell Pumped Storage Units. Currently, the pump generator units at the Richard B. Russell Project are undergoing a series of environmental tests to meet the requirements of an injunction imposed by the U.S. District Court in the case of *South Carolina Department of Wildlife and Marine Resources* v. *Marsh et al,* 866 F.2d 97 (4th Cir 1989). The first opportunity for commercial operation of the pumping units is after the completion of these tests. The environmental tests and schedules were agreed upon by the Corps of Engineers and the party litigants, and the results of the tests must be approved by the district court before the units become commercially available. Should pumped storage units at the Russell project become commercially available during the tenure of contracts implementing this policy, after the approval of the district court, after further mitigating modifications required by environmental concerns, or by any other means, Southeastern will allocate this additional power as detailed in the Power Marketing Policy for the Georgia-Alabama-South Carolina System of Projects promulgated on October 1, 1980 in the **Federal Register**. The capacity

relative to the Russell pumped storage units will be allocated to the City of Oxford, Georgia, and to the existing customers in The Southern Company service area including Alabama Electric Cooperative and South Mississippi Electric Power Association (130 MW), the Duke Power Company service area (65 MW), the South Carolina Electric and Gas service area (5 MW) and the South Carolina Public Service Authority (60 MW). Adequate capacity has been retained to provide an appropriate capacity margin. Russell pumped storage capacity is predicted a this time on testing accomplished to date and reflects the best estimate at this time. Energy accompaniment to the pumped storage capacity will be sufficient to provide viable peaking capacity. The Russell pumped storage power will be allocated as follows:

Customer	KW
Alabama Electric Cooperative	9,000
South Carolina Public Service Authority	60,000
South Mississippi Electric Power Association	7,000
Customers in Duke Power Company service area	65,000
Customers in S.C. Electric & Gas Co. service area	5,000
Customers in The Southern Company service area	114,000

Power From Pumped Water. Southeastern will utilize its combination pumped storage and generation resources to produce high-value on-peak power. Pumping power, whether generated within the system of projects or obtained by purchasing or exchange agreement, will be used in pumped storage operations, at Southeastern's discretion. Should the purchase alternative be selected, Southeastern will obtain pumping energy from utilities offering the best terms, and/or resulting in the most benefits to the system. Should the exchange alternative be selected, pumped storage operations will be handled with public bodies, cooperatives and the utilities in a manner not involving the direct purchase and sales approach, with preference given to public bodies and cooperatives.

Utilization Of Utility Systems. In the absence of transmission facilities of its own, Southeastern will use area generation and transmission systems to integrate the Government's projects, provide firming, wheeling, exchange and backup services and such other functions as may be necessary to dispose of system power under reasonable and acceptable marketing arrangements. Utility systems providing such services shall be entitled to adequate compensation. Specific terms and conditions of all such arrangements shall be the subject of negotiations between Southeastern and the generation and transmission utilities providing the services. Individual preferred agencies directly affected by the negotiations shall, through representatives selected at the outset of negotiations, be kept currently advised on the status and progress of negotiations. Southeastern also will consult with and seek advice from these affected parties.

Wholesale Rates. Rate schedules shall be drawn to recover all costs associated with producing and transmitting the power in accordance with then current repayment criteria. Production costs will be determined on a system basis and rate schedules will relate to the integrated output of the projects. Rate schedules may be revised periodically.

Resale Rates. Resale rate provisions requiring the benefits of Southeastern power to be passed on to the ultimate consumer will be included in each Southeastern customer contract that provides for Southeastern to supply more than 25 percent of the customers' total power requirements during the term of the contract.

Energy and Economic Efficiency Measures. Each customer who purchases Southeastern's power is encouraged to participate in an integrated resource plan that considers both supply and demand side alternatives. It is recognized that some Southeastern customers are members of a power supply organization that does resource planning for its customers (i.e., power supply cooperatives and joint action agencies). Where a customer, or a power supply organization that does resource planning for a Southeastern customer, is responsible to a regulatory body or another Government agency for an integrated resource plan, the customer will make a copy of such integrated resource plan available to Southeastern. All Southeastern customers shall agree to encourage the efficient use of energy by ultimate customers.

[FR Doc. 94–16708 Filed 7–8–94; 8:45 am]
BILLING CODE 6450–01–M

Western Area Power Administration

Revised Provo River Project Marketing Proposal

AGENCY: Western Area Power Administration, DOE.

ACTION: Revised Provo River Project marketing proposal summary.

SUMMARY: In December 1993, Western Area Power Administration (Western) proposed to change the way it markets power and energy produced by the Provo River Project (PRP) and to include it as one of the Salt Lake City Area/Integrated Projects (Integrated Projects). During the comment period on the proposal, comments were received which indicated that customers of Western's Integrated Projects would not support inclusion of the PRP in the Integrated Projects. Western has decided to modify its original proposal to market this power and energy independent of the Integrated Projects. Capacity and energy produced by the PRP will be allocated to those members of Intermountain Consumers Power Association (ICPA) and Utah Municipal Power Agency (UMPA) located in Utah and Wasatch Counties in Utah. ICPA and UMPA are hereafter referred to as potential contractors. Power would be allocated to these potential contractors proportional to their load. Separate power sales contracts would be offered to the potential contractors. Potential contractors would pay all of the annual powerplant expenses of the PRP including an amount to assist the Provo River Water Users Association (Water Users) repayment of the United States original investment in the PRP. In return, potential contractors would receive all of the marketable output of the PRP.

DATES: Comments on Western's revised proposal must be received on or before August 10, 1994.

A similar notice appears in today's **Federal Register.**

FOR FURTHER INFORMATION CONTACT:

Mr. John Harrington, Acting Area Manager, Salt Lake City Area Office, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147–0606, (801) 524–5497, or
Mr. Edmond Chang, Assistant Area Manager for Power Marketing, Salt Lake City Area Office, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147–0606, (801) 524–5493

SUPPLEMENTARY INFORMATION:

Background

In a **Federal Register** notice dated December 13, 1993 (58 FR 65180–65181), Western proposed to include the PRP with the Integrated Projects and to market the power and energy produced by the PRP to members of ICPA and UMPA within a marketing area comprised of Utah and Wasatch

Counties, Utah. Western accepted comments on its proposal until January 12, 1994. A public information/comment/scoping meeting was held in Spanish Fork, Utah, on January 4, 1994. As a result of comments received, at both the meeting and in writing, Western is revising its proposed marketing plan for the PRP.

Marketing Issues

One of the commentors, the Colorado River Energy Distributor's Association (CREDA), an organization of many Integrated Projects customers, commented that CREDA believes "the same principles commonly used in other Bureau of Reclamation (Reclamation) water projects having power generation features should be applied to the extent lawful in the instance of PRP." Western's review of the appropriate laws shows that construction of the PRP and the methods of repaying the United States for its investment in the project were first established in 1936, under Contract No. Ilr-874 dated June 27, 1936 (1936 Contract). The 1936 Contract states that surplus revenue from the sale of surplus water and power shall be applied to the repayment obligation of the Water Users. No distinction was made in the contract that this payment was to be for irrigation investment or for investment beyond the irrigators' ability to pay as is common in other Reclamation projects. In fact, from the beginning, almost three-fourths of the water developed by the project was for municipal and industrial use. Western has agreed to pay from power revenues $1.623 million toward the Water Users' obligation by 2008. Of this amount, $191,587 has been paid.

CREDA also stated that it did not believe Western had adequately supported the need to integrate the projects. When Western established the Integrated Projects in 1986, it intended to include the Colorado River Storage Project (CRSP), the Collbran Project, the Rio Grande Project, and the PRP. The PRP was not included because of uncertainty associated with commitments to the Water Users. Western's intent was to bring PRP into the Integrated Projects on an equal basis with the rest of the projects. Western has agreed that it is not necessary to include the PRP in the Integrated Projects.

In a further comment, CREDA objected to all Integrated Projects customers paying costs of the Water Users since these constitute repayment of municipal and industrial water development costs. CREDA had no objection to marketing the PRP resource to ICPA and UMPA under separate contracts from the Integrated Projects. In fact, ICPA and UMPA are both members of CREDA. Western has determined that it can still meet its objectives of beneficially marketing the PRP through separate contractual arrangements and has revised its proposal to do so. This will require development of power sales contracts with potential contractors.

Since the PRP has only been sold to Western's CRSP, a rate for the capacity and energy produced has never been developed. A power repayment study (PRS) has been prepared each year to determine the revenues needed to meet project repayment, including operation, maintenance, and replacement expenses. The CRSP purchased the energy produced by the PRP for this amount. Western now proposes that the PRS still be used to identify the annual revenue requirements of the PRP. Potential contractors would pay their proportional share of one-twelfth of the annual amount each month to Western. In addition, the potential contractors would pay a total of $102,243.80 each year to Reclamation to be applied toward the Water Users' payment obligations.

Two other Integrated Projects customers in Utah, the Weber Basin Water Conservancy District (Weber Basin) and Bountiful City Light and Power (Bountiful), operate generating plants on the Weber River. Both claimed when water is diverted from the Weber River into the Provo River under existing agreements, they incur losses in generation and asked to be compensated for these losses. Western has determined that the water diversions from the Weber River into the Provo River were established before Weber Basin or Bountiful constructed generation on the Weber River. Neither entity had a power right to the waters of the Weber River. PacifiCorp, which is compensated for generating losses, owned an operating generating plant on the Weber River and held power rights to the flows of the river prior to the Provo River diversion. Discussions with Reclamation and examination of Weber Basin and Bountiful contracts have confirmed this position. Weber Basin and Bountiful are not entitled to an allocation of PRP power to compensate them for harm caused by reduced flows in the Weber River because their plants have never been entitled to, or used, the diverted water.

Another commentor, Reclamation, stated that the marketing criteria should consider arrangements for providing assistance to the Water Users. Also, the amount of assistance should be included in the PRP power marketing contracts, and arrangements made so that payment could be made directly to Reclamation on behalf of the Water Users during the contract period.

These issues are still subject to further discussions with the Water Users and Reclamation. However, Western has committed to provide a means for annual payment to be made toward project repayment on behalf of the Water Users by the power purchasers.

Reclamation also noted that the amount of winter season surplus energy is affected by several factors, including the agreement dated May 16, 1986, known as the Interim Operating Agreement of Deer Creek and Strawberry Exchange of Bonneville Unit Water (Interim Operating Agreement), and future agreements on the operation of Deer Creek and Jordanelle Reservoirs.

Reclamation has made it clear that the Interim Operating Agreement and future agreements may severely impact the amount of generation available from the PRP during the winter season. The Interim Operating Agreement anticipated that compensation to PacifiCorp, for energy lost when water is diverted from the Weber River into the Provo River, would be affected and it provided a remedy. However, the Interim Operating Agreement does not address compensation to the Water Users by Central Utah Water Conservancy District (Central Utah) for other winter season generation which would be lost. Draft language on an agreement for joint operation of Deer Creek and Jordanelle Reservoirs provides a means for Central Utah to compensate the Water Users for this reduction. Drafts of this agreement stipulate that a separate agreement among Central Utah, the Water Users, Western, PacifiCorp, and Reclamation will be developed to provide for this compensation. It is anticipated that this agreement will be completed prior to initial service under Western's proposed marketing plan.

The Water Users commented that Western's criteria for marketing the surplus power and energy of the Deer Creek Powerplant must fairly compensate the Water Users for the value of the surplus electric power and energy in the form of assistance on its repayment obligation.

Western's criteria specify that the annual revenue requirements, including Western's commitment to the Water Users, will be recovered from the potential contractors in return for all of the marketable power and energy produced by the PRP.

The Water Users further commented that the rate for nonfirm energy should be the same as the blended rate of firm

energy. Western's revised proposal would eliminate any distinction between firm and nonfirm energy. All energy produced by the PRP would be delivered in return for the potential contractors paying all of the PRP's annual powerplant expenses.

All of the Water Users' comments are concerned with their claim to a contractual obligation that surplus revenue from the sale of power be applied toward the repayment obligation of the Water Users for the PRP. Western has stated that it will consider $1.623 million by 2008 as a repayment assistance to the PRP. The Water Users assert that there is an obligation to develop surplus revenue from power sales that can be applied to the repayment obligation of the Water Users beyond 2008 until all repayment obligations have been met. Western knows of no legal basis for the Water Users' position. Resolution of these issues are outside the scope of this proposed action. These issues have been the focus of several meetings between the Water Users, Western, and Reclamation. Western's proposal would provide a means to ensure that the balance of the $1.623 million commitment is paid in annual increments by 2008.

Other Issues

UMPA states that use of PRP energy in Utah County, Utah, will result in reduced reliance on fossil fuels and will enhance the environment, especially air quality.

This issue will be addressed in the environmental assessment which will be done on the proposed action. However, because of the quantities of energy involved in the proposal, it is unlikely that the action will have a significant impact on air quality in Utah County.

The Stonefly Society (Society), a local environmental organization, commented that operation of the PRP on the Provo, Duchesne, and Weber Rivers has produced devastating impacts on these river systems. Among these are: (1) Destruction of the Provo's natural channel and riparian areas, (2) anoxic water discharge from Deer Creek Reservoir, (3) dewatering of the Weber River, and (4) dewatering of the Duchesne River. They state that three actions should be taken: (1) studies of the environmental impacts of the PRP should be conducted immediately; (2) funds should be allocated from Deer Creek Power revenues to correct these serious problems; and (3) no funds should be allocated to the PRP until these environmental impacts have been both assessed and corrected.

Western's proposal is to only change the way power from the PRP is marketed. It will have no effect on how the PRP is operated. The Society's issues are concerned with the way the project is operated and not on how power is marketed. Therefore, their comments are outside the scope of this proposal.

The Society asked "if the PRP were included in the Integrated Projects, will the powerplant at Deer Creek Reservoir be operated independently or will the operation be integrated with other Western generating facilities? If its operation is integrated, will there be environmental impacts at these other facilities?" Western's proposal is to market the PRP independently of the Integrated Projects. There would be no operation connection between the projects. Furthermore, since Deer Creek Powerplant is not controlled by Western, delivery of power and energy to the customer would be, as always, on a run-of-the-river basis.

Marketing Criteria

a. Applicability

Congress granted to the Secretary of Energy acting by and through Western's Administrator the authority to market Federal power. In response to requests from UMPA and ICPA to receive power produced by the PRP, Western has examined the merits of reorganizing the marketing of the PRP resource. Western believes these proposed marketing changes will benefit both the potential contractors and the Water Users.

b. Marketable Resource

A contract among Reclamation, the Water Users, the Weber River Water Users Association, and PacifiCorp dated December 20, 1938 (1938 Contract), provides for diversion of water from the Weber River into the Provo River for storage in Deer Creek Reservoir and for use by the Water Users. Because PacifiCorp operated generating units on the Weber River below the point of diversion to the Provo River, PacifiCorp's ability to generate was reduced when water was diverted. The 1938 Contract provides that PacifiCorp is to receive all of the electrical generation of the PRP during the period of time that water is diverted. This means that for up to 6 months, from October 15 to April 15 of each year, there may be no marketable energy generated by the PRP. Historically however, marketable energy has averaged 23,000,000 kilowatthours (kWh), with 15,000,000 kWh generated during summer months, and the remaining 8,000,000 kWh from winter surplus energy. Typically, about 3,000,000 kWh are available in each of the 3 peak summer months of June, July, and August; approximately 1,000,000 kWh are available in April; 2,500,000 kWh in May; and another 2,500,000 kWh in September. ICPA and UMPA would receive all of the marketable energy generated by the PRP each year in return for paying all of the PRP powerplant expenses.

c. Marketing Area

Because of the size of the resource, Western proposes to limit the marketing of this resource to preference entities within the drainage area of the Provo River. All eligible utilities are members of ICPA and UMPA, and are located in Utah and Wasatch Counties. Members of ICPA are the cities of Heber City, Lehi, Payson, Springville, and the Strawberry Electric Service District (Strawberry). Affected members of UMPA are the cities of Provo, Salem, and Spanish Fork. It is anticipated that marketing of the PRP resource to these potential contractors would assure that each would receive a beneficial amount of power.

d. Class of Service

PRP generation is dependent upon water releases that are dictated by minimum stream flow requirements and the Water Users' needs. No load following ability exists. Since April 1, 1994, the PRP has been included in Western's Upper Colorado Missouri Basin control area. With the PRP in Western's control area, Western is able to enhance the usability of the product and to allow it to be scheduled, even though it has no control over PRP generation. Western provides control area and regulating services for several other customers and has a developed methodology to share the expenses of operating a control area and providing for regulating capacity. Under the revised proposal, the PRP would be required to pay for its share of these services. These costs will be included in the PRS as an operating expense.

Energy will be scheduled to the potential contractors in megawatts in accordance with anticipated generation levels from the PRP. When variations occur, the hourly schedules will be adjusted to reflect actual operation.

Western will maintain an energy deviation account between the PRP and the Integrated Projects. At the end of each year, an accounting of scheduled and generated energy will be made. Differences between the two projects will be made up by adding to or subtracting from the following year's schedules to the potential contractors.

The potential contractors will be responsible for reserves in accordance with Inland Power Pool requirements.

e. Resource Allocation

Western proposes to allocate PRP resources in proportion to the historical sales of each of the ICPA and UMPA members. UMPA members serve approximately 70 percent of the load in the marketing area, and the city of Provo is by far the largest member. ICPA members serve approximately 30 percent of the marketing area load. Proportional allocation of the PRP's average annual output of 23,000,000 kWh would mean UMPA members could expect an average of 16,100,000 kWh and 3,500 kilowatts (kW) of contingent capacity, and ICPA members could expect an average of 6,900,000 kWh and 1,500 kW of contingent capacity. Of ICPA members' 30 percent, Heber City would receive 6 percent, Lehi 2.7 percent, Springville 12.9 percent, Payson 4.8 percent, and Strawberry 3.6 percent. Of UMPA members' 70 percent, Provo would receive 60.9 percent, Salem 1.4 percent, and Spanish Fork 7.7 percent. Western would develop firm power sales contracts with ICPA and UMPA on behalf of their members which would specify the terms and conditions of receiving PRP power. The power sales contracts would be structured such that if a member withdraws from either ICPA or UMPA, it would be able to retain its entitlement of PRP power.

f. Contract Terms

ICPA and UMPA would pay the PRP's total annual powerplant expenses in return for the total marketable PRP production. Each would pay its proportional share of the operation, maintenance, and replacement expenses identified in the PRS in 12 monthly installments. In addition, before January 1 of each year, ICPA would pay $30,685.71 and UMPA $71,600.00 to Reclamation to be applied toward the Water Users annual payment.

g. Term of Contract

The power sales contracts would become effective on October 1, 1994, and terminate on September 30, 2008.

Process

Western will accept comments on its proposed revised marketing plan until August 10, 1994. Following this comment period, Western will prepare the appropriate contracts and other agreements that may be necessary to implement its proposal. A notice in the **Federal Register** will announce Western's final decisions on marketing PRP power. The marketing plan will be effective 30 days following publication of that notice. Western intends to begin initial service under these contracts on October 1, 1994.

ENVIRONMENTAL COMPLIANCE: Western will comply with the National Environmental Policy Act of 1969 through preparation of an environmental assessment (EA) on the impacts of the proposed marketing changes.

Western has no operational control over the PRP. Deer Creek Dam is operated primarily for the benefit of water storage and delivery. Power production is a secondary benefit and does not influence dam operations in any manner. Therefore, the proposed PRP marketing changes will have no effect on dam operations.

REGULATORY FLEXIBILITY ANALYSIS: Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), each agency, when publishing a proposed rule, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the rule on small entities. Western has determined that: (1) This rulemaking relates to services offered by Western and, therefore, is not a rule within the purview of the Act, and (2) the impacts of an allocation from Western would not cause an adverse economic impact to such entities.

DETERMINATION UNDER EXECUTIVE ORDER 12866: DOE has determined this is not a significant regulatory action because it does not meet the criteria of Executive Order 12866, 58 FR 51735. Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Issued in Golden, Colorado, June 22, 1994.

William H. Clagett,

Administrator.

[FR Doc. 94–16709 Filed 7–8–94; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5010–8]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et al.*). this notice announces the Office of Management and Budget's (OMB) responses to Agency PRA clearance requests.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer (202) 260–2740

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency PRA Clearance Requests

OMB Approvals

EPA ICR No. 1414.02; Hazardous Organic NESHAP (HON) for the Synthetic Organic Chemical Manufacturing Industry (SOCMI) and Other Processes Subject to the Negotiated Regulation for Equipment Leaks; was approved 05/26/94; OMB No. 2060–0282; expires 05/31/97.

EPA ICR No. 1685.01; U.S. Environmental Protection Agency 1994 Industrial Laundries Industry Questionnaire; was approved 06/06/94; OMB No. 2040–0171; expires 06/30/97.

EPA ICR No. 1012.05; PCB Disposal Permitting Regulation; was approved 06/14/94; OMB No. 2070–0011; expires 06/30/97.

EPA ICR No. 0783.21; Application for Motor Vehicle Emission Certification and Fuel Economy Labeling; was approved 06/03/94; OMB No. 2060–0104; expires 06/30/95.

EPA ICR No. 1061.06; NSPS for the Phosphate Fertilizer industry—49 CFR 60, Subparts T, U, V, W, X; was approved 06/02/94; OMB No. 2060–0037; expires 06/30/97.

OMB Disapprovals

EPA ICR No. 1658.01; Control Technology Determinations for Constructed, Reconstructed, and Modified Major Sources of Hazardous Air Pollutants, Offset Showings for Existing Major Sources; was disapproved 06/03/94.

EPA ICR No. 1669.01; Provision of lead Hazard Information Pamphet Before Renovation of Target Housing; was disapproved 05/09/94. This collection supports the proposed rule

OMB Extensions of Expiration Date

EPA ICR No. 1582.01; Extension of Compliance with Standards for Hazardous Air Pollutions Due to Early Emission Reduction—Reporting and Recordkeeping Requirements; OMB No. 2060–0222; expiration dated extended from 08/31/94 to 11/30/94.

EPA ICR No. 1463.02; National Oil and Hazardous Substances Pollution Contingency Plan (NCP); OMB No. 2050–0096; expiration date extended from 10/31/94 to 01/31/95.

EPA ICR No. 1445.02; Continuous Use Reporting Regulation under CERCLA Final Rule; OMB No. 2050–0086;

expiration date extended from 09/30/94 to 12/31/94.

Dated: June 27, 1994.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 94–16722 Filed 7–8–94; 8:45 am]

BILLING CODE 6560–50–M

Office of Research and Development

[FRL–5010–5]

Ambient Air Monitoring Reference and Equivalent Methods; Reference Method Designation

Notice is hereby given that EPA, in accordance with 40 CFR part 53, has designated another reference method for the determination of ambient concentrations of particulate matter measured as PM_{10}. The new reference method is a gravimetric method which utilizes a specially designed PM_{10} sampler for particle collection. The designated method is identified as follows:

RFPS–0694–098, "Rupprecht & Patashnick Partisol™ Model 2000 Air Sampler", consisting of a Hub Unit and 0, 1, 2, or 3 Satellite Units, with each sampling station used for PM_{10} measurements equipped with a Rupprecht & Patashnick PM_{10} Inlet and operated for continuous 24-hour periods using the Basic, Manual, Time, Analog Input, or Serial Input programming modes, and with or without any of the following options:

Stand for Hub or Satellite.....57–002320
Advanced EPROM.....59–002542
Large Pump (¼ hp), 120 VAC.....10–001403
Hardware for Indoor Installation consisting of:
Temperature Sensor (Extended Length).....51–002638–xxxx
Roof Flange (1¼").....55–001289
Support Tripod for Inlet.....57–000604
Sample Tube Extension (1 m).....57–002526–0001
Sample Tube Extension (2 m).....57–002526–0002
Hardware for Outdoor Installation in Extreme Cold Environments:
Insulating Jacket for Hub Unit.....10–002645

This method is available from Rupprecht & Patashnick Co., Inc. (R&P), 25 Corporate Circle, Albany, New York 12203. A notice of receipt of application for this method appeared in the **Federal Register**, Volume 59, March 30, 1994, page 14853.

The hub unit of the Partisol™ Model 2000 Air Sampler contains a filter holder assembly, the flow control system, the valves to direct the sample flow through the hub or appropriate satellite unit, the sample pump, a microprocessor, keypad, information display, and associated electronics. Each satellite unit contains only a filter holder assembly and is connected to the hub unit through a single flow line. Each sampling station (hub or satellite) used for PM_{10} measurements must be equipped with an R&P PM_{10} inlet (other sampling stations may have other types of inlets). Only one sampling station may operate at a time.

The Model 2000 uses 47mm diameter filters mounted in cassettes. Filter media meeting the minimum requirements specified in appendix J to 40 CFR part 50 (Reference Method for the Determination of Particulate Matter as PM_{10} in the Atmosphere) are available from R&P, or may be obtained from other sources, depending on individual user needs. A 5-place analytical balance is required for weighing filters before and after sampling.

Test samplers representative of this method have been tested by the applicant, in accordance with the test procedures specified in 40 CFR part 53. After reviewing the results of these tests and other information submitted by the applicant, EPA has determined, in accordance with part 53, that this method should be designated as a reference method. The information submitted by the applicant will be kept on file at EPA's Atmospheric Research and Exposure Assessment Laboratory, Research Triangle Park, North Carolina 27711, and will be available for inspection to the extent consistent with 40 CFR part 2 (EPA's regulations implementing the Freedom of Information Act).

As a designated reference method, this method is acceptable for use by States and other air monitoring agencies under requirements of 40 CFR part 58, Ambient Air Quality Surveillance. For such purposes, the method must be used in accordance with the guidance in appendix J to 40 CFR part 50 and the specific procedures contained in the operation or instruction manual associated with the method. Use of the method is also subject to any limitations specified in the applicable designation (see description of the method above). Vendor modifications of a designated method used for purposes of part 58 are permitted only with prior approval of EPA, as provided in part 53. Provisions concerning modification of such methods by users are specified under section 2.8 of appendix C to 40 CFR part 58 (Modifications of Methods by Users).

In general, this designation applies to any sampler which is identical to the sampler described in the designation. Similar samplers manufactured and sold prior to the designation may be upgraded (e.g., by minor modification or by substitution of a new operation or instruction manual) so as to be identical to the designated method and thus achieve designation status at a modest cost. The manufacturer should be consulted to determine the feasibility of such upgrading.

Part 53 requires that sellers of designated methods comply with certain conditions. These conditions are given in 40 CFR 53.9 and are summarized below for PM_{10} methods:

(1) A copy of the approved operation or instruction manual must accompany the PM_{10} sampler when it is delivered to the ultimate purchaser.

(2) The PM_{10} sampler must not generate any unreasonable hazard to operators or to the environment.

(3) The PM_{10} sampler must function within the limits of the performance specifications given in table D–1 of part 53 for at least one year after delivery when maintained and operated in accordance with the operation manual.

(4) Any PM_{10} sampler offered for sale as a reference or equivalent method must bear a label or sticker indicating that it has been designated as a reference or equivalent method in accordance with part 53.

(5) An applicant who offers PM_{10} samplers for sale as reference or equivalent methods is required to maintain a list of ultimate purchasers of such samplers and to notify them within 30 days if a reference or equivalent method designation applicable to the sampler has been canceled or if adjustment of the samplers is necessary under 40 CFR 53.11(b) to avoid a cancellation.

(6) An applicant who modifies PM_{10} sampler previously designated as a reference or equivalent method is not permitted to sell the sampler (as modified) as a reference or equivalent method (although he may choose to sell it without such representation), nor to attach a label or sticker to the sampler (as modified) under the provisions described above, until he has received notice under 40 CFR 53.14(c) that the original designation or a new designation applies to the method as modified or until he has applied for and received notice under 40 CFR 53.8(b) of a new reference or equivalent method determination for the sampler as modified.

Aside from occasional breakdowns or malfunctions, consistent or repeated noncompliance with any of these conditions should be reported to: Director, Atmospheric Research and Exposure Assessment Laboratory, Department E (MD–77), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of this reference method will provide assistance to the States in establishing and operating their air quality surveillance systems under part 58. Technical questions concerning the method should be directed to the manufacturer. Additional information concerning this action may be obtained from Frank F. McElroy, Methods Research and Development Division (MD–77), Atmospheric Research and Exposure Assessment Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541–2622.

Carl Gerber,

Assistant Administrator for Research and Development.

[FR Doc. 94–16723 Filed 7–8–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5010–8]

Performance Evaluation Reports for Fiscal Year 1993; Section 105 Grants; Missouri, Kansas, Iowa, Nebraska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of grantee performance evaluation reports.

SUMMARY: EPA's grant regulations (40 CFR 35.150) require the Agency to conduct yearly performance evaluations on the progress of the approved State/EPA Agreements. EPA's regulations (40 CFR 56.7) require that the Agency make available to the public the evaluation reports. EPA has conducted evaluations on the Missouri Department of Natural Resources, Nebraska Department of Environmental Quality, Iowa Department of Natural Resources, and Kansas Department of Health and Environment. These evaluations were conducted to assess the agencies' performance under the grants made to them by EPA pursuant to section 105 of the Clean Air Act.

EFFECTIVE DATE: July 11, 1994.

ADDRESSES: Copies of the evaluation reports are available for public inspection at the EPA's Region VII Office, Air and Toxics Division, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Carol D. LeValley at (913) 551–7610.

Dated: June 13, 1994.

Delores Platt,

Acting Regional Administrator.

[FR Doc. 94–16724 Filed 7–8–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5010–7]

Public Water Supply Supervision Program Revision for the State of South Carolina

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of South Carolina is revising its approved State Public Water Supply Supervision Primacy Program. South Carolina has adopted drinking water regulations for Volatile Organic Chemicals, Synthetic Organic Chemicals and Inorganic Chemicals (known as Phase II and Phase IIB of the Federal Safe Drinking Water Regulation) and for Lead and Copper. EPA has determined that these State program revisions are no less stringent than the corresponding federal regulations. Therefore, EPA has tentatively decided to approve the State program revisions.

All interested parties may request a public hearing. A request for a public hearing must be submitted by August 10, 1994, to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by August 10, 1994, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his/her own motion, this determination shall become final and effective August 10, 1994.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; and (3) the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201.

Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Philip H. Vorsatz, EPA, Region IV, Drinking Water Section at the Atlanta address given above or telephone (404) 347–2913.

(Sec. 1413 of the Safe Drinking Water Act, as amended (1986), and 40 CFR 141 and 142 of the National Primary Drinking Water Regulations)

Dated: June 1, 1994.

Patrick M. Tobin,

Acting Regional Administrator, EPA, Region IV.

[FR Doc. 94–16727 Filed 7–8–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5009–9]

Report to Congress: "A Review of Federal Authorities for Hazardous Materials Accident Safety"

AGENCY: Environmental Protection Agency.

ACTION: Notice of Availability and Request for Public Input on the Environmental Protection Agency Report to Congress: "A Review of Federal Authorities for Hazardous Materials Accident Safety".

SUMMARY: The purpose of this notice is to announce the availability of the above cited report and provide a public input opportunity on the report's findings.

DATES: Written statements should be submitted on or before August 31, 1994 and should be addressed as indicated below.

ADDRESSES: Requests for the report can be faxed to the Emergency Planning and Community Right-to-Know Hotline at (703) 412–3333 or you may contact the Hotline by phone at 1–800–535–0202 to request a copy. Statements concerning the report should be sent to: David Speights, U.S. Environmental Protection Agency, Chemical Emergency Preparedness and Prevention Office, Mail Code: 5101, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: David Swack, Chemical Emergency Preparedness and Prevention Office, at (202) 260–3850.

BACKGROUND INFORMATION: Section 112(r)(10) of the Clean Air Act directs the President to conduct a review of release prevention, mitigation, and response authorities across the Federal government. The Environmental Protection Agency, in conjunction with the other member agencies of the Federal National Response Team (NRT),

conducted the review and submitted its report to the Congress in February 1994. The report concludes that while the current hazardous materials safety system achieves its statutory goals to protect public health and safety and the environment, it is overly complex and confusing and, as a result, imposes unnecessary costs on government, industry, and the public. To address these issues and to consider appropriate remedies, the report proposes a second phase involving stakeholder participation that will focus on:

- Streamlining the multiple and overlapping statutory terms for regulated substances and reportable events,
- Harmonizing multiple and/or redundant hazard classification systems,
- Analyzing the efficacy of multiple requirements for facility contingency plans and the desirability of a Federal baseline standard with added components for special concerns,
- Streamlining accident data collection and management systems to improve efficiency, and
- Improving Federal/state/local coordination of emergency planning.

The goal of the second phase of the project is to identify specific administrative and statutory changes that will yield a more coordinated, rational, and efficient approach to hazardous materials safety. The period provided under this notice for statements is designed to provide an opportunity for interested parties to have input into this process and help shape any potential recommendations.

Dated: June 25, 1994.

James L. Makris,

Director, Chemical Emergency Preparedness and Prevention Office.

[FR Doc. 94–16726 Filed 7–8–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5010–4]

State of Florida; Final Determination of Adequacy of State/Tribal Municipal Solid Waste Landfill Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Final Determination of Full Program Adequacy for State of Florida's Municipal Solid Waste Landfill Permit Program.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised federal MSWLF criteria (40 CFR part 258). RCRA Section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribal permit programs provide interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in States/Tribes with approved permit programs can use the site-specific flexibility provided by part 258 to the extent the State/Tribal permit program allows such flexibility.

Florida applied for a determination of adequacy under section 4005 of RCRA. EPA reviewed Florida's application and proposed a determination that Florida's MSWLF permit program is adequate to ensure compliance with the revised MSWLF criteria. After consideration of all comments received, EPA is today issuing a final determination that the State's program is adequate.

EFFECTIVE DATE: The determination of adequacy for Florida shall be effective on July 11, 1994.

FOR FURTHER INFORMATION CONTACT: Patricia S. Zweig, Program Coordinator, Office of Solid Waste, Waste Management Division, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30365.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that facilities comply with the federal criteria under part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised federal criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA intends to approve State/Tribal MSWLF permit programs prior to the promulgation of STIR. EPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an "adequate" program based on the interpretation outlined above. EPA plans to provide more specific criteria for this evaluation when it proposes the State/Tribal Implementation Rule. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

B. State of Florida

On July 20, 1993, Florida submitted an application for adequacy determination for their municipal solid waste landfill permit program. On March 2, 1994, EPA published a tentative determination of adequacy for all portions of Florida's program. Further background on the tentative determination of adequacy appears at 59 FR 9980–9983 (March 2, 1994).

Along with the tentative determination, EPA announced the availability of the application for public comment and a public hearing which

was held by EPA—Region IV on April 25, 1994, in Tallahassee, Florida. The public comment period, which originally ended on April 25, 1994, was extended an additional seven (7) days because of public interest. Comments were accepted on the tentative determination through close of business on May 2, 1994.

C. Public Comment

EPA Region IV received written and oral comments during the public comment period and public hearing on the tentative determination of adequacy for Florida. In addition to comments supporting EPA's determination, several issues and concerns were raised, which are outlined and responded to below.

1. Liner design—Comments received during the public comment period presented the following issues regarding Florida's liner designs for municipal solid waste landfills: (1) Florida fails to require adequate liner design criteria which complies with minimum federal requirements and that would reduce leaks and improve leak detection capabilities, (2) Florida's liner designs contemplate the allowance of a double geomembrane liner without a low permeable clay component, (3) many of the assumptions that Florida made in their required MuitiMed modelling efforts were not actually indicative of conditions in Florida or did not present actual "worst-case" conditions, as is required when states submit alternative liner designs for EPA review, and (4) Florida's liner design demonstration was based on a point of compliance nearly 500 feet from the landfill boundary (almost five (5) times the distance allowed by state law).

EPA was charged with reviewing state municipal solid waste landfill permitting programs to determine if they meet the standards presently set forth in the federal criteria for municipal solid waste landfills, which are found at parts 257 and 258 of Chapter 40 of the Code of Federal Regulations (40 CFR 257 and 258). Florida's regulations incorporate ten (10) liner designs to be used in landfills in the state. Nine (9) of the liner designs are single composite systems which incorporate—from top to bottom—a leachate collection system, a flexible synthetic membrane and a layer of compacted soil (the federal standard liner system is also a composite requiring the same components, in the same order). The tenth of Florida's designs is a double liner system, which incorporates—from top to bottom—a leachate collection system, a flexible synthetic membrane, a second leachate collection/detection system, a second flexible synthetic membrane and a layer of compacted soil. The state of Florida has presented information to satisfactorily demonstrate that each of the liner systems prescribed in their regulations will meet the federal performance standard.

EPA performed an extensive review of Florida's liner requirements and found them to be comparable to the federal criteria at 40 CFR part 258. In addition, EPA Region IV retained an independent contractor to evaluate Florida's liner systems and conferred with an EPA landfill liner expert. After thorough review of all submitted information, the contractor also found Florida's liner systems to be comparable to the federal criteria.

EPA's expert was called upon in the matter of Florida's assumption of 1 cm^2/acre defect density in the flexible membrane portion(s) of their liner system. According to the EPA expert, with appropriate quality assurance/quality control (QA/QC) during installation of the flexible membranes, the referenced defect density is achievable and has been extensively documented. The federal criteria at 40 CFR part 258 contain no specific QA/QC provisions. It is assumed that QA/QC will be ensured prior to disposal of wastes in landfill units. As Florida's QA/QC requirements are quite extensive and as it is the state alternative liner designs and not QA/QC that is being evaluated for comparability, it is appropriate to assume that Florida will ensure that QA/QC requirements are met during installation of municipal solid waste landfill liner systems in their state.

Regarding the distance that Florida used for the point of compliance in their modelling, states must demonstrate to EPA that proposed alternatives meet federal performance standards. The federal performance standard for liner designs is that maximum concentration limits (MCLs) for listed constituents not be exceeded in the uppermost aquifer at the point of compliance, which must be on the landfill owner/operator's property and within 150 meters (approximately 500 feet of the landfill unit boundary). Although Florida requires that MCLs not be exceeded at a maximum distance of 100 feet (which is more restrictive than the federal criteria), utilization of the 500 foot distance is appropriate for Florida's demonstration that their requirements meet the federal performance standards.

2. Authority for and implications of approving alternative liner designs in Florida—Comments were received during the public comment period questioning whether EPA is authorized to allow statewide alternative liner designs and stating that Region IV's decision on Florida's liner designs will have national implications based on the presumption that any alternative liner design that EPA approves for Florida must likewise be approved in other states, "given Florida's extreme vulnerability to groundwater pollution." EPA Headquarters has addressed the issue of EPA's authority to approve statewide alternative liner designs for municipal solid waste landfills. After review of 40 CFR part 258, the preamble to part 258 and EPA Headquarters training materials on the implementation of part 258, EPA Headquarters prepared a memorandum which concluded that the flexibility afforded to an approved State/Tribe allows the application of an alternative liner design on a State/Tribal-wide basis so long as that design meets the performance standard in all locations throughout the State/Tribe.

Regarding the presumption that alternatives approved for Florida will have to be approved for other states, the State/Tribal adequacy review process requires EPA to evaluate each state's municipal solid waste landfill permit program based on the specifics of individual state requirements. Proposed alternatives to any of the federal standards are only to be accepted if the state demonstrates that the alternative(s) would meet federal performance standards. States proposing alternative liner designs are required to present data from analysis via the MultiMed fate and transport model, which requires information that can only be expressed based on particular state conditions (eg., precipitation, hydrologic conditions, etc.). EPA's decision to approve or disapprove a state's alternative liner design weighs heavily on the results of this state-specific modelling. Therefore, approval of an alternative liner design in one state would not automatically make the same liner approvable in another state.

3. Groundwater/Drinking Water—Comments received during the public comment period presented the following concerns regarding the effects of municipal solid waste landfills on groundwater and drinking water in the State of Florida: (1) Florida's present municipal solid waste landfill permit program fails to adequately protect high quality groundwater and the State should prohibit landfills from being located in sensitive areas, such as above underground sources of drinking water, and (2) there is the possibility of leachate discharges from municipal solid waste landfills contaminating drinking water wells.

The federal criteria require that groundwater be monitored for constituents at a distance no more than 150 meters (approximately 500 feet) from the landfill unit boundary or at the landfill facility property boundary, whichever is less. The point at which groundwater is monitored is to be chosen considering several factors, one of which is whether the groundwater is used for drinking water. Florida's program meets these standards. Florida has made revisions to their requirements to include all of the contaminants for which the federal standards require monitoring. Florida also requires periodic sampling of leachate generated by the landfill to determine which contaminants would be of concern in the event of a release to the subsurface. This analysis is not required by the federal criteria. Further, as previously mentioned, Florida requires monitoring of groundwater and corrective action if groundwater is found to be contaminated at a distance not to exceed 100 feet from the landfill unit boundary or at the landfill facility property boundary, whichever is less. Again, Florida's 100 foot distance is more stringent than the federal criteria.

Regarding landfills being sited in the vicinity of drinking water intakes, the federal criteria for locating municipal solid waste landfills are very general and include restrictions (but not necessarily prohibitions) to locating municipal solid waste landfills in floodplains, wetlands, fault areas, seismic impact zones, unstable areas and areas in close vicinity to airports. The State of Florida's regulations have been deemed adequate in that they meet the minimum federal requirements. The federal criteria at 40 CFR part 258 do not address drinking water intakes with respect to locating landfills. Further, EPA cannot *require* Florida to adopt more stringent requirements to receive approval of their program.

4. Health/Risk Assessment—Comments were received during the public comment period presenting the concern that Florida's municipal solid waste landfill permit program fails to adequately assess the adverse impact on human health resulting from exposure to landfill leachate in drinking water. It was suggested that Florida be required to evaluate human health effects from chronic exposure to contaminants released from municipal solid waste.

Addressing this issue was beyond the scope of EPA's review of Florida's municipal solid waste landfill permitting program. However, the types of complex health studies that are referenced are generally conducted as research projects by organizations and health scientists trained in this field. Such work is ongoing in federally-funded laboratories, universities and other research organizations. On occasion, these studies are conducted in community populations that are known to have been exposed to environmental contaminants over an extended period of time and that claim to have a high level of health problems believed to be associated with the contamination. With the multiple stresses and health problems that typically exist in a community, it is extremely difficult to prove a causal association with a specific environmental exposure. Such health studies are complex, difficult to interpret and often inconclusive. Therefore, a requirement for health evaluations are not typically included, per se, in regulatory permit programs but rather these programs use toxicity and risk assessment information to develop the technical permit requirements that would be health protective. Florida's municipal solid waste landfill program was developed in a manner which satisfactorily meets the above requirements.

5. Public Participation—Comments were received during the public comment period petitioning for "corrective action to redress inadequate public participation in development of Florida's Solid Waste Management Plan."

Under EPA's rules for public participation, a state, in its development of rules for a Subtitle D program, has the option of following the requirements of the state's administrative procedures act, if one exists. Florida does have an administrative procedures act and the State complied with its requirements in the rulemaking process. Accordingly, Florida has complied with EPA's rules for public participation. In addition, EPA has provided public participation opportunities in its review of whether the Florida program is adequate when compared to the criteria of 40 CFR Part 258.

6. Environmental Justice—Comments were received during the public comment period suggesting that there should be an evaluation of the environmental justice implications of Florida's municipal solid waste landfill permitting rules prior to approval of Florida's program. There is concern that (1) Florida's program was "developed with grossly inadequate provisions for participation by persons most threatened by toxic pollution of their water supplies" and (2) Florida's present program fails to provide equal protection to people obtaining drinking water from private wells (low-income communities were specifically referenced).

Review of Florida's practices with respect to environmental justice was beyond the scope of this adequacy determination. In an effort to address questions of environmental justice, EPA—Region IV established the Office of Environmental Justice in 1993. In March 1994, President Clinton issued an Executive Order that is designed to focus federal attention on the environmental and human health conditions in minority communities. EPA's primary objectives with respect to environmental justice are: (a) ensure that all EPA Region IV environmental programs do not adversely impact minority populations and persons living at or below the poverty level, (b) address complaints from communities regarding subjection to a disproportionate burden of the pollution generated by industry and municipalities and (c) provide for outreach programs that will bring minority communities, environmental groups, and government together on relevant environmental issues. Guidelines for implementing these objectives and the requirements of the Executive Order within EPA programs are presently being developed at the Regional and Headquarters levels.

7. Mandated Recycling—Comments were received during the public comment period suggesting that Florida be required to mandate separation of recyclables and toxic contaminants from municipal solid waste prior to disposal in landfills. The federal operating criteria for municipal solid waste landfills include procedures for excluding the receipt of regulated hazardous waste, which require implementation of "a program at the facility for detecting and preventing the disposal of regulated hazardous wastes and polychlorinated biphenyls (PCB) wastes". The state's program must incorporate, at a minimum: random inspections of incoming loads, records of inspections, training facility personnel to recognize prohibited wastes and notification of the proper authorities if a regulated hazardous waste or PCB is discovered at the facility. Florida's program meets the federal requirements for exclusion of regulated hazardous substances in municipal solid waste landfills. However, there presently are no federal regulations which mandate recycling. Therefore, requiring separation of recyclables from municipal solid waste streams prior to disposal is a decision which must be made on the state and/or local level.

The State of Florida's rules for municipal solid waste landfills are not

enforceable at municipal solid waste landfills located on Indian Lands in the State of Florida.

D. Decision

After reviewing the public comments, I conclude that Florida's application for adequacy determination meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Florida is granted a determination of adequacy for all portions of its municipal solid waste permit program.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of Section 7002 of RCRA to enforce the federal MSWLF criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the federal criteria. See 56 *FR* 50978, 50995 (October 9, 1991).

Today's action takes effect on the date of publication. EPA believes it has good cause under section 553(d) of the Administrative Procedure Act, 5 U.S.C. 553(d), to put this action into effect less than 30 days after publication in the **Federal Register**. All of the requirements and obligations in the State's/Tribe's program are already in effect as a matter of State/Tribal law. EPA's action today does not impose any new requirements with which the regulated community must begin to comply. Nor do these requirements become enforceable by EPA as federal law. Consequently, EPA finds that it does not need to give notice prior to making its approval effective.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of sections 2002, 4005 and 4010(c) of the Solid Waste Disposal Act as amended; 42 U.S.C. 6912, 6945, 6949a(c).

Dated: June 30, 1994.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 94–16725 Filed 7–8–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

July 5, 1994.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, N.W., Suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395–3561.

OMB Number: 3060–0292
Title: Part 69, Access Charges
Action: Extension of a currently approved collection
Respondents: State or local governments and businesses or other for-profit
Frequency of Response: Monthly, semi-annually reporting requirements and one-time requirement
Estimated Annual Burden: 5,832 responses; 5.8 hours average burden per response; 33,825 hours total annual burden
Needs and Uses: Part 69 of the Commission's rules and regulations establishes the rules for access charges for interstate or foreign access provided by telephone companies on or after January 1, 1984. Part 69 essentially consists of rules or the procedures for the computation of access charges which are not information collections as defined by 5 CFR 1320. Any reporting or disclosure requirements occurs in connection with particular tariff filings with the FCC or other state commissions or with records maintained in accordance to the Uniform Systems of Accounts (USOA). Section 69.3 requires the annual submission of access charge tariffs. Section 69.116(c) and 69.117(c) requires LECs to file information with NECA semi-annually pertaining to the number of lines in their study areas and interexchange carriers to which such lines are presubscribed. This information will be used by NECA to assess revenue requirements needed to fund the Universal Service Fund and Lifeline Assistance Programs. Section 69.104(k)(1) requires that a state or local telephone company wishing to implement an end user common line reduction or waiver for its subscribers file information with the FCC demonstrating that its state lifeline assistance plan meets certain criteria. This is a one-time filing requirement. Section 69.104(l) requires local telephone carriers to calculate for NECA their projected revenue requirements for the lifeline assistance programs. Section 69.605 requires carriers who are participating in the pool to report access revenues and cost data so that NECA may compute monthly pool revenues - distributions. The information is used by FCC staff to compute charges in tariffs for access service (or origination and termination) and to compute revenue pool distributions. Neither process could be implemented without the information.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

[FR Doc. 94–16729 Filed 7–8–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each Agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200488–001.

Title: Port of Oakland/Yang Ming Marine Transport Corporation.

Parties:

Port of Oakland ("Port")
Yang Ming Marine Transport Corporation ("Yang Ming")

Synopsis: The proposed amendment would authorize the Port to retain ten percent of the full tariff reduction percentage applicable to Yang Ming under the Agreement until the end of each remaining contract year. It also provides for deletion of the provision of the Agreement relating to Yang Ming's payment per TEU for empty containers.

Dated: July 5, 1994.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 94–16637 Filed 7–8–94; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

Background

Notice is hereby given of the final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public).

For Further Information Contact:

Federal Reserve Board Clearance Officer—Mary M. McLaughlin—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202–452–3829)

OMB Desk Officer—Milo Sunderhauf—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503 (202–395–7340)

Final approval under OMB delegated authority of the extension, with revisions, of the following reports:

1. *Report title:* Applications for Membership in the Federal Reserve System
Agency form number: FR 2083, 2083A–2083E
OMB Docket number: 7100–0046
Frequency: On occasion
Reporters: Commercial banks and certain mutual savings banks
Annual reporting hours: 1,988
Estimated average hours per response: 37.5
Number of respondents: 53
Small businesses are not affected.
General description of report: This information collection is required [12 U.S.C. §§ 321–328]. The information in the application is not confidential; however, parts may be given confidential treatment at the applicant's request [5 U.S.C. § 552(b)(4)].

This application provides managerial, financial and structural data necessary for the Federal Reserve System to evaluate a new or existing bank's application for admission to membership in the Federal Reserve System pursuant to criteria established by statute and regulation (Regulation H). The revisions would standardize the format of certain information and clarify the instructions.

2. *Report title:* Senior Loan Officer Opinion Survey on Bank Lending Practices
Agency form number: FR 2018
OMB Docket number: 7100–0058
Frequency: Up to six times per year
Reporters: Large U.S. commercial banks and large U.S. branches and agencies of foreign banks
Annual reporting hours: 1,008
Estimated average hours per response: 2.0
Number of respondents: 84
Small businesses are not affected.
General description of report: This information collection is voluntary [12 U.S.C. §§ 248(a), 263, 335, 3101, 3102, and 3105] and is given confidential treatment [5 U.S.C. § 552(b)(4)].

This survey collects qualitative information about changes in business loan demand and various aspects of bank lending practices from sixty large U.S. commercial banks. The proposed revision will add six U.S. branches and agencies of foreign banks to the current panel. The survey serves as a very important tool for monitoring and understanding the evolution of lending practices at banks and developments in credit markets generally.

3. *Report title:* Application for Prior Approval To Become a Bank Holding Company, or for a Bank Holding Company to Acquire an Additional Bank or Bank Holding Company
Agency form number: FR Y–3
OMB Docket number: 7100–0171
Frequency: Event-generated
Reporters: Corporations seeking to become bank holding companies, or bank holding companies and state chartered banks that are members of the Federal Reserve System
Annual reporting hours: 27,383
Estimated average hours per response: Section 3(a)(1): 48.5, Section 3(a)(3), and 3(a)(5): 59.0
Number of respondents: Pursuant to Section 3(a)(1): 196. Pursuant to Section 3(a)(3) and 3(a)(5): 303
Small businesses are affected.
General description of report: This report is required and is authorized by law [12 U.S.C. §§ 1842(a)(1), (a)(3), and (a)(5)]. Individual respondent data are available to the public except any portions which have been granted confidential treatment at the applicant's request [5 U.S.C. § 552(b)(4) and (8)].

This application provides systematic data on the structure of the proposal on the formation of a bank holding company through acquisition of one or more banks or the merger of two existing bank holding companies, or for the prior approval of the acquisition of direct or indirect ownership, control, or power to vote a certain percentage of the voting shares of a bank or bank holding company. The application collects financial and managerial information on the applicant and data on competitive and public convenience factors. This report has been renamed and now combines information formerly collected on the Application for Prior Approval to Become a Bank Holding Company (FR Y–1; OMB No. 7100–0119) and the Application for Prior Approval for a Bank Holding Company to Acquire an Additional Bank or Bank Holding Company (FR Y–2; OMB No. 7100–0171).

4. *Report title:* Application for Prior Written Consent to Effect a Bank Merger, Consolidation, Acquisition of Assets or Assumption of Deposit Liabilities
Agency form number: FR 2070
OMB Docket number: 7100–0266
Frequency: On occasion
Reporters: State chartered banks that are members of the Federal Reserve System
Annual reporting hours: 4,680
Estimated average hours per response: 39.0
Number of respondents: 120
Small businesses are affected.
General description of report: This report is required by law [12 U.S.C. § 1828(c)]. Parts may be given confidential treatment at the applicant's request [5 U.S.C. § 552(b)(4)].

This form provides information on the pro forma financial condition of the applicant, a description of the proposed merger and the advantages it offers to the public's needs and convenience. The form is used by the Federal Reserve to evaluate the proposed merger as to financial soundness, competitive acceptability and consistency with the public interest.

This report represents the reinstatement of a previous information

collection of the same title, and incorporates information formerly collected on the Application for Prior Approval for a Bank Holding Company to Acquire an Additional Bank or Bank Holding Company (FR Y–2; OMB No. 7100–0171).

Final approval under OMB delegated authority of the extension, without revisions, of the following reports:

1. *Report title:* Domestic Branch Notification
Agency form number: FR 4001
OMB Docket number: 7100–0097
Frequency: On occasion
Reporters: State member banks
Annual reporting hours: 415
Estimated average hours per response: expedited notifications 0.5 hours; nonexpedited 1.0 hour
Number of respondents: 684
Small businesses are affected.
General description of report: This information collection is required [12 U.S.C. § 321] and is not given confidential treatment.

Whenever a state member bank wishes to establish a domestic branch, it must receive the approval of the Federal Reserve System by filing a domestic branch application, which is in the form of a letter addressed to the appropriate Federal Reserve Bank.

2. *Report title:* Investment in Bank Premises Notification
Agency form number: FR 4014
OMB Docket number: 7100–0139
Frequency: On occasion
Reporters: State member banks
Annual reporting hours: 117
Estimated average hours per response: 0.5
Number of respondents: 234
Small businesses are affected.
General description of report: This information collection is required [12 U.S.C. § 371d] and is not given confidential treatment.

Whenever a new investment in bank premises by a state member bank causes that bank's total dollar investment in bank premises to exceed 100 percent of the bank's capital stock account, the bank is required to send an application to the appropriate Federal Reserve Bank requesting permission from the Federal Reserve System to proceed.

3. *Report title:* Notice of Proposed Stock Redemption
Agency form number: FR 4008
OMB Docket number: 7100–0131
Frequency: On occasion
Reporters: Bank holding companies
Annual reporting hours: 775
Estimated average hours per response: 15.5
Number of respondents: 50
Small businesses are affected.
General description of report: This information collection is required [12 U.S.C. § 1844] and is not given confidential treatment; however, parts may be given confidential treatment at the applicant's request [5 U.S.C. §§ 552(b)(4), and (8)].

The filing of this notice is required of a bank holding company proposing to purchase or redeem its shares when the gross consideration to be paid for such purchase or redemption is equal to 10 percent or more of the company's consolidated net worth over any 12-month period.

4. *Report title:* Report on Terms of Credit Card Plans
Agency form number: FR 2572
OMB Docket number: 7100–0239
Frequency: Semiannual
Reporters: Financial institutions
Annual reporting hours: 76.5
Estimated average hours per response: .25
Number of respondents: 153
Small businesses are not affected.
General description of report: The Board is authorized to collect the information contained in this report by Section 5 of the Fair Credit and Charge Card Act of 1988 (Pub. Law No. 100–583, 102 Stat. 2960). Further, the Board may compel creditors to provide the information contained on this report pursuant to Section 136 of the Truth in Lending Act. [15 U.S.C. § 1646(a)].

This semiannual report will collect credit card price and availability information from the largest 153 issuers of bank credit cards. Such issuers include commercial banks as well as thrift organizations (savings and loan associations and savings banks). In addition, the report will include any financial institution that notifies the Federal Reserve Banks that they would like to participate. Financial institutions wishing to file should contact the Federal Reserve Bank located in their district. This information will be assimilated into a report and made available to Congress and the public on a semiannual basis.

5. *Report title:* Survey to Obtain Information on the Relevant Market in Individual Merger Cases
Agency form number: FR 2060
OMB Docket number: 7100–0232
Frequency: On occasion
Reporters: Small businesses and consumers
Annual reporting hours: 55
Estimated average hours per response: 10 minutes for small businesses, 6 minutes for consumers
Number of respondents: 25 small businesses and 50 consumers per survey
Small businesses are affected.
General description of report: This information collection is voluntary [12 U.S.C. § 1828(c)] and is given confidential treatment [5 U.S.C. §§ 552(b)(4) & (b)(6)].

This telephone survey is designed to determine from what sources small businesses and consumers obtain financial services. The information is needed for specific merger and acquisition applications to determine relevant banking markets in the analysis of local market competition.

6. *Report title:* Senior Financial Officer Survey
Agency form number: FR 2023
OMB Docket number: 7100–0223
Frequency: Up to four times per year
Reporters: Commercial banks, other depository institutions, corporations or large money-stock holders
Annual reporting hours: 240
Estimated average hours per response: 1.0
Number of respondents: 60
Small businesses are not affected.
General description of report: This information collection is voluntary [12 U.S.C. §§ 225, 248(a) and 263] and the confidentiality will be determined on a case-by-case basis.

The survey collects qualitative information about deposit relationships and other aspects of bank funding practices from a selection of commercial banks, or if appropriate, other depository institutions, corporations or large money-stock holders. The survey assists the Federal Reserve in its assessment of the monetary aggregate and financial market conditions.

7. *Report title:* Application for Prior Approval to Engage Directly or Indirectly in Certain Nonbanking Activities
Agency form number: FR Y–4
OMB Docket number: 7100–0121
Frequency: Event-generated
Reporters: Bank holding companies
Annual reporting hours: 21,529
Estimated average hours per response: Applications: 59.0, Notifications: 1.5
Number of respondents: Applications: 362, Notifications: 114
Small businesses are affected.
General description of report: This report if required and authorized by law [12 U.S.C. § 1844 4(c)]. Individual respondent data are available to the public except any portions granted confidential treatment at applicant request [5 U.S.C. § 552(b)(4) and (8)].

This form is completed by a bank holding company seeking prior approval to acquire or retain the assets or shares of a nonbank company. The application collects financial and managerial

information on the applicant and data on competitive and public convenience factors.

8. *Report title:* Reports Related to Securities of State Member Banks as Required by Regulation H
Agency form number: N.A.
OMB Docket number: 7100–0091
Frequency: On occasion, quarterly, and annually
Reporters: State member banks with more than 500 shareholders and more than $5 million in total assets
Annual reporting hours: 2,835
Estimated average hours per response: 6.75
Number of respondents: 42
Small businesses are not affected.
General description of report: This information collection is mandatory [15 U.S.C. § 78(i)] and is not given confidential treatment.

Since December 1987 state member banks that meet the shareholder and total asset criteria have been required pursuant to Regulation H to file the same securities forms and reports that bank holding companies and non-bank entities use when they file directly with the Securities and Exchange Commission. Some examples of such reports are Form 10–Q quarterly reports, Form 10–K annual reports, and event-generated Form 3 and Form 4 reports.

Board of Governors of the Federal Reserve System, July 1, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–16640 Filed 7–8–94; 8:45 am]

BILLING CODE 6210–01–P

Bancorp Connecticut, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 2, 1994.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Bancorp Connecticut, Inc., Southington, Connecticut, to become a bank holding company by acquiring 100 percent of the voting shares of Southington Savings Bank, Southington, Connecticut, which will continue to participate in the Connecticut Savings Bank Life Insurance Program.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. FDH Bancshares, Inc., Little Rock, Arkansas, to acquire 100 percent of the voting shares of Springhill Bancshares, Inc., Springhill, Louisiana, and thereby indirectly acquire Springhill Bank and Trust Company, Springhill, Louisiana.

2. Mercantile Bancorp, Inc., Quincy, Illinois, to acquire 100 percent of the voting shares of Perry Bancshares, Inc., Monroe City, Missouri, and thereby indirectly acquire Perry State Bank, Monroe City, Missouri.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Community First Bancorp, Inc., Glendive, Montana, to become a bank holding company by acquiring 100 percent of the voting shares of Glendive Bancorporation, Inc., Glendive, Montana, and thereby indirectly acquire First Fidelity Bank, Glendive, Montana.

2. Community First Bancorp, Inc. Glendive, Montana, to become a bank holding company by acquiring 100 percent of Glendive Bancorporation, Inc., and thereby indirectly acquire First Fidelity Bank, Glendive, Montana.

D. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. DFC Acquisition Corporation II, Kansas City, Missouri, to acquire 100 percent of the voting shares of First American Bancshares, Inc., Kansas City, Kansas, and thereby indirectly acquire The Home State Bank of Kansas City, Kansas City, Kansas; The Wyandotte Bank, Kansas City, Kansas; The Edwardsville Bank, Edwardsville, Kansas; and First American Bank, N.A., Lenexa, Kansas.

2. First National Corporation of Ardmore, Inc., Ardmore, Oklahoma, to acquire 35 percent of the voting shares of Bank of Love County, Marietta, Oklahoma.

Board of Governors of the Federal Reserve System, July 5; 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–16671 Filed 7–8–94; 8:45 am]

BILLING CODE 6210–01–F

The Bank of New York Company Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the

offices of the Board of Governors not later than August 2, 1994.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. The Bank of New York Company, Inc., New York, New York; Baybanks, Inc., Boston, Massachusetts; The Chase Manhattan Corporation, New York, New York; Chemical Banking Corporation, New York, New York; Citicorp, New York, New York; Fleet Financial Group, Inc., Providence, Rhode Island; HSBC Holdings PLC, London, England; HSBC Holdings BV, The Netherlands; Marine Midland Banks, Inc., Buffalo, New York; Banco de Santander, S.A., Madrid, Spain; The Bank of Boston Corporation, Boston, Massachusetts; First Fidelity Bancorporation, Lawrenceville, Newark, New Jersey; and Shawmut, National Corporation, Hartford, Connecticut, to engage through InfiNet Payment Service, Inc., in data processing activities pursuant to § 225.25(b)(7) of the Board's Regulation Y. The applications also may be reviewed at the Federal Reserve Banks of Boston and Philadelphia.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Commonwealth Bancshares, Inc., Shelbyville, Kentucky, to acquire First Security Trust Company, Miami, Florida, and thereby engage in trust company functions, as permitted by § 225.25(b)(3) of the Board's Regulation Y. Commonwealth also proposes to provide portfolio investment advice, pursuant to § 225.25(b)(4)(iii) of the Board's Regulation Y. These activities will be conduced in Dade, Palm Beach, and Broward Counties, Florida.

Board of Governors of the Federal Reserve System, July 5, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–16672 Filed 7–8–94; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. ACYF–HS 93600–941]

A Head Start on Science Demonstration Project; Grant Availability

AGENCY: Administration on Children, Youth and Families (ACYF), ACF, DHHS.

ACTION: Announcement of financial assistance to a two year or four year college or university for a Head Start on Science demonstration project.

SUMMARY: The Head Start Bureau of the Administration on Children, Youth and Families announces that applications from colleges or universities will be accepted to demonstrate and evaluate a summer institute prototype on their campus during the summers 1995 and 1996 on the topic of "A Head Start on Science", with follow-up assistance to graduates as they implement their new skills at their local Head Start programs. In year two of the grant period, the successful applicant also will recruit, fund and mentor another teacher education college or university to implement the "A Head Start on Science" approach.

DATES: The closing date for submission of applications is August 25, 1994.

ADDRESSES: Submit applications to: Applications may be mailed to the Department of Health and Human Services Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade SW., Aerospace Building, 6th Floor, OFM/DDG, Washington, DC 20447.

Hand delivered applications are accepted during the normal working hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, on or prior to the established closing date at: Administration for Children and Families, Division of Discretionary Grants, 6th Floor OFM/DDG, 901 D Street SW., Washington DC 20447.

FOR FURTHER INFORMATION CONTACT: Jean Simpson, Head Start Bureau, P.O. Box 1182, Washington, D.C. 20013, Telephone number: (202) 205–8421.

SUPPLEMENTARY INFORMATION:

Part I—General Information

A. Program Purpose

Head Start is a national program providing comprehensive developmental services primarily to low-income preschool children and their families. To help enrolled children achieve their full potential, Head Start programs provide comprehensive health, nutritional, educational, social, and other services. In addition Head Start programs are required to provide for the direct participation of the parents of enrolled children in the development, conduct, and direction of local programs. Head Start currently serves approximately 713,000 children through a network of approximately 1,395 grantees.

While Head Start is targeted primarily toward children whose families have incomes at or below the poverty line or who are eligible for public assistance, regulations permit up to 10 percent of the Head Start children in local programs to be from families which do not meet these low-income criteria. Head Start regulations also require that a minimum of 10 percent of enrollment opportunities in each program be made available to children with disabilities. Such children are expected to be enrolled in the full range of Head Start services and activities in a mainstream setting with their non-disabled peers, and to receive needed special education and related services.

B. Background on Demonstration Project "A Head Start on Science"

The report from the Advisory Committee on Head Start Quality and Expansion emphasizes that quality services to Head Start families must be given priority attention by all Head Start programs. The report underscored the need for staff development and training and supports initiatives designed to increase staff understanding of concepts and principles which will help them become more effective in early childhood settings.

This project is designed to link colleges and universities to Head Start programs for the purpose of teaching science to Head Start staff. Highly intensive, hands-on instruction will provide teachers, assistants, and home visitors with exposure to the principles of science and increase their insights and skills regarding how to take their college campus experience and create classroom environments which invite child exploration and discovery. The staff will also increase their understanding of the natural learning environment presented by the out-of-doors, and the child's own home. We expect that "A Head Start on Science" model will be developed and documented in suitable printed and visual materials to be used to transmit the concept and approaches to other institutions of higher learning and Head Start communities. Project funds may also be used to present and distribute information at appropriate regional and national Head Start events, and to members of the Head Start training and technical assistance network. Also, it would be appropriate for the grantee to develop strategies and products which will assist other local Head Start programs to negotiate with their local college or university for similar staff training.

We believe that as a result of participating in "A Head Start on Science" demonstration project, Head Start teachers, teacher assistants, and

home visitors will be instrumental in creating a lifelong interest in science both for themselves and for the children and families with whom they work. We believe that staff will be impacted by the knowledge that science is found not only in a laboratory under a microscope, but in the everyday world in which they live. As a result of this experience, teachers, assistants and home visitors' concepts of science and their own scientific abilities will increase and in turn have a powerful effect on their ability to engage in discovery and establish environments in which children and families may explore, discover and interpret scientific activities.

This announcement is soliciting applications from four-year colleges or universities, i.e., institutions of higher learning that grant degrees. Awards, on a competitive basis, will be for a one-year budget period, although projects periods may be for two years. Applications for continuation grants funded under these awards beyond the one-year budget period but within the two year project period will be entertained in subsequent years on a non-competitive basis, subject to availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the Government. The Department of Health and Human Services will award one grant under this announcement. Up to $550,000 will be available for a 24 month project period.

In the first year of the grant, the grantee institution will use these funds to create, demonstrate and evaluate a summer institute prototype on their campus during the summer of 1995 with follow-up assistance to Head Start staff graduates as they implement their new skills at their local programs. Also in year one the grantee will recruit another college or university in which to replicate the model in year two.

In the second year of this grant, the grantee institution will improve the prototype program based on year-one experiences, and will offer the hands-on science program to a new group of Head Start staff during the summer 1996. Also during the second year, the "A Head Start on Science" grantee will fund for one year, and mentor another college or university to: (1) implement the prototype "A Head Start on Science" model in the summer of 1996 and; (2) provide follow-up assistance to the Head Start staff as they plan to implement their new skills in their local programs. The addition of a second institution will provide the opportunity to evaluate the effectiveness and transferability of the concept.

Throughout the grant period, a third party evaluator must be secured by the grantee institution to assess the effectiveness of the approach, content and transferability of the "A Head Start on Science" project. The third party evaluator must not be involved in the conduct of the demonstration. The evaluation of the students in both institutes in the summer of 1996 will be completed by the end of the project period. It should focus on the students' plans for the implementation of the program and principles.

C. Statutory Authority

The Head Start Act, as amended, 42 U.S.C. 9801 et seq.

D. Project Period and Funding

A total of approximately $550,000 in ACF funds will be available to fund the demonstration project for a 24 month period. Applicants must propose how much will be needed for each 12 month period of the project.

The grantee must provide at least 20 percent of the total cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $550,000 in Federal funds (based on an award of approximately $275,000 per budget period) must provide § 137,500 in cash or in-kind contributions (20% of total project costs of $687,500).

E. Eligible Applicants

Applicants must be either two year or four year institutions of higher learning which are colleges or universities having the capability to create, demonstrate and evaluate a summer institute prototype.

Part II—Special Requirements

A. Colleges and universities are eligible to apply for these funds. The college or university must also be able to award college credit to Head Start staff that successfully complete the summer program.

B. The project should be directed toward Head Start teachers, teachers' assistants and/or home visitors.

C. Funds may be used for university operating expenses and related costs. Related costs include such activities as planning and development costs, administration, supplies, insurance, university staff salaries, training provided at Head Start events and the third party evaluation.

D. The university or college institute teaching team will be comprised of individuals with knowledge of science, adult learning, and early childhood education.

Part III—Specific Responsibilities of the Applicant

When submitting an application under this announcement, applicants should include a maximum of 50 typed, doubled-spaced pages. Applicants interested in submitting an application for the training prototype must:

A. Describe the design of the project. Include a description of how the summer institutes will address the unique needs of teachers, teacher assistants and/or home visitors.

B. Provide a sample curriculum for the summer institute participants based on content and approach which will help increase participants' knowledge of science, increase their understanding and skills regarding how to create classroom environments, and capitalize on the out-of-doors and family settings as areas of scientific exploration and learning.

C. List projected field experiences appropriate to the location of the college and Head Start programs. These may include trips to the ocean, visiting a quarry, aquarium, desert, nature trail, or wild life reserve. Information submitted should include the total number of hours of the institute program including a breakout of instruction vs. field trip experiences.

D. Describe a plan for how many participants will be included in each summer program and how these participants will be recruited.

E. Describe what provisions will be made for residential, intensive summer institutes for Head Start teachers, teacher assistants, and/or home visitors.

F. Describe provision of materials, lunch and snacks, stipend or reimbursement, transportation to field activities, entry fees.

G. Describe the college credit to be awarded for work completed during the summer institute and for implementing new knowledge and practice back at local programs.

H. Describe the plan for the extension of the summer institute into Head Start settings and the provision of on-site feedback and ongoing support for adults applying their new skills.

I. Explain the criteria and the approach to be used to recruit, fund, and mentor another teacher education college for the second year of the project.

J. Develop an evaluation of the project to determine the effectiveness of the project. Describe the research questions to be addressed. Describe the evaluation that would be implemented, including the outcomes that would be measured, the evaluation design to be employed, and how the data will be analyzed. The evaluation should also include an analysis of the second summer institutes. The project and the evaluation will be completed by the end of the project period.

K. Provide a description of the qualifications of each key staff member including the third-party evaluator (the evaluator cannot be a member of the demonstration project staff). Include copies of their curriculum vitae.

L. Describe a plan to establish a self sustaining project, since this will be a prototype other colleges and universities may want to adapt. It is expected that the applicant may pay for more activities and services during the first year; however, attempts should be made to run a more self supporting program by year two. Outside resources or Head Start grantees that see these services as a priority can support some of the cost of the training.

Part IV—Evaluation Criteria

In consideration of how applicants will meet the requirements and responsibilities addressed under Parts II and III of this announcement, competing applications from colleges and universities will be reviewed and evaluated against the following criteria.

A. *Objectives and Need for Assistance* (15 points)

The extent to which the applicant identifies any relevant economic, social, financial institutional or other problems requiring a solution: demonstrates the need for the assistance: and states the principal and subordinate objectives of the project. Supporting documentation or other testimonies from concerned interests other than the applicant on the need for assistance may be used.

Identify the precise location of the project and the area to be served by the proposed project. Maps and other geographic aids may be attached.

Information provided in response to the following items under "Specific Responsibilities of the Applicant" will be used to review and evaluate applicants on this criterion: Letters A,C,D

B. *Results or Benefits Expected* (15 points)

The extent to which the applicant identifies the results and benefits to be derived which are consistent with the objectives of the proposal and indicates the anticipated contributions to policy, practice, theory and/or research.

Information provided in response to the following items under "Specific Responsibilities of the Applicant" will be used to review and evaluate applicants on this criterion: Letters A,G,H,J

C. *Approach* (40 points)

The extent to which the applicant outlines an acceptable plan of action pertaining to the scope of the project; details how the proposed work will be accomplished and lists each organization, consultant, and other key individuals who will work on the project, along with resumes and a short description of their responsibilities or contribution to the applicant's work plan. Describe the evaluation methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved.

Information provided in response to the following items under "Specific Responsibilities of the Applicant" will be used to review and evaluate applicants on this criterion: Letters A,B,C,E,F,G,H,I

D. *Staff Background and Organization's Experience* (20 Points)

Identifies the background of the project director/principal investigator and key project staff (including name, address, training, most relevant educational background and other qualifying experiences) and the experience of the college or university to demonstrate the applicant's ability to effectively and efficiently administer this project.

Information provided in response to the following items under "Specific Responsibilities of the Applicant" will be used to review and evaluate applicants on this criterion: Letter K

E. *Budget Appropriateness and Reasonableness* (10 Points)

The extent to which the project's costs are reasonable in view of the activities to be carried out and the anticipated outcomes. The extent to which assurances are provided that the applicant can and will contribute the non-Federal share of the total project.

The extent to which the amount budgeted for the evaluation is sufficient to conduct the evaluation.

Information provided in response to the following items under "Application Requirements" will be used to review and evaluate applicants on this criterion: Letter C,E,F,J,L

Part V—Application Process

A. Availability of Forms

Eligible applicants interested in applying for funds must submit all of the required forms included at the end of this Announcement.

In order to be considered for a grant under this Announcement, an application must be submitted on the Standard Form 424 which has been approved by the Office of Management and Budget (OMB) under Control Number 0348–0043. A copy has been provided (see Appendix B). Each application must be signed by an individual authorized to act for the applicant and to assume responsibility for the obligations imposed by the terms and conditions of the grant award.

Appendix C contains certification forms regarding drug free work place, debarment, and lobbying. Only the certification regarding lobbying must be signed and returned with the application. Applications must be prepared in accordance with the guidance provided in this Announcement.

B. Application Submission

One signed original and two copies of the grant application, including all attachments, are required. The program announcement number (ACYF–HS _____) must be clearly identified on the application. Each application must be limited to no more than 50 double-spaced pages of program narrative (not including the forms which make up the SF–424 and resumes) including the one-page project summary. If the application is more that 50 double-spaced pages, the other pages will be removed from the application and not considered by the reviewers.

The application must be paginated beginning with the Form 424 and also contain a table of contents listing each section of the application with the respective pages identified. Only one application per applicant will be accepted.

C. Application Consideration

Applicants will be scored against the evaluation criteria described above. The review will be conducted in Washington, D.C.

The results of the competitive review will be taken into consideration by the Associate Commissioner, Head Start Bureau, in recommending the project to be funded. The Commissioner of ACYF will make the final selection of the applicants to be funded. An application may be funded in whole or in part, depending on the relative need for

services, applicant ranking, geographic location and funds available.

The Commissioner may also elect not to provide funding to applicants experiencing problems in providing quality services.

Successful applicants will be notified through the issuance of a Financial Assistance Award which sets forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, the budget period for which support is given, and the total project period for which support is provided.

D. Checklist for a Complete Application

The checklist below is for your use to ensure that your application package has been properly prepared.

—One original, signed and dated application plus two copies.
—Application length does not exceed 50 double-spaced pages
—A complete application consists of the following items in this order:
—Application for Federal Assistance (SF 424, REV.4–88); Narrative;
—Staff Resumes;
—A completed SPOC certification with the date of SPOC contact entered in line 16, page 1 of the SF 424, REV.4–88);
—Budget information—Non-Construction Programs (SF 424A REV.88);
—Budget justification for Section B—Budget Categories; including subcontract/delegate agency budgets
—Table of Contents;
—Letter from the Internal Revenue Services to prove non-profit status
—Project Summary (not to exceed one page);
—Organization/eligibility information;
—Assurances Non-Construction Programs;
—Certification Regarding Lobbying;

E. Deadlines

Applications shall be considered as meeting an announced deadline if they are either:

1. received on or before the deadline date at a place specified in the program announcement, or

2. sent on or before the deadline date and received by the granting agency in time for the independent review under DHHS GAM Chapter 1–62. (Applicants must be cautioned to request a legibly edited U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private Metered postmarks shall not be acceptable as proof of timely mailing.)

Late applications: Applications which do not meet the criteria in paragraph A of this section are considered late applications. The granting agency shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines: The granting agency may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mails. However, if the granting agency does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

F. Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, Public Law 96–511, the Department is required to submit to OMB for review and approval any reporting and record keeping requirements in regulations, including program announcements. This program announcement does not contain information collection requirements beyond those approved for ACF grant applications under OMB Control Number 0348–0043.

G. Executive Order 12372—Notification Process

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under Executive Order 12372, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and territories except Alabama, Alaska, Connecticut, Colorado, Hawaii, Idaho, Kansas, Louisiana, Minnesota, Montana, Nebraska, Oklahoma, Oregon, Pennsylvania, South Dakota, Virginia, Washington, American Samoa, and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these 19 jurisdictions areas need not take action regarding Executive Order 12372. Applications for projects to be administered by Federally-recognized Indian Tribes are exempt from the requirements of Executive Order 12372. Otherwise, applicants should contact their SPOC as soon as possible to alert them to the prospective application and to receive any necessary instructions. Applicants must submit any required material to the SPOC as early as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or date of contact if no submittal is required) on the SF 424, item 16a.

SPOCs have 30 days from the application deadline date to comment on applications submitted under this announcement. We are requesting a shortened period for SPOC review. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which they intend to trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, S.W., 6th floor, Aerospace Building, Washington, D.C. 20447. ACF will notify the State of any application received which has no indication that the State process has had an opportunity for review.

A list of SPOCs for each State and territory is included at Appendix A at the end of this announcement.

H. Effective Date

It is anticipated that successful applications shall be funded no later than September 30, 1994.

(Catalog of Federal Domestic Assistance Program Number 93.600, Project Head Start)

Dated: June 28, 1994.

Olivia A. Golden,

Commissioner, Administration on Children, Youth and Families.

Appendix A—Executive Order 12372—State Single Points of Contact

Arizona

Mrs. Janice Dunn, Attn: Arizona State Clearinghouse, 3800 N. Central Avenue, 14th Floor, Phoenix, Arizona 85012, Telephone (602) 280–1315

Arkansas

Tracie L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Telephone (501) 682–1074

California

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323–7480

Delaware

Ms. Francine Booth, State Single Point of Contact, Executive Department, Thomas

Collins Building, Dover, Delaware 19903, Telephone (302) 736–3326

District of Columbia

Rodney T. Hallman, State Single Point of Contact, Office of Grants Management and Development, 717 14th Street NW., Suite 500, Washington, DC 20005, Telephone (202) 727–6551

Florida

Florida State Clearinghouse, Intergovernmental Affairs Policy Unit, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399–0001, Telephone (904) 488–8441

Georgia

Mr. Charles H. Badger, Administrator, Georgia State Clearinghouse, 254 Washington Street SW., Atlanta, Georgia 30334, Telephone (404) 656–3855

Illinois

Steve Klokkenga, State Single Point of Contact, Office of the Governor, 107 Stratton Building, Springfield, Illinois 62706, Telephone (217) 782–1671

Indiana

Jean S. Blackwell, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232–5610

Iowa

Mr. Steven R. McCann, Division of Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281–3725

Kentucky

Ronald W. Cook, Office of the Governor, Department of Local Government, 1024 Capitol Center Drive, Frankfort, Kentucky 40601, Telephone (502) 564–2382

Maine

Ms. Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289–3261

Maryland

Ms. Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Telephone (301) 225–4490

Massachusetts

Karen Arone, State Clearinghouse, Executive Office of Communities and Development, 100 Cambridge Street, Room 1803, Boston, Massachusetts 02202, Telephone (617) 727–7001

Michigan

Richard S. Pastula, Director, Michigan Department of Commerce, Lansing, Michigan 48909, Telephone (517) 373–7356

Mississippi

Ms. Cathy Mallette, Clearinghouse Officer, Office of Federal Grant Management and Reporting, 301 West Pearl Street, Jackson, Mississippi 39203, Telephone (601) 960–2174

Missouri

Ms. Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751–4834

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Telephone (702) 687–4065, Attention: Ron Sparks, Clearinghouse Coordinator

New Hampshire

Mr. Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271–2155

New Jersey

Gregory W. Adkins, Acting Director, Division of Community Resources, N.J. Department of Community Affairs, Trenton, New Jersey 08625–0803, Telephone (609) 292–6613

Please direct correspondence and questions to: Andrew J. Jaskolka, State Review Process, Division of Community Resources, CN 814, Room 609, Trenton, New Jersey 08625–0803, Telephone (609) 292–9025

New Mexico

Geroge Elliott, Deputy Director, State Budget Division, Room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827–3640, FAX (505) 827–3006

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474–1605

North Carolina

Mrs. Chrys Baggett, Director, Office of the Secretary of Admin., N.C. State Clearinghouse, 116 W. Jones Street, Raleigh, North Carolina 27603–8003, Telephone (919) 733–7232

North Dakota

N.D. Single Point of Contact, Office of Intergovernmental Assistance, Office of Management and Budget, 600 East Boulevard Avenue, Bismarck, North Dakota 58505–0170, Telephone (701) 224–2094

Ohio

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266–0411, Telephone (614) 466–0698

Rhode Island

Mr. Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Telephone (401) 277–2656

Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning

South Carolina

Omeagia Burgess, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Telephone (803) 734–0494

Tennessee

Mr. Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Telephone (615) 741–1676

Texas

Mr. Thomas Adams, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, Telephone (512) 463–1778

Utah

Utah State Clearinghouse, Office of Planning and Budget, Attn: Carolyn Wright, Room 116 State Capitol, Salt Lake City, Utah 84114, Telephone (801) 538–1535

Vermont

Mr. Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Telephone (802) 828–3326

West Virginia

Mr. Fred Cutlip, Director, Community Development Division, West Virginia Development Office, Building #6, Room 553, Charleston, West Virginia 25305, Telephone (304) 348–4010

Wisconsin

Mr. William C. Carey, Federal/State Relations, Wisconsin Department of Administration, 101 South Webster Street, P.O. Box 7864, Madison, Wisconsin 53707, Telephone (608) 266–0267

Wyoming

Sheryl Jeffries, State Single Point of Contact, Herschler Building, 4th Floor, East Wing, Cheyenne, Wyoming 82002, Telephone (307) 777–7574

Guam

Mr. Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone (671) 472–2285

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

Puerto Rico

Norma Burgos/Jose H. Caro, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–9985, Telephone (809) 727–4444

Virgin Islands

Jose L. George, Director, Office of Management and Budget, #41 Norregade Emancipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802.

Please direct correspondence to: Linda Clarke, Telephone (809) 774–0750.

BILLING CODE 4184–01–P

Appendix B

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction *Preapplication* ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ — ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State — H. Independent School Dist.
B. County — I. State Controlled Institution of Higher Learning
C. Municipal — J. Private University
D. Township — K. Indian Tribe
E. Interstate — L. Individual
F. Intermunicipal — M. Profit Organization
G. Special District — N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐☐ ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

BILLING CODE 4184-01-C

Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in a response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry:

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—"New" means a new assistance award.

—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.

—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project, if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4184-01-P

BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044.

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

BILLING CODE 4184-01-C

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:

23. Remarks

SF 424A (4-88) Page 2
Prescribed by OMB Circular A-102

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Instructions for the SF–424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A. Budget Summary

Lines 1–4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g)

For *new applications*, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B. Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect, during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Assurances—Non-Construction Programs

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–

544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official

Title

Applicant Organization

Date Submitted

BILLING CODE 4184-01-P

Appendix C

U.S. Department of Health and Human Services

Certification Regarding Drug-Free Workplace Requirements

Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"**Controlled substance**" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"**Conviction**" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"**Criminal drug statute**" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"**Employee**" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)_____

Check ___ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DGMO Form#2 Revised May 1990

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction" provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form–LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less then $10,000 and not more than $100,000 for each such failure.

State for Loan Guarantee and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form–LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

Date

BILLING CODE 4184–01–P

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OM
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known:* Congressional District, *if known:*	Congressional District, *if known:*
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable:* _____
8. Federal Action Number, *if known:*	9. Award Amount, *if known:* $
10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI):*	b. Individuals Performing Services *(including address if different from No. 10a)* *(last name, first name, MI):*

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply)*:	13. Type of Payment *(check all that apply)*:
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment *(check all that apply)*: ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16.	
Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____

Federal Use Only:	Authorized for Local Reproduction Standard Form - LLL

[FR Doc. 94–16622 Filed 7–8–94; 8:45 am]

Agency for Toxic Substances and Disease Registry

[Announcement 443]

Environmental Health Education Activities for Health Professionals and Communities Concerned With Human Exposure to Hazardous Substances in the Environment

Introduction

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of fiscal year (FY) 1994 funds for a cooperative agreement program to conduct health education activities related to human exposures to hazardous substances in the environment. The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Environmental Health. (For ordering a copy of "Healthy People 2000," see the section WHERE TO OBTAIN ADDITIONAL INFORMATION.)

Authority

This program is authorized under Sections 104(i) (14) and (15) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986 [42 U.S.C. 9604(i) (14) and (15)].

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 the official public health agencies of States or their bona fide agents or instrumentalities. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and federally recognized Indian tribal governments.

Availability of Funds

Approximately $1,340,000 is available in FY 1994 to fund approximately 19 awards. It is expected that 10 noncompeting continuation awards will be made for approximately $598,000. Approximately 9 new awards will be made for approximately $742,000. The average new award will be $80,000 ranging from $75,000 to $85,000. It is expected that the awards will begin on or about September 30, 1994, with a 12-month budget period within a project period of 3 years. Funding estimates may vary and are subject to change. Continuation awards within the project period are made on the basis of satisfactory progress and availability of funds.

Purpose

The overall purpose of the program is to work toward the ultimate goal of reducing exposures to hazardous substances and mitigating potential adverse health effects from such exposures. Applications should describe how progress toward this goal will be measured. This program will assist State health or environmental departments to identify, develop, disseminate, and evaluate appropriate educational materials and programs on the potential health effects, prevention, medical surveillance, screening, and methods of diagnosis and treatment of injury or disease related to exposure to hazardous substances in the environment. Special emphasis will be placed on exposures found at or near Environmental Protection Agency (EPA) Superfund sites, and other sites identified by ATSDR's Health Activities Recommendation Panel (HARP). See Health Activities Recommendation Panel (HARP) below for a description of HARP. (Superfund sites are defined as sites on, or proposed to be on, the EPA's National Priorities List (NPL)). HARP sites include petitioned sites and consultation sites, in addition to NPL sites. A list of HARP-recommended sites will be included with the application package. Following are definitions or descriptions of the activities to be performed:

Site-Specific Preventive Health Education—An activity designed to address health risks in a community where presenting specific information or recommendations can assist the community in understanding, preventing, or mitigating the health effects of hazardous substances exposure. Target audiences are community members and health professionals. Preventive health education related to sites should be integral to the entire public health activities process and not simply performed when all other activities are completed. Sites for health education should be selected based on public health need.

The following describes the two types of site-specific preventive health education activities.

Community Health Education—Any activity or activities directed toward the community near a site, designed to assist the community in understanding their potential for exposure or assessing adverse health occurrence in their community and to prevent or mitigate exposure to hazardous substances. Activities may include disseminating written materials, presenting coordinated programs involving on-site actions and site-specific materials development (prevention oriented), or supporting an on site health educator. It is assumed that in community health education, community members are involved in the assessment, policy development, and assurance phases of site-specific preventive health education.

Health Professional Education—Any activity or activities directed toward educating public health professionals and the local medical community. The purpose of these activities is to improve the knowledge, skill, and behavior of health professionals concerning medical surveillance, screening, and methods of diagnosing, treating, and preventing injury or disease related to exposure to hazardous substances. See *Recipient Activities* for a description of types of activities.

General Environmental Health Education—Programs and materials for health professionals that may not be directly related to a site, but contribute to the base of knowledge in environmental health and help equip health professionals to more effectively address environmental health issues. A partial list of appropriate and inappropriate topics to be addressed by these efforts follows:

Sample of Appropriate Topics: Superfund site hazardous substances on the priority pollutant list (the ranked list of substances prioritized by ATSDR and the EPA appears in **Federal Register** issue 56 FR 52166, October 17, 1991); environmental exposure histories; resources for environmental health information; environmental toxicology; environmental epidemiology; and health risk communication.

Sample of Inappropriate Topics: Occupational health/workplace exposures; radon; indoor air; sick building syndrome; secondhand smoke; ozone; air pollution; carbon monoxide poisoning; childhood lead poisoning (unless site-related); greenhouse effect; insect repellents; and household chemicals.

Health Activities Recommendation Panel (HARP)—This is a multidisciplinary intra-Agency panel established to evaluate the data and information contained in public health assessments, health consultations, public health advisories and other documents developed by ATSDR to determine public health follow-up actions—including environmental

health education—needed for communities affected by exposures to hazardous substances present at hazardous waste sites nationwide. States funded under the health education cooperative agreement may be asked to participate in HARP review of selected sites, when appropriate.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under A., below, and ATSDR shall be responsible for conducting activities under B., below:

A. Recipient Activities

1. Site-Specific Preventive Health Education

Site-specific preventive health education includes activities for health professionals, communities, and that apply to both audiences.

a. *Health professionals.* (1) Develop for health professionals site-related educational activities. Sites to be addressed include: sites listed or proposed for the National Priorities List (NPL); HARP-recommended sites; sites that have had consultations or petitions, and other sites where the State and ATSDR determine health education is needed. Activities relevant to hazardous substances found at these sites are also appropriate. Activities include grand rounds, short courses, and workshops.

(2) Develop educational materials to improve the skills and knowledge of health professionals concerning potential exposure to hazardous substances at Superfund (or HARP) sites. If non-printed materials are to be developed, the applicant must thoroughly describe the materials, and justify their superiority over traditional educational materials.

b. *Communities.* Develop and conduct community health education activities and materials related to potential exposure to hazardous substances at sites as described above in 1.a. The recipient should give priority to HARP-recommended sites and those sites where community members can take specific actions to reduce or eliminate exposure to hazardous substances.

c. *Health professionals and communities.* (1) Develop and distribute environmental health information resource guides, for health professionals and communities, that include relevant and up-to-date information concerning Superfund sites and chemicals, including environmental health references and local, State, and Federal resources and contacts.

(2) Assess program effectiveness by implementing an evaluation plan that includes process and impact/outcome measures for educational activities and materials.

2. *General Environmental Health Education*

Up to 20% of health education efforts can be devoted to developing for health professionals general educational materials and programs that may not be directly related to a site, but expand the base of knowledge in the area of environmental health. Types of activities could include grand rounds, short courses, workshops, or curriculum development. Topics, for example, could include materials or programs on: improving the knowledge and skills of health care providers in determining potential hazardous substance exposure as an integral part of their patient workup (i.e., taking exposure histories); environmental toxicology; environmental epidemiology; and health risk communication. General environmental education activities must also be evaluated.

B. ATSDR Activities

1. Site-Specific Preventive Health Education

a. *Health professionals.* (1) Collaborate with the recipient to develop effective methods to enhance skill and knowledge required for appropriate medical surveillance, screening, treatment, and prevention of injury or disease related to exposure to hazardous substances at Superfund sites.

(2) Collaborate with the recipient in developing and reviewing all materials and ensuring scientific consistency. When appropriate, provide the recipient with existing education materials to be used in their programs.

b. *Communities.* Assist in developing appropriate, targeted education activities and materials that address the needs and concerns of communities.

c. *Health professionals and communities.* (1) Collaborate with the recipient in developing an environmental health information resource guide.

(2) Collaborate with the recipient in evaluating the effectiveness of educational materials and activities.

2. *General Environmental Health Education*

Collaborate with the recipient in developing appropriate general environmental health education materials and programs for health professionals.

Evaluation Criteria

1. Review of New Applications

Applications will be reviewed and evaluated according to the following criteria.

A. *Proposed Program—30%*

The extent to which the applicant has:

1. Described project purpose and rationale;

2. Justified the need or problem to be addressed;

3. Described the objectives of the project in specific, measurable terms;

4. Outlined an appropriate and feasible plan of action which describes the scope and detail the proposed work to be accomplished;

5. Described a specific timeline for project activities;

6. Identified results/impact expected and benefits to be derived;

7. Identified specific target group(s) for health education activities;

8. Addressed each of the "recipient activities" listed above (Recipient Activity A.2., General Environmental Health Education, is optional); and

9. Described appropriate content of educational programs (in accordance with the **PURPOSE** and **PROGRAM REQUIREMENTS** sections); programs should include both site-specific health professional and site-specific community health education.

B. Program Personnel—20%

Adequacy of the proposal relative to the:

1. Appropriateness of qualifications and experience of proposed program staff;

2. Appropriateness of how staff will be used in relation to the activities to be performed to accomplish the work, and their percentage of time to be spent on the project (at least 1.00 FTE); and

3. Appropriate CVs provided.

C. Capability—10%

Description of the applicant's capability to carry out the proposed project and suitability of facilities and equipment available or to be purchased/leased for the project.

D. Program Evaluation—15%

The adequacy of the proposal relative to:

1. Appropriateness and thoroughness of the methods used to evaluate the project; and

2. Extent to which evaluation plan includes measures of program outcome (i.e., effect of participant's knowledge, attitudes, skills, behaviors, exposure to hazardous substances).

E. Site-Specific Activity Level—25%

The extent to which the proposal has addressed site-specific health education needs at NPL sites in the State. In States with sites recommended for HARP follow-up, such sites should take priority. Sites for health education should be selected based on public health need.

F. Program Budget—(not scored)

The extent to which the budget relates directly to project activities, is clearly justified, and is consistent with intended use of funds.

2. Review of Continuation Applications

Continuation applications within the project period will be reviewed according to the following criteria:

A. Satisfactory progress has been made in meeting project objectives (each objective must be listed, and status toward meeting the objective must be described); if not met, explain;

B. Objectives for the new budget period are realistic, specific, and measurable;

C. Proposed changes in objectives, methods of operation, need for financial support, and/or applicant's evaluation procedures will lead to achievement of project objectives; and

D. The budget request is clearly justified and consistent with the intended use of Federal funds.

Executive Order 12372 Review

Applications are subject to the Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribal governments) should contact their State Single Point of Contacts (SPOCs) as early as possible to alert them to the prospective applications and to receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC for each affected State. A current list of SPOCs is included in the application kit. If SPOCs have any State process recommendations on applications submitted to CDC, they should forward them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Atlanta, GA 30305, no later than 30 days after the application deadline date. (A waiver for the 60-day requirement has been requested.) The granting agency does not guarantee to "accommodate or explain" State process recommendations it receives after that date.

Indian tribes are strongly encouraged to request tribal government review of the proposed application. If tribal governments have any tribal process recommendations on applications submitted to CDC, they should forward them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mailstop E13, Atlanta, GA 30305. This should be done no later than 30 days after the application deadline date. The granting agency does not guarantee to "accommodate or explain" for tribal process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.200.

Other Requirements

A. Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

B. Technical Review

All protocols, studies, and results of research that ATSDR carries out or funds in whole or in part will be peer reviewed to meet the requirements of CERCLA Section 104(i)(13), as amended by SARA.

C. Cost Recovery

CERCLA as amended by SARA, provides for the recovery of costs incurred for response actions at each Superfund site from potentially responsible parties. The recipient would agree to maintain an accounting system that will keep an accurate, complete, and current accounting of all financial transactions on a site-specific basis, i.e., individual time, travel, and associated cost including indirect cost, as appropriate for the site. The recipient would also maintain documentation that describes the site-specific response actions taken with respect to the site, e.g., contracts, work assignments, progress reports, and other documents that describe the work performed at a site. The recipient will retain the documents and records to support these financial transactions and documentation of work performed, for possible use in a cost recovery case, for a minimum of ten (10) years after submission of a final Financial Status Report (FSR), unless there is litigation, claim, negotiation, audit or other action involving the specific site, then the records will be maintained until resolution of all issues on the specific site.

D. Third Party Agreements

Project activities which are approved for contracting pursuant to the prior approval provisions shall be formalized in a written agreement that clearly establishes the relationship between the recipient and the third party.

The written agreement shall at a minimum:

1. State or incorporate by reference all applicable requirements imposed on the contractors under the terms of the grant and/or cooperative agreement, including requirements concerning technical review (ATSDR selected reviewers), ownership of data, and the arrangement for copyright when publications, data, or other copyrightable works are developed under or in the course of work under a PHS grant-supported project or activity.

2. State that any copyrighted or copyrightable works shall be subject to a royalty-free, nonexclusive, and irrevocable license to the government to reproduce, publish, or otherwise use them, and to authorize others to do so for Federal government purposes.

3. State that whenever any work subject to this copyright policy may be developed in the course of a grant by a contractor under a grant, the written agreement (contract) must require the contractor to comply with these requirements and can in no way diminish the government's right in that work.

4. State the activities to be performed, the time schedule for those activities, the policies and procedures to be followed in carrying out the agreement, and the maximum amount of money for which the grantee may become liable to the third party under the agreement.

The written agreement required shall not relieve the recipient of any part of its responsibility or accountability to PHS under the cooperative agreement. The agreement shall, therefore, retain sufficient rights and control to the recipient to enable it to fulfill this responsibility and accountability.

Application Submission and Deadline

The original and two copies of application PHS Form 5161–1 should be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E13, Atlanta, GA 30305, on or before August 22, 1994. (By formal agreement, the CDC Procurement and Grants Office will act for and on behalf of ATSDR on this matter.)

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date, or

(b) Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications which do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

A complete program description, information on application procedures, an application package and business management assistance may be obtained from Maggie Slay, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E13, Atlanta, GA 30305, telephone (404) 842–6797. Programmatic assistance, including current updated lists of HARP-referred sites and the "Guidelines for Planning and Evaluating Environmental Health Education Programs," may be obtained from Ms. Jeannette May, Health Education Specialist, Division of Health Education, Agency for Toxic Substances and Disease Registry, Mailstop E33, 1600 Clifton Road, NE., Atlanta, GA 30333, telephone (404) 639–6205.

Please refer to announcement number 443 when requesting information and submitting an application.

Potential applicants may obtain a copy of "Healthy People 2000" (Full Report, Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report, Stock No. 017–001–00473–1) referenced in the Introduction through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: July 1, 1994.

Claire V. Broome, M.D.,

Deputy Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 94–16652 Filed 7–8–94; 8:45 am]

BILLING CODE 4163–70–P

[ATSDR–83]

Availability of the Great Lakes; Human Health Effects Research Program Draft Report

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces the availability of the draft ATSDR Annual Report for fiscal year (FY) 1992 of its Great Lakes Human Health Effects Research Program. The public is invited to comment on this annual report.

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

ADDRESSES: The draft report is available through the Division of Toxicology, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E–29, Atlanta, Georgia 30333, telephone (404) 639–6300.

Submit written comments relating to the draft report to the above address.

FOR FURTHER INFORMATION CONTACT: Dr. Christopher T. DeRosa, Director, Division of Toxicology, ATSDR; telephone (404) 639–6300.

SUPPLEMENTARY INFORMATION: The Agency for Toxic Substances and Disease Registry Great Lakes Human Health Effects Program is authorized under section 106, Subsection 118(e) of the Great Lakes Critical Programs Act of 1990 [33 U.S.C. 1268(e)(3)], and Sections 104(i)(5)(A) and (15) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) [42 U.S.C. 9604(i)(5)(A) and (15)].

Provisions of the Great Lakes Critical Programs Act of 1990 require the Environmental Protection Agency (EPA), in consultation with ATSDR and the Great Lakes States, to initiate a research program and submit a report to Congress assessing the harmful human health effects of water pollutants in the Great Lakes basin. The ATSDR Great Lakes Human Health Effects Research Program focuses on populations that have been identified as having a higher risk of long-term adverse health effects from exposure to Great Lakes contaminants in fish. They include Native Americans, sport anglers, urban poor, and fetuses and nursing infants of mothers who consume contaminated Great Lakes fish.

In FY 1992, ATSDR awarded nine research grants designed to investigate and characterize the association between the consumption of contaminated Great Lakes fish and potential long-term adverse health effects. The draft ATSDR annual report for FY 1992 describes the Great Lakes Human Health Effects Research Program's strategy, and the research activities and status of the nine awarded grants.

Dated: July 1, 1994.

Claire V. Broome,

Deputy Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 94–16651 Filed 7–8–94; 8:45 am]

BILLING CODE 4163–70–P

Centers for Disease Control and Prevention

[Announcement Number 483]

State Injury Intervention Programs; Notice of Availability of Funds for Fiscal Year 1994

Introduction

The Centers for Disease Control and Prevention (CDC), announces the availability of fiscal year (FY) 1994 funds for cooperative agreements for State Injury Intervention Programs. These programs will develop, implement, and evaluate multi-faceted, injury prevention and/or surveillance programs to reduce the incidence of injuries and deaths in the following areas: bicycle-related head injuries, fire-related burn injuries, motor vehicle injuries, firearm-related injuries, violence against women, and alcohol-related injuries.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives described in "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Violent and Abusive Behavior and Unintentional Injuries. (For ordering a copy of "Healthy People 2000," see the Section **Where to Obtain Additional Information.**)

Authority

This program announcement is authorized under Sections 301, 317, and 391–394 (42 U.S.C. 241, 247b, and 280b–280b–3) of the Public Health Service Act as amended.

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Eligible Applicants

Assistance will be provided only to the official public health agencies of States or their bona fide agents. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, and the Republic of Palau. In addition, official public health agencies of county or city governments with jurisdictional populations greater than 3,500,000 (based on 1990 census data) are eligible.

Availability of Funds

Approximately $3,500,000 is available in FY 1994 to fund up to twenty projects to implement and evaluate injury intervention and surveillance programs in five priority areas: bicycle-related head injuries (4–5 to be awarded), fire-related burn injuries (4–5 to be awarded), motor vehicle injuries (4–5 to be awarded), firearm-related injuries (6 to be awarded), and alcohol-related injuries (1 to be awarded). Awards are expected to range from $150,000 to $200,000 with an average award of $175,000 for each 12-month budget period.

In addition, approximately $750,000 will be available to fund up to three projects to perform activities for the prevention of violence against women. Awards are expected to range from $225,000 to $275,000, with an average award of $250,000.

Funds are expected to be awarded on or about September 1, 1994, and will be made for a 12-month budget period. Programs addressing bicycle-related head injuries, fire-related burn injuries, motor vehicle injuries, firearm-related injuries, and alcohol-related injuries will have a 3-year project period and those addressing violence against women will have a 5-year project period. Funding estimates may vary and are subject to change. Continuation awards within the project periods will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Note: At the request of the applicant, Federal personnel may be assigned in lieu of a portion of the financial assistance.

Purpose

The purpose of this cooperative agreement is to enable State public health agencies to implement and evaluate priority injury prevention and control activities. Specifically, State public health agencies may submit applications to develop programs in EACH OR ANY of six areas:

1. Prevention of bicycle-related head injuries through increased usage of bicycle helmets;
2. Prevention of fire-related burns through increased installation and utilization of smoke detectors;
3. Prevention of motor vehicle injuries through increased usage of occupant protection, including seat belts, child safety seats, and air bags;
4. Identification of firearm-related injuries;
5. Identification and prevention of violence against women; and
6. Identification and prevention of alcohol-related injuries.

Programs in any of these six areas will develop, implement, and evaluate targeted activities designed to accurately measure and reduce morbidity, mortality, severity, disability, and costs associated with injuries. This funding will allow the applicant to establish or strengthen a lead capacity for prevention and control of the targeted injury (e.g., bicycle-related head injuries). It is expected that any program developed will function as a component of the public health agency's injury control program, will coordinate related activities both within the agency and within the jurisdiction, and will mobilize, seek input from, and utilize broad coalitions.

Bicycle-Related Head Injuries

Awards for prevention of bicycle-related head injuries are to be used to develop, implement, and evaluate the effectiveness of multi-faceted bicycle injury prevention programs in increasing helmet use and reducing morbidity, mortality, severity, disability, and costs associated with bicycle injuries for which helmets are effective. This program will facilitate the development, expansion, and improvement of bicycle injury control programs, and in particular, bicycle helmet usage programs within State public health agencies. Programs within State public health agencies are expected to define and monitor the extent of the bicycle-related injury problem, develop intervention strategies, including public education programs, and evaluate the program's effectiveness in terms of reduced morbidity, mortality, severity, disability, and cost. Specifically, bicycle helmet usage programs are intended to:

A. Develop or improve injury surveillance activities to identify bicycle-related head injuries, including data describing the magnitude of the problem, who is affected, utilization of bicycle helmets, costs associated with bicycle-related head injuries, and to identify and monitor health outcomes to measure the impact of the program;

B. Implement and evaluate multifaceted prevention activities to address and define the bicycle injury problem using evaluation guidelines for State injury control programs developed by CDC/National Center of Injury Prevention and Control (NCIPC);

C. Enact legislation and implement community-based prevention programs (including educational, promotional and legislative strategies) to encourage the use of bicycle helmets.

D. Determine the effectiveness of strategies for increasing bicycle helmet use.

Fire-Related Burns

Awards for prevention of fire-related burns are to be used to develop, implement, and evaluate the effectiveness of smoke detector promotion programs in increasing installation and utilization of smoke detectors and in reducing morbidity, mortality, severity, disability, and costs associated with fire-related burns which are preventable by utilization of smoke detectors. This program will facilitate the development, expansion, and improvement of smoke detectors programs within State public health agencies. Programs within State public health agencies are expected to define and monitor the fire-related burn problem, develop and implement intervention strategies, including public education programs, and evaluate the program's effectiveness in terms of increased smoke detector installation and use, and reduced morbidity, mortality, severity, disability, and cost of fire-related burns.

Specifically, smoke detector usage programs are intended to:

A. Develop or improve injury surveillance activities for fire-related burn injuries, including data describing the magnitude of the problem, who is affected, and utilization of smoke detectors;

B. Implement and evaluate multi-faceted prevention activities to address

and define the fire-related burn problem using evaluation guidelines for State injury control programs developed by CDC/NCIPC.

C. Enact legislation and implement community prevention programs (including educational, promotional, legislative and maintenance strategies) to encourage the use of smoke detectors.

D. Determine the effectiveness of strategies for increasing smoke detector installation and use.

Motor Vehicle Injuries

Awards for prevention of motor vehicle injuries are designed to develop, implement, and evaluate the effectiveness of occupant protection programs in increasing occupant protection and reducing morbidity, mortality, severity, disability, and costs associated with motor vehicle injuries. This program will facilitate the development, expansion, and improvement of programs to increase the use of occupant protection within State public health agencies. Programs within State public health agencies are expected to define and monitor the motor vehicle injury problem, develop intervention strategies, including programs in highway safety, and evaluate the program's effectiveness in terms of increased usage patterns and reduced morbidity, mortality, severity, disability, and cost associated with motor vehicle injuries.

Specifically, occupant protection usage programs are intended to:

A. Develop or improve injury surveillance activities to identify motor vehicle-related injuries, including linkage with other data systems to describe the magnitude and cost of the problem, who is affected, and use of occupant protection (seat belts, child safety seats, air bags, or some combination of these). These data should be collected in a manner that allows for the evaluation of progress toward the Year 2000 Objectives for the nation;

B. Implement and evaluate multi-faceted prevention activities to address and define the motor vehicle injury problem using evaluation guidelines for State injury control programs developed by CDC/NCIPC;

C. Enact and strengthen legislation to cover all ages and seating positions and implement community-based interventions (including education, behavioral change, and policy development) to encourage the use of occupant protection;

D. Determine the effectiveness of specific interventions in increasing occupant protection.

Firearm-Related Injury Surveillance

Awards for development of firearm-related injury surveillance systems are designed to develop, implement, and evaluate such surveillance systems. This program will enable State public health agencies to define and monitor the firearm-related injury problem in their jurisdictions, and to evaluate the program's effectiveness in terms of surveillance sensitivity, timeliness, representation, predictive value positive, and ability to measure the impact of specific interventions on morbidity, mortality, severity, disability, and cost of firearm-related injury.

Specifically, firearm-related injury surveillance programs are intended to:

A. Develop or improve injury surveillance activities to identify firearm-related injuries, including data describing the magnitude of the problem, who is affected, areas and persons at greatest risk, and the type and source of the firearm and ammunition used;

B. Link data from various sources to form a more complete picture of firearm-related injuries (e.g., linkage of emergency department or hospital discharge data with police data).

C. Measure the effectiveness of specific interventions in reducing firearm-related injuries.

Violence Against Women

Awards for identification and prevention of violence against women are designed to develop, implement, and evaluate a surveillance system for injuries due to violence against women, define the role of the State public health agency in preventing violence against women, and develop, implement and evaluate the effectiveness of strategies to prevent violence against women. Programs will define and monitor this injury problem and evaluate the surveillance system's effectiveness in terms of sensitivity, timeliness, representativeness, and predictive value positive. Programs will evaluate the effectiveness of the interventions in reducing morbidity, mortality, severity, disability, and cost of injury.

Specifically, programs to prevent violence against women are intended to:

A. Identify data sources and develop or improve existing surveillance systems for violence against women. Field test violence against women surveillance guidelines developed by a drafting group convened by CDC/NCIPC.

B. Assess the State public health agency's ability to address violence against women issues, including conducting inventories of existing violence against women prevention programs.

C. Develop collaborative relationships with voluntary, community-based, and public and private organizations already involved in preventing violence against women.

D. Determine the effectiveness of specific interventions in preventing violence against women, including evaluation of existing interventions and development and evaluation of new interventions, and determine how to combine specific interventions into effective programs. (Emphasis should be placed on violence against women that is committed by family members and intimates rather than by strangers.)

Alcohol-Related Injuries

An award for identification and prevention of alcohol-related injuries is designed to develop, implement, and evaluate a surveillance system based at acute care hospitals and to increase the effectiveness of hospital-based screening, intervention, and treatment referral for injured individuals with alcohol problems. This program will establish or strengthen the ability of the State public health agency to work with acute care hospitals and other organizations in efforts to facilitate access and improve treatment outcomes for injured individuals in need of alcohol treatment services. State public health agencies will define the nature and extent of alcohol-related injuries, provide leadership in developing and implementing essential clinical prevention services, and evaluate the effectiveness of these services in terms of their impact on the incidence of alcohol-related injuries.

Specifically, programs to prevent alcohol-related injuries are intended to:

A. Develop or improve surveillance activities to identify alcohol-related injuries treated in inpatient or outpatient departments of acute care hospitals, including data describing the magnitude of the problem, who is affected, and the costs of associated acute care.

B. Promote collaborative working relationships among community and voluntary organizations. State alcohol and drug abuse treatment agencies, treatment providers and other mental health professionals, professional organizations, insurance companies, and other parties involved in delivering or improving clinical prevention services for individuals with alcohol-related injuries.

C. Establish or enhance statewide programs based in acute care hospitals designed to improve identification, reduce alcohol consumption, achieve

necessary referrals to specialized alcohol treatment, and assure continuity of care of drinkers with alcohol-related injuries.

D. Determine the effectiveness of specific components of new or enhanced clinical prevention services provided to patients with alcohol-related injuries, including methods of screening and intervening at acute care hospitals. Emphasis should be placed on using the surveillance system to measure the impact of these services on the incidence of recurrent alcohol-related injuries.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under A. (Recipient Activities), and CDC will be responsible for the activities listed under B. (CDC Activities).

A. Recipient Activities

In conducting activities to achieve the purpose of this program, the recipient shall:

1. For Bicycle-Related Head Injury Prevention Programs

a. Provide a full-time director/coordinator and staff who have authority, responsibility, and expertise to carry out the program.

b. Define the magnitude of the bicycle-related head injury problem; define the population at risk, and collect adequate injury data. These data include deaths and injuries attributable to bicycle-related head injury, helmet use rates among various age groups in the community, and barriers to helmet use. Potential data sources include: E-coded hospital discharge data, emergency department data, head and spinal cord injury registries, and random digit dial phone surveys of community residents to obtain information on behaviors.

c. Develop and implement community-based prevention programs to encourage the use of bicycle helmets. These include educational, promotional, and legislative strategies utilized in a multifaceted approach.

d. Promote and develop local and statewide legislation requiring bicycle helmet usage for all riders and passengers under 16 years of age.

e. Form partnerships with highway safety officials (e.g., Governor's Highway Safety Representative, police) to promote bicycle helmet usage.

f. Seek community input and generate community support for bicycle helmet usage promotion activities. Coalitions of appropriate individuals, agencies, and organizations with experience and interest in bicycle helmet usage campaigns may be established in support of intervention activities.

g. Evaluate the effectiveness of each intervention activity and the program as a whole using evaluation guidelines for State injury control programs developed by CDC/NCIPC.

h. Perform related injury demonstration projects. These may be related by population at risk, nature of the injury, causal chain, or intervention methodology.

2. For Fire-Related Burn Prevention Programs

a. Provide a full-time director/coordinator and staff who have authority, responsibility, and expertise to carry out the program.

b. Define the magnitude of the fire-related burn problem; define the population at risk and areas affected, and collect adequate injury data. These data include deaths and injuries attributable to fire-related burns, smoke detector use rates for various geographic areas of the community, and barriers to smoke detector use. Potential data sources include: E-coded hospital discharge data, emergency department data, public safety data (e.g., fire department data), and random digit dial phone surveys of community residents to obtain information on behaviors.

c. Develop and implement community-based prevention programs to encourage the installation, use, and maintenance of smoke detectors. These include promotional, educational, and legislative (State and local) strategies utilized in a multifaceted approach.

d. Form partnerships with public safety officials (e.g., fire departments) to promote smoke detector installation and maintenance.

e. Seek community input and generate community support for smoke detector installation and maintenance. Coalitions of appropriate individuals, agencies, and organizations with experience and interest in smoke detector campaigns may be established in support of fire-related burn prevention activities.

f. Evaluate the effectiveness of each intervention activity and the program as a whole using evaluation guidelines for State injury control programs developed by CDC/NCIPC.

g. Perform related injury demonstration projects. These may be related by population at risk, nature of the injury, causal chain, or intervention methodology.

3. For Motor Vehicle Injury Prevention Programs

a. Provide a full-time director/coordinator and staff who have authority, responsibility, and expertise to carry out the program.

b. Define the magnitude of the motor vehicle injury problem; define the population at risk and associated costs and collect adequate injury data. These data include deaths and injuries attributable to motor vehicle crashes, use of occupant protection (seat belts, child safety seats, air bags, or a combination of these), and barriers to occupant protection use. These data might best be derived through linkage of various data systems (e.g., hospital discharge and police data).

c. Develop and implement or enhance existing State and community-based programs to encourage the use of occupant protection devices. These include legislative (State and local), promotional, and educational strategies utilized in a multifaceted approach.

d. Form partnerships with highway safety officials (e.g., Governor's Highway Safety Representative, law enforcement) to promote motor vehicle occupant protection use.

e. Seek community input and generate community support for motor vehicle occupant protection. Coalitions of appropriate individuals, agencies, and organizations with experience and interest in prevention of motor vehicle injuries may be established in support of occupant protection campaigns.

f. Evaluate the effectiveness of each intervention activity and the program as a whole using evaluation guidelines for State injury control programs developed by CDC/NCIPC.

g. Perform related injury demonstration projects. These may be related by population at risk, nature of the injury, causal chain, or intervention methodology.

4. For Firearm-Related Injury Surveillance Programs

a. Provide a full-time director/coordinator and staff who have authority, responsibility, and expertise to carry out the program.

b. Collect adequate injury data on firearm-related injuries. These data include who is affected, areas and persons at greatest risk, the type and source of firearm used, and characteristics of perpetrators.

c. Implement or enhance a surveillance system to define the magnitude of the firearm-related injury problem in at least one of the following areas:

(1) Link vital statistics data with other data (e.g., medical examiner data, police data) to provide a more complete description of firearm-related mortality, or

(2) Conduct surveillance of nonfatal firearm-related injuries (e.g., through hospital emergency department data, E-coded hospital discharge data), or

(3) Define risk behaviors, utilizing risk behavior surveys (e.g., gun carrying, availability, storage practices).

d. Form partnerships with public safety officials (e.g., police) to ensure the completeness of surveillance data.

e. Demonstrate the utility of the surveillance system in measuring the effectiveness of specific interventions designed to reduce firearm-related injuries.

f. Evaluate the surveillance system in terms of sensitivity, timeliness, representation and predictive value positive.

g. Perform related injury demonstration projects. These may be related by nature of the injury or surveillance methodology.

5. For Programs To Prevent Violence Against Women

a. Provide a full-time director/coordinator and staff who have authority, responsibility, and expertise to carry out the program.

b. Establish an advisory structure to address issues related to violence against women, to ensure community input, and to generate community support. This advisory structure should consist of individuals (internal and external to the State public health agency), agencies, and organizations with experience, expertise and interest in preventing violence against women. If a State Injury Advisory Committee exists, this advisory structure should be constituted as a subcommittee for violence against women issues.

c. Develop collaborative relationships with voluntary, community-based public and private organizations and agencies already involved in preventing violence against women.

d. Conduct an inventory of existing data sources and prevention programs within the State which address violence against women.

e. Assess the State public health agency's organizational capacity and available resources, as well as other public and private resources, to address violence against women.

f. Design, pilot test, and implement a surveillance system to track the incidence of violence against women in selected geographic areas within the State, and expand this surveillance system statewide.

g. Evaluate the usefulness of the surveillance system for assessing violence against women.

h. Identify, implement and evaluate specific interventions to prevent violence against women. Evaluate existing interventions or implement and test new interventions. Examples of existing interventions include, but are not limited to:

(1) Public awareness campaigns to change knowledge, attitudes, and beliefs conducive to violence against women.

(2) School-based curricula that teach strategies for developing and maintaining nonviolent dating relationships.

(3) Home health visitation to reduce partner abuse in targeted families and thereby reduce the likelihood of children witnessing such violence.

(4) Shelters for battered women to reduce prevalence of physical abuse.

(5) Victim identification and referral protocols in hospital emergency rooms, STD clinics, prenatal care clinics, and family planning clinics.

(6) Behavior motivation programs for men.

(7) Rape crisis centers to help in prevention recurrence of sexual assault by someone the victim knows.

(8) Hotlines as tools to provide crisis intervention counseling.

i. Develop, implement, and evaluate multi-faceted programs to prevent violence against women (Year-03 and beyond).

j. Develop and produce replication guidelines describing all aspects of the violence against women program. This includes processes, lessons, results, and products (Year-03 and beyond).

k. Perform related injury demonstration projects. These may be related by population at risk, nature of the injury, causal chain, or surveillance or intervention methodology.

6. For Alcohol-Related Injury Prevention Program

a. Provide a full-time director/coordinator and staff who have authority, responsibility, and expertise to carry out the program.

b. Develop or improve an alcohol-related injury surveillance system to identify alcohol-related injuries treated in inpatient or outpatient departments of acute care hospitals. This includes a definition of the nature and extent of the alcohol-related injury problem. These data include alcohol-related injury rates of various age groups, description of the population at risk, types of injury, and acute care costs.

c. Develop and implement community-based programs located in acute care hospitals which will improve identification of persons at risk for alcohol-related injuries, reduce alcohol consumption in a target group, achieve referrals to specialized alcohol treatment, and assure continuity of care of drinkers with alcohol related injuries.

d. Evaluate the effectiveness of new or enhanced acute care hospital prevention services provided to patients with alcohol-related injuries.

e. Collaborate with community and voluntary organizations, State alcohol and drug abuse treatment agencies, treatment providers and other mental health providers, professional organizations, insurance companies, and others interested in clinical prevention services to coordinate and support alcohol-related injury prevention activities.

f. Perform related injury demonstration projects. These may be related by population at risk, nature of the injury, causal chain, or surveillance or intervention methodology.

B. CDC Activities

1. Collaborate in the design of all phases of the program. Provide consultation on data collection instruments and procedures, and provide coordination and a standardized approach to research, evaluation, and intervention activities between and among the sites for each program topic area.

2. Provide consultation and assistance in problem assessment and target population identification, the evaluation of coverage, cost, and impact of current and potential interventions, and design of scientific protocols.

3. Provide evaluation guidelines for State injury control programs in bicycle-related head injuries, fire-related burn injuries, and motor vehicle occupant protection, and provide violence against women surveillance definition and guidelines.

4. Provide consultation on selection of interventions and future demonstration projects and surveillance systems for State implementation, and an implementing intervention activities and disseminating results.

5. Collaborate in the analysis and dissemination of surveillance data.

6. Provide up-to-date scientific information about injury prevention and coordinate with related activities in CDC's national injury prevention program.

7. Assist in the transfer of information and methods developed in these programs to other prevention programs.

Review and Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria (maximum 100 total points):

A. Background and Need (15%)

The extent to which the applicant presents data justifying need for the

program in terms of magnitude of the related injury problem, and identifies suitable target populations. The extent to which a description of current and previous related experiences:

(a) is inclusive in terms of surveillance activities, prevention activities (if applicable) and success, evaluation capability and coordination activities, and (b) demonstrates capacity to conduct the program.

B. Goals and Objectives (10%)

The extent to which the applicant has included goals which are relevant to the purpose of the proposal and feasible to be accomplished during the project period, and the extent to which these are specific and measurable. The extent to which the applicant has included objectives which are feasible to be accomplished during the budget period, and which address all activities necessary to accomplish the purpose of the proposal. The extent to which the objectives are specific, timeframed, and measurable. The extent to which the applicant's intention to undertake related injury demonstration projects, should additional funds become available is documented.

C. Methods (30%)

The extent to which the applicant provides a detailed description of proposed activities which are likely to achieve each objective and overall program goals and which includes designation of responsibility for each action undertaken. The extent to which the applicant provides a reasonable and complete schedule for implementing all activities. The extent to which roles of each unit, organization, or agency are described, and coordination and supervision of staff, organizations and agencies involved in activities is apparent. The extent to which documentation of program organizational location is clear, and shows a coordinated relationship among injury-related components forming the applicant's injury prevention program. The extent to which position descriptions, CVs, and lines of command are appropriate to accomplishment of program goals and objectives. The extent to which concurrence with the applicant's plans by all other involved parties, including consultants, is specific and documented.

D. Evaluation (30%)

The extent to which the proposed evaluation system is detailed and will document program process, effectiveness, impact, and outcome and, if applicable, measure surveillance system sensitivity, timeliness, representativeness, predictive value positive, and ability to detect the impact of specific intervention on morbidity, mortality, severity, disability, and cost of related injuries. The extent to which the applicant demonstrates potential data sources for evaluation purposes, and documents staff availability, expertise, and capacity to perform the evaluation. The extent to which a feasible plan for reporting evaluation results and using evaluation information for programmatic decisions is included. The extent to which a description of how CDC/NCIPC-developed evaluation guidelines (if applicable) will be utilized is included.

E. Collaboration (15%)

The extent to wh ch relationships between the program and other organizations, agencies, and health department units that will relate to the program or conduct related activities are clear, complete and provide for complementary or supplementary working interactions. The extent to which coalition (if any) membership and roles are clear and appropriate. The extent to which relationships with the Governors Office of Highway Safety, public safety officials, or Maternal and Child Health (MCH) (if applicable), and Injury Control Research Center's (ICRC's) or local academic institutions are completely described, are activity-specific, and show evidence of specific support. The extent to which relationships with local communities, if intervention activities are to be carried out there, are completely described, are activity-specific and show evidence of specific support.

F. Budget and Justification (not weighted)

The extent to which the applicant provides a detailed budget and narrative justification consistent with stated objectives and planned program activities.

Note: At the request of the applicant, Federal personnel may be assigned to a program area in lieu of a portion of the financial assistance.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current list of SPOCs is included in the application kit. If SPOCs have any State process recommendations on applications submitted to CDC, they should forward them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, Georgia 30305, no later than 30 days after the application deadline date. (A waiver for the 60-day requirement has been requested.) The granting agency does not guarantee to "accommodate or explain" for State process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.136.

Other Requirements

Projects that involve the collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations (45 CFR Part 46) regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, Georgia 30305, on or before August 1, 1994.

1. Deadlines:

Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date; or

b. Sent on or before the deadline date and received in time for submission to the independent review committee. For proof of timely mailing, 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. above are considered late. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures, an application package, and business management technical assistance may be obtained from Georgia Jang, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mailstop E–13, Atlanta, Georgia 30305, telephone (404) 842–6634. Programmatic assistance may be obtained from James S. Belloni, M.A., National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop F–36, Atlanta, Georgia 30341–3724, telephone (404) 488–4400.

Please refer to Announcement Number 483 when requesting information and submitting an application.

Potential applicants may obtain a copy of "Healthy People 2000" (Full Report; Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: June 29, 1994.

Arthur C. Jackson,

Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–16653 Filed 7–8–94; 8:45 am]

BILLING CODE 4163–18–P

Food and Drug Administration

[Docket No. 86B–0058]

Anesthesia Apparatus Checkout Recommendations, 1993; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled "Anesthesia Apparatus Checkout Recommendations, 1993." The document presents a general checkout and inspection procedure that should be conducted before administration of an anesthesia to ensure that the anesthesia machine, patient breathing system, and monitors, which together comprise the anesthesia system, are correctly interconnected, adjusted, and functioning as intended. The document is a revised version of previously published recommendations documents. This action is part of FDA's commitment to help ensure the safety and effectiveness of medical devices.

ADDRESSES: Submit written request for single copies of the document entitled "Anesthesia Apparatus Checkout Recommendations, 1993" to the Office of Training and Assistance (HFZ–240), Center for Devices and Radiological Health, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Requests should be identified with the docket number found in brackets in the heading of this document. Send two self-addressed adhesive labels to assist that office in processing your requests. The documents entitled "Anesthesia Apparatus Checkout Recommendations, 1993," and "Anesthesia Apparatus Checkout Recommendations, 1992," and received comments and their analyses are available for public examination in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9:00 a.m. and 4 p.m. Monday through Friday. Single copies of these documents are available upon written request from the contact person listed below.

FOR FURTHER INFORMATION CONTACT: Robert Cangelosi, Center for Devices and Radiological Health (HFZ–210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2436.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is committed to carrying out a program to help ensure the safety and effectiveness of medical devices. One aspect of this program involves regulatory activities under the laws administered by the agency concerning the design, manufacture, and distribution of medical devices. Patient safety, however, is dependent on more than properly functioning devices. Although proper operation, maintenance, and periodic inspection of these devices by the user are matters that cannot always be addressed effectively through regulatory action under the laws administered by the agency, they are essential to minimize risks to patients. Consequently, as an important adjunct to its regulatory program, FDA has initiated a variety of educational efforts to aid medical professionals in the safe use of medical devices. These educational endeavors are conducted in cooperation with, and usually with the active participation of, the relevant professional organizations and other groups within the private sector.

For example, to reduce unnecessary retakes in radiology and to improve image quality, FDA, in cooperation with the American College of Radiology and other private sector organizations, developed voluntary recommendations for radiology facilities concerning equipment quality assurance programs ("A Basic Quality Assurance Program for Small Diagnostic Radiology Facilities," FDA 83–8218). In cooperation with the American College of Radiology and numerous other medical professional societies, FDA also fostered the development of guides for clinicians on the effective use of selected diagnostic imaging procedures ("The Selection of Patients for X-ray Examinations," FDA 80–8104; "The Selection of Patients for X-ray Examinations: The Pelvimetry Examination," FDA 81–8174; "The Selection of Patients for X-ray Examinations: Chest X-ray Screening and Examination," FDA 83–8204). As an adjunct to the teaching of medical students and radiology residents, FDA funded the development of a basic teaching system in radiology, "The Radiological Health Sciences Learning File," which is now in use in radiology education and is used in 118 medical schools in the United States and in several foreign medical schools as well. These examples illustrate FDA's commitment to ensuring that users of medical devices are sufficiently educated and motivated to use medical devices safely and effectively.

II. Scope of the 1993 Recommendations Document

The recommendations document that the agency is now making available a revised version of the draft document entitled "Draft Anesthesia Apparatus Checkout Recommendations, 1992," that was announced in the **Federal Register** of October 6, 1992 (57 FR 46033), and that was based on the original document entitled "Draft Anesthesia Apparatus Checkout Recommendations," that was announced in the **Federal Register** of February 27, 1987 (52 FR 5583). FDA also intends to make this document available to anesthesia clinicians through their professional organizations and to anesthesia equipment manufacturers so that they may include it in their user education programs.

The recommendations in "Anesthesia Apparatus Checkout Recommendations, 1993" should be followed for anesthesia systems that conform to current and relevant standards (such as "Standard Specifications for Minimum Performance and Safety Requirements for Components and Systems of Anesthesia Gas Machines," ASTM F–1161–88) and that include an ascending bellows ventilator and at least the following monitors: Capnograph, pulse oximeter, oxygen analyzer, respiratory volume monitor (spirometer) and breathing system pressure monitor with high and low pressure alarms. However, the recommendations document offers guidance that users are encouraged to modify to accommodate differences in equipment design and variations in local clinical practice. Such local modifications should have appropriate peer review. The original recommendations document (52 FR 5583) should be followed for other anesthesia systems. Users should refer to the operators manual for specific procedures and precautions.

In response to the draft document entitled "Anesthesia Apparatus Checkout Recommendations, 1992" (57 FR 46033), eight comments were received and reviewed by the agency. Some minor refinements were made to the checkout recommendations in response to the comments.

FDA believes that the pre-use inspection procedure provided in the checkout recommendations will aid medical professionals in the safe use of anesthesia devices. FDA regards the pre-use inspection procedure to be a recommendation as defined in § 10.90(c) (21 CFR 10.90(c)). Therefore, the checklist is being made available under § 10.90(c) of the agency's administrative practices and procedures regulations. That regulation provides for FDA to formulate and disseminate recommendations about matters that are authorized by, but do not involve direct regulatory action under, the laws administered by the agency.

Dated: June 30, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–16618 Filed 7–8–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93N–0378]

North Carolina Memorial Hospital; Revocation of U.S. License No. 314

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of the establishment license (U.S. License No. 314) and product license issued to the North Carolina Memorial Hospital, doing business as the Clinical Coagulation Laboratory, for the manufacture of Source Plasma. In a letter to FDA dated February 10, 1993, the firm voluntarily requested revocation of its establishment and product licenses and thereby waived an opportunity for a hearing.

DATES: The revocation of the establishment license (U.S. License No. 314) and product license became effective August 24, 1993.

FOR FURTHER INFORMATION CONTACT: Stephen Ripley, Center for Biologics Evaluation and Research (HFM–635), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–3074.

SUPPLEMENTARY INFORMATION: FDA has revoked the establishment license (U.S. License No. 314) and the product license issued to the North Carolina Memorial Hospital, doing business as the Clinical Coagulation Laboratory, University of North Carolina School of Medicine, Chapel Hill, NC 27514, for the manufacture of Source Plasma.

FDA conducted an inspection of the Clinical Coagulation Laboratory between July 30 and August 15, 1991. The inspection documented serious deviations from the applicable Federal regulations and the biologics standards in the firm's license. Deviations identified during the inspection included, but were not limited to, the following: (1) Failure to adequately determine donor suitability, in that: (a) three donors who admitted to a history of hepatitis, liver disease, or jaundice were regularly accepted for Source Plasma donation (21 CFR 640.63(c)(11)); (b) two donors who previously tested repeatedly reactive for the hepatitis B surface antigen (HBsAg) continued to be accepted for donation, despite having never met the established criteria for donor reentry as described in the December 2, 1987, FDA HBsAg protocol (21 CFR 610.41); (c) two donors who failed to donate for a period of 6 months were not processed as new donors (21 CFR 640.65(b)(1)(iii)); and (d) five donors did not have serum protein electrophoresis testing performed every 4 months (21 CFR 640.65(b)(1)(i)); (2) failure to limit the frequency of Source Plasma donation to two times within a 7-day period, in that at least two donors were allowed to donate three times in a 7-day period (21 CFR 640.65(b)(5)); (3) failure to observe, standardize, and calibrate equipment used in the collection, processing, and distribution of blood components (21 CFR 606.60); (4) failure to maintain adequate and complete standard operating procedures for all steps in the collection, processing, storage, and distribution of blood components (21 CFR 606.100(b)); and (5) failure to report important changes in responsible personnel or manufacturing methods to FDA's Center for Biologics Evaluation and Research (21 CFR 601.12 (a) and (b)).

FDA determined that the deviations from Federal regulations were significant and constituted a danger to public health, warranting a suspension pursuant to 21 CFR 601.6(a). In a letter to the North Carolina Memorial Hospital dated September 3, 1991, FDA detailed the violations noted above and suspended the firm's establishment and product licenses for the manufacture of Source Plasma. In a letter to the firm dated May 20, 1992, FDA indicated that the firm had responded satisfactorily to FDA's September 3, 1991, suspension letter. In the same letter, FDA permitted the firm to resume collecting and storing Source Plasma on a limited basis for the purpose of reinspection to determine compliance.

FDA conducted a followup inspection of the firm between July 27 and July 29, 1992. The inspection documented several continuing deviations from Federal regulations. These deviations included, but were not limited to, the following: (1) Inadequate facilities to provide for the storage of blood or blood components; (2) incomplete or incorrect disposition records; and (3) incomplete or inadequate written procedures. FDA permitted the firm to continue to collect and store Source Plasma on a limited basis, but FDA did not permit the firm to distribute the prepared plasma until otherwise notified by FDA.

FDA attempted to conduct a reinspection of the firm on February 2, 1993, to, in part, determine the firm's status. During this inspection, it was observed that the donor chair had been removed and that no plasma had been collected since the inspection ending July 29, 1992. The inspection was terminated because a meaningful inspection could not be performed.

In a letter to FDA dated February 10, 1993, the firm requested voluntary revocation of its licenses and thereby waived its opportunity for a hearing under 21 CFR 601.5(a). The agency granted the licensee's request by letter dated August 24, 1993, which revoked the establishment license (U.S. License No. 314) and the product license for the manufacture of Source Plasma.

FDA has placed copies of the letters relevant to the license revocation on file under the docket number found in brackets in the heading of this document with the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. These documents include the following: FDA letters of September 3, 1991, May 20, 1992, and August 24, 1993; and the firm's letter of February 10, 1993. These documents are available in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m. Monday through Friday.

Accordingly, under section 351 of the Public Health Service Act (42 U.S.C. 262), 21 CFR 601.5, and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Biologics Evaluation and Research (21 CFR 5.68), the establishment license (U.S. License No. 314) and the product license issued to the North Carolina Memorial Hospital, doing business as the Clinical Coagulation Laboratory, for the manufacture of Source Plasma were revoked, effective August 24, 1993.

This notice is issued and published under 21 CFR 601.8 and the redelegation at 21 CFR 5.67.

Dated: June 27, 1994.

Michael G. Beatrice,

Deputy Director, Center for Biologics Evaluation and Research.

[FR Doc. 94–16617 Filed 7–8–94; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETING: The following advisory committee meeting is announced:

Joint Subcommittee Meeting of the Nonprescription Drugs Advisory Committee and Arthritis Advisory Committee on Over-the-Counter Internal Analgesic, Antipyretic, and Antirheumatic Drug Products

Date, time, and place. September 8 and 9, 1994, 8:30 a.m., Parklawn Bldg., conference rms. D and E, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open committee discussion, September 8, 1994, 8:30 a.m. to 4 p.m.; open public hearing, 4 p.m. to 5 p.m., unless public participation does not last that long; open committee discussion, September 9, 1994, 8:30 a.m. to 4 p.m.; open public hearing, 4 p.m. to 5 p.m., unless public participation does not last that long; Lee L. Zwanziger, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

General function of the committees. The Nonprescription Drugs Advisory Committee reviews and evaluates available data concerning the safety and effectiveness of over-the-counter (nonprescription) human drug products for use in the treatment of a broad spectrum of human symptoms and diseases. The Arthritis Advisory Committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in arthritic conditions.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the joint subcommittee. Those desiring to make formal presentations should notify the contact person before August 15, 1994, and submit a brief statement of the general nature of the information or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their comments. In a subsequent issue of the Federal Register, FDA will publish a notice announcing the availability of background information.

Open committee discussion. On September 8 and 9, 1994, the joint subcommittee will discuss effectiveness data requirements and proposed labeling indications for OTC analgesic drug products. The joint subcommittee will address topics such as: (1) Data requirements to support specific types of indications for OTC analgesic drug products; (2) recommendations for labeling indications for OTC analgesics; and (3) the current state of scientific knowledge in the areas of pain receptors, mechanism(s) of pain perception, and the basis for response to analgesic drug classes.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an

opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: July 5, 1994.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 94–16619 Filed 7–8–94; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health.

ACTION: Notice.

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to Steven M. Ferguson, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, suite 325, Rockville, Maryland 20852–3804 (telephone 301/496–7735 ext. 266; fax 301/402–0220). A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

Anti-Retroviral Compounds

Tam, S., Weigle, M., Broder, S., Mitsuya, H. (NCI)
Serial No. 07/064,631
Patent Reissued 14 Apr 92
U.S. Patent No. Re 33,887

Dimeric dideoxynucleosides formed from two different 2',3'-dideoxynucleosides joined by a linking group are useful for treatment of HIV-infection and other retroviral infections. The linked dideoxynucleosides specifically inhibit HIV replication in vitro with less toxicity in human cells. Methods for the synthesis of these compounds are provided.

Method of Inhibiting Viral Replication Using IL–10

Yarchoan, R., Saville, W., Tosato, G., Taga, K. (NCI)
Filed 24 May 93
Serial No. 08/066,785

The use of recombinant human interleukin 10 (rhIL–10) has been discovered to be a new potential means of treating HIV infection. In vitro studies with rhIL–10 have shown it to be an inhibitor of HIV infection in human monocytes and macrophages as well as having activity against HIV in certain T-cell and monocyte cell lines. This activity against HIV occurs both at the time of infection and when added to previously infected cell cultures.

These effects occur at IL–10 concentrations that are lower than those which inhibit other immune functions. In addition, the use of IL–10 to interfere with HIV replication is expected to result in the amelioration of Kaposi's sarcoma.

Novel Nonpeptidic Retroviral Protease Inhibitors

Randad, R., Pan, W., Burt, S., Erickson, J. (NCI)
Filed 8 Aug 93
Serial No. 08/106,686

Novel nonpeptidic compounds designed to be inhibitors of the HIV protease enzyme have been discovered. These compounds thus have potential as possible pharmaceutical compositions for the inhibition HIV replication and the treatment of AIDS. Based upon SS isomers of substituted dibenzyl-5-hydroxyl-2-primidones, these compounds are expected to not have the problems associated with current peptide-based protease inhibitors such as poor oral absorption, poor stability, and rapid metabolism and elimination.

Use of Peptomers Derived From HIV–1 and HIV–2 as Vaccine Candidates

Robey, F., Harris-Kelson, T., Robert-Guroff, M. (NIDR)
Filed 19 Jan 94
Serial No. 08/184,330

Novel conformationally constrained peptide polymer HIV vaccine candidates have been uncovered that generate a strong humoral immune response not seen against monomeric peptides. Termed "peptomers", these candidates are composed of specifically cross-linked synthetic peptide sequences from the highly conserved CD4 binding domains of the gp120 regions of HIV–1 *and* HIV–2. Although peptides from these regions of gp120 do not possess any conformation in solution, the polymerized forms were found to have conformations that resemble the theoretical conformations that might be found in these regions of the native gp120 from HIV–1 and HIV–2. Certain peptomers from HIV–1 and HIV–2 bind CD4, the cell receptor for HIV–1 and HIV–2, and induce antibody responses in rabbits and rhesus monkeys that block in vitro HIV–1 infection.

Dated: June 25, 1994.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 94–16696 Filed 7–8–94; 8:45 am]

BILLING CODE 4140–01–P

Appeals Procedures Related To Licensing of Patents and Inventions Under the Jurisdiction of the Department of Health and Human Services

AGENCY: National Institutes of Health, Public Health Service, HHS

ACTION: Proposed Interim Procedures.

SUMMARY: The National Institutes of Health is proposing for public comment interim appeals procedures under 37 CFR § 404.11 which permits appeals from any decision or determination concerning the grant, denial, interpretation, modification, or termination of a license and specifies the parties who may appeal.

DATES: Written comments on the proposed interim procedure must be received by August 10, 1994.

ADDRESSES: Comments regarding the proposed interim procedure may be

submitted to Mr. Arthur J. Cohn, Esq., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852.

SUPPLEMENTARY INFORMATION:

Background

This proposed interim procedure implements 35 U.S.C. 207(a), and 209, and the Department of Commerce Regulation in 37 CFR Part 404 dealing with the licensing of federally owned inventions. This interim procedure describes the terms, conditions and procedures under which specified parties may appeal from a decision of the Director of the Office of Technology Transfer, National Institutes of Health, concerning the grant, denial, interpretation, modification or termination of a license of any patent or invention in the custody of the Department of Health and Human Services. Upon promulgation of these procedures, following consideration of the comments made in response to this notice, the procedures will remain in effect until permanent procedures are adopted as a part of comprehensive policies or regulations governing the technology transfer activities of the National Institutes of Health.

Interim Procedure for Appeals From Licensing Decisions by the Department of Health and Human Services

Purpose

In accordance with 37 CFR § 404.11 this interim procedure describes the terms, conditions and procedures under which a party may appeal a decision of the Office of Technology Transfer (OTT) concerning the grant, denial interpretation, modification or termination of a license for any invention in the custody of the Public Health Service (PHS), Department of Health and Human Services (HHS).

Definitions

(a) "OTT Director" means the Director of the Office of Technology Transfer, National Institutes of Health.

(b) "Director," means the Director of the National Institutes of Health (NIH) or any officer or employee of the NIH to whom the authority involved may be delegated.

(c) "Person" means any individual or entity.

(d) "Invention" means any invention or discovery which is or may be patentable or otherwise protected under title 35, United States Code, or any novel variety of plant which is or may be protectable under the Plant Variety Protection Act (7 U.S.C. § 2321 et seq.).

(e) "Written Objection" means a written objection in response to a notice of a prospective license published in the Federal Register as required by 37 CFR § 404.7(a)(1)(i) or 37 CFR § 404.7(b)(1)(i).

(f) "Appellant" means a person who requests reconsideration or appeals a decision of the OTT in accordance with this subpart.

Licensing Authority

The OTT Director has been delegated authority to make any decision or determination concerning the grant, denial, interpretation, modification or termination of any license for any invention in the custody and control of the PHS. The decision and determination of the OTT Director is final and conclusive on behalf of the Department unless the procedures for reconsideration and appeal set forth below are initiated.

Persons Who May Request Reconsideration and Appeal

Under 37 CFR § 404.11, the following person(s) may request reconsideration by the OTT Director and may subsequently appeal to the Director any decision or determination concerning the grant, denial, interpretation, modification or termination of a license:

(a) A person whose application for a license has been denied;

(b) A licensee whose license has been modified or terminated in whole or in part; or

(c) A person who has timely filed a written objection in response to the notice required by 37 CFR § 404.7(a)(1)(i) or § 404.7(b)(1)(i) and who can demonstrate to the satisfaction of the OTT Director or the Director, as appropriate, that such person may be damaged by the determination of the OTT.

Request for Reconsideration

(a) Prior to appealing a determination by the OTT granting, denying, interpreting, terminating, or modifying a license, the Appellant must request reconsideration by filing with the OTT Director a written request for reconsideration within thirty (30) days after the notice of denial, termination or modification or a response to a Written Objection is sent by the OTT to the Appellant. The request for reconsideration, in concise and brief terms, shall state the grounds for reconsideration and include copies of all pertinent documents. The OTT Director may require submission of additional information or documentation. Upon written request by the Appellant and at the sole discretion of the OTT Director this thirty (30) day period may be extended for good cause.

(b) The OTT Director will make a written determination within sixty (60) days of receiving all required documentation in support of the request for reconsideration. The decision of the OTT Director will be based on all information in the administrative record, including all information submitted with the request for reconsideration.

Appeal

(a) An Appellant, who has received an adverse determination from the OTT Director following a request for reconsideration, may appeal such determination to the Director. The Director may designate another individual from within the NIH to review the notice of appeal and render a decision thereon. The Appellant shall file a written notice of appeal to the Director with two copies to the OTT Director no later than thirty (30) days from the receipt of an adverse decision by the OTT Director following a request for reconsideration unless the Director grants for good cause an extension of time. The notice of appeal, in concise and brief terms, shall state the grounds for appeal and include copies of all pertinent documents. The notice of appeal shall be accompanied by concise arguments as to why the OTT Director's decision should be rejected or modified. Upon review of the notice of appeal, the Director may require submission of additional information or documentation.

(b) The Director will make a written determination within sixty (60) days of receiving all required documentation. The decision of the Director will be based on all the information in the administrative record, including the information submitted by the Appellant and shall constitute a final decision by the agency.

Dated: July 1, 1994.

Donald P. Christoferson,

Acting Director, Office of Technology Transfer.

[FR Doc. 94–16697 Filed 7–8–94; 8:45 am]

BILLING CODE 4140–01–P

Social Security Administration

Social Security Ruling 94–4p.; Title II of the Social Security Act and Title IV of the Federal Mine Safety and Health Act of 1977—Waiver of Recovery of Overpayments—Notice of Appeal and Waiver Rights—Right to a Pre-Recoupment Oral Hearing Before Waiver Can Be Denied

AGENCY: Social Security Administration, HHS.

ACTION: Notice of Social Security Ruling.

SUMMARY: In accordance with 20 CFR 422.406(b)(1), the Commissioner of Social Security gives notice of Social Security Ruling 94–4p. This Ruling states the Social Security Administration's longstanding policy of giving adequate written notice of a determination of overpayment and the right to contest such determination and of providing the person from whom we are seeking recovery with an opportunity for a face-to-face oral hearing before we deny that person's request for waiver of recovery of the overpayment. This policy is based on the 1974 court decision in *Buffington, et al. v. Weinberger,* No. 734–73C2 (W.D. Wash. October 22, 1974), and Supreme Court decision in *Califano v. Yamasaki,* 442 U.S. 682 (1979).

EFFECTIVE DATE: July 11, 1994.

FOR FURTHER INFORMATION CONTACT: Joanne K. Castello, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1711.

SUPPLEMENTARY INFORMATION: Although we are not required to do so pursuant to 5 U.S.C. 552 (a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 422.406(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other policy interpretations of the law and regulations.

Although Social Security Rulings do not have the force and effect of the law or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 422.406(b)(1), and are to be relied upon as precedents in adjudicating other cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the **Federal Register** to that effect.

(Catalog of Federal Domestic Assistance Programs Nos. 93.802 Social Security—Disability Insurance; 93.803 Social Security—Retirement Insurance; 93.805 Social Security—Survivors Insurance; 93.906 Special Benefits for Disabled Coal Miners)

Dated: July 5, 1994.

Shirley S. Chater,

Commissioner of Social Security.

Policy Interpretation Ruling—Title II of the Social Security Act and Title IV of the Federal Mine Safety and Health Act of 1977: Waiver of Recovery of Overpayments—Notice of Appeal and Waiver Rights—Right to a Pre-Recoupment Oral Hearing Before Waiver Can be Denied

Purpose: To state the longstanding Social Security Administration (SSA) policy of:

- Giving adequate written notice of a determination of overpayment and the right to contest such determination and request waiver of recovery of the overpayment; and
- Providing the person from whom we are seeking recovery of an overpayment with the opportunity for a face-to-face oral hearing before we deny a request for waiver of recovery of the overpayment.

The policy is based on the court decisions and orders discussed below.

Citations (Authority): Section 204(a) and (b) of the Social Security Act, as amended, and Title IV of the Federal Mine Safety and Health Act of 1977; 20 CFR 404.502a, 404.506, 404.904, 410.561, 410.561a, and 410.620.

Pertinent History: On October 22, 1974, the U.S. District Court for the Western District of Washington in *Buffington, et al. v. Weinberger,* No. 734–73C2 (W.D. Wash. October 22, 1974) stopped SSA from recovering overpaid Social Security benefits without giving each member of the plaintiff class adequate written notice of the overpayment determination, the right to contest such determination and the right to a pre-recoupment hearing. Moreover, the court stopped SSA from taking any action to recover the overpayments before affording the class member the opportunity for a hearing.

The court ordered that the written notice must include:

- A statement of the alleged overpayment, an explanation of the basis for the overpayment and SSA's proposed action to recover the overpayment;
- A statement of the individual's right to a pre-recoupment hearing;
- Instructions and forms for requesting a pre-recoupment hearing;
- An explanation that if the person did not request a pre-recoupment hearing within 30 days of the date of mailing of the overpayment notice, it would be presumed that the person waived his/her right to the hearing and recovery of the alleged overpayment would begin;
- A statement of any other administrative relief available (i.e., reconsideration of the fact and/or amount of overpayment and waiver of recovery of the overpayment); and
- A statement that the local SSA office would help him/her to complete and submit forms for appeal.

The court also ordered the following:

1. SSA had to restore all benefits withheld from the named plaintiffs pending an opportunity for a pre-recoupment hearing. The person had to be given the opportunity to examine his/her claims file at least 5 days prior to the date of the hearing.

2. The pre-recoupment hearing had to be conducted by an SSA employee who had no prior knowledge of the events leading to the overpayment determination and the decision to recover the overpayment. At the hearing the person requesting waiver had to be given the opportunity to:

- Personally appear, testify, and cross-examine any witnesses;
- Be represented by an attorney or other representative; and
- Submit documents for consideration at the hearing.

The court, however, did not require that a transcript be made of the hearing.

3. After the hearing, SSA had to issue a written decision to the individual (and his/her representative, if any) specifying the findings of fact and conclusions in support of the decision to approve or deny waiver and advising of the individual's right to appeal the decision.

In accordance with the court order, SSA began to issue overpayment notices containing all of the aforementioned information and to offer pre-recoupment hearings to all class members.

On June 20, 1979, the Supreme Court held in *Califano v. Yamasaki,* 442 U.S. 682 (1979), that individuals who filed a written request for waiver were entitled to the opportunity for a pre-recoupment oral hearing, but those who requested only reconsideration were not so entitled. Thereafter, SSA applied its revised overpayment notice and pre-recoupment hearing procedures to all individuals who are determined to be overpaid under the title II or Black Lung programs.

On July 31, 1981, the court in *Buffington, et al. v. Schweiker,* No 734–

73C2 (W.D. Wash.) required SSA to automatically schedule pre-recoupment hearings for persons whose request for waiver of overpayment recovery could not be approved after initial paper review. On February 10, 1983, the court in *Buffington, et al. v. Schweiker,* No 734–73C2 (W.D. Wash.) approved procedures developed by SSA in response to the 1981 decree whereby pre-recoupment hearings would be automatically scheduled provided that the scheduling would be in writing. The scheduling letter had to contain all the necessary information about the date, time, and place of the hearing; the procedure for reviewing the file prior to the hearing; the procedure for seeking a change in the scheduled date, time, or place; and all other information necessary to fully inform the claimant about the pre-recoupment hearing. SSA began to automatically schedule pre-recoupment hearings in writing in April 1983.

In its order of October 19, 1987, the court in *Buffington, et al. v. Bowen,* No. 734–73C2 (W.D. Wash.) approved SSA's plan to transfer waiver decisionmaking authority from the processing centers to the field offices for Retirement and Survivors Insurance overpayments. SSA implemented this change in July 1988.

Policy Interpretation

Overpayment Notice

In accordance with the court decisions, when an overpayment is discovered, the person is immediately notified. The notice includes:

- The overpayment amount and how and when it occurred;
- A request for full, immediate refund, unless the overpayment can be withheld from the next month's benefit;
- The proposed adjustment of benefits if refund is not received within 30 days after the date of the notice and adjustment of benefits is available;
- An explanation of the availability of a different rate of withholding when full withholding is proposed, installment payments when refund is requested and adjustment is not currently available, and/or cross-program recovery when refund is requested and the person is receiving another type of benefit from SSA (cross-program recovery is not available to residents of New York and Pennsylvania);
- An explanation of the right to request waiver of recovery and the automatic scheduling of a folder review and pre-recoupment hearing (commonly referred to as a personal conference) if a request for waiver cannot be approved after initial paper review;
- Instructions about the availability of forms for requesting reconsideration and waiver;
- An explanation that if the person does not request waiver or reconsideration within 30 days of the date of the overpayment notice, recovery of the overpayment will begin;
- An explanation of the right to request reconsideration of the overpayment determination;
- A statement that the local SSA office will help him/her to complete and submit forms for appeal; and
- An explanation that the person receiving the notice should notify SSA promptly if reconsideration, waiver, a lesser rate of withholding, repayment by installments, or cross-program adjustment is wanted.

Form SSA–3105

Form SSA–3105 (Important Information About Your Appeal and Waiver Rights) is included with each overpayment notice. The SSA–3105 further explains the pre-recoupment review process and contains a tear-off form which the person may complete and return to SSA if he/she wants reconsideration and/or waiver.

Delaying Recovery of the Overpayment

To ensure meaningful opportunity to contest the correctness of an overpayment determination and/or establish entitlement to waiver, the date on which full refund is due and, if appropriate, the date on which adjustment will begin must be at least 30 days after the date of the overpayment notice. If the individual responds within 30 days after the date of the overpayment notice, SSA must take action to ensure that benefit payments are not interrupted. If the 30-day period cannot be assured, SSA must postpone any proposed recoupment for a longer period. Anytime waiver is requested, SSA stops recovery.

Requesting Waiver

When waiver is requested, the individual gives SSA information (usually on Form SSA–632–BK (Request for Waiver of Overpayment Recovery or Change in Repayment Rate)) to support his/her contention that he/she is without fault in causing the overpayment and that recovery would either cause financial hardship or be inequitable. That information, along with supporting documentation, is reviewed to determine if waiver can be approved.

Reviewing Waiver Request

In Retirement and Survivors Insurance overpayments, the waiver request is reviewed in the field office; in Disability Insurance overpayments, it is reviewed in the processing center. If waiver cannot be approved after review of the claims folder, the person is notified in writing and given necessary information about the dates, times, and place of the folder review and personal conference; the procedure for reviewing the claims folder prior to the personal conference; the procedure for seeking a change in the scheduled dates, times, or place; and all other information necessary to fully inform the person about the personal conference. The folder review is always scheduled at least 5 days before the personal conference.

Folder Review

At the folder review, the person and/or the person's representative has the right to review the claims folder and applicable law and regulations with the decisionmaker or another SSA representative who is prepared to answer questions. The individual can get copies of any requested material from the claims folder or pertinent sections of the law or regulations.

Personal Conference

At the personal conference, the person is given the opportunity to:

- Personally appear, testify, cross-examine any witnesses, and make arguments;
- Be represented by an attorney or other representative; and
- Submit documents for consideration by the decisionmaker.

The decisionmaker:

- Tells the person that the decisionmaker was not previously involved in the issue under review, that the waiver decision is solely the decisionmaker's, and that the waiver decision is based only on the evidence or information presented or reviewed at the conference;
- Ascertains the role and identity of everyone present;
- Indicates whether or not the person reviewed the claims file;
- Explains the provisions of law and regulations applicable to the issue;
- Briefly summarizes the evidence already in file which will be considered;
- Ascertains from the person whether the information presented is correct and whether he/she fully understands it;
- Allows the person and the person's representative, if any, to present the person's case;
- Secures updated financial information, if necessary;
- Allows each witness to present information and allows the person and the person's representative, if any, to question the witness;

- Ascertains whether there is any further evidence to be presented;
- Reminds the person of any evidence promised by the person which has not been presented;
- Lets the person and the person's representative, if any, present any final summary or closing statement;
- Explains that a decision will be made and the person will be notified in writing; and
- Explains further appeal rights in the event the decision is adverse to the person.

Personal Conference Decision

SSA issues a written decision to the individual (and his/her representative, if any) specifying the findings of fact and conclusions in support of the decision to approve or deny waiver and advising of the individual's right to appeal the decision.

Effective Date: This Ruling is effective July 11, 1994.

Cross References: Program Operations Manual System, Part 02, Chapter 022, Subchapter 01, Sections 009, 011, 021, and 023; Subchapter 50, Sections 301, 302, 370, and 390; Subchapter 70, Sections 003–017; SSR 79–30c, Recovery of Overpayment—Prerecoupment Oral Hearings.

[FR Doc. 94–16687 Filed 7–8–94; 8:45 am]
BILLING CODE 4190–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of an Application for an Incidental Take Permit for the proposed Cedar Park Waterline in Travis County, Texas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The City of Cedar Park (Applicant) has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act (Act). The Applicant has been assigned permit number PRT–788842. The requested permit, which is for a period not to exceed 30 years, would authorize the incidental take of the endangered golden-cheeked warbler (*Dendroica chrysoparia*). The proposed take would occur as a result of the construction and operation of a water pipeline, in Travis County, Texas. The proposed development will eliminate about 4.2 acres of occupied and/or potential endangered species habitat.

The Service has prepared an environmental assessment/habitat conservation plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a finding of no significant impact (FONSI) will not be made before 30 days from the date of publication of this notice. This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received on or before August 10, 1994.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Ann Henry, Ecological Services Field Office, U.S. Fish and Wildlife Service, 611 East Sixth Street, Suite 407, Austin, Texas 78701 (512) 482–5436. Documents will be available by written request for public inspection, by appointment, during normal business hours (8:00 to 4:00) at the Southwest Regional Office, Division of Endangered Species/Permits, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103, or the Ecological Services Field Office (8:00 to 4:30), U.S. Fish and Wildlife Service, 611 East Sixth Street, Suite 407, Austin, Texas 78701. Written data or comments concerning the application and EA/HCP should be submitted to the State Administrator, Ecological Services Field Office, Austin, Texas (see **ADDRESS** above). Please refer to permit number PRT–788842 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Ann Henry at the above Austin Ecological Services Field Office address.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "Taking" of any endangered species, including the golden-cheeked warbler. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species if such taking is incidental to, and not the purpose of otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

The Applicant plans to construct a 20,193-foot long water supply pipeline from Lake Travis eastward to the Williamson County line. An Environmental Assessment/Habitat Conservation Plan has been prepared for the project. As mitigation for the incidental taking of the golden-cheeked warbler, the Applicant proposes to preserve documented perch trees for the warbler along the route; limit clearing to 35 feet wide along the route and two 100 feet by 100 feet staging areas in non-habitat; schedule work during the season when the warblers are absent from the area (August 1 through March 1); and the purchase and dedication of 33 acres of occupied warbler habitat to a conservation organization approved by the Service.

The Applicant considered four alternatives but rejected three because they were not economically viable.

James A. Young,

Assistant Regional Director, Ecological Services, Southwest Region (2).

[FR Doc. 94–16654 Filed 7–8–94; 8:45 am]
BILLING CODE 4310–55–P

Bureau of Land Management

[CA–019–4333–24–1A; 8322.JRMP]

Emergency Closure Order; California

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Emergency closure of public lands to all motorized vehicle use in the Joaquin Rocks Management Area and in portions of the Ciervo Hills, Fresno County, California.

SUMMARY: This emergency closure will close all public lands within the Joaquin Rocks Management Area, and portions of the Ciervo Hills in Fresno County, California, to the use or operation of all motorized vehicles except as specified.

The purpose of this emergency closure is to protect sensitive resources from the adverse effects of motorized vehicle use. These resources include soils, vegetation, wildlife and wildlife habitat (including vernal pools and threatened and endangered species), sandstone rock formations, and cultural and historic resources, and wilderness potential.

The authorized officer has determined that past and present unregulated motorized vehicle use has caused and is causing serious adverse effects to these resources.

This closure will include all public lands within:

A. Joaquin Rocks Management Area:

T. 18 S., R. 13 E., MDM
Sections 10, 12, 14, 15, 16, 22, 23, 24, 25, 26, 35, 36.
T. 18 S., R. 14 E., MDM
Sections 18, 19, 20, 22, 26, 28, 29, 30, 31, 32, 33, 34.
T. 19 S., R. 14 E., MDM
Sections 2, 3, 4, 5, 6, 10, 11, 14, 24.

B. Ciervo Hills:

T. 16 S., R. 13 E., MDM

Sections 16, 17, 22, 26
T. 17 S., R. 13 E., MDM
Section 12

A map of the areas affected by this closure order is on file and can be viewed at the Hollister Area Office of the Bureau of Land Management.

The following persons are exempt from this closure order:

(1) Federal, State or Local Law Enforcement Officers, while engaged in the execution of their official duties.

(2) BLM personnel or their representatives while engaged in the execution of their official duties.

(3) Authorized permittees carrying a written letter of authorization from the BLM for a specific activity.

(4) Any member of an organized rescue or fire fighting force while in the performance and execution of an official duty.

SUPPLEMENTARY INFORMATION: This closure is issued under the authority of 43 CFR 8364.1 and 43 CFR 8341.2. Persons violating this closure shall be subject to the penalties provided in 43 CFR 8360.0–7 and 8340.0–7, including a fine not to exceed $100,000 and/or imprisonment not to exceed 12 months.

DATES: This order is in effect as of 6/20/94. The emergency closure for the Joaquin Rocks Management Area will remain in effect until permanently adopted, amended or rescinded by the Authorized Officer as part of the Activity Plan for this area. The emergency closure of portions of the Ciervo Hills will remain in effect until permanently adopted, amended or rescinded by the Authorized Officer.

FOR FURTHER INFORMATION CONTACT: Robert E. Beehler, Area Manager, Hollister Resource Area, Bureau of Land Management, 20 Hamilton Court, Hollister, CA 95023, (408) 637–8183.

Dated: May 13, 1994.

Robert E. Beehler,

Area Manager.

[FR Doc. 94–16688 Filed 7–8–94; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act; Title II–A, Title II–C, Title III, and Section 204(d) Performance Standards for Program Years (PY) 1994 and 1995

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of performance standards for PY 1994–95.

SUMMARY: The Department of Labor is announcing performance standards for Job Training Partnership Act (JTPA) Title II–A (Adult Training), Title II–C (Youth Training), Title III (Dislocated Workers Training), and section 204 (Older Workers Training) for Program Years (PY) 1994–95 (July 1, 1994–June 30, 1996). The proposed issuance appended to this notice contains revised performance standards levels and implementation instructions to conform the Title II performance management system with the Job Training Reform Amendments of 1992.

EFFECTIVE DATE: July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Steven Aaronson, Chief, Adult and Youth Standards Unit, Telephone (202) 219–5487, extension 107 (this is not a toll-free number).

PAPERWORK REDUCTION ACT: Information collection related to this regulation has been approved previously by the Office of Management and Budget, No. 1205–0321. No further information collections or other paperwork requirements of the public are needed.

SUPPLEMENTARY INFORMATION: Under section 106 of the amended Job Training Partnership Act (JTPA), the Secretary of Labor is required to set performance standards for programs serving: (1) adults and youth under Title II–A and Title II–C; (2) dislocated workers under Title III; and (3) older workers under section 204(d). The Job Training Reform Amendments of 1992 (Amendments) also introduced significant changes in the way job training programs are designed and operated at the local levels. These statutory changes, combined with recent legislative and administrative initiatives to promote high-quality, results-driven, customer-oriented services throughout the Federal Government, are not only reshaping the way JTPA delivers its services, but also how to measure its effectiveness.

National job training objectives have remained unchanged since 1990 and focus on enhancing the long-term employability and economic self-sufficiency of those most at risk of becoming or remaining unemployed. Current measures of the program's progress in achieving these objectives relate directly to near-term employment and earnings levels of adult program completers and levels of employment and skill enhancements of youth program completers. These outcomes do not, by themselves, measure the quality of the services received or the extent to which the program is able to improve upon participants' prior employment, earnings and welfare dependency.

For this reason, the Department will be undertaking a comprehensive review of its performance standards over the next year to examine alternative program measures and more cost efficient ways of assessing the program's long-term effects on its graduates. Ongoing surveys of JTPA's customers will also provide invaluable feedback on how helpful JTPA services are to its users, what other services are needed but not provided by the program, and the extent to which good outcomes are related to levels of customer satisfaction. Finally, the Employment and Training Administration will initiate a nationwide JTPA Report Card that will highlight programs showing the greatest returns on their human resource investments in terms of obtaining high-quality employment for those participants most at-risk of failure.

Outcome measures for Title II–A and C will be retained until this performance standards review is completed. Numerical levels for these core standards have been updated to reflect the most recent JTPA program experience.

The Department is also undertaking a comprehensive review of its Title III programs; therefore, changes in outcome measures will be deferred until the results of this critical assessment are available. Governors will continue to be required to set an entered employment rate standard for their Title III programs and are encouraged to establish an average wage at placement goal. At the same time, the Department will be exploring ways to use performance standards to improve the quality of services provided to dislocated workers, and to achieve higher levels of customer satisfaction.

Under section 204(d) of JTPA, older worker programs are now subject to performance standards. However, no incentive awards or sanctions are associated with these standards. Outcomes for these programs focus on increasing employment and earnings similar to those programs serving other disadvantaged adults. Because field evidence suggests that older workers are much more likely to remain employed once they are placed in jobs, employment and wages will be measured at program completion rather than at a later follow-up period. Together, these measures underscore the employment focus of the program, particularly in jobs that are higher paying.

To comply with the legislative provisions, the Department considered adding specific outcome measures for hard-to-serve participants and separate outcomes for in-school and out-of-

school youth. In the interest of avoiding a proliferation of performance measures and limiting local flexibility in programming, additional measures for these three separate groups were not established. Rather, the requirement to promote services to hard-to-serve individuals will be addressed from an incentive policy perspective and the issue of in-school and out-of-school standards will continue to be addressed through the performance standards adjustment process. When judging service delivery area (SDA) performance and awarding incentive funds, States will need to design incentive policies that will promote more effective services to out-of-school youth and reward placements into jobs with employer-assisted benefits.

The policy of excluding cost measures from incentive awards will remain unchanged; however, States are reminded of the integral role of financial oversight in program management. States are also encouraged to utilize available administrative data to relate overall costs of job training to more direct measures of long-term employment, earnings and reductions in welfare. The Office of the Inspector General will be collaborating with ETA in developing a mechanism for measuring the program's return on its investments. The wider JTPA community will also be invited to participate in this effort.

Discussion of Comments

On March 1, 1994, proposed revisions to the performance standards for JTPA Title II–A, Title II–C, Title III, and newly instituted section 204(d) performance standards were published in the **Federal Register** at 59 FR 9910. Interested parties were invited to submit written comments through March 31, 1994.

The Department of Labor (DOL) received 96 written comments on the proposed performance standards issuance. Eighteen of the letters explicitly endorsed the overall direction which the Department is taking in establishing performance standards policy for Program Years 1994 and 1995. In general, the majority of comments requested clarifications or raised issues about specific aspects of the proposed requirements. While the concept of imposing a hard-to-serve "gate" for incentive awards eligibility received support, its application to terminees rather than enrollments drew considerable local and State criticism.

The following summarizes the major issues raised by the commenters and the Department's respective responses.

Use of Participants Rather Than Terminees as the Basis for Determining SDA Eligibility for Incentive Awards

The Department specifically sought comments on whether the hard-to-serve "gate" for incentive award eligibility fully addresses the need to emphasize this population in the performance standards system, and whether compliance with the gate should be measured against those enrolled in training or those completing the program. A majority of those commenting on this issue agreed with the Department's approach of restricting eligibility for incentive awards to those programs that enroll in training at least a minimum (65%) hard-to-serve adults as well as youth.

However, fully three-fourths of States and SDAs submitting comments specifically recommended that the basis for the gate should be participants (all individuals served during the year, including those still enrolled at the end of the program year) rather than terminees. Basing the 65% hard-to-serve level on program terminees was seen as pressuring SDAs to "manipulate" their terminations. Local programs can manage the recruitment process to ensure that adequate numbers of hard-to-serve are enrolled. Ensuring comparable numbers of hard-to-serve individuals will graduate each year is more problematic because of the clients' varying training needs. Participants with multiple barriers typically need to remain in programs longer than those with fewer barriers.

The Department concurs with the arguments made for changing the basis of the incentive award "gate" from terminations to participants. Particularly compelling is the rationale that hard-to-serve participants need longer-term interventions and the adverse effects that such a gate might create in prompting SDAs to terminate participants prematurely. Thus, beginning in FY 1994 for SDAs to become eligible for incentives, at least 65 percent of *both* the SDAs' Title II–A *and* Title II–C (in-school and out-of-school combined) participants receiving training, and/or other services beyond objective assessment, must be hard-to-serve. For the purpose of determining compliance with this requirement, those individuals with SDA-defined barriers that have been approved by the Governor are to be included as well as participants in school-wide projects under section 263(g) and participants in five percent-funded projects.

To further reinforce JTPA's focus on serving hard-to-serve participants, the Department encourages Governors to design incentive policies that explicitly promote increased service to that group. For example, Governors may wish to adjust themselves based on the degree to which SDAs exceed the incentive eligibility "gate" or on a sliding scale of continuous improvement.

Improved Service to Out-of-School Youth and Employer-Assisted Benefits Incentive Award Criteria

About 30 percent of all commenters mentioned this issue. Most of the comments requested additional guidance and clarification on how these two items could be incorporated into incentive award policies and asked whether Governors could ignore or "zero weight" either one of them in the awarding of incentives. The Department is sensitive to concerns about establishing incentive criteria without sufficient information on the program's prior experience in placing individuals in jobs with employer-assisted benefits; or in the case of out-of-school youth, in the absence of effective program models that have a positive impact on a youth's long-term earnings potential.

In response to the field comments several changes have been made to the incentive policy guidance as originally proposed. First, Governors will be encouraged, but not required, to include these criteria in State incentive policy for PY 1994. States will be required to incorporate these criteria (i.e., they cannot be zero-weighted) beginning in PY 1995. In the interim States can use data from the Standardized Program Information Reports (SPIR) for PYs 1992 and 1993 to establish performance benchmarks for programs serving out-of-school youth and job placements providing employer-assisted benefits. Therefore, the Department is giving Governors maximum flexibility in terms of how these criteria may be applied. Suggested approaches for rewarding improved service to out-of-school youth and placements in jobs providing employer-assisted benefits will be included in the Training and Employment Guidance Letter appended to this Notice.

Several commenters noted that the intent of the incentive provisions is to encourage service to more out-of-school youth; thus, SDAs should be rewarded solely on the extent to which they exceed the statutory minimum service levels. The Department's position is that rewarding SDAs simply on the basis of increasing the numbers of out-of-school youth does not go far enough in addressing the disappointing findings from the National JTPA study. Thus, while SDAs will not be exempted from the statutory requirement to serve at

least 50% out-of-school youth, ETA is encouraging States to use incentive funds to pilot innovative youth models and to evaluate and replicate promising strategies.

20-Hour Requirement

Section 106(k) of JTPA requires for performance standards purposes that employment be for at least 20 or more hours per week. This requirement applies to Title II–A (adults), Title II–C (youth), Section 204(d) (older workers), and Title III (dislocated workers) programs. About 15 percent of the comments questioned the reasonableness of this requirement for in-school youth, older workers, or disabled participants, and requested that the Department waive it in these cases. Since this requirement is explicitly defined *in the statute*, it cannot be waived.

Several commenters also requested clarification about the reference period, i.e., whether a "week" means 5 or 7 days and whether follow-up is needed to verify that an individual actually worked for at least 20 hours. For determining compliance with this provision, a "week" means a period of 7 consecutive days, and the 20 or more hours is to be understood as a condition of employment. (See section 5 of the attached TEGL.) No formal verification is required, but the Department encourages States to set up a system that would, at a minimum, provide for random checking to assess compliance by SDAs.

Definition of "Failure to Meet Standards"

Section 106(j)(i)(A) of JTPA requires the Secretary to establish uniform criteria of determining whether a service delivery area fails to meet performance standards. To comply with this provision, the Department specified the number of failed standards which constitute overall failure. Commenters generally agreed with the concept of a uniform definition of performance failure; however, there was minor opposition to defining overall failure as missing a combination of any three standards or simply missing both youth standards. The Department was criticized for placing too much weight on the youth standards. Given Congressional interest in improving the quality of service to youth, as reflected in various provisions in the amended JTPA, and given the need to respond to the programmatic issues raised by the National JTPA Study, the Department believes its emphasis on youth program performance is appropriate.

Several commenters requested clarification on whether SDAs had to fail the same standards two consecutive years to trigger a reorganization. The sanction policy does not apply to the same standards over the two-year period. Thus, for the purpose of identifying whether an SDA has failed to meet performance standards for two consecutive years, overall failure means failing any three core standards or both youth standards for two consecutive years. Definitions for meeting and failing *individual* standards will be established by Governors.

Performance Standards for Older Worker Programs Under Section 204(d)

The other major area of comment involved the performance standards for older worker programs under Section 204(d). A total of 27 letters was received from advocates/service providers and State agencies on aging. These letters questioned the methodology and data used for setting the performance standards levels. Many indicated that the proposed levels were too high, particularly the level of the average wage at placement standard.

Since March 1, 1994, when the notice appeared in the Federal Register, additional data became available from the PY 1992 SPIR. Reported information on the Section 204(d) Older Worker program was analyzed and used to establish revised levels for the standards that are more closely related to actual experience for that program. This has resulted in a lower entered employment rate standard, but the average wage at placement standard remains unchanged. It should be remembered, however, that the Secretary's standards are merely *departure points* which will be adjusted to account for local economic conditions and the characteristics of the terminees. The Department will be providing States with a methodology for making these adjustments.

Performance Standards Levels

A total of 9 comments was received about the overall performance levels for Titles II–A and II–C standards. Comments were mixed with hard-to-serve advocates supporting both higher and lower levels. The majority of comments advocating lower levels were from youth advocates who felt that the standard for youth employment was too high given the recent decline in the rate of placing youth in jobs.

The numerical values of the standards are generally set so that if local programs continue to perform unchanged from the prior program year, 75 percent of the system are expected to exceed their standards. The proposed numerical standards for five of the six core measures (all but the YEER) and the Title III Entered Employment Rate measure are set in this manner, using PY 1992 performance. Further adjustments were made to reflect the new 20 hour per week minimum requirement for employment. To arbitrarily raise the level of all standards, as suggested by certain advocate groups, appeared counterproductive when the Department was imposing new targeting requirements and employment caveats.

One exception is the numerical standard for the YEER which if similarly set, would lead to reduced standards for SDAs. The recently published 30-month results from the National JTPA Study suggest that employment and earnings experienced by out-of-school youth in JTPA fall short of acceptable levels. Therefore, to foster improved services to out-of-school youth, the numerical standard for the YEER will remain at its current level of 41 percent.

The Secretary's standards for the new older worker performance measures were derived from an analysis of available PY 1992 Section 204(d) data from the SPIR. The same general rules that were used for setting the levels for the Titles II–A, II–C, and III programs, including the adjustment for 20-hour employment, were used for the Section 204(d) program. Again, it must be emphasized that these national standards are merely departure points and States must make adjustments to account for local conditions.

Certifications

This issuance is procedural in character and gives directions to States and local service deliverers on the implementation of performance standards under Title II–A, Title II–C, Section 204(d), and Title III of JTPA. Therefore, it is not classified as "major" under Executive Order 12291 and no impact analysis is required. This issuance has been assessed according to the Federalist policymaking criteria outlined in Executive Order 12612. The Department believes that this issuance will not materially limit the policymaking discretion of the States. This issuance both addresses Departmental policy objectives and permits States discretionary authority in the application of performance standards. The procedural framework included in this issuance enables States to better assist localities in more effective and efficient program design and management.

Signed at Washington, DC, this 5th day of July, 1994.

Doug Ross,

Assistant Secretary of Labor.

Appendix—Revisions to the Performance Management System, and Performance Standards for Program Years (PY's) 1994 and 1995

Training and Employment Guidance Letter_____

Training and Employment Guidance Letter No. _____

From: Barbara Ann Farmer, Administrator for Regional Management

Subject: Job Training Partnership Act (JTPA) Title II and Title III Performance Standards for PY's 1994–1995

1. *Purpose.* To transmit guidance on the Secretary's required performance measures and the Secretary's implementing instructions for performance standards for Program Years (PY's) 1994 and 1995 (July 1, 1994–June 30, 1995; July 1, 1995–June 30, 1996).

2. *Background.* Sec. 106 of JTPA, as amended, directs the Secretary to establish performance standards for adult, youth, and dislocated worker programs. These standards may be updated every two years based on the most recent JTPA program experience, as well as program emphases and goals established by the Department of Labor. The Secretary also issues instructions for implementing standards and parameter criteria for States to follow in adjusting the Secretary's standards for service delivery areas (SDAs) and substate areas (SSAs).

The Job Training Reform Amendments (JTRA) of 1992 mandated significant changes in the design and operation of local job training programs, as well as the criteria used to assess their performance. Revised Section 106 requires that performance standards for Title II–A, Title II–C, Section 204(d) and Title III programs measure the number of job placements that provide a minimum of 20 hours of work per week, and that programs be rewarded based on high performance, increased service to the "hard-to-serve," and quality job placements that are both high-paying and offer employer-assisted benefits. Incentive and sanction policies are to be structured around more explicit criteria, and performance standards failure is now federally defined to ensure greater uniformity in assessing underperformance nationwide. As a result of the JTPA amendments, section 204(d) now mandates performance measures for the older worker program.

To assist the Department in responding to the substantive changes required in the section 106 amendments, a Technical Workgroup was convened in Washington, DC, in mid-July 1993. The workgroup had representatives from State and local JTPA programs; public interest groups, including the Partnership for Training and Employment Careers; the U.S. Conference of Mayors; the National Association of Counties; the National Governors' Association; and the National Council on the Aging; and staff from the Department of Labor (DOL) Office of the Inspector General. This Guidance Letter incorporates, to a large extent, the workgroup's findings.

3. *Performance Management Goals for PY's 1994–1995.* Departmental goals, initially established for PY 1990 in anticipation of the amendments, remain unchanged and are as follows:

—Targeting services to a more at-risk population;

—Improving the quality and intensity of services that lead to skills acquisition, long-term employability and increased earnings;

—Placing greater emphasis on basic skills acquisition to qualify for employment or advanced education or training; and

—Promoting comprehensive, coordinated human resource programs to address the multiple needs of at-risk populations.

In addition, with the passage of the 1992 JTPA Amendments, the performance management system has been tasked, through its performance incentive policies, to improve service to out-of-school youth and also to foster employment in better quality jobs which offer high wages and employer-assisted benefits.

These goals are reflected in the Secretary's six Title II–A and Title II–C (core) measures, national numerical standards for these measures, new incentive award criteria, and associated reporting requirements. Governors still retain authority to establish additional standards which reflect State policy and to develop the specific approach to determining incentive awards.

This issuance specifies the national standards for PY's 1994–1995 and introduces the new criteria which must be a part of State incentive grant policies. Data to support additional non-cost measures will continue to be reported and Governors may use these measures, or others in making State incentive award determinations. Data on costs together with program performance will provide critical information for State monitoring, fiscal oversight, and assist States in measuring returns on their human resource investments.

The Department has identified two additional goals for PY 1994–1995. These are:

—Establishing a strong customer focus and orientation toward improving the program's responsiveness in meeting the individual needs of participants; and

—Seeking and using customer feedback to monitor the appropriateness of JTPA services and to promote continuous program improvements.

States and SDAs are encouraged to survey customers on a regular basis as an integral part of their program oversight to identify program weaknesses and to improve program services. Technical assistance will be made available on cost-effective ways to gather and utilize such information.

4. *Secretary's National Standards for PY's 1994–1995.* The Secretary's performance measures and national standards for Title II–A, Title II–C, section 204(d), and Title III (all of section 302(c)(1) State activities, and sections 302(c)(2) and 302(d) substate area activities) are as follows:

PY 1994–1995 Performance Standards

Title II–A

Adult Follow-up Employment Rate	59%
Adult Weekly Earnings at Follow-up	$245
Welfare Follow-up Employment Rate	47%
Welfare Weekly Earnings at Follow-up	$223

Title II–C

Youth Entered Employment Rate	41%
Youth Employability Enhancement Rate	40%

Section 204(d) Older Worker Programs

Entered Employment Rate	52%
Average Hourly Wage at Placement	$5.45

Title III

Entered Employment Rate	67%
Average Wage at Placement	State Determined

The Title II–A adult and welfare follow-up measures will continue to be based on individuals who terminate during the first three quarters of the program year and the last quarter of the previous program year.

5. *Explanation of Performance Standards Levels.* The Title II–A and II–C numerical standards were derived from PY 1992 aggregate performance data reported on the JTPA Annual Status Report (JASR) and are generally set at a minimally-acceptable level that approximately 75% of the SDA's can be expected to exceed.

Revising the numerical standard for the Youth Entered Employment Rate (YEER) in the same way would lead to reduced standards for SDAs. However,

recent National JTPA Study results suggest that employment and earnings experienced by out-of-school youth in JTPA fall short of acceptable levels. Therefore, to encourage improved services to out-of-school youth, the numerical standard for the YEER will remain at its current level of 41 percent.

Earnings standards have been adjusted to account for expected future inflation. Finally, an additional special adjustment has been made to employment-related standards to account for the requirement in section 106(k) that permits credit, for performance standards purposes, only for employment that is scheduled for 20 or more hours per week.

Similar to the Title II–A and Title II–C standards, the Title III standard was derived from PY 1992 performance data reported on the Worker Adjustment Program Annual Program Report (WAPR). This standard is set at a level that, approximately, 75 percent of the substate areas can be expected to exceed. As with the employment measures for Titles II–A and II–C, an adjustment has been made to take into account the 20-hour per week employment requirement.

Since discrete aggregate data were not available for PY 1992 Section 204(d) Older Worker program performance, available SPIR data were used to assist in setting performance standards levels for that program. As with the employment measures for Titles II–A, II–C, and III, an adjustment has been made to take into account the 20-hour per week employment requirement.

Note: Programs operated under section 204(d) are State programs even though they may be managed by various local entities. Therefore, performance standards will be applied to the total older worker programs State-wide. Unlike the adult and youth programs under Title II–A/C, however, no incentive awards or sanctions are associated with these standards.

6. *Implementing Provisions.* The following implementing requirements must be followed:

A. *Required Standards.* For Titles II–A and II–C, Governors are required to set, for each SDA, a numerical performance standard for each of the six Secretary's measures; for the Older Worker program, Governors are required to set numerical Entered Employment Rate and Average Wage at Placement standards for programs operated under section 204(d); for Title III, Governors are required to set for each substate area a numerical performance standard for the Entered Employment Rate and are encouraged to establish an Average Wage at Placement goal

B. *Setting the Standards.* Consistent with new legislative provisions, Governors are now *required* to adjust the Secretary's performance standards to reflect local area circumstances (section 106(d)). Such adjustments apply to Title II–A, Title II–C, section 204(d) and Title III programs, and must conform to the Secretary's parameters described below:

1. Procedures must be:
   —Responsive to the intent of the Act,
   —Consistently applied among the SDA's/SSA's,
   —Objective and equitable throughout the State,
   —In conformance with widely accepted statistical criteria;
2. Source data must be:
   —Of public use quality,
   —Available upon request;
3. Results must be:
   —Documented,
   —Reproducible; and
4. Adjustment factors must be limited to:
   —Economic factors,
   —Labor market conditions,
   —Geographic factors,
   —Characteristics of the population to be served,
   —Demonstrated difficulties in serving the population (this adjustment factor is new), and
   —Type of services to be provided.

The Department offers Governors an adjustment methodology that conforms both to these parameters and to the requirement in section 106(d). This methodology covers Title II–A, Title II–C Section 204(d), and Title III programs and will be provided to States in a soon-to-be issued Training and Employment Information Notice. Should the Governor choose to use an alternate methodology, or make adjustments not addressed by the Departmental model, it must conform to the parameter criteria and be documented in the Governor's Coordination and Special Services Plan (GCSSP) prior to the program year to which it applies. The State Job Training Coordinating Council and, where appropriate, the State Human Resources Investment Council must have an opportunity to consider adjustments to the Secretary's standards and to recommend variations. To determine whether an SDA has met or exceeded a performance standard, Governors must use actual end-of-year program data to recalculate the performance standards.

C. *Performance Standards Definitions.* Governors must calculate the performance of their SDA's, SSA's, and section 204(d) programs according to the definitions included in the Attachments.

D. *Titles II–A and II–C Incentive and Sanction Policies.* Performance standards are to be established for programs funded under Titles II and III of the Act. In applying the Secretary's standards for Titles II–A and II–C, Governors *must use* the six core measures and also consider criteria relating to programs successfully serving out-of-school youth and placement in jobs providing employer-assisted benefits. Governors are encouraged to begin using these criteria in PY 1994 incentive policies; these criteria are required (i.e., they cannot be zero-weighted) to be incorporated into State incentive policies beginning in PY 1995. Governors may select additional non-cost measures, such as increased service to hard-to-serve participants, to form the basis of incentive policies as long as the following criteria are met:

1. As the basis for making incentive awards, the Governors must use *all* (i.e., cannot "zero weight" *any*) of the six Secretary's core measures. Beginning in PY 1995, Governors will also be required to reward innovative out-of-school youth program models either identified by the Department of Labor or recognized by the State as having a demonstrated record of success, and placements in jobs providing employer-assisted benefits. Although successful programs for out-of-school youth remain the cornerstone of out-of-school incentives, SDA's will still be expected to exceed the 50 percent minimum service level to be rewarded under that criterion. Governors have considerable flexibility in implementing the new incentive criteria. Suggested approaches to addressing these criteria are included as Attachments 3 and 4 to this TEGL. Decisions regarding the *relative* weight or emphasis of each core measure (e.g., the Youth Entered Employment Rate) and incentive criterion (e.g., placement in jobs with employer-assisted benefits) in a State's incentive award formula rest with the Governor.

The core measures will be the basis for identifying SDA's that are candidates for technical assistance and for imposing sanctions. At least 75 percent of the funds set aside for performance incentives must be related to these measures and the out-of-school youth and employer-assisted benefits criteria, in accordance with section 106(b)(7)(E).

2. Cost standards cannot be used for incentive award purposes. However, States are reminded of the integral role of financial reviews in program management. States are encouraged to explore ways of relating overall costs of job training to more direct measures of long-term employment, earnings and reductions in welfare.

3. Incentive policies may include adjustments to incentive award amounts

based upon factors such as grant size, additional services to the hard-to-serve, intensity of service, and expenditure level.

4. A Secretary's standard for service to the hard-to-serve, as required by section 106(b)(7)(B) of JTPA, has been established in the form of a stand-alone eligibility criterion ("gate") for incentive awards. In order for an SDA to be eligible to receive *any* incentive award, at least 65 percent of *both* the SDA's (a) Title II–A *and* (b) Title II–C (in-school and out-of-school youth combined) participants receiving training and/or other service beyond objective assessment must be hard-to-serve. The definitions of hard-to-serve are to be consistent with the definitions in sections 203(b), 263(b), and 263(d) of the Act. For the purpose of determining compliance with this requirement, Governors are to include any SDA-defined barriers that have been approved by the Governor, as well as the characteristics of participants in school-wide projects under section 263(g) and participants in five percent-funded projects.

5. For those SDA's that successfully "pass through" the gate, three criteria (in addition to any funds set aside for Governors' standards) will determine the *amount* of the incentive award: (1) exceeding the Secretary's performance standards, (2) providing quality service to out-of-school youth, and (3) placing participants in employment that provides employer-assisted benefits.

—The definition of "employer-assisted benefits" is to be consistent with the SPIR definition (see Attachment 4). For the purposes of reporting and performance standards, fringe benefits count so long as they are an acknowledged component of employment conditions, whether actually received at the time of placement or not. Thus, State incentive policies will be structured to include benefit information for those participants who entered employment at termination, and Governors will have considerable latitude in implementing this incentive policy requirement.

6. Consistent with present DOL policy, SDA's that pass through the "gate" and exceed all six of the Secretary's Titles II–A and II–C standards *must* receive an incentive award.

7. Determination of an SDA's failure to meet these standards and the consequent imposition of technical assistance and reorganization requirements under section 106(j) will be based only on the Secretary's Title II–A and Title II–C core measures.

—"Meeting Performance Standards" overall is defined as meeting at least four of the six core standards, one of which must be a youth standard. Conversely, overall "Failure" is defined as failing *any* three (3) or more of the core standards *or* failing both youth standards. Definitions for meeting and failing *individual* standards will be established by Governors.

—Failure for the first year precludes an SDA from receiving *any* incentive awards and requires Governors to provide technical assistance to the underperforming SDA.

—Failure in the second consecutive year precludes an SDA from receiving *any* incentive award and requires Governors to impose a reorganization plan.

8. Section 106(j)(3) requires each State to report to the Secretary, not later than 90 days after the end of each program year, the actual performance and performance standards for each SDA within that State. Within the same timeframe, technical assistance plans developed by the State are required for each SDA "failing" for the first year. A 90-day timeframe also applies to the imposition of a reorganization plan, which is mandatory when an SDA "fails" for a second consecutive year. Specific procedures for the formal performance standards report and required State action will be provided under separate cover. However, in addition to the formal annual process, there should be ongoing oversight of SDA performance and continuous technical assistance and capacity-building aimed at addressing areas where program performance can be improved. In addition, the Employment and Training Administration will initiate a national JTPA Report Card that will highlight programs showing the greatest returns on their human resource investments in terms of high-quality employment (type of job, wages and fringe benefits) for those participants most at-risk of failure. Further information on the content and procedures for preparing the "report card" will be provided separately.

9. Governors must specify in the GCSSP their incentive award policy under section 202(c)(1)(B) and 202(c)(3)(A) and imposition of sanctions policy under section 106(j). It is recognized that the timing of this issuance may preclude some States from submitting complete incentive policies with their PY 1994–95 GCSSPs. States are to provide as much information as possible in compliance with required due dates and submit a GCSSP amendment containing complete information no later than August 31, 1994.

10. In PY 1994 and 1995, Governors will continue to have the authority to exclude pilot projects serving "hard-to-serve" individuals funded from the 5 percent incentive fund set-aside in computing their standards and actual performance. States and SDA's are encouraged to use such funds to develop or replicate model programs serving out-of-school youth, particularly those based on contextual learning models.

Note: For those SDA's in which "incentive projects" are indistinguishable from those that provide general training, these programs would *not* be considered exempt from performance standards.

7. *State Action.* States are to distribute this Guidance Letter to all officials within the State who need such information to implement the new performance standards policies and requirements for PY 1994–95. It is especially critical that States, State Councils, Private Industry Councils and SDA operational staff become thoroughly familiar with the new provisions concerning incentive and sanctions policies.

A copy of this Guidance Letter is also being sent to your State JTPA Liaison, the State Wagner-Peyser Administering Agency, and the State Worker Adjustment Liaison.

8. *Inquiries.* Questions concerning this issuance may be directed to Steven Aaronson at (202) 219–5487, ext. 107.

9. *Attachments.*

1. Definitions for Performance Standards;
2. Youth Employability Enhancement Definitions;
3. Rewarding Model Programs for Out-of-School Youth;
4. Rewarding Placements in Jobs Providing Employer-Assisted Benefits.

Attachment 1—Definitions for Performance Standards

Those terminees who receive only objective assessment and/or supportive services (or only objective assessment and/or supportive services and entered employment) are to be excluded from the calculation of performance outcomes for Title II–A, Title II–C, and section 204(d) older worker programs. Participants in special 5-percent-funded projects may, at the discretion of the Governor, also be excluded from the calculation of performance outcomes for Title II–A and Title II–C.

The following defines the Title II–A performance standards:

1. *Adult Follow-Up Employment Rate*—Total number of adult respondents who were employed (for at

least 20 hours per week) during the 13th full calendar week after termination, divided by the total number of adult respondents (i.e., terminees who completed follow-up interviews).

2. *Adult Follow-Up Weekly Earnings*—Total weekly earnings for all adult respondents who were employed (for at least 20 hours per week) during the 13th full calendar week after termination, divided by the total number of adult respondents employed (for at least 20 hours per week) at the time of follow-up.

Welfare

3. *Welfare Follow-Up Employment Rate*—Total number of adult welfare respondents who were employed (for at least 20 hours per week) during the 13th full calendar week after termination, divided by the total number of adult welfare respondents (i.e., terminees who completed follow-up interviews).

4. *Welfare Follow-Up Weekly Earnings*—Total weekly earnings for all adult welfare respondents employed (for at least 20 hours per week) during the 13th full calendar week after termination, divided by the total number of adult welfare respondents employed (for at least 20 hours per week) at the time of follow-up.

Note: The Title II–A adult and welfare follow-up employment measures will continue to be based on individuals who terminate during the first three quarters of the program year and the last quarter of the previous program year. If the response rates for those employed at termination and those not employed at termination in an SDA differ by more than 5 percentage points in either the adult or welfare samples, then the calculations of the follow-up outcomes for that group must be modified to adjust for non-response bias. The following defines the Title II–C performance standards:

5. *Youth Entered Employment Rate (YEER)*—Total number of youth who entered employment at termination (for at least 20 hours per week), divided by the total number of youth who terminated, excluding those potential dropouts who are reported (on the Standardized Program Information Report [SPIR]) as remained-in-school and dropouts who are reported (on the SPIR) as returned-to-school.

Note: As in past practice, youth terminees who remain-in-school or return-to-school *and* who also enter employment will *not* be excluded from the termination pool reflected in the denominator of the Youth Entered Employment Rate. However, only employment of at least 20 hours per week satisfies the requirement for "employment."

6. *Youth Employability Enhancement Rate (YEEN)*—Total number of youth who attained one of the employability enhancements at termination, whether or not they also obtained a job, divided by the total number of youth who terminated.

Youth Employability Enhancements include:

a. Attained (two or more) PIC-recognized Youth Employment Competencies.

b. Completed major level of education following participation of at least 90 calendar days or 200 hours in JTPA activity.

c. Entered and retained for at least 90 calendar days or 200 hours in non-Title II training or received a certification of occupational skill attainment.

Note: It is expected that the *ultimate* result of this outcome will be the attainment of a job-specific skill competency on the part of the terminee.

d. Returned to and retained in full-time school (dropouts only) for one semester or at least 120 calendar days, attained a basic or job-specific skill competency, and made satisfactory progress.

Note: For the purposes of this outcome, and the remained in school outcome described below, "school" *includes alternative schools*, defined as a specialized, structured curriculum offered inside or outside of the public school system which may provide work/study and/or General Educational Development (GED) test preparation.

e. Remained in school for one semester or at least 120 calendar days (for youth at risk of dropping out of school), attained a basic or job-specific skill competency, and made satisfactory progress.

Note: For youth aged 14 and 15, the acceptable competencies will be basic skills or pre-employment/work maturity.

The following defines Section 204(d) Older Worker program performance standards:

1. *Entered Employment Rate*—Total number of individuals who entered employment of at least 20 hours per week at termination, divided by the number of total terminations.

2. *Average Wage at Placement*—Total hourly wage rate of all terminees who entered employment of at least 20 hours per week at termination, divided by the number of terminees who entered employment of at least 20 hours per week at termination.

The following defines the Title III performance standard:

1. *Entered Employment Rate*—Total number of individuals who entered employment of at least 20 hours per week at termination, excluding those who were recalled or retained by the original employer after receipt of a layoff notice, divided by the total terminations, excluding those who were recalled or retained by the original employer after receipt of a layoff notice.

Note: As indicated in the definitions listed above, for performance standards purposes, the term "employment" means employment for 20 or more hours per week. For determining compliance with this provision, a "week" means a period of 7 consecutive days, and the 20 or more hours is to be understood as a condition of the employment. No formal verification is required, but the Department encourages States to set up a system that would, at a minimum, provide for random checking to assess compliance by SDA's.

Attachment 2—Youth Employability Enhancement Definitions

"Youth Employability Enhancement" means an outcome for youth, other than entered unsubsidized employment, which is recognized as enhancing long-term employability and contributing to the potential for a long-term increase in earnings and employment. Outcomes which meet this requirement shall be restricted to the following:

(1) Attained PIC-Recognized Youth Employment Competencies (two or more reported from SPIR items 36a, 36d, and 36e);

(2) Returned to Full-Time School;

(3) Remained in School;

(4) Completed Major Level of Education; or

(5) Entered Non-Title II Training.

1. *Attained PIC-Recognized Youth Employment Competencies*—The total number of youth who demonstrated proficiency, as defined by the PIC in *two or more* of the following three skill areas *in which the terminee was deficient at enrollment:* (1) pre-employment/work maturity (SPIR item 36a); (2) basic education (SPIR item 36d); or (3) job-specific skills (SPIR item 36e). Competency gains must be achieved through program participation and be tracked through sufficiently developed systems that must include: quantifiable learning objectives, related curricula/training modules, pre and post-assessment, employability planning, documentation, and certification.

The completely detailed definition for Youth Employment Competency systems is located in the Standardized Program Information Reporting System (SPIR) instructions.

2. *Returned to Full-Time School*—The total number of youth who: (1) had returned to full-time secondary school (e.g., junior high school, middle school and high school) including an alternative school if, at the time of intake, the participant was not attending school (exclusive of summer school) and had not obtained a high school diploma or equivalent; and (2) prior to

termination, had been retained in school for one semester or at least 120 calendar days.

Alternative School—A specialized, structured curriculum offered inside or outside of the public school system which may provide work/study and/or GED preparation.

Note: To obtain credit for *Returned to Full-Time School* and *Remained in School* (described below), SDA's must be prepared to demonstrate that retention results from continuing, active participation in JTPA activities and the youth *must:* (1) be making satisfactory progress in school; and (2) (for youth aged 16–21) attain a PIC-approved Youth Employment Competency in Basic Skills or Job-Specific Skills; or (3) (for youth aged 14–15) attain a PIC-approved Youth Employment Competency in Pre-employment/Work Maturity or Basic Skills.

Satisfactory Progress in School—An SDA, in cooperation with the local school system, must develop a written policy that defines an individual standard of progress for each participant that he or she is required to meet. Such a standard should, at a minimum, include both a qualitative element of a participant's progress (e.g., performance on a criterion-referenced test or a grade point average) and a quantitative element (e.g., a time limit for completion of the program or course of study). This policy may provide for exceptional situations in which students who do not meet the standard of progress are nonetheless making satisfactory progress during a probationary period because of mitigating circumstances.

3. *Remained in School*—The total number of youth who, prior to termination, had been retained in full-time secondary school, including alternative school, for one semester or at least 120 calendar days. A youth may be reported as Remained-in-School only if he/she was attending school at the time of intake, had not received a high school diploma or its equivalent, and was considered "at risk of dropping out of school," as defined by the Governor in consultation with the State Education Agency.

4. *Completed Major Level of Education*—The total number of adults/youth who, prior to termination, had completed, during enrollment in the program, a level of educational achievement which had not been reached at entry. Levels of educational achievement are secondary and post-secondary. Completion standards shall be governed by State standards and shall include a high school diploma, GED Certificate or equivalent at the secondary level, and shall require a diploma or other written certification of completion at the post-secondary level.

Note: To obtain credit, completion of a major level of education must result primarily from active JTPA program participation of at least 90 calendar days *or* 200 hours, usually prior to the completion of the major level of education.

5. *Entered Non-Title II Training*—The total number of adults/youth who, prior to termination, had entered an occupational skills employment/training program not funded under Title II of the JTPA, that builds upon and *does not duplicate* training received under Title II.

Note: To obtain credit, the participant must have been retained in that program for at least 90 calendar days OR 200 hours *or* must have received a certification of occupational skill attainment. During the period the participant is in non-Title II training, he/she may or may not have received JTPA services. It is expected that the *ultimate* result of this outcome will be the attainment of a job-specific skill competency on the part of the terminee.

Attachment 3—Rewarding Model Programs for Out-of-School Youth

One of the Department of Labor's high priorities is to improve the effectiveness of JTPA programs for out-of-school youth. Results from the National JTPA Study show that outcomes achieved by out-of-school youth 30 months after entering the program are disappointing. To implement section 107(b)(7)(C) of the amended JTPA, the Department encourages in PY 1994, and *will require* in PY 1995, that Governors reward out-of-school youth programs that are identified by the Department or recognized by the State as having a demonstrated record of success. States need to develop ways to identify such programs. Possible approaches include:

—Using outcomes achieved to identify successful programs. Outcomes could include both the two youth performance measures and measures such as learning gains and earnings/retention in full-time employment.

—Alternatively, States could offer SDA's "seed money" from incentive funds to plan/operate programs that provide innovative or high-quality training to out-of-school youth based on criteria established by the Governor. Examples of such criteria include training that integrates occupational and basic skills training, and training that emphasizes acquiring job skills in demand in the emerging workplace.

Note: Whatever method is used to reward successful out-of-school youth programs, access to such incentives must be limited to those SDA's that serve in excess of 50 percent out-of-school youth in their overall Title II–C program.

Attachment 4—Rewarding Placements in Jobs Providing Employer-Assisted Benefits

PY 1994 is the first year Governors are asked to reward SDA's for placements in jobs with employer-assisted benefits, including health benefits. (Governors will be *required* to do so beginning in PY 1995.) Rewarding such placements is intended to increase the focus on overall job quality. To include placements in jobs with employer-assisted benefits in their incentive policies, States will need to:

1. Specify how the criterion will be measured. The definition must be consistent with that for SPIR Item 35c (i.e., consisting of, at a minimum, health insurance benefits and coverage under Social Security or an equivalent pension plan). Note that it is not necessary for an individual to actually receive benefits when employment begins as long as they are an acknowledged component of employment conditions. For example, health benefits available after a waiting-period and benefits that are refused because of availability from another source both count as employer-assisted benefits. Examples of measures of jobs with benefits, using data from SPIR Item 35c are:

—among terminees who enter employment, the percent who are in jobs providing employer-assisted benefits; and

—among *all* terminees, the percent who enter employment and are in jobs providing employer-assisted benefits.

2. Determine how to reward placement in jobs with employer-assisted benefits. One possible approach would require the State to determine a departure point or benchmark to use in setting rewards levels for benefits. This departure point would serve the same function served by the numerical national standards for the Secretary's core measures. It would be the level that, before any adjustment for local factors, identifies rewardable performance. Under this approach, a State would also decide whether and how the departure point should be adjusted for local clientele and economic conditions when setting reward levels for each SDA.

Rather than setting reward levels for employer-assisted benefits using a process akin to setting standards for the Secretary's core measures, States may choose a simpler approach. Because there are no sanctions based on this criterion, it is not absolutely necessary to set a minimally acceptable performance level. It is possible to reward SDA's at all levels of performance on employer-assisted

benefits. One way to do this would be to set aside a portion of incentive funds to reward such placements. This reward pool could be divided among SDA's based on their proportionate share of all placements in jobs with employer-assisted benefits. This procedure is equivalent to giving a fixed amount for each placement (i.e., the amount is the value of the pool divided by the total number of placements into jobs with benefits in the State.

Because this approach may be viewed as favoring SDA's in areas where benefits are widely prevalent, it should be viewed as interim until better data on employer-assisted benefits are available.

[FR Doc. 94–16698 Filed 7–8–94; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Notice of Transfer of Function to NTIS

In the spirit of the National Performance Review, the U.S. Department of Commerce, National Technical Information Service (NTIS) and the National Archives and Records Administration (NARA) will team up to demonstrate how government can operate more effectively.

The National Audiovisual Center at NARA will be transferred to NTIS under an agreement which will consolidate much of the Federal government's capability for audio, visual, and multimedia materials production and dissemination.

At a time when NARA has developed a strategic vision of its future calling for a sharpening of its focus on the archival aspects of its programs, the need for service support for audiovisual and multimedia across government is rapidly increasing. Merging the complimentary strengths of the NARA National Audiovisual Center with the existing NTIS which has been congressionally mandated to collect and disseminate scientific and technical information will result in better services to agencies and the public.

The new National Audiovisual Center at NTIS will be ideally positioned to serve as a hub for access to Federally developed media and training materials. By combining resources with the NARA center, NTIS will now be able to provide Federal training technology transfer services to both the public and private sectors.

The transfer of the National Audiovisual Center from NARA to NTIS will be effective October 1, 1994.

Written questions regarding this functional transfer may be sent to Charles W. Bender, Deputy Assistant Archivist for Public Programs (NE), National Archives, 7th & Pennsylvania Avenue NW., Washington, DC 20408.

Dated: June 30, 1994.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 94–16655 Filed 7–8–94; 8:45 am]

BILLING CODE 7515–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to OMB for review the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

1. Type of submission, new, revised, or extension: Revision.

2. The title of the information collection: Proposed amendments of 10 CFR 35.75, "Criteria for the Release of Patients Administered Radioactive Material."

3. The form number if applicable: Not applicable.

4. How often is the collection required: On occasion; upon release of a patient whose dose to another individual is likely to exceed 1 millisievert (0.1 rem) in a year.

5. Who will be required or asked to report: Medical licensees administering radiopharmaceuticals and permanent implants and releasing patients under the provisions of 10 CFR 35.75.

6. An estimate of the number of respondents: Approximately 1,350 NRC and Agreement State licensees.

7. An estimate of the number of hours annually needed to complete the requirement or request: 25,833 hours (includes NRC and Agreement State licensees).

8. The average annual burden per respondent: 19.14 hours.

9. An indication of whether Section 3504(h), Pub. L. 96–511 applies: Applicable.

10. Abstract: The Nuclear Regulatory Commission (NRC) is proposing to amend the criteria for release of patients administered radioactive material under 10 CFR Part 35. The proposed amendment requires the licensee to provide the patient with instructions on how to maintain doses to other individuals as low as reasonably achievable, and to maintain a record of the released patient and the calculated total effective dose equivalent to the individual likely to receive the highest dose. These requirements are necessary to ensure adequate protection of the public health and safety, and that dose limits to other individuals are maintained as low as reasonably achievable.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street NW. (lower level), Washington, DC.

Comments and questions can be directed by mail to the OMB reviewer: Troy Hillier, Office of Information and Regulatory Affairs, (3150–0010), NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7232.

Dated at Rockville, Maryland, this 30th day of June 1994.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 94–16692 Filed 7–8–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. STN 50–456]

Commonwealth Edison Co.; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–72 issued to Commonwealth Edison Company (CECo, the licensee) for operation of the Braidwood Station, Unit 1, located in Will County, Illinois.

The proposed amendment would revise the Braidwood, Unit 1, Technical Specifications (TSs) to remove the condition limiting operation of the facility to 100 days during the present fuel cycle when T_{hot} is greater than 500°F and to restore the reactor coolant dose equivalent Iodine-131 limit to 1 microcurie per gram of coolant from the present value of 0.35. Both the limit on permissible operational time and the reduction in the permissible level of Iodine-131 were incorporated into the TSs by Amendment No. 50 issued to Facility Operating License No. NPF–72

for Braidwood Station, Unit 1, on May 7, 1994.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Braidwood Unit 1 TS Amendment 50 imposed a 100 calendar days with T_{hot} greater than 500°F operating limit on Unit 1. This limitation was a consequence of the amount of main steam line break (MSLB) leakage predicted in Braidwood Station's April 30, 1994, submittal. These predictions were made using the Log-Logistic method of draft NUREG 1477, "Voltage Based Interim Plugging for Steam Generator Tubes—Task Group Report," with the Dose Equivalent Iodine-131 limit of Specification 3.4.8 reduced from 1.0 microcurie per gram (μCi/gm) to 0.35 μCi/gm. However, WCAP 14046; "Braidwood Unit 1 Technical Support for Cycle 5 Steam Generator Interim Plugging Criteria" (WCAP–14046), docketed June 10, 1994, as required by Braidwood Station's April 25, 1994, submittal, has shown using the Electric Power Research Institute (EPRI) Leakrate Correlation that projected End Of Cycle (EOC)–5 MSLB leakage is 3.1 gallons per minute (gpm) which is less than the allowable limit of 9.1 gpm for Braidwood Unit 1. This analysis is discussed in detail in WCAP–14046.

Thus the Unit 1 100-day operating limit and reactor coolant dose equivalent iodine restriction imposed by Amendment 50 on the basis of MSLB leakage is no longer required.

In addition to the 100-day, leakage based limit, the Nuclear Regulatory Commissions (NRC) Safety Evaluation Report (SER), issued May 7, 1994, in support of Braidwood Station's Unit 1 TS Amendment 50 discusses a 4.6 month (138 day) limit derived from a deterministic assessment of SG tube burst probability. To address the issue of tube burst for full cycle operation Braidwood Station's April 25, 1994, submittal provided a probabilistic risk assessment which is restated below.

As part of ComEd's evaluation of the operability of Braidwood Unit 1 Cycle 5, a risk evaluation was completed. The objective of this evaluation was to compare core damage frequency, with containment bypass, with and without the interim plugging criteria applied at Braidwood 1.

ComEd has evaluated the impact of operation using the proposed interim plugging criteria against the results of insights from the draft Braidwood Individual Plant Examination (IPE). Braidwood Station is scheduled to docket its IPE June 30, 1994. Byron Station's IPE was docketed April 20, 1994. The SG sections of these documents are identical.

While the Braidwood IPE is not in its final form, it is believed that the quantification in hand is sufficiently robust to allow a validation assessment of the impact of such operation. The ComEd evaluation parallels that described in the NRC Staff's SER for Palo Verde Unit 2 dated August 19, 1993.

The values calculated in WCAP–14046, for Beginning of Cycle (BOC) 5 and EOC 5 using 0.6 Probability Of Detection (POD) were used to develop a cycle average burst probability. Another BOC 5 burst probability assuming a POD of 0.6 for indications less than 3 volts and 1.0 for indications greater than 3 volts was used to evaluate the impact of POD on core damage frequency.

The total Braidwood core damage frequency is estimated to be 2.74E–5 per reactor year with a total contribution from containment bypass sequences of 2.9E–8 per reactor year in the current IPE. Operation with the alternate repair criteria with a variable POD is expected to increase the MSLB with containment bypass sequence frequency contribution by a factor of only 10%. An upper bound increase of a factor of two is derived when the fixed POD of 0.6 is employed in the calculation. Neither increase is significant from a risk perspective.

The reason for a reduced core damage frequency with a higher POD is that large voltage indications have a high assurance of being identified and removed from service during inspection. Therefore, the calculation of burst probability during MSLB changes because of differences in the assumed distribution of indications left in service at BOC. The EOC burst probability also changes because the growth distribution is added to the new BOC distribution of indications. The result of this change is a significant reduction in burst probability during MSLB.

Therefore, the operation of Braidwood Unit 1 Cycle 5 for a complete 18 month fuel cycle with the application of the one volt IPC does not significantly increase the core damage frequency even with the conservative assumption of a POD of 0.6 and application of the full growth rate distribution observed during Cycle 4.

To further address SG tube burst probability, the following qualitative discussion of limited tube support plate (TSP) displacement is provided. As part of ComEd's technical support for the implementation of IPC at Braidwood Unit 1, numerous quantitative analyses were completed to assure the structural integrity of the SG tubing. These quantitative determinations were provided as part of WCAP–14046. These analyses focused on the quantifiable elements of the IPC to evaluate the impact of crack length on steam generator tube leakage and burst, and were completed consistent with the guidance provided in draft RG 1.121, "Bases for Plugging Degraded SG Tubes."

The bases for these calculations are the analyses completed by the utility industry and reported to the NRC in the EPRI Draft Report TR–100407, "PWR Steam Generator Tube Repair Limits—Technical Support Document for Outside Diameter Stress Corrosion Cracking at Tube Support Plates", Revision 1, August 1993. As explained in this document, the analyses have been completed to assure that the general design criteria and the requirements of RG 1.121 are met during plant operation.

In the preparation of these industry documents and the Braidwood Unit 1 specific WCAP–14046, all analyses for leakage and burst potential were completed using the extremely conservative assumption that all Outside Diameter Stress Corrosion Cracking (ODSCC) indications occur on the tubing freespan. In fact, as indicated in both WCAP–14046 and EPRI Draft Report TR–100407, ODSCC degradation is confined to the region of the tube/TSP intersection. The burst capability of a section of tube containing ODSCC indications and located within the tube/TSP intersection substantially exceeds the burst capability of a freespan tube section without ODSCC indications. Therefore, tubing left in service by Braidwood's Unit 1 IPC amendment will

not burst when confined by the tube support plates.

In fact, it is highly unlikely that a section of tubing within the tube support plate will leak, even with through wall cracks.

To assure structural integrity of the tubing, even during a MSLB accident, ComEd undertook extensive analyses, presented as part of WCAP–14046, to show analytically that the TSP's do not move far enough during a MSLB to allow degraded tubes to uncover, and subsequently, result in increased leakage.

A Generic Model D–4 SG Limited Support Plate Motion Analysis is also being conducted and should be submitted to the NRC by the end of August, 1994.

This analysis is being performed using the following assumptions:

1. The TSP crevices are clean,

2. The TSPs are free to move, depending on applied loads, along the length of the SG tube, and

3. Movement of the TSPs along the length of the tube is not restricted by bending or distortion of the SG tube hole.

Each of these base assumptions is extremely conservative in its own right:

1. For assumption 1, visual inspections of the secondary side of the tube bundles of Braidwood Unit 1 SGs show some quality of deposits in the tube to TSP crevice, and along the length of the tube. Since these deposits are considered to be a possible factor in causing ODSCC, it is likely that any tube having ODSCC indications has deposits in the tube/TSP intersection. These deposits would tend to close the tube to TSP crevice, restricting by friction the ability of the TSP to move along the tubes as loads are applied to the TSP during a MSLB.

2. With regards to assumptions 2 and 3, the TSPs tend to flex and in some locations, are constrained by tie-rods and wedges attached to the tube bundle shroud. These constraints tend to cause the TSPs to ripple under the applied loads as indicated in WCAP–14046. This effect tends to distort the shape of the tube holes, which are fitted to a tight tolerance around the tubes. Therefore, any distortion of these tube holes caused by motion of the TSP will tend to cause the TSP to bind against the outside diameter of the tube, further constraining its movement away from the degraded area of the tubing.

The impact of these facts will lessen the ability of the TSP to move, thereby significantly reducing the possibility that a degraded section of tubing would become uncovered during a MSLB.

Thus, this proposed license amendment request does not result in any increase in the probability or consequences of an accident previously evaluated within the Braidwood Updated Final Safety Analysis Report (UFSAR).

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Approval of this proposed change does not introduce any significant changes to the plant design basis. Removal of the Amendment 50 and SER operating limits for Unit 1 does not provide a mechanism which could result in a new or different kind of accident. Neither a single or multiple tube rupture event would be expected in a SG in which the IPC has been applied.

ComEd has implemented a maximum leakage rate limit of 150 gallons per day (gpd) through any one SG to help preclude the potential for excessive leakage during all plant conditions. The RG 1.121 criterion for establishing operational leakage rate limits that require plant shutdown are based upon leak-before-break considerations to detect a free span crack before potential tube rupture during faulted plant conditions. The 150 gpd limit will provide for leakage detection and plant shutdown in the event of the occurrence of an unexpected single crack resulting in leakage that is associated with the longest permissible free span crack length. Since tube burst is precluded during normal operation due to the proximity of the TSP to the tube and the potential exists for the crevice to become uncovered during MSLB conditions, the leakage from the maximum permissible crack must preclude tube burst at MSLB conditions. Thus, the 105 gpd limit provides for plant shutdown prior to reaching critical crack lengths for MSLB conditions.

As SG tube integrity will continue to be maintained upon approval of this amendment request through inservice inspection and primary-to-secondary leakage monitoring, the possibility of a new or different kind of accident from any previously evaluated is not created.

3. The proposed change does not involve a significant reduction in a margin of safety.

Braidwood Unit 1 TS Amendment 50 imposed a 100 calendar days with T_{hot} greater than 500°F operating limit on Unit 1. This limitation was a consequence of the amount of MSLB leakage predicted in Braidwood Station's April 30, 1994, submittal. These predictions were made using the Log-Logistic method of draft NUREG 1477, with the Dose Equivalent Iodine-131 limit of Specification 3.4.8 reduced from 1.0 μCi/gm to 0.35 μCi/gm. However, WCAP 14046, docketed June 10, 1994, as required by Braidwood Station's April 25, 1994, submittal, has shown using the EPRI Leakrate Correlation that projected EOC–5 MSLB leakage is 3.1 gpm which is less than the allowable limit of 9.1 gpm for Braidwood Unit 1. This analysis is discussed in detail in WCAP–14046.

Thus the Unit 1 operating limit imposed by Amendment 50 on the basis of MSLB leakage is no longer required.

In addition to the 100 day, leakage based limit, the Nuclear Regulatory Commissions (NRC) Safety Evaluation Report (SER), issued May 7, 1994, in support of Braidwood Station's Unit 1 TS Amendment 50 discusses a 4.6 month (138 day) limit derived from a deterministic assessment of SG tube burst probability. To address the issue of tube burst for full cycle operation Braidwood Station's April 25, 1994, submittal provided a probabilistic risk assessment which is restated below.

As part of ComEd's evaluation of the operability of Braidwood Unit 1 Cycle 5, a risk evaluation was completed. The objective of this evaluation was to compare core damage frequency, with containment bypass, with and without the interim plugging criteria applied at Braidwood 1.

ComEd has evaluated the impact of operation using the proposed interim plugging criteria against the results of insights from the draft Braidwood IPE. Braidwood Station is scheduled to docket its IPE June 30, 1994. Byron Station's IPE was docketed April 20, 1994. The SG sections of these documents are identical. While the Braidwood IPE is not in its final form, it is believed that the quantification in hand is sufficiently robust to allow a validation assessment of the impact of such operation. The ComEd evaluation parallels that described in the NRC Staff's SER for Palo Verde Unit 2 dated August 19, 1993.

The values calculated in WCAP–14046, for BOC 5 and EOC 5 using 0.6 POD were used to develop a cycle average burst probability. Another BOC 5 burst probability assuming a POD of 0.6 for indications less than 3 volts and 1.0 for indications greater than 3 volts was used to evaluate the impact of POD on core damage frequency.

The total Braidwood core damage frequency is estimated to be 2.74E–5 per reactor year with a total contribution from containment bypass sequences of 2.9E–8 per reactor year in the current IPE. Operation with the alternate repair criteria with a variable POD is expected

to increase the MSLB with containment bypass sequence frequency contribution by a factor of only 10%. An upper bound increase of a factor of two is derived when the fixed POD of 0.6 is employed in the calculation. Neither increase is significant from a risk perspective.

The reason for a reduced core damage frequency with a higher POD is that large voltage indications have a high assurance of being identified and removed from service during inspection. Therefore, the calculation of burst probability during MSLB changes because of differences in the assumed distribution of indications left in service at BOC. The EOC burst probability also changes because the growth distribution is added to the new BOC distribution of indications. The result of this change is a significant reduction in burst probability during MSLB.

Therefore, the operation of Braidwood Unit 1 Cycle 5 for a complete 18 month fuel cycle with the application of the one volt IPC does not significantly increase the core damage frequency even with the conservative assumption of a POD of 0.6 and application of the full growth rate distribution observed during Cycle 4.

To further address SG tube burst probability, the following qualitative discussion of limited TSP displacement is provided.

As part of ComEd's technical support for the implementation of IPC at Braidwood Unit 1, numerous quantitative analyses were completed to assure the structural integrity of the SG tubing. These quantitative determinations were provided as part of WCAP–14046. These analyses focused on the quantifiable elements of the IPC to evaluate the impact of crack length on steam generator tube leakage and burst, and were completed consistent with the guidance provided in draft RG 1.121.

The bases for these calculations are the analyses completed by the utility industry and reported to the NRC in the EPRI draft report TR–100407. As explained in this document, the analyses have been completed to assure that the general design criteria and the requirements of RG 1.121 are met during plant operation.

In the preparation of these industry documents and the Braidwood Unit 1 specific WCAP–14046, all analyses for leakage and burst potential were completed using the extremely conservative assumption that all ODSCC indications occur on the tubing freespan. In fact, as indicated in both WCAP–14046 and EPRI Draft Report TR–100407, ODSCC degradation is confined to the region of the tube/TSP intersection. The burst capability of a section of tube containing ODSCC indications and located within the tube/TSP intersection substantially exceeds the burst capability of a freespan tube section without ODSCC indications. Therefore, tubing left in service by Braidwood's Unit 1 IPC amendment will not burst when confined by the tube support plates.

In fact, it is highly unlikely that a section of tubing within the tube support plate will leak, even with through wall cracks.

To assure structural integrity of the tubing, even during a MSLB accident, ComEd undertook extensive analyses, presented as part of WCAP–14046, to show analytically that the TSPs do not move far enough during a MSLB to allow degraded tubes to uncover, and subsequently, result in increase leakage.

A Generic Model D–4 SG Limited Support Plate Motion Analysis is also being conducted and should be submitted to the NRC by the end of August, 1994.

This analysis is being performed using the following assumptions:

1. The TSP crevices are clean,

2. The TSPs are free to move, depending on applied loads, along the length of the SG tube, and

3. Movement of the TSPs along the length of the tube is not restricted by bending or distortion of the SG tube hole.

Each of these base assumptions is extremely conservative in its own right:

1. For assumption 1, visual inspections of the secondary side of the tube bundles of Braidwood Unit 1 SGs show some quantity of deposits in the tube to TSP crevice, and along the length of the tube. Since these deposits are considered to be a possible factor in causing ODSCC, it is likely that any tube having ODSCC indications has deposits in the tube/TSP intersection. These deposits would tend to close the tube to TSP crevice, restricting by friction the ability of the TSP to move along the tubes as loads are applied to the TSP during a MSLB.

2. With regards to assumptions 2 and 3, the TSPs tend to flex and in some locations, are constrained by tie-rods and wedges attached to the tube bundle shroud. These constraints tend to cause the TSPs to ripple under the applied loads as indicated in WCAP–14046. This effect tends to distort the shape of the tube holes, which are fitted to a tight tolerance around the tubes. Therefore, any distortion of these tube holes caused by motion of the TSP will tend to cause the TSP to bind against the outside diameter of the tube, further constraining its movement away from the degraded area of the tubing.

The impact of these facts will lessen the ability of the TSP to move, thereby significantly reducing the possibility that a degraded section of tubing would become uncovered during a MSLB.

This evidence, in conjunction with the probability of occurrence of a MSLB, and the probabilistic assessment of the consequences of a MSLB, results in the substantially increased assurance that the consequences of a MSLB will be significantly less severe than those assessed in WCAP–14046 and the generic Model D–4 SG Limited Support Plate Motion Analyses.

Thus, this proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the pertinent portions of the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. This staff finding is partially based on the licensee's usage of a constant value for the Probability of Detection (POD) of 0.6 as recommended in draft NUREG–1447. This is consistent with the staff's position in the Safety Evaluation (SE) it issued in support of Amendment No. 50 to the Braidwood, Unit 1, operating license. While the licensee also discussed in its analysis the usage of a higher value for the POD, the staff did not rely on this. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to

take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 10, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Robert A. Capra: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated June 20, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Dated at Rockville, Maryland, this 1st day of July 1994.

For the Nuclear Regulatory Commission.

Ramin R. Assa,

Acting Project Manager, Project Directorate III–2, Division of Reactor Projects—IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 94–16695 Filed 7–8–94; 8:45 am]

BILLING CODE 7590–01–M

PRESIDENT'S COUNCIL ON SUSTAINABLE DEVELOPMENT

Office of Policy Development

The Fifth Meeting of the President's Council on Sustainable Development (PCSD) in Chicago, IL

SUMMARY: The Council will witness, both first-hand and through interaction with citizens, elected officials and community and business leaders, how the Great Lakes region is working to address sustainability issues.

DATE/TIME: Thursday, July 21—9:00 a.m.–5:00 p.m.; Friday, July 22, 1994—9:00 a.m.–12:00 p.m.

PLACE: Hyatt Regency Hotel, 151 East Wacker Drive, Regency Rooms C & D, Chicago, Illinois.

STATUS: Open to the Public.

AGENDA:

Thursday, July 21
- Opening Statements
- Energy Task Force Discussion
- Sustainable Agriculture Scoping Task Force Report
- Discussion by Council Members to Determine the Future Work of the Council and Time Lines
- Public Comment
- Great Lakes Overview

PCSD Policy Roundtables/Site Visits

The public is invited to attend but must provide own transportation.

Directions will be available the day of the meeting.

Site 1: Grand Calumet, Marquette Pavilion, Gary, Indiana

or

Site 2: Southside Chicago

Friday, July 22
- Task Force Reports
- Non-Point Source Pollution Discussion
- Council of Great Lakes Governors and Environmental Defense Fund
- Great Printers Project
- The Role of Science in Sustainable Development; National Science Technology Council
- Public Comment

Contact: Sarah McCourt, Director of Communications, President's Council on Sustainable Development, (202) 208–7411.

Molly Harriss Olson,

Executive Director, President's Council on Sustainable Development.

[FR Doc. 94–16623 Filed 7–8–94; 8:45 am]

BILLING CODE 1100–14–M

RESOLUTION TRUST CORPORATION

Policy Statement on Procedures for Non-Defaulting Commercial Borrowers To Appeal Adverse Credit Decisions of the RTC Acting as Conservator

AGENCY: Resolution Trust Corporation.

ACTION: Policy statement.

SUMMARY: In accordance with § 21A(b)(4)(C) of the Federal Home Loan Bank Act, 12 U.S.C. 1441a(b)(4)(C), the Resolution Trust Corporation (RTC) announces the establishment of a procedure for non-defaulting commercial borrowers to appeal decisions by the RTC, when acting as conservator of an insured depository institution, which have the effect of terminating or otherwise adversely affecting credit agreements.

EFFECTIVE DATE: This policy is effective on July 11, 1994.

FOR FURTHER INFORMATION CONTACT: Henry W. Abbot, Senior Asset Specialist, Office of Asset Management, (202) 416–7132; Robert Gunter, Chief of Conservatorship/Receivership Operations Unit, Conservatorship Operations, (202) 416–7257; William I. Jones, Counsel, Division of Legal Services, (202) 736–3106; Resolution Trust Corporation, 801 17th Street NW., Washington, DC 20434.

SUPPLEMENTARY INFORMATION:

Introduction and Authority

Section 3(b) of the Resolution Trust Corporation Completion Act (RTC Completion Act), Public Law No. 93–204, enacted on December 17, 1993, added a new subparagraph (C) to § 21A(b)(4) of the Federal Home Loan Bank Act, 12 U.S.C. 1441a(b)(4), which requires the RTC to implement and maintain a program, in a manner acceptable to the Thrift Depositor Protection Oversight Board (Oversight Board), to provide an appeals process for business and commercial borrowers to appeal decisions by the RTC, when acting as conservator of an insured depository institution, which would have the effect of terminating or otherwise adversely affecting credit or loan agreements, lines of credit, and similar arrangements with such borrowers who have not defaulted on their obligations to the institution in conservatorship.

The RTC submitted this Policy on Procedures for Non-defaulting Commercial Borrowers to Appeal Adverse Credit Decisions of the RTC Acting as Conservator to the Oversight Board for consideration at its June 16, 1994 meeting. The Oversight Board adopted a resolution approving the policy at that meeting. In that resolution the Oversight Board suggested that the RTC make the public aware of the new policy through publication in the **Federal Register.**

The RTC is rapidly resolving the remaining institutions it operates in conservatorships. Inasmuch as the policy affects only the operation of those institutions in conservatorship, there is a critical need to make the public aware of this new policy quickly.

In light of the request of the Oversight Board and the need to publicize the policy quickly, the RTC has concluded that publication in the **Federal Register** would be the best means of disseminating the new policy to members of the public with an interest in the subject matter.

Policy on Procedures for Non-Defaulting Commercial Borrowers to Appeal Adverse Credit Decisions of the RTC Acting as Conservator

The RTC is issuing procedures which provide a process for non-defaulting business and commercial borrowers to appeal the RTC's decisions (when acting as a conservator) which terminate or otherwise adversely affect credit or loan agreements, lines of credit or other similar arrangements.

I. Scope

The appeals process outlined herein pertains to adverse credit decisions affecting a non-defaulting commercial borrower made by the RTC as conservator for an insured depository institution for which the RTC was acting as conservator on or after December 17, 1993. These procedures shall only apply to adverse credit decisions affecting a non-defaulting commercial borrower made on or after December 17, 1993 by the RTC as conservator for an insured depository institution and only during the period for which the RTC acts as conservator for such insured depository institution. The appeals process is not intended to deny borrowers any rights otherwise provided under law.

The appeals process described in this policy does not limit or affect the exercise by the RTC, as conservator or receiver, of its authority to repudiate contracts pursuant to 12 U.S.C. § 1821(e).

II. Background

Generally, a predecessor institution retains the obligation to fund unfunded or partially funded loan commitments, and such obligations are not transferred to or assumed by the new savings association which the RTC operates in conservatorship. However, it has also been the RTC's policy for the conservator to consider funding partially funded loan commitments, as generally outlined in the Asset Management and Disposition Manual, Circular 10100.1, Change-One, Section F(3), and as further detailed with respect to the handling of construction loans in Circular 10100.32, Subject: "Funding of ADC Loan Commitments," which can be obtained upon request to one of the above listed contacts or from one of the public reading rooms of the RTC. These practices will continue. Pursuant to Section 21A(b)(4)(C) of the Federal Home Loan Bank Act, as added by Section 3(b) of the RTC Completion Act, effective December 17, 1993, whenever the RTC acting as conservator decides to deny an extension of credit to a non-defaulting commercial borrower, the borrower shall have an opportunity to appeal the decision to the next level of authority above the initial decision maker, as described below.

III. Definitions

The following definitions shall apply for purposes of this policy:

A. *Adverse Credit Decision*—a decision, made by the RTC as conservator of an insured depository institution, to deny funds or a request for a new extension of credit for commercial or business purposes to a non-defaulting commercial borrower.

B. *Credit Agreement*—a construction loan agreement, commercial mortgage agreement, commercial business loan agreement, line of credit agreement or other commercial credit agreement for commercial or business purposes.

C. *Non-defaulting Commercial Borrower*—a person or entity,

(1) who entered into a credit agreement with either:

(a) the predecessor institution prior to the appointment of the RTC as receiver of the predecessor institution, or

(b) the depository institution in conservatorship prior to the appointment of the RTC as conservator, where there is no predecessor institution, and

(2) who is not in default of any obligations owed to the predecessor institution or the institution in conservatorship.

D. *Predecessor Institution*—the insured depository institution in receivership from which the assets, deposits and certain other liabilities were transferred to the depository institution in conservatorship which made the adverse credit decision.

IV. General Policies

A. Right of Appeal

A non-defaulting commercial borrower shall have the right to appeal an adverse credit decision made by a Managing Agent or other person or entity authorized to act on behalf of the RTC as conservator of an insured depository institution.

B. Notice to Non-Defaulting Commercial Borrower

A Managing Agent or other person or entity authorized to act on behalf of the RTC as conservator shall give notice to a non-defaulting commercial borrower of (1) any adverse credit decision within the scope of this directive as outlined in the Paragraph I above, and (2) the right to appeal such decision. The notice should be sent via certified/registered mail-return receipt requested to document receipt by the borrower. (Two sample forms of such notice are included as Appendices A and B.) This notice is in addition to any notice by the conservator terminating a line of credit, or other credit agreement, or notice by the receiver of the predecessor institution repudiating a loan commitment or other credit agreement.

C. Procedure for the Appeal

(1) The Senior Credit Review Committee of the field office with jurisdiction over the conservatorship shall normally decide the appeal of the non-defaulting commercial borrower. However, if the adverse credit decision under appeal was made by a field office's Senior Review Committee, or by a person or entity at a level of authority above the field office Senior Credit Review Committee, then the person or entity at the next level of authority above the initial decision maker, as determined by the RTC's delegations of authority, shall decide the appeal of the non-defaulting borrower. (The person or entity deciding the appeal is hereafter referred to as the "hearer of the appeal.")

(2) A non-defaulting commercial borrower must file an appeal, in writing, with the hearer of the appeal within 60 calendar days of receipt of the notice described in subparagraph IV.B above.

(3) A non-defaulting commercial borrower must state the grounds for the appeal. The non-defaulting commercial borrower may submit only documentary evidence in support of the appeal.

(4) The hearer of the appeal shall make a good faith effort to decide the appeal within 30 calendar days of receipt of the appeal and all documentation necessary to act on the appeal.

(5) (a) The record of an appeal shall consist of the written appeal and documentary evidence submitted by the non-defaulting commercial borrower and any other evidence and information within the possession or control of the RTC that relates to the appeal.

(b) The non-defaulting commercial borrower shall have the right to review any documentation submitted by such borrower, along with the appeal or prior to the filing of the appeal, for purposes of determining the accuracy of the RTC's records. The hearer of the appeal may extend the period for deciding the appeal of such reasonable time as may be necessary to permit any such review of the documentation submitted by the borrower.

(6) The hearer of the appeal may reverse an adverse credit decision if the hearer determines that (a) the extension of credit is likely to reduce a conservatorship's overall losses, or (b) the extension of credit would not be likely to increase the conservatorship's overall losses.

(7) As a condition to reversing the adverse credit decision, the hearer of the appeal may require the non-defaulting commercial borrower to release any related claim against the receiver for a predecessor institution, in whole or in part.

(8) The hearer of the appeal shall provide written notice of the decision, including an explanation of any negative ruling, to the relevant Managing Agent, Field Office Claims Department, and to the non-defaulting commercial borrower. The RTC will make a good faith effort to provide such notice within 30 calendar days of receiving the Appeal Letter and all other information necessary to act on the appeal.

D. Appeal Log

A log should be maintained in each conservatorship to track each appeal under this procedure. Entries in the log, to be initiated upon receipt of the borrower's appeal, shall include the following items: borrower's name, date of credit application, date of adverse credit decision, decision by whom, date borrower's appeal received, hearer the of appeal, date of hearer's decision, date borrower notified of decision, and remarks.

E. Appointment of Receiver

Upon the appointment of a receiver for the depository institution operated in conservatorship by the RTC, with respect to such institution, the right of all non-defaulting commercial borrowers to appeal (and any pending appeal) under this process terminates. Thereafter, any rights of the non-defaulting commercial borrowers, with respect to such depository institution, are governed by 12 U.S.C. § 1821(d).

F. No Further Appeal

A non-defaulting commercial borrower shall have no right to appeal the decision of the hearer of the appeal within the RTC or to any court.

G. No Effect on RTC's Rights as Receiver or Conservator

Nothing contained in this policy shall be construed to waive or alter the rights of the RTC as conservator or receiver with respect to any commercial borrower or any insured depository institution. Such rights include, by way of illustration only, the rights to repudiate contracts, to leave obligations and liabilities with the receiver of the predecessor institution and to require non-defaulting commercial borrowers to adhere to the receivership claims procedures of the RTC.

The filing of an appeal with the hearer of the appeal in accordance with the appeal procedures outlined in subparagraph IV.C above does not preserve, and does not substitute for, the requirement that a claim be filed and the claims process be pursued with respect to any claim against: (1) the receiver for any predecessor institution, or (2) the receiver for the depository institution operated in conservatorship if a receiver is appointed for such institution.

V. Responsibility

RTC Field Office Vice Presidents are responsible for ensuring that all conservatorships, SAMDA contractors, commercial loan servicers, other commercial loan managers, and appropriate RTC staff are aware of and comply with this policy.

By Order of John E. Ryan, Deputy and Acting Chief Executive Officer.

Dated at Washington, D.C., this 5th day of July, 1994.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Secretary.

Appendix A—Notice of Adverse Decision and Right To Appeal

[For Use Where Conservator Does Not Assume Obligation To Fund and/or Where the Receiver of Predecessor Institution Repudiates]

[date]

[Name of Borrower]
[Address of Borrower]
Dear _____:

Effective [date], the Office of Thrift Supervision appointed the Resolution Trust Corporation as Receiver for [Predecessor Institution]. Concurrently with such appointment, a new federal mutual association was formed, [name of de novo institution], and the Resolution Trust Corporation was appointed Conservator of the [name of de novo institution] (the "Conservator"). Most of the assets of [Predecessor Institution] were acquired by the Conservator in consideration of the assumption by the Conservator of some, but not all, of the liabilities of the [Predecessor Institution]. The Conservator DID NOT, however, assume the obligation to continue to fund your loan{, and as you were informed in another letter the Receiver for [Predecessor Institution] has repudiated the loan agreement and terminated any obligation to continue to fund your loan}.[1] You may have a claim against the Receiver of [Predecessor Institution] for the unfunded loan amount. You must follow any instructions from the receiver regarding the filing of such claim.

Notwithstanding that the Conservator has no obligation to continue to fund your loan, the Conservator has the discretion to provide funds to you through a new extension of credit, when the Conservator determines, in its sole discretion, that it is in the best interest of the Conservator to provide those funds. However, the Conservator has decided not to provide funds to you.

Because you are a non-defaulting commercial borrower of [name of the predecessor institution], section 21A(b)(4)(C) of the Federal Home Loan Bank Act provides you with an opportunity to appeal this adverse credit decision of the Conservator. You must submit your appeal in writing to the hearer of the appeal, set forth below, within 60 days of receipt of this notice, stating the grounds for your appeal. In support of your appeal, you may submit documentary evidence, which must be submitted at the same time as your letter of appeal. The hearer of the appeal will conduct no evidentiary hearing. A copy of the RTC's policy on borrower appeals is attached for your information.

You should know that the hearer of the appeal may only reverse the adverse credit decision if the hearer determines that to do so would reduce, or would not increase, the overall losses to the RTC as Conservator.

Your appeal should be submitted to:

[Name of Hearer of the Appeal]
[Address of Hearer]
Attention: _____

The filing of an appeal with the hearer of the appeal does not preserve your claim with the receiver of [Predecessor Institution] or affect in any way the right of the Receiver to repudiate your credit agreement.

Sincerely,

[Managing Agent or other official]

Appendix B—Notice of Adverse Decision and Right To Appeal

[For Use]

(1) Where Credit Agreement Transferred to Conservator and Conservator Terminated Agreement in Accordance With Its Terms, or

(2) Where Non-Defaulting Commercial Borrower Has Made an Application for a New Loan or a New Line of Credit.]

[date]

[Name of Borrower]
[Address of Borrower]

Dear _____:

The Resolution Trust Corporation acting as Conservator of [name of de novo] (the "Conservator") has [reviewed your application for credit and has] decided not to provide funds to you. Section 21A(b)(4)(C) of the Federal Home Loan Bank Act provides you with an opportunity to appeal this adverse credit decision of the Conservator. You must submit your appeal in writing to the hearer of the appeal, set forth below, within 60 days of receipt of this notice, stating the grounds for your appeal. In support of your appeal, you may submit documentary evidence, which must be submitted at the same time as your letter of appeal. The hearer of the appeal will conduct no evidentiary hearing. A copy of the RTC's policy on borrower appeals is attached for your information.

You should know that the hearer of the appeal may only reverse the adverse credit decision if the hearer determines that to do so would reduce, or would not increase, the overall losses to the RTC as Conservator.

Your appeal should be submitted to:

[Name of Hearer of the Appeal]
[Address of Hearer]
Attention: _____

Sincerely yours,

[Managing Agent or other official]

[FR Doc. 94–16658 Filed 7–8–94; 8:45 am]
BILLING CODE 6714–01–M

[1] To be used when a repudiation occurs.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-34298; File No. SR-Amex-94-13]

Self-Regulatory Organizations; The American Stock Exchange, Inc.; Filng and Order Granting Approval on an Accelerated Basis of a Proposed Rule Change Relating to Trade-Day Comparison

July 1, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that the American Stock Exchange, Inc. ("Amex") filed with the Securities and Exchange Commission ("Commission") on May 6, 1994, the proposed rule change (File No. SR-Amex-94-13) as described in Items I and II below. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will allow Amex to implement a program, in conjunction with the New York Stock Exchange, Inc. ("NYSE") and the National Securities Clearing Corportion ("NSCC"), to compare all Amex equity trades on trade date. Amex will phase-in the program commencing June 30, 1994, with full implementation scheduled for June 30, 1995.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filings with the Commission, Amex included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Since 1988, Amex has sought to improve its clearing operations and to reduce exposure to loss through market volatility by reducing the comparison cycle in stocks and in options. The Amex has reduced the comparison times first from five business days to three business days and then to one business day after the trade date. For the past five years, the Amex, in conjunction with the NYSE, has been working with the member firm community and the NSCC to establish operational parameters, systems, and rules for shortening trade comparison time frames. In 1989, the Amex adopted Rule 719, which requires next-day comparison ("T+1") of exchange transactions, and developed its Intra-Day Comparison ("IDC") System, which is an electronic system designed to match trade sides and to resolve uncompared trades known as "don't knows" or "DKs."[2] The IDC System is used by Amex for both equities and options.

The Amex now proposes to implement, again in conjunction with NYSE and NSCC, trade-date comparison of Amex equity transactions. Trade-date comparison will be implemented in phases with a final target date of June 30, 1995. The first phase of this program is scheduled to be implemented by the end of June 1994. When the first phase has been implemented, the Amex will require all member firms to input equity trade data into the IDC System every two hours on the date of the trade rather than once daily. Input times will be 12:00 noon, 2:00 p.m., 4:00 p.m., and 6:00 p.m. Amex member firms already are submitting option trade data into the IDC System on trade-date on an hourly basis. The IDC System will continue to be the main processor of the comparison data. The Amex will transmit the compared trades to a registered clearing agency in order to complete the process.

The Amex is not proposing any written changes to its rules at this time. Amex Rule 719(a), which currently requires each transaction effected on the Amex to be compared or closed out no later than close-of-business on T+1, will remain in effect for the present time. The Amex believes that its Rule 719(c), which requires members to submit trade data as may be required by the Amex, provides it with sufficient authority to require clearing members to submit trade data in listed stocks and options for comparison by such times as Amex may prescribe. However, as the final implementation date of June 30, 1995, approaches, Amex will file any other rule changes with the Commission pursuant to Section 19(b) of the Act[3] and Rule 19b-4 thereunder[4] as are necessary or appropraite to implement the trade-date comparison program. As indicated above, any such Amex rule changes will be developed in conjunction with the NYSE and NSCC, and Amex will work with the NYSE and NSCC to achieve uniformity and to monitor the implementation of each phase of this program.

The Amex states that it believes the proposed rule change is consistent with Section 6(b) of the Act[5] in general and with Section 6(b)(5)[6] in particular because it will help prevent fraudulent and manipulative acts and practices, will promote just and equitable principles of trade, and will foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

Amex believes that the proposed rule changes will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received From Members, Participants or Others

Amex has neither solicited nor received any comments from its members, participants, or others.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

For the reasons discussed below, the Commission believes the proposal is consistent with Section 6(b) of the Act. Section 6(b)(5) of the Act[7] states that exchange rules should be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to securities transactions and to protect investors and the public interest.

The risks posed by uncompared trades and by the long span of time between trade execution and trade comparison (as long as five business days for equity transactions until 1990) came under intense scrutiny after the Market Break of October 1987. The leading studies of the Market Break of 1987 identified uncompared trades as a major stress point in post-trade processing which, together with the unprecedented trading volume and the

[1] 15 U S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 27851 (March 27, 1990), 55 FR 12759 [File No. SR-Amex-89-05] (order approving proposed rule change).

[3] *Supra*, note 1.

[4] 17 CFR 240.19b-4 (1993).

[5] 15 U.S.C. 78f (1989).

[6] 15 U.S.C. 78f(b)(5) (1988).

[7] *Id.*

unprecedented price volatility during the Market Break, posed an unacceptable threat to the marketplace.[8] The Commission, in its recommendations to Congress in February of 1988, proposed that markets accelerate their efforts to compare all trades on trade date.[9]

Since 1988, the Amex, among others, has sought to improve clearing operations and to reduce exposure to losses associated with market volatility occurring during the period between execution and settlement. The Amex reduced its comparison cycle in stocks first from T+5 to T+3 and then to T+1 in 1990.[10]

As stated above, the Commission believes that the proposed rule change which shortens the Amex comparison cycle from T+1 to trade date will make Amex's comparison process safer in terms of the risks resulting from market price volatility and more efficient in terms of the time and expense involved in post-trade processing. The Commission believes that the proposal will offer additional protection to investors, brokers, and other persons that safeguard investors' funds and facilitate investors' transactions. In the Commission's view, this proposal will provide fundamental and important improvements to the marketplace.

The Amex has requested that the Commission find good cause for approving the proposed rule changes prior to the thirtieth day after the date of publication of notice of the filings in the Federal Register. Trade-date comparison is to be phased-in by both Amex and NYSE on a parallel schedule, and the NYSE has begun some aspects of its phase-in program.[11] Accelerated approval of this proposal will permit Amex, as well as the NYSE and NSCC, to provide their clearing members with a more coordinated implementation of trade-date comparison. Furthermore, because neither the Commission nor NYSE received any written comments on the NYSE's proposal, which was very similar to the Amex's proposal, and because the Amex did not receive any comments from its members in response to its Information Circular,[12] the Commission does not expect to receive any comments on this proposal. Therefore, the Commission believes there is good cause for approving the proposed rule changes prior to the thirtieth day after the date of publication of notice of the filing.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies also will be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–94–13 and should be submitted by August 1, 1994.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[13] that the above-mentioned proposed rule changes (File No. SR–Amex–94–13) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[14]

Jonathan G. Katz,

Secretary.

[FR Doc. 94–16629 Filed 7–8–94; 8:45 am]

BILLING CODE 8010–01–M

[8] For an analysis of the 1987 Market Break and the changes in clearance and settlement effected in response, refer to Division of Market Regulation, *Market Analysis of October 13 and 16, 1989*, 118–129 (December 1990).

[9] Testimony on the Securities and Exchange Commission's Recommendations Regarding the October 1987 Market Break delivered by David S. Ruder, Chairman, Commission, before the Senate Committee on Banking, Housing, and Urban Affairs at 23–24 (February 3, 1988).

[10] *Supra* note 2.

[11] For a discussion of the NYSE's implementation of trade-date comparison, refer to Securities Exchange Act Release No. 34153 (June 3, 1994), 59 FR 30071 [File No. SR–NYSE–94–08] (order approving proposed rule change).

[12] "Implementation of Equity Trade Date Comparison," Amex Information Circular #94–147 (April 6, 1994).

[13] 15 U.S.C. 78s(b)(2) (1988).

[14] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 34–34297; File No. SR–NASD–94–39]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Security Application Fee for The PORTAL Market

July 1, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 22, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend The PORTAL Market Rules, Schedule I to the NASD By-Laws ("PORTAL Rules"), to add a security application fee with respect to securities submitted for designation in The PORTAL Market. Below is the text of the proposed rule change. Proposed new language is in italics.

The PORTAL Market

Schedule I to the NASD By-Laws

* * * * *

PART VI

PORTAL MARKET TRANSACTIONS

* * * * *

Sec. 4 PORTAL Fees

PORTAL participants shall pay to the Association a fee for PORTAL transactions or such other fees as determined by the Association, *which are set forth in Part IX of the PORTAL Rules.* The Board of Governors shall have the power to impose, alter, or amend such fees from time to time pursuant to Article VI, Section 1 of the By-Laws.

* * * * *

PART IX

PORTAL FEES

Sec. 1 Entry Fee

When a PORTAL participant submits an application for designation of any class of securities as a PORTAL security it shall pay to the Corporation a filing

fee of $2,000 per class of security covered by the security application submitted plus $200 per assigned security symbol that is in addition to the first symbol assigned.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The PORTAL Market is the market operated by The Nasdaq Stock Market, Inc., for the quotation of securities that are restricted securities, as defined in Rule 144(a)(3) under the Securities Act of 1933 ("Securities Act"), or are securities that are treated as if restricted.[1] In order to qualify for inclusion in The PORTAL Market, a security that is restricted or treated as if restricted must be eligible to be sold pursuant to Rule 144A under the Securities Act, [2] be in negotiable form, and be assigned a CUSIP or other security identification number that is different from any identification number assigned to any unrestricted securities of the same class.

The PORTAL Market has processed over one thousand applications for designation as a PORTAL security. Designation of a security as a PORTAL security permits the security to be assigned a CUSIP number by Standard & Poor's Corporation and be cleared and settled through the Depository Trust Company. Section 2 of the PORTAL Rules permits any PORTAL participant to submit an application for security designation, rather than the issuer of the security. "PORTAL participants" include PORTAL dealers, PORTAL brokers, and PORTAL investors. The first two categories of PORTAL participants are required to be brokers and dealers registered with the Commission under Section 15 of the Exchange Act and members of the NASD. The third category of PORTAL participants are institutional investors that are not members of the NASD that meet the definition of "qualified institutional buyer" under Rule 144A.

The NASD has operated The PORTAL Market since it initiated operations in June 1990 without the imposition of any fees on users. The NASD is proposing to adopt a filing fee of $2,000 per security application submitted plus $200 for each security identification symbol assigned after the first symbol. Many private offerings of securities are of securities that are sold in multiple tranches, each of which is treated as a separate security, even though part of a single private offering, and assigned a separate identification symbol by The PORTAL Market.

The NASD believes that the imposition of a PORTAL filing fee will assist The Nasdaq Stock Market, Inc. to cover continuing costs associated with the operation of the PORTAL Market, including significant costs associated with the processing of security applications. The processing of security applications for The PORTAL Market requires an immediate review of all applications, as private placements are usually on a very short time schedule. Such review must ensure that the security meets all of the requirements in Part II of the PORTAL Rules, as set forth above.

Applications are generally submitted the day prior to commencing the private placement or the day prior to conducting a "road show," if such a road show is used, and approval is necessary within one or two days at the most.[3] In addition, because of a continuing lack of knowledge regarding the procedures for obtaining approval for PORTAL designation, Depository Trust Company book-entry approval, and the issuance of a CUSIP number from Standard & Poor's, The Nasdaq Stock Market, Inc. staff must work closely with the applicant to complete the process. Further, private offerings that rely on Rule 144A for redistribution of the securities to qualified institutional buyers are many times unique in their structure, as well as frequently involving issues related to SEC Regulation S and compliance with the CUSIP identification number requirement when an offshore offering occurs simultaneously with a U.S. private placement. Finally, there are many issues with multiple tranches, each of which must be assigned a separate security symbol. Given the efforts required by The Nasdaq Stock Market, Inc. staff, the NASD belies that the fees as proposed are appropriate.

(b) Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Exchange Act,[4] which requires that the rules of the Association provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Association operates or controls in that the proposed rule change equitably applies a filing fee to all applications submitted by PORTAL dealers, PORTAL brokers, and PORTAL qualified investors for the designation of securities in The PORTAL Market.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

[1] Part II, PORTAL Rules, provides that to qualify for initial designation and continued designation in the PORTAL Market, a security shall be either a restricted security, as defined in Rule 144(a)(3) under the Securities Act, or a security that upon issuance and continually thereafter only can be sold pursuant to Regulation S under the Securities Act, Rule 114A, or Rule 144 under the Securities Act, or in a transaction exempt from the registration requirements of the Securities Act pursuant to Section 4 of the Securities Act and not involving any public offering.

[2] This provision requires that the security meet the requirements of Rule 144A(d)(3) and (4) under the Securities Act, which are, respectively, the "fungibility" and "information delivery requirement" conditions of Rule 114A.

[3] In the case of private offerings, such a "road show" is quite abbreviated as the number of potential investors is generally no more than 75.

[4] 15 U.S.C. 78*o*–3 (1988).

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by August 1, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Jonathan G. Katz,

Secretary.

[FR Doc. 94–16630 Filed 7–8–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26078]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

July 1, 1994.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by July 25, 1994 to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Connecticut Light and Power Company (70–7320)

Connecticut Light and Power Company ("CL&P"), Selden Street, Berlin, Connecticut 06037, an electric public-utility subsidiary company of Northwest Utilities, a registered holding company, has filed a post-effective amendment under Sections 6(a) and 7 of the Act and rule 54 thereunder to its declaration previously filed under Sections 6(a) and 5 of the Act and rule 50(a)(5) thereunder.

By order dated December 16, 1986 (HCAR No. 24263), the Commission authorized CL&P, among other things, to issue a promissory note up to an aggregate principal amount of $25 million to the Industrial Development Authority of the State of New Hampshire ("IDA"). The note evidenced IDA's loan to CL&P of the proceeds from pollution control revenue bonds ("Bonds") issued by IDA to finance the cost of acquiring, constructing and installing certain pollution control facilities and/or sewage or solid waste disposal facilities at the Seabrook Nuclear Power Station, Unit No. 1 in Seabrook, New Hampshire.

In an effort to improve the credit ratings of the Bonds, CL&P obtained a letter of credit ("LOC") from the Long-Term Credit Bank of Japan Limited ("Credit Bank"). Subsequent to the issuance of the Bonds, Credit Bank's rating in the financial markets deteriorated. CL&P has been informed that many institutional investors that otherwise would be interested in purchasing the bonds will not purchase securities secured by letters of credit issued by the Credit Bank, and investors that are still willing to purchase the Bonds are demanding an interest rate premium that is causing CL&P's effective interest cost to be higher than it would have otherwise been using a bank with a higher rating.

CL&P now seeks authority to: (1) replace Credit Bank LOC and the Bank Reimbursement Agreement with a new Letter of Credit and Reimbursement Agreement ("Substitute Agreement"); (2) replace the LOC with a new letter of Credit ("New LOC"); and subsequently thereto (3) extend, modify, or replace the Substitute Agreement and the New LOC from time to time during the term of the bonds supported thereby. The terms of any such extensions, modifications or replacements, including the New LOC and the Substitute Agreement, shall provide that (a) the total amount available to be drawn under any such extended, modified or replacement letter of credit does not exceed $16.2 million, representing principal in the amount of $15.4 million and interest in the amount of $800,000 calculated at the maximum rate of 15% for 123 days, (b) the annual letter of credit costs applicable to any such extension, modification, or replacement do not exceed 1% per annum of the total amount available to be drawn under the extended, modified or replacement letter of credit, and (c) the reimbursement agreement applicable to any such extension, modification or replacement shall provide (or shall afford CL&P the option to elect) that tender advances tear interest until paid at a rate not to exceed the higher of the prime rate plus 2% or the federal funds rate plus 2%, (d) such extension, modification or replacement is otherwise on terms that are substantially similar in all material respects to those applicable to the New LOC and Substitute Agreement (or previous extensions or modifications thereof or replacements therefore proposed to be entered into in connection with the replacement of Credit Bank, and (e) CL&P shall have obtained all necessary State Commission approvals applicable to such extension, modification or replacement.

Consolidated Natural Gas Company (70–8167)

Consolidated Natural Gas Company ("CNG"), CNG Tower, 625 Liberty Avenue, Pittsburgh, Pennsylvania 15222, a registered holding company, has filed a post-effective amendment under Sections 6 and 7 of the Act and Rule 54 thereunder to its declaration previously filed under Sections 6 and 7 of the Act and Rule 50(a)(5) thereunder.

By order dated April 21, 1993 (HCAR No. 25800) ("April Order"), the Commission authorized CNG to issue and sell on or before June 30, 1995 up to $400 million principal amount of debentures ("Debentures") in one or more series at a price, exclusive of accrued interest, which would be not less than 98% nor more than 101% of the principal amount and at an interest rate which would be a multiple of ⅛,

1/10, or 1/20 of 1%. The Debentures would mature in not more than thirty years and would be issued in accordance with the indenture between CNG and Chemical Bank (successor by merger to Manufacturers Hanover Trust Company), as Trustee, dated May 1, 1971 ("Indenture"). CNG has sold $300 million of Debentures under the April Order, thus $100 million of Debentures remains authorized for issue and sale.

CNG now proposes to change its Indenture by adding section 4.02 so that it may reserve the right, without the consent of the holders of future debenture issues sold under the April Order, to amend sections 6.06 and 6.07 of the Indenture. New section 4.02 provides:

> The Company reserves the right, subject to appropriate corporate action, but without consent, approval or other action by holders of debentures of any series created after May 1, 1994, to make such amendments to the Indenture, as heretofore supplemented and amended, as shall be necessary in order to amend Sections 6.06 and 6.07 thereof so as to modify or eliminate the provisions or requirements of such Sections, or any part thereof and the definition of any term used in either of such Sections or related thereto, as the Company may determine in its sole discretion.

Section 6.06 provides that funded debt (as defined) cannot be incurred and subsidiary preferred stock cannot be issued unless: (1) The consolidated income available for interest and subsidiary preferred stock dividends of CNG and its subsidiaries for any 12 consecutive months within 15 months immediately preceding the date additional funded debt is incurred is not less than 2½ times the sum of the total annual interest charges and the total subsidiary preferred stock dividends, assuming the incurrence of such additional funded debt or issuance of such preferred stock, as the case may be; and (2) after giving effect to the incurring of the additional funded debt and issuance of preferred stock, the sum of the outstanding consolidated debt of CNG and its subsidiaries and the amount of outstanding subsidiary preferred stock shall not be more than 60% of the consolidated net tangible assets of CNG and its subsidiaries. Section 6.07 provides that a subsidiary of CNG cannot incur funded debt or issue preferred stock to a third party unless funded debt and preferred stock of the subsidiary will not exceed 60% of the total capitalization of the subsidiary, and the principal amount of funded debt and amount of preferred stock of all subsidiaries of CNG shall not exceed 15% of consolidated net tangible assets.

CNG also requests authorization to extend the expiration date for the issuance and sale of the remaining $100 million principal amount of Debentures under the April Order from June 30, 1995 to June 30, 1996.

The Columbia Gas System, Inc., et al. (70–8219)

The Columbia Gas System, Inc. ("Columbia"), 20 Montchanin Road, Wilmington, Delaware 19807, a registered holding company; Columbia's public utility subsidiary companies, Columbia Gas of Pennsylvania, Inc., Columbia Gas of Ohio, Inc. ("Ohio"), Columbia Gas of Maryland, Inc., Columbia Gas of Kentucky, Inc., and Commonwealth Gas Services, Inc., each located at 200 Civic Center Drive, Columbus, Ohio 43215; and Columbia's nonutility subsidiary companies, Columbia Gas System Service Corporation, Columbia LNG Corporation, Columbia Atlantic Trading Corporation, TriStar Ventures Corporation, TriStar Capital Corporation, each located at 20 Montchanin Road, Wilmington, Delaware 19807; Columbia Natural Resources, Inc., Columbia Coal Gasification Corporation, both located at 900 Pennsylvania Avenue, Charleston, West Virginia 25302; Columbia Energy Services Corporation, 2581 Washington Road, Upper Saint Clair, Pennsylvania 15241; Columbia Gulf Transmission Company, 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314; Columbia Gas Development Corporation, 5847 San Felipe, Houston, Texas 77057; Commonwealth Propane, Inc., and Columbia Propane Corporation, located at 800 Moorefield Park Drive, Richmond, Virginia 23236 (collectively, "Applicants"), have filed a post-effective amendment to their application-declaration under Sections 6(a), 7, 9(a), 10, 12(b), and 12(f) of the Act and Rules 43 and 45 thereunder.

By order dated September 29, 1993 (HCAR No. 25896) ("September Order"), the Commission authorized Applicants, among other things, to engage in financing from September 30, 1993 through December 31, 1994 of up to $629.9 million. At that time, the Commission authorized Ohio to engage in long-term financing of up to $73.1 million and short-term financing of up to $162 million, and authorized Columbia to provide $398.7 million in short-term financing to its subsidiaries.

Columbia now proposes to increase the amount of short-term financing for Ohio $40 million. These short-term borrowings will have the same terms and conditions as those authorized by the September Order. Thus, Ohio proposes to borrow the funds directly from Columbia and/or from certain other subsidiaries of Columbia through Columbia's intrasystem money pool ("Money Pool"), and Columbia requests authority to loan to its subsidiaries an additional $40 million for short-term borrowings.

The Money Pool provides a vehicle by which Columbia and its subsidiary companies loan their excess cash to their associate companies. Funds would be advanced, repaid, and reborrowed as required through December 31, 1994, with all such advances to be fully repaid by April 30, 1995. All short-term borrowings from Columbia and/or the Money Pool will be evidenced by a promissory note ("Short-Term Note" and "Money Pool Note", respectively). A default rate of 2% per annum above the pre-default rate on unpaid principal or interest amounts will be assessed if any interest or principal payment becomes past due.

The interest rate charged on all Short-Term Notes and Money Pool Notes, and the investment rate earned on moneys invested in the Money Pool, will be the interest rate per annum equal to the composite weighted average effective rate on short-term transactions of Columbia and/or the Money Pool short-term investment rate. During any month, this composite rate may be based on one or any combination of: (1) The cost of Columbia's borrowings under its bank facility; (2) the interest rate earned by Columbia on invested excess cash; and/or (3) the interest rate earned by subsidiaries on investments of excess Money Pool funds.

The Southern Company (70–8421)

The Southern Company ("Southern"), 64 Perimeter Center East, Atlanta, Georgia 30346, a registered holding company, has filed an application-declaration under Sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rules 45 and 50(a)(5) thereunder.

Southern proposes to acquire the securities of one or more companies ("Project Parents") engaged directly or indirectly, and exclusively, in the business of owning and holding the securities of "foreign utility companies" ("FUCOs"), as defined in Section 33(a) of the Act, and "exempt wholesale generators" ("EWGs"), as defined in Section 32(a) of the Act. Southern requests that the authorization for its proposals remain effective until the earlier of: (i) December 31, 1996; and (ii) the effective date of any rule of general applicability adopted by the Commission that would exempt the acquisition of any securities of any

Project Parent from the requirements of Sections 9(a) and 10 of the Act.

Southern states that a Project Parent may be organized at the time of, and in order to facilitate: the making of bids or proposals to acquire an interest in any EWG or FUCO ("Exempt Subsidiaries"); after the award of a bid proposal, in order to facilitate closing on the purchase or financing of any such Exempt Subsidiary; or at any time subsequent to the consummation of an acquisition of an interest in an Exempt Subsidiary. A Project Parent would be formed after the acquisition of an Exempt Subsidiary in order to: effect an adjustment in the respective ownership interests in any Exempt Subsidiary held by Southern and unaffiliated co-investors; facilitate a partial sale of an interest in any such Exempt Subsidiary; comply with applicable laws of foreign jurisdictions limiting or otherwise relating to the ownership of domestic companies by foreign nationals; or, to limit Southern's exposure to U.S. and foreign taxes as part of tax planning.

Southern requests authority to make direct or indirect investments in Project Parents in an aggregate amount at any one time outstanding not to exceed $400 million. Any such direct or indirect investment by Southern in any Project Parent would be consummated only if, at the time thereof, and giving effect thereto, Southern's "aggregate investment," determined in accordance with Rule 53(a)(1)(i), in all FUCOs, EWGs and Project Parents would not exceed 50% of Southern's "consolidated retained earnings," as defined in Rule 53(a)(1)(ii). In addition, any such investment in any particular Project Parent would be limited to an amount no greater than the amount reasonably required in connection with making the underlying investment in any Exempt Subsidiary (or Exempt Subsidiaries) with respect to which such Project Parent was organized or formed, taking into account development expenditures, working capital needs, and cash reserves required to be maintained in accordance with financing documents. Southern states that it will also comply with all other applicable rules under the Act, including, without limitation, such rules as may be promulgated in the future pursuant to Sections 32 and 33.

It is proposed that investments by Southern in any Project Parents may take the form of any combination of the following: (i) Ppurchases of capital shares, partnership interests, trust certificates, or the equivalent of any of the foregoing under the laws of foreign jurisdictions, if applicable; (ii) cash capital contributions or open account advances; (iii) loans evidenced by promissory notes; and (iv) guaranties by Southern of the principal of or interest on any promissory notes or other evidences of indebtedness of any Project Parent issued to lenders other than Southern.

Southern proposes that any investment in the capital shares or other equity securities of a Project Parent that have a stated par value will be in an amount equal to or greater than such par value, and that any open account advance made by Southern to a Project Parent be non-interest bearing and repayable within one year of the date of the advance. Southern also proposes that any promissory note issued by a Project Parent to Southern, and any promissory note or similar evidence of indebtedness with respect to which Southern may issue a guaranty, would mature not later than 30 years after the date of insurance, and would bear interest at a rate: (a) Not greater than the prime rate at a bank to be designated by Southern in the case of any promissory note issued to Southern, and (b) not greater than 3% over such prime rate in the case of any note or similar evidence of indebtedness guarantied by Southern.

Any promissory note issued to Southern by any Project Parent may, at Southern's option, be converted to a capital contribution to such Project Parent through Southern's forgiveness of the indebtedness evidenced thereby.

Funds for any direct or indirect investment by Southern in any Project Parent (including the guaranty of any securities of any Project Parent) will be derived from: (i) The sale of common stock or the issuance of guarantees (within the limitations of HCAR No. 25980 (January 25, 1994), or in any future authorization obtained from the Commission); (ii) bank borrowings or commercial paper sales (within the limitations of HCAR No. 26004 (March 15, 1994), or any future authorization obtained from the Commission); and, (iii) available cash. Southern is not requesting the authority to issue any additional securities for the purpose of financing investments in any Project Parents.

Southern states that it is currently investigating potential opportunities to acquire or construct electric generation, transmission or distribution facilities in Europe, Asia, Australia and South America. Southern believes that, in almost all cases, such facilities will qualify as facilities that a FUCO may own or operate.[1] Southern states that it has been Southern's experience, in connection with its foreign project development activities to date, including the preparation and submission of bid proposals in foreign government privatization programs, that the formation and acquisition of one or more Project Parents (usually, but not always, foreign corporations or the equivalent thereof) is necessary or desirable to facilitate the acquisition and ownership of a FUCO. For example, laws of some foreign countries may require that the bidder in a privatization program be a domestic company. In such cases, it would be necessary for Southern to form a foreign subsidiary as the entity submitting the bid or other proposal.

Southern states that there would typically be other business reasons for creating Project Parents. Southern states that, for example, the interposition of one or more wholly-owned Project Parents may be necessary to minimize U.S. income taxes (e.g., by deferring repatriation of foreign source income, or in order to take full advantage of favorable tax treaties among foreign countries). Further, Project Parents are useful in cases in which Southern may bid as a part of a consortium of companies, since each member of the consortium will typically want to have at least one consolidated subsidiary in the final FUCO ownership structure for tax and accounting purposes. Finally, Project Parents serve to isolate business risks and facilitate subsequent adjustments to or sales of interests among or by the members of the ownership group.

Southern proposes herein that a Project Parent may also acquire and hold direct or indirect interests in both FUCOs and EWGs.[2] The ability to combine ownership of both FUCOs and EWGs under a single company will enable Southern to minimize the number of separate intermediate subsidiaries needed in connection with its investments in EWGs and FUCOs.

Southern states that, within 45 days after Southern determines that the purposes for owning any Project Parent no longer exists, it shall liquidate or dissolve such Project Parent, unless, within that time, Southern determines that such Project Parent may be used in

[1] In some instances, a foreign utility facility may also qualify as an "eligible facility," as defined in Section 32(a)(2) of the Act. Depending upon various facts and circumstances, Southern may in the future pursue any particular foreign utility investment opportunity as an EWG rather than as a FUCO, in which case the requisite filing or filings would be made with the Federal Energy Regulatory Commission.

[2] An entity engaged exclusively in the business of holding the securities of one or more EWGs may itself seek a determination of EWG status from the Federal Energy Regulatory Commission. However, such an entity could not hold the securities of both EWGs and FUCOs.

conjunction with a proposal or plan to acquire an interest in a different Exempt Subsidiary. Southern requests authority to liquidate or dissolve any Project Parent under such circumstances.

Southern also requests approval for any Project Parent to issue equity securities and debt securities to persons other than Southern (and with respect to which there is no recourse to Southern), including banks, insurance companies, and other financial institutions, exclusively for the purpose of financing (including any refinancing of) investments in Exempt Subsidiaries. Such securities may be issued in one or more transactions from time to time through the earlier to occur of (i) December 31, 1996, and (ii) the effective date of any rule of general applicability adopted by the Commission exempting such transaction from the application requirements under the Act. It is proposed that the aggregate principal amount of non-recourse debt securities issued by Project Parents to persons other than Southern will not exceed $800 million at any one time outstanding. No more than $200 million principal amount of such non-recourse debt securities at any time outstanding may be denominated in currencies other than U.S. dollars. In any case in which Southern directly or indirectly owns less than all of the equity interests of a Project Parent, only that portion of the non-recourse indebtedness of such Project Parent equal to Southern's equity ownership percentage shall be included for purposes of the foregoing limitations.

Equity securities issued by any Project Parent to any party other than Southern may include capital shares, partnership interests, trust certificiates, or the equivalent of any of the foregoing under applicable foreign law. Non-recourse debt securities issued to parties other than Southern may include secured and unsecured promissory notes, subordinated notes, bonds, or other evidence of indebtedness. Securities issued by Project Parents may be denominated in either U.S. dollars or foreign currencies.

Southern states that the amount and type of such securities, and the terms thereof, including interest rate, maturity, prepayment or redemption privileges, and the terms of any collateral security granted with respect thereto, would be negotiated on a case by case basis, taking into account differences from project to project in optimum debt-equity ratios, projections of earnings and cash flow, depreciation lives, and other similar financial and performance characteristics of each project. Accordingly, Southern requests the authority to negotiate the terms and conditions of such securities without further approval by the Commission.

Notwithstanding the foregoing, Southern states that no equity security having a stated par value would be issued or sold by a Project Parent for a consideration that is less than such par value. Southern also states that no note, bond or other evidence of indebtedness issued or sold by any Project Parent will mature later than 30 years from the date of issuance thereof, and will bear interest at a rate exceeding the following: (i) if such note, bond or other indebtedness is U.S. dollar denominated, at a fixed rate not to exceed 6.5% over the yield to maturity on an actively traded, non-callable, U.S. Treasury note having a maturity equal to the average life of such note, bond or other indebtedness ("Applicable Treasury Rate"),[3] or at a floating rate not to exceed 6.5% over the then applicable prime rate at a U.S. money center bank to be designated by Southern ("Applicable Prime Rate"); and (ii) if such note, bond or other indebtedness is denominated in the currency of a country other than the United States, at a fixed or floating rate which, when adjusted (i.e., reduced) for the prevailing rate of inflation in such country, as reported in official indices published by such country, would be equivalent to a rate on a U.S. dollar denominated borrowing of identical average life that does not exceed 10% over the Applicable Treasury Rate or Applicable Prime Rate, as the case may be.

In connection with the issuance of any non-recourse debt securities by any Project Parent, it is anticipated that such Project Parent may grant security in its assets. Such security interest may take the form of a pledge of the shares or other equity securities of an Exempt Subsidiary that it owns, including a security interest in any distributions from any such Exempt Subsidiary, or a collateral assignment of its rights under and interests in other property, including rights under contracts. It is also anticipated that fees in the form of placement or commitment fees, or other similar fees, would be paid to lenders, placement agents, or others in connection with the issuance of any such non-recourse debt securities. Southern requests authority for any Project Parent to agree in any case to pay placement or commitment fees, and other similar fees, in connection with any borrowing, provided that the effective annual interest charge on any indebtedness evidencing such borrowing is not greater than 115% of the stated interest rate thereon.

In connection with investments in Exempt Subsidiaries, Southern states that it is typical that a portion of the capital requirements of any such Exempt Subsidiary would be obtained through non-recourse financing involving borrowings from banks and other financial institutions. Southern also states that, in some cases, however, it may be necessary or desirable to structure an investment in an Exempt Subsidiary such that the obligations created are not those of the Exempt Subsidiary, but instead those of its parent companies. For example, in a consortium of non-affiliated companies bidding to purchase the securities or assets of an EWG or FUCO, each of the consortium members would be obligated to fund its respective share of the proposed purchase price. If external sources of funds are needed for this purpose, a participant in the consortium may choose to engage in non-recourse financing through one or more single-purpose subsidiaries that would then utilize the proceeds of the financing to acquire an ownership interest in the Exempt Subsidiary.[4]

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–16631 Filed 7–8–94; 8:45 am]

BILLING CODE 8010–01–M

[3] If there is no actively traded U.S. Treasury note with a maturity equal to the average life of such note, bond or other evidence of indebtedness, then the Applicable Treasury Rate would be determined by interpolating linearly with reference to the yields to maturity on actively traded, non-callable, Treasury notes having maturities near (i.e., both shorter and longer than) such average life.

[4] Typically, the capital shares or other equity interests in the Exempt Subsidiary would be pledged to secure the securities issued by the Project Parent.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Asheville Regional Airport, Asheville, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Asheville

Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before August 10, 1994.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address:

Atlanta Airports District Office, 1680 Phoenix Boulevard, Suite 101, College Park, Georgia 30349.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to James C. Parker, Jr., Airport Director, of the Asheville Regional Airport Authority at the following address: 708 Airport Road, Fletcher, North Carolina 28732.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Asheville Regional Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Thomas M. Roberts, Atlanta Airports District Office, 1680 Phoenix Boulevard, Suite 101, College Park, Georgia 39349—telephone 404/994–5306. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Asheville Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On June 30, 1994, the FAA determined that the application to impose and use the revenue from a PFC submitted by Asheville Regional Airport Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 28, 1994.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00
Proposed charge effective date:
November 1, 1994
Proposed charge expiration date:
October 31, 2000
Total estimated PFC revenue:
$5,066,760

Brief description of proposed projects: Terminal Building Expansion-Second Level; Land Acquisition (28± Acres for Runway Protection Zone and 46± Acres Borrow Area); Construction of Two (2) Helipads; Master Plan Update; Installation of Runway Lights; Phase I Runway 34 Extended Runway Safety Area; Install Security System (Part 107); Rehabilitate Aircraft Rescue and Fire Fighting Vehicle; Phase II Runway 34 Extended Runway Safety Area; Land Acquisition (50 Acres Borrow Area); Aircraft Rescue and Fire Fighting Building Expansion; Taxiway Signage Upgrade; Widen Parallel Taxiway; Seal Coat General Aviation Apron; Expand Equipment Storage Building; Terminal Access Improvements; Acquire Snow Equipment; Non-Destrustive Testing Pavement Evaluation; Resurface and Groove Runway 16/34; Replace Concrete Slabs and Joint Seal Ramp; Resurface Taxiways, Acquire Snow Removal Equipment; Land Acquisition (100+ Acres); Terminal Building Expansion; Perimeter Security Road; Construct Aircraft Rescue and Fire Fighting Road.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: air taxi/commercial operators filing FAA 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.** In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Asheville Regional Airport Authority.

Issued in College Park, Georgia, on June 30, 1994.

Samuel F. Austin,

Manager, Atlanta Airports District Office, Southern Region.

[FR Doc. 94–16679 Filed 7–8–94; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

[FHWA Docket No. 94–15]

Life-Cycle Cost Analysis

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Interim policy statement; request for comments.

SUMMARY: This FHWA policy statement on life-cycle cost analysis (LCCA) helps fulfill Federal management responsibilities for analyzing life-cycle cost aspects of infrastructure investment decisions under Executive Order 12893, "Principles of Federal Infrastructure Investment." The policy statement establishes LCCA principles to be applied by FHWA in infrastructure investment analyses, and in evaluating the adequacy of State highway agency procedures used in conducting required LCCA for investments funded through the Federal-aid highway program. States and local agencies are expected to apply these principles in evaluating program and project level investment decisions involving Federal-aid highway funds as required under applicable FHWA regulations. Comments are solicited on potential problems in implementing provisions of this policy statement and specific needs for training and technical assistance in LCCA.

DATES: This interim policy statement is effective on July 11, 1994. Comments on the interim policy statement must be received on or before October 11, 1994. A final LCCA policy statement will be published that takes into consideration comments received on this interim statement.

ADDRESSES: Submit written, signed comments concerning this interim policy statement to FHWA Docket No. 94–15, Federal Highway Administration, room 4232, HCC–10, Office of the Chief Counsel, 400 Seventh Street, SW., Washington D.C. 20590. In addition to specific comments on this policy statement, comments are requested on training and technical assistance needed to implement LCCA. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m. e.t. Monday through Friday, except legal Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. James W. March, Chief, Systems Analysis Branch, (202) 366–9237, or Mr. Steven M. Rochlis, Legislation and Regulations Division, (202) 366–1395, Federal Highway Administration, 400 Seventh Street SW., Washington D.C. 20590.

SUPPLEMENTARY INFORMATION:

Background

There is an increasing recognition that total life-cycle costs of highway and transportation investments must be given greater consideration in all phases of highway programs. Executive Order 12893, "Principles of Federal Infrastructure Investment," requires that benefits and costs of infrastructure investment be measured and appropriately discounted over the full life cycle of each project. Sections 1024 and 1025 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102–240, 105 Stat. 1914, 1977) also require consideration of "the use of life-cycle cost in the

design and engineering of bridges, tunnels, or pavement." Subpart B of the interim final rule on implementation of ISTEA management systems (23 CFR 500.207) requires use of LCCA for pavement management systems (PMS) and Subpart C (23 CFR 500.307) requires use of LCCA or comparable techniques for bridge management systems (BMS).

Life-cycle cost analysis is an economic evaluation of all current and future costs associated with investment alternatives. It is a valuable economic analysis technique for evaluating highway and other transportation programs and projects that require long-term capital and maintenance expenditures over the extended lives of facilities. Future costs are discounted using an appropriate discount rate to compare costs incurred at different points in time.

Life-cycle cost analysis principles and techniques are used in many types of economic analysis to compare benefits and costs arising at different points in time. Benefit-cost analysis and cost effectiveness analysis, for instance, use life-cycle cost analysis principles to discount future benefits and costs of investment alternatives over the lives of alternatives being evaluated.

Life-cycle cost analysis is used to evaluate programs of pavement and bridge improvements as well as individual projects. It is an important input to estimates of future funding requirements and to the development of improvement programs, especially when there are budget constraints.

The use of value engineering is receiving increased attention as a technique for analyzing the functions of a program, project, system, product, or service to identify opportunities to significantly lower costs while still achieving the essential functions. Life-cycle costs are often analyzed to ensure that unnecessary costs are avoided by considering future operations, maintenance, and reconstruction requirements.

Total life-cycle costs of specific facilities may be many times the initial construction costs when user costs are considered. It is essential that a long term perspective be taken in programming improvements, selecting among alternative maintenance, rehabilitation, and reconstruction strategies, and designing pavements, structures, and other highway elements. Longer design lives may have to be considered, and traditional strategies for programming maintenance and rehabilitation activities may have to be reevaluated to determine whether they adequately consider future costs, including user delay-related costs.

Increasing congestion on important highways in urban areas and some rural areas makes it critical to fully consider life-cycle costs of investment decisions. Safety concerns and auxiliary construction costs to maintain, rehabilitate, or reconstruct congested highways and bridges under traffic are very high. User costs and delays around work zones in congested areas may be even higher and represent significant inefficiencies that may adversely affect economic productivity, especially on the National Highway System (NHS). These delays can erode productivity gains realized by the growing number of industries using just-in-time and other advanced logistics strategies that depend on efficient and predictable transportation.

Regardless of whether user costs are included in a formal LCCA, most States already implicitly consider user costs when they choose to pay premiums to maintain traffic through work zones or design more durable pavements in congested urban areas. Including user costs in LCCA makes these implicit considerations explicit, and may help identify other opportunities to reduce overall agency and user costs.

Recognition of the high future costs to maintain and rehabilitate highways, bridges and tunnels, and their associated traffic control, safety, environmental, and hydraulic components has led to increased interest in the potential for LCCA to improve investment productivity and reduce public and private costs of highway and other transportation programs. The FHWA and the American Association of State Highway and Transportation Officials (AASHTO) jointly sponsored a symposium in December 1993 to learn more about LCCA practices among the States and to identify research, training, technical assistance, and policy-related needs to improve LCCA application. An important input to that symposium was an AASHTO survey of State LCCA practices.

Many specific LCCA issues and research needs were identified at the symposium. Key technical issues included how to establish the appropriate analysis period, how to value and properly consider user costs, and how to choose the appropriate discount rate. Participants also identified important research and data needed to predict pavement and bridge performance and forecast future traffic.

An important policy issue raised at the symposium was the recognition that results of LCCA may favor selection of improvements with higher initial costs in order to achieve significant long term savings in overall investment requirements. It may indicate, for instance, that more projects warrant reconstruction rather than rehabilitation strategies, that early intervention with preventive maintenance is cost effective, or that somewhat higher designs or levels of service may be appropriate for some facilities. The FHWA recognizes that LCCA, thus, may result in proposals for greater expenditures up front. At the same time virtually all transportation agencies will continue to face budgetary limitations at least over the short term. Life-cycle cost analysis will help agencies identify and explain the real costs borne by transportation users of inadequate infrastructure funding. Furthermore, LCCA can assist agencies that face fiscal constraints in making the best use of available funds. Several States already use LCCA in developing network improvement programs as part of their pavement and bridge management systems. Eventually it is desirable for all States to have such capabilities.

The following paragraphs highlight key principles of good LCCA practice. Applying these principles generally will allow States and local agencies to identify investment alternatives that will minimize total life-cycle costs. While their use is not mandatory in all instances, States are strongly encouraged to apply these principles in conducting life-cycle cost analyses unless there are unique characteristics of particular programs or projects that require principles to be modified. Life-cycle cost analysis, of course, is only one consideration in many investment decisions, but it certainly is one of the most important for NHS routes and other high volume roads in light of the costs and lost productivity associated with future maintenance and rehabilitation actions.

In general there are no hard and fast rules concerning the appropriate length of the analysis period. The analysis period will vary depending on the type of improvement (bridge, versus tunnel, versus pavement), the location (urban versus rural), the highway system (NHS versus other), and the design lives of all appropriate alternatives. In general, longer design lives should be considered for improvements on the NHS and other high volume urban roadways because future agency and user costs associated with maintenance and rehabilitation activities may be so high. For pavement improvements on the NHS, design lives of 50 years may be reasonable while bridge and tunnel improvements may have design lives of

100 or more years. The consideration of longer design lives will require longer analysis periods in LCCA. Analysis periods for projects involving other modes generally should be long enough to cover the full life-expectancy of the investment—the time until facilities would have to be reconstructed if initially constructed to an optimum design. These lives would vary according to the modal alternative being examined. Analysis periods for all project alternatives should be the same length.

The inclusion of user costs in LCCA is particularly controversial among some States. Part of the controversy over user costs is the fact that they often are many times higher than agency costs and can critically influence decisions. While all motorists do not value costs of delays as highly as do commercial travelers, the costs and lost productivity to businesses of delays around work zones are simply too high to ignore. In fact, such delays arguably have a greater impact on business than delays associated with inadequate capacity because businesses factor normal congestion costs into their plans, but delays around work zones generally cannot be foreseen and thus are more disruptive. Technical advisories to be developed on estimating user operating and delay costs will address this issue in greater detail.

In addition to increased delay and vehicle operating costs, rehabilitation and maintenance activities may result in increased accident costs around work zones. Technical advisories will be developed to assist in estimating increases in accident rates associated with different types of rehabilitation and maintenance activities. The most comprehensive information on the costs of motor vehicle accidents is contained in the National Highway Traffic Safety Administration's publication, "The Economic Cost of Motor Vehicle Crashes, 1990." A copy of this document is available in the public docket for this notice.

The proper use of the discount rate has been an issue for LCCA, cost-benefit analysis and other types of economic analysis as well. Among the issues are the relationship between the discount rate and inflation, factors that affect the choice of rates, and how to establish rates over a long analysis period. Office of Management and Budget (OMB) Circular A–94, "Guidelines and Discount Rate for Benefit-Cost Analysis of Federal Programs," provides guidance on selecting appropriate discount rates for economic analyses. Since the choice of discount rate can affect relative life-cycle costs, sensitivity analysis may be appropriate if two or more alternatives are close in cost, if streams of costs and benefits among alternatives vary significantly over time, or if the discount rate is outside the range of discount rates recommended by OMB.

The FHWA will develop training and technical assistance materials to address issues in LCCA. These materials should supplement guidance on economic analysis techniques contained in AASHTO's 1977 publication, "A Manual on User Benefit Analysis of Highway and Bus-Transit Improvements,"[1] the "Red Book," in the forthcoming update to that publication which was developed under National Cooperative Highway Research Program Project 7–12, and in other guidance on LCCA issues. While additional materials are being developed, this interim policy statement provides guidance on LCCA principles applicable to highway and structure design.

The FHWA is reviewing its policy on alternative bridge designs (53 FR 21637, June 9, 1988) for consistency with this interim life-cycle cost analysis policy as well as with Executive Order 12893.

Policy

The following is FHWA's LCCA policy for infrastructure investment analyses. It represents good practice that should be followed by States and local transportation agencies in making program and project investment decisions:

1. Life-cycle costs are an important consideration in all highway investment decisions.

2. The level of detail in LCCA should be commensurate with the level of investment involved and the types of alternatives being analyzed. Investments on the NHS generally warrant more detailed analysis than investments on non-NHS routes. Similarly, evaluation of decisions whether to reconstruct or rehabilitate a facility warrants more detailed analysis than consideration of alternative maintenance strategies.

3. Typical life-cycle cost analysis profiles may be developed and used as the basis for evaluating alternatives for general types of improvements, such as, consideration of alternative pavement designs or different types of bridges on various functional class highways. Major programs and projects, however, often will require consideration of a broad range of alternative rehabilitation and reconstruction options and more detailed analysis of potential alternatives. The potential applicability and use of LCCA profiles will be discussed in greater detail in future technical advisories.

4. Other factors, including budgetary, environmental, and safety considerations, legitimately influence highway investment decisions and should be considered along with the results of LCCA in evaluating investment alternatives. Life-cycle cost analysis principles should be used in conjunction with other appropriate economic analysis techniques in pavement and bridge management systems. Systemwide or network objectives as well as project level concerns should be considered in decisionmaking, and both levels of analysis should consider life-cycle costs.

5. Analysis periods should be for the life of the facility or system of facilities being evaluated and should account for costs of foreseeable future actions. Analysis periods should not be less than 75 years for major bridge, tunnel, or hydraulic system investments, and not less than 35 years for pavement investments. Longer design lives may be appropriate for the NHS or other major routes or corridors.

6. All appropriate agency costs anticipated during the analysis period should be considered in the analysis, including traffic control costs during maintenance and rehabilitation, costs of special construction procedures required to maintain traffic, and agency operating costs for such things as tunnel lighting and ventilation. In those cases where the agency required to operate a facility is not the one making the investment decision, it is important for the funding agency to include operating costs borne by other organizations responsible for operating the facilities.

7. User costs including increased vehicle operating costs, accident costs, and delay-related costs incurred throughout the analysis period should be considered in LCCA. Increased costs due to deteriorated riding surfaces, circuitous routings, and accidents and delays around and through maintenance and construction work zones are all important.

8. Future agency and user costs should be discounted to net present value or converted to equivalent uniform annual costs using appropriate discount rates. Discount rates selected should be consistent with guidance provided in OMB Circular A–94.

[1] This document is available for inspection as prescribed at 49 CFR Part 7, Appendix D. It may be purchased from the American Association of State Highway and Transportation Officials, 444 N. Capitol Street, NW., Suite 225, Washington DC 20001. A copy also will be available in the public docket for this notice.

Technical advisories on these and other technical issues in the application of LCCA will be issued by FHWA in the future.

Issued on: June 30, 1994.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 94–16719 Filed 7–8–94; 8:45 am]

BILLING CODE 4910–22–P

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of 49 CFR Part 236

Pursuant to 49 CFR Part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236 as detailed below.

Block Signal Application (BS–AP)–No. 3294

Applicant: Union Pacific Railroad Company, Mr. P.M. Abaray, Chief Engineer-Signals, 1416 Dodge Street, Room 1000, Omaha, Nebraska 68179

The Union Pacific Railroad Company seeks approval of the proposed discontinuance and removal of controlled signal HIE and the associated traffic control system, on the departure track, between CP 211 and Signal HIE, at East Pocatello, Idaho, milepost 211.0, on the Pocatello Subdivision.

The reason given for the proposed changes is to eliminate delays to yard movements.

BS–AP–No. 3295

Applicant: Union Pacific Railroad Company, Mr. P.M. Abaray, Chief Engineer-Signals, 1416 Dodge Street, Room 1000, Omaha, Nebraska 68179

The Union Pacific Railroad Company seeks approval of the proposed discontinuance and removal of the automatic block signal system, on the two main tracks, between milepost 783.6 and milepost 785.4, near Salt Lake City, Utah, on the Salt Lake Subdivision; consisting of the discontinuance and removal of signals 7839, 7844, and 7849.

The reason given for the proposed changes is that the signals are no longer needed and eliminate delays to yard movements.

BS–AP–No. 3296

Applicant: CSX Transportation, Incorporated, Mr. D.G. Orr, Chief Engineer—Train Control, 500 Water Street, Jacksonville, Florida 32202

CSX Transportation, Incorporated (CSX) seeks approval of the proposed modification of the traffic control system, on the two main tracks, at MD Cabin, milepost CD 46.4, near Marion, Ohio, Huntington Division, Columbus Subdivision; consisting of the discontinuance and removal of four controlled signals associated with the retirement of the power-operated turnout connections between the center siding and Track No. 1 at East End MD Cabin and West End MD Cabin.

The reason given for the proposed changes is that the holding signals are no longer needed for present day operation.

BS–AP–No. 3297

Applicant: Southern Pacific Lines, Mr. J.A. Turner, Engineer—Signals Southern Pacific Building, One Market Plaza, San Francisco, California 94105

The Southern Pacific Lines seeks approval of the proposed discontinuance and removal of the electric locks from the hand-operated switches, on the single main track, at Prosser Interlocking, milepost TSP–120.3, near Lufkin, Texas, on the Lufkin District, Gulf Coast Regions.

The reason given for the proposed changes is that the electric locks are no longer needed due to changes in operations and traffic levels.

BS–AP–No. 3298

Applicant: Norfolk Southern Railway Company, Central of Georgia Railroad, Mr. J.W. Smith, Chief Engineer—C&S, Communication and Signal Department, 99 Spring Street, S.W., Atlanta, Georgia 30303

The Norfolk Southern Railway Company, Central of Georgia Railroad seeks approval of the proposed discontinuance and removal of Muscogee Junction Interlocking, milepost M288.1 and the automatic block signal system between milepost 289.6 and milepost 287.9, near Columbus, Georgia, on the Alabama Division, Columbus and Norris Yard District.

The reason given for the proposed changes is to improve safety of operations and reduce maintenance costs.

BS–AP–No. 3299

Applicant: CSX Transportation, Inc., Mr. D.G. Orr, Chief Engineer—Train Control, 500 Water Street, Jacksonville, Florida 32202

CSX Transportation, Inc. (CSX) seeks approval of the proposed discontinuance and removal of two control signals, on single main track, at South Junta, Georgia, milepost WA 47.1, Atlanta Division, W&A Subdivision.

The reason given for the proposed changes is that the holding signals are no longer needed for present day operation.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the protestant in the proceeding. The original and two copies of the protest shall be filed with the Associate Administrator for Safety, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 within 45 calendar days of the date of issuance of this notice. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, D.C. on July 5, 1994.

Phil Olekszyk,

Acting Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 94–16680 Filed 7–8–94; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

July 1, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

U.S. Customs Service (USCS)

OMB Number: 1515–0022.

Form Number: CF 4315.

Type of Review: Reinstatement.

Title: Application for Allowance in Duties.

Description: This document is submitted by the importer or his agent when applying for duty allowance due to damaged or defective merchandise.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Recordkeepers: 12,000.

Estimated Burden Hours Per Recordkeeper: 8 minutes.

Frequency of Response: On occasion.

Estimated Total Recordkeeping Burden: 1,600 hours.

Clearance Officer: LaVerne Williams (202) 927–1555, U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229.

OMB Reviewer: Milo Sunderhauf (202) 395–7316, Office of Management and Budget, room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94–16683 Filed 7–8–94; 8:45 am]

BILLING CODE 4820–02–M

Public Information Collection Requirements Submitted to OMB for Review

July 1, 1994.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0085.

Form Number: IRS Form 1040A, Schedule 1 (Form 1040A), Schedule 2 (Form 1040A), Schedule 3 (Form 1040A), and Schedule EIC (Form 1040A)

Type of Review: Revision.

Title: U.S. Individual Income Tax Return.

Description: This form is used by individuals to report their income subject to income tax and to compute their correct tax liability. The data is used to verify that the income reported on the form is correct and are also for statistical use.

Respondents: Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 26,544,784.

Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 1040A	Sch. 1 (1040A)	Sch. 2 (1040A)	Sch. 3 (1040A)	Sch. EIC (1040A)
Recordkeeping	1 hr., 3 min	20 min	33 min	13 min	0 min.
Learning about the law or the form.	2 hr., 15 min	4 min	11 min	14 min	2 min.
Preparing the form	2 hr., 52 min	10 min	41 min	28 min	4 min.
Copying, assembling, and sending the form to the IRS.	35 min	20 min	28 min	35 min	20 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 219,904,045 hours.

OMB Number: 1545–0998.

Form Number: IRS Form 8615.

Type of Review: Extension.

Title: Tax for Children Under Age 14 Who Have Investment Income of More Than $1,000.

Description: Under section 1(g) of the Internal Revenue Code, children under age 14 who have unearned income may be taxed on part of that income at their parent's tax rate. Form 8615 is used to see if any of the child's unearned income is taxed at the parent's rate and, if so, to figure the child's tax on his or her unearned income and earned income, if any.

Respondents: Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 500,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	13 minutes.
Learning about the law or the form.	12 minutes.
Preparing the form	45 minutes.
Copy, assembling, and sending the form to the IRS.	17 minutes.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 730,000 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–7316, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94–16684 Filed 7–8–94; 8:45 am]

BILLING CODE 4830–01–P

Sunshine Act Meetings

Federal Register
Vol. 59, No. 131
Monday, July 11, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Tuesday, July 26, 1994.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Review.

CONTACT PERSON FOR MORE INFORMATION: Lynn K. Gilbert, 254–6314.

Lynn K. Gilbert,

Deputy Secretary of the Commission.

[FR Doc. 94–16792 Filed 7–7–94; 10:57 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Tuesday, July 26, 1994.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Quarterly Review.

CONTACT PERSON FOR MORE INFORMATION: Lynn K. Gilbert, 254–6314.

Lynn K. Gilbert,

Deputy Secretary of the Commission.

[FR Doc. 94–16791 Filed 7–7–94; 10:57 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, July 26, 1994.

PLACE: 2033 K St. NW., Washington, DC, Lower Level Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Quarterly review, 3rd quarter FY 1994.

CONTACT PERSON FOR MORE INFORMATION: Lynn K. Gilbert, 254–6314.

Lynn K. Gilbert,

Deputy Secretary of the Commission.

[FR Doc. 94–16790 Filed 7–7–94; 10:57 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10 a.m. Tuesday, July 19, 1994.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement matters.

CONTACT PERSON FOR MORE INFORMATION: Lynn K. Gilbert, 254–6314.

Lynn K. Gilbert,

Deputy Secretary of the Commission.

[FR Doc. 94–16789 Filed 7–7–94; 10:57 am]

BILLING CODE 6351–01–M

LEGAL SERVICES CORPORATION

Audit and Appropriations Committee Meeting Changes

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: To be published July 8, 1994.

PREVIOUSLY ANNOUNCED TIME AND DATE: A meeting of the Legal Services Corporation Board of Directors Audit and Appropriations Committee will be held on July 14–15, 1994. The meeting will commence at 6:00 p.m., on July 14, 1994, and at 9:00 a.m., on July 15, 1994.

PREVIOUSLY ANNOUNCED LOCATION OF MEETING: Legal Service Corporation, 750 First Street, N.E., 10th Floor, Office of Program Services Conference Room, Washington, DC 20002, (202) 336–8800.

CHANGES IN THE MEETING: _____.

STATUS OF MEETING: The correct exemptions for closure of that portion of the meeting noticed previously are the Government in the Sunshine Act, 5 U.S.C. Sections 552(b)(4), (6), and (9)(B); and the corresponding regulation of the Legal Services Corporation, 45 C.F.R. Sections 1622.5(c), (e), and (g).

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Executive Office, (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: July 7, 1994.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 94–16807 Filed 7–7–94; 11:02 am]

BILLING CODE 7050–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:03 a.m. on Wednesday, July 6, 1994, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Reports of the Office of Inspector General.

Matters relating to the Corporation's corporate and supervisory activities.

Matters relating to the probable failure of certain insured depository institutions.

In calling the meeting, the Board determined, on motion of Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), seconded by Ms. Susan F. Krause, acting in the place and stead of Director Eugene A. Ludwig (Comptroller of the Currency), concurred in by Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, N.W., Washington, D.C.

Federal Deposit Insurance Corporation.

Leneta G. Gregorie,

Acting Assistant Executive Secretary.

[FR Doc. 94–16833 Filed 7–7–94; 2:00 pm]

BILLING CODE 6714–01–M

BLACKSTONE RIVER VALLEY NATIONAL HERITAGE CORRIDOR

NOTICE OF PUBLIC MEETING

The Blackstone River Valley National Heritage Corridor Commission will HOLD A PUBLIC MEETING TO solicit comments on the proposed Boundary expansion of the Blackstone River Valley National Heritage Corridor.

Notice is hereby given in accordance with Section 552b of Title 5, United States Code, that this meeting will be held. The Commission was established pursuant to Public Law 99–647, in order to establish a management framework to protect, enhance and interpret the nationally significant resources in the Blackstone Valley.

The meeting will be held at Smithfield Town Hall, Smithfield, RI. It will be at 7:00 PM on Thursday, July 21, 1994.

The Public is invited to discuss the boundary expansion at the meeting and/or provide written comments at that time.

James R. Pepper,

Executive Director, Blackstone River Valley National Heritage Corridor.

[FR Doc. 94–16828 Filed 7–7–94; 2:00 pm]

BILLING CODE 4310–70–P

STATE JUSTICE INSTITUTE

TIME AND DATE:

9:00 a.m. to 5:00 p.m., July 29, 1994
9:00 a.m. to 12:00 p.m., July 30, 1994

PLACE: Teton Pines, 3450 N. Clubhouse Drive, Jackson, Wyoming 83001.

MATTERS TO BE CONSIDERED: Requests for FY 1994 grants, FY 1995 Grant Guideline, internal Institute business.

PORTIONS OPEN TO THE PUBLIC: Board of Directors' consideration of grant requests, Grant Guideline and non-personnel-related Institute business.

PORTIONS CLOSED TO THE PUBLIC: Internal personnel matters and Board committee meetings.

CONTACT PERSON FOR MORE INFORMATION: David I. Tevelin, Executive Director, State Justice Institute, 1650 King Street, Suite 600, Alexandria, Virginia 22314, (703) 684–6100.

David I. Tevelin,

Executive Director.

[FR Doc. 94–16864 Filed 7–7–94; 3:40 pm]

BILLING CODE 6820–SC–M

POSTAL RATE COMMISSION

TIME AND DATE: 2:30 p.m., July 12, 1994.

PLACE: Conference Room, 1333 H Street, NW, Suite 300, Washington, DC 20268.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Issues in Docket No. R94–1.

CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Suite 300, 1333 H Street, NW, Washington, DC 20268–0001, Telephone (202) 789–6840.

Charles L. Clapp,

Secretary.

[FR Doc. 94–16866 Filed 7–7–94; 3:54 pm]

BILLING CODE 7715–01–P

Corrections

Federal Register
Vol. 59, No. 131
Monday, July 11, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD23-1-6369; FRL-4893-9]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Stage II Vapor Recovery at Gasoline Dispensing Facilities

Correction

In rule document 94-14084, appearing on page 29730, in the issue of June 9, 1994, make the following correction:

In the second column under the **EFFECTIVE DATE:** heading, the date reads June 10, 1994." The date should read "July 11, 1994".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[FRL 4887-3]

EPA Region III Comprehensive Environmental Response, Compensation and Liability Act Program; Transfer and Disclosure of Information to Contractors and Subcontractors

Correction

In notice document 94-12773, appearing on page 27013 in the issue of May 25, 1994, make the following correction:

On page 27013, in the third column under the **DATES** heading, "until" was inadvertently omitted from the second sentence. The second sentence should read "Comments concerning CBI access will be accepted until June 24, 1994.

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-20308; 812-8878]

Security Equity Fund, et al.; Notice of Application

Correction

In notice document 94-12939 beginning on page 27643 in the issue of Friday, May 27, 1994, make the following correction:

On page 27644, in the first column, before the FR Doc. line insert the following:

Margaret McFarland,

Deputy Secretary.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 172

[Docket No. HM-166Z; Amdt. No. 172-134]
RIN 2137-AC46

Transportation of Hazardous Materials; Miscellaneous Amendments

Correction

In rule document 94-13138 beginning on page 28487 in the issue of Thursday, June 2, 1994 make the corrections:

§ 172.101 [Corrected]

On page 28492, in the table, in the second column, the second entry should be italized as follows: *Ammonium nitrate fertilizers: uniform non-segregating mixtures of ammonium nitrate with added matter which is inorganic and chemically inert towards ammonium nitrate, with not less than 90% ammounium nitrate and not more than 0.2% combustible material (including organic material calculated as carbon), or the more than 70% but less than 90% ammonium nitrate and not more than 0.4% total combustible material.*

BILLING CODE 1505-01-D

federal register

Monday
July 11, 1994

Part II

Department of the Treasury

Internal Revenue Service

26 CFR Part 1 et al.

Federal Tax Deposits by Electronic Funds Transfer; Temporary Regulation and Proposed Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 31, and 40

[TD 8553]

RIN 1545–AS80

Federal Tax Deposits by Electronic Funds Transfer

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the deposit of taxes by electronic funds transfer. The temporary regulations describe the taxpayers that must make deposits by means of electronic funds transfer, the types of taxes that must be so deposited, and when the deposits must commence. The temporary regulations reflect changes to the Internal Revenue Code made by section 523 of the North American Free Trade Agreement Implementation Act (NAFTA). The text of the temporary regulations also serves as the text of the cross-reference notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: These temporary regulations are effective July 11, 1994.

For dates of applicability, see § 31.6302–1T(h) of these regulations.

FOR FURTHER INFORMATION CONTACT: Vincent G. Surabian, 202–622–6232 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 523 of NAFTA amended section 6302 of the Internal Revenue Code of 1986 (Code) by enacting a new subsection (h) authorizing the Secretary of the Treasury to prescribe such regulations as may be necessary for the development and implementation of an electronic funds transfer (EFT) system to be used for the collection of depository taxes. The depository taxes are the taxes required to be deposited with an authorized financial institution or Federal Reserve bank pursuant to any regulations prescribed by the Secretary (generally FICA and railroad retirement taxes, income tax withheld, corporate income and estimated taxes, and various Federal excise taxes). The new system will be designed to ensure that the depository taxes are credited to the Treasury's general account by the due date of the deposit.

Explanation of Provisions

A. Current Tax Deposit System

At present, taxpayers are required to deposit taxes with an authorized government depository (generally, a commercial bank or savings institution or a Federal Reserve bank) by various dates specified in regulations. Each deposit must be accompanied by Form 8109, Federal Tax Deposit Coupon, which contains the taxpayer's name, identification number, the amount and type of tax being deposited, and the tax period for which the deposit is being made. The government depository forwards the coupon to the appropriate IRS Service Center. The Service Center compares the information entered on the coupon with the liabilities reported by the taxpayer on the return for the applicable tax period. The funds are transferred by the depository to the Treasury on the business date following the date of the deposit.

B. An Electronic Tax Deposit System

Section 6302(h) of the Code authorizes a new system which will allow for the transfer of tax deposit amounts electronically from taxpayer accounts to the Treasury's general account. The new system will be phased in over a period of several fiscal years, beginning with fiscal year 1994 (October 1, 1993, to September 30, 1994), by gradually increasing the percentage of the total depository taxes required to be collected by EFT. The temporary regulations implement this phase-in by gradually increasing the number of taxpayers that must deposit all of their depository taxes by EFT.

The requirement to deposit by EFT under these temporary regulations applies only to those taxpayers required to make deposits pursuant to regulations under section 6302 of the Code, and only for those taxes required to be deposited. At present, many small taxpayers are excluded from the various deposit requirements imposed by regulations under section 6302. For example, filers of Form 720, Quarterly Federal Excise Tax Return, are not required to make deposits for any calendar quarter in which the net tax liability reported on the Form 720 does not exceed $2,000. Similarly, filers of Form 941, Employer's Quarterly Federal Tax Return, are not required to make deposits for any calendar quarter in which the liability reported on the Form 941 is less than $500.

The temporary regulations, with one exception, do not apply to taxes with respect to wages for domestic service in the private home of an employer because these taxes are not required to be deposited but are remitted quarterly with Form 942, Employer's Quarterly Federal Tax Return for Household Employees. The sole exception is if the employer is a sole proprietor filing Form 941, Employer's Quarterly Federal Tax Return, who chooses to report wages to household employees on that form.

In order to achieve an expedited and orderly conversion to an EFT system, NAFTA prescribed a schedule of minimum percentages of taxes that must be deposited by EFT during a phase-in period. These percentages depend in part on whether the taxes are: (a) The taxes imposed by chapters 21 (Federal Insurance Contributions Act), 22 (Railroad Retirement Tax Act), and 24 (Collection of Income Tax at Source on Wages) of the Code, or (b) "other" depository taxes (generally corporate income taxes and various excise taxes). The statutorily prescribed minimum percentages for each year are as follows:

Fiscal year	Chapter 21, 22, & 24 taxes (percent)	Other taxes (percent)
1994	3	3
1995	16.9	20
1996	20.1	30
1997 & 1998	58.3	60
1999 and later	94	94

For the period prior to January 1, 1995, the first step of the phase-in of the EFT system will be carried out through binding agreements entered into between the Commissioner of Internal Revenue and certain third party bulk data processors (processors) under which the processors have committed to make deposits of Federal depository taxes of certain of their customers by EFT in such a manner as to ensure that the amounts are credited to the general account of the Treasury by the deposit due date. These agreements will take effect beginning in the latter part of fiscal year 1994 and will continue for a period of time into fiscal year 1995. A taxpayer who is a customer of a processor that is a party to one of these agreements may have its deposits that are subject to such an agreement made by the processor pursuant to the terms of the agreement until the expiration or termination of the agreement. However, the taxpayer continues to be responsible for the deposit of those depository taxes that are not subject to such agreement. If a taxpayer whose deposits are being made by a processor pursuant to such an agreement becomes required to deposit by electronic funds transfer pursuant to § 31.6302–1T(h)(1)(ii) of these temporary regulations, the taxpayer is responsible for making

deposits by electronic funds transfer of those depository taxes not subject to the agreement.

For periods after December 31, 1994, the temporary regulations require that deposits be made by EFT based on the taxpayer's total deposits of taxes imposed by chapters 21, 22, and 24 during certain "determination" periods. If a taxpayer's total deposits of the taxes imposed by chapters 21, 22, and 24 during the determination period exceed a prescribed dollar threshold, the taxpayer must begin depositing by EFT on and after the applicable effective date prescribed in the regulations, unless otherwise exempted. (A taxpayer will become subject to the EFT requirement for the applicable effective date "January 1, 1996" by exceeding the threshold amount during either calendar years 1993 or 1994). The phase-in schedule is as follows:

Threshold amount	Determination period	Applicable effective date
$78 million	1–1–93 to 12–31–93.	January 1, 1995.
47 million	1–1–93 to 12–31–93.	January 1, 1996.
47 million	1–1–94 to 12–31–94.	January 1, 1996.
50 thousand .	1–1–95 to 12–31–95.	January 1, 1997.
50 thousand .	1–1–96 to 12–31–96.	January 1, 1998.
20 thousand .	1–1–97 to 12–31–97.	January 1, 1999.

The thresholds set forth in this phase-in schedule have been set by taking into account the minimum percentages prescribed by NAFTA, the need for administrative convenience and simplicity, and the potential need for exemptions from the EFT system for certain small businesses. Therefore, the thresholds for the January 1, 1995 and January 1, 1996 effective dates were specifically set to satisfy the statutory minimum percentages. The $50,000 threshold for the January 1, 1997 effective date will result in receipts of depository taxes somewhat in excess of the percentage prescribed by NAFTA. For purposes of administrative convenience and simplicity, this threshold was adopted to require the participation of an entire class of taxpayers, that is, those taxpayers that are classified as "semi-weekly" depositors of employment taxes (the taxes imposed by chapters 21, 22, and 24). Finally, the $20,000 threshold for the January 1, 1999 effective date was set to satisfy the statutory percentage while allowing for the possibility that the smallest of depositors will be exempted from the EFT system. As described in paragraph C of this preamble, the IRS solicits comments on the impact of these regulations on small businesses. Based on those comments, the IRS will determine those categories of small businesses, if any, that should be exempted from the EFT requirements, and may adjust the threshold for the January 1, 1999 effective date to bring in additional taxpayers while at the same time accommodating any appropriate exemptions.

Although only the taxes imposed by chapters 21, 22, and 24 are used to determine whether a taxpayer is subject to the EFT deposit requirement, the requirement, once triggered, applies to all federal taxes (not just the taxes imposed by chapters 21, 22, and 24) that the taxpayer is required to deposit pursuant to regulations prescribed under section 6302 of the Code. Once a taxpayer becomes subject to the EFT deposit requirement, the taxpayer must continue to deposit by EFT.

At present the IRS has in place a voluntary electronic funds transfer (EFT) system in which a taxpayer may by telephone or computer effectuate an electronic funds transfer through the use of one of two payment options: debit and credit. The debit option is effected by using a Financial Agent of the Department of Treasury. The taxpayer requests the Financial Agent to initiate the transfer of funds from the taxpayer's bank account(s) to Treasury's general account and transmit the related tax payment data, supplied by the taxpayer, to the IRS. The credit option is effected by using the taxpayer's financial institution. The taxpayer requests the financial institution to initiate the transfer of funds to the Treasury's general account and submit the related tax data, supplied by the taxpayer, to a Financial Agent for transmission to the IRS. The EFT system required to be used in connection with these regulations will employ similar options and procedures.

C. Exemptions

Section 6302(h)(1)(B) of the Code, as added by NAFTA, provides that the regulations may contain such exemptions as the Secretary may deem appropriate. The Senate Report accompanying section 6302(h) strongly encourages the Secretary of the Treasury to consider the impact of the regulations on small businesses. S. Rep. No. 103–189, 103d Cong., 1st Sess., at 61 et. seq. (1993). The report recommends that the regulations should not create hardships for small businesses and that no small business should be required to purchase computers or gain access to any electronic equipment other than a touch-tone telephone. Further, the report urges the Secretary to take into account the specific needs of small employers, including possible exemption for the very smallest businesses from the new electronic funds transfer system. The phase-in schedule included in the temporary regulations defers use of the EFT system by the smallest businesses until at least calendar year 2000. The IRS welcomes comments about the impact of the temporary regulations on small businesses and will consider any suggestions regarding how small businesses should be treated under the regulations in order to implement Congressional intent. Based on the comments and suggestions received, the IRS will determine those categories of small businesses, if any, that should be exempted from the EFT requirements and publish such determinations in the Internal Revenue Bulletin. (See § 601.601(d)(2)(ii)(*b*)).

Special Analyses

It has been determined that these temporary regulations are not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, a copy of these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Vincent G. Surabian, Office of the Assistant Chief Counsel (Income Tax & Accounting), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social Security, Unemployment compensation.

26 CFR Part 40

Excise taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR parts 1, 31, and 40 are amended as follows:

PART 1—INCOME TAXES

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

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

Sections 1.6302–1T, 1.6302–2T and 1.6302–3T also issued under 26 U.S.C. 6302(h). * * *

Par. 2. Section 1.6302–1T is added to read as follows:

§ 1.6302–1T Use of Government depositaries in connection with corporation income and estimated income taxes and certain taxes of tax-exempt organizations—deposits required to be made by electronic funds transfer after December 31, 1994 (temporary).

(a) through (b)(1) [Reserved].

(b)(2) *Deposits by electronic funds transfer.* For the requirement to deposit corporation income and estimated income taxes and certain taxes of tax-exempt organizations by electronic funds transfer, see § 31.6302–1T(h) of this chapter. A taxpayer not required to deposit by electronic funds transfer pursuant to § 31.6302–1T(h) of this chapter remains subject to the rules of § 1.6302–1(b).

Par. 3. Section 1.6302–2T is added to read as follows:

§ 1.6302–2T Use of Government depositaries for payment of tax withheld on nonresident aliens and foreign corporations—deposits required to be made by electronic funds transfer after December 31, 1994 (temporary).

(a) through (b) [Reserved].

(c) *Deposits by electronic funds transfer.* For the requirement to deposit taxes withheld on nonresident aliens and foreign corporations by electronic funds transfer, see § 31.6302–1T(h) of this chapter. A taxpayer not required to deposit by electronic funds transfer pursuant to § 31.6302–1T(h) of this chapter remains subject to the rules of § 1.6302–2(b).

Par. 4. Section 1.6302–3T is added to read as follows:

§ 1.6302–3T Use of Government depositaries in connection with estimated taxes of certain trusts—deposits required to be made by electronic funds transfer after December 31, 1994 (temporary).

(a) through (b) [Reserved].

(c) *Cross-references.* For further guidance and instructions for certain banks and financial institutions acting as fiduciaries with respect to taxable trusts, see Revenue Procedure 89–49, 1989–2 C.B. 615 (see § 601.601(d)(2) of this chapter) or any successor revenue procedure. For the requirement to deposit estimated tax payments of taxable trusts by electronic funds transfer, see § 31.6302–1T(h) of this chapter.

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT THE SOURCE

Par. 5. The authority citation for part 31 is amended by adding entries in numerical order to read as follows:

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

Section 31.6302–1T also issued under 26 U.S.C. 6302(h). * * *

Section 31.6302(c)–3T also issued under 26 U.S.C. 6302(h). * * *

Par. 6. Section 31.6302–1T is added to read as follows:

§ 31.6302–1T Federal tax deposit rules for withheld income taxes and taxes under the Federal Insurance Contributions Act (FICA)—deposits required to be made by electronic funds transfer after December 31, 1994 (temporary).

(a) through (g) [Reserved].

(h) *Time and manner of deposit—deposits required to be made by electronic funds transfer*—(1) *In general.* Section 6302(h) of the Internal Revenue Code requires the Secretary to prescribe regulations as may be necessary for the development and implementation of an electronic funds transfer system to be used for the collection of depository taxes as described in paragraph (h)(2) of this section. Section 6302(h)(2) of the Code provides a phase-in schedule which sets forth escalating minimum percentages of those depository taxes to be deposited by electronic funds transfer, starting with the fiscal year beginning October 1, 1993, and ending September 30, 1994. This section prescribes the rules necessary for implementing an electronic funds transfer system for collection of depository taxes and for effecting an orderly and expeditious phase-in of that system.

(i) *Period prior to January 1, 1995.* The Commissioner of Internal Revenue has entered into binding agreements with third party bulk data processors. These agreements require that the third party bulk processors deposit certain depository taxes of certain of their customers by electronic funds transfer in a manner designed to ensure that those amounts are credited to the general account of the Treasury by the deposit due date. A taxpayer who is a customer of a third party bulk data processor that is a party to such an agreement may have its deposits that are subject to such agreement made by the processor until the expiration or termination of the agreement. However, the taxpayer continues to be responsible for the deposit of those depository taxes that are not subject to such agreement.

(ii) *Periods after December 31, 1994.* (A) Taxpayers whose aggregate deposits of the taxes imposed by Chapters 21 (Federal Insurance Contributions Act), 22 (Railroad Retirement Tax Act), and 24 (Collection of Income Tax at Source on Wages) of the Internal Revenue Code during a 12-month determination period exceed the applicable threshold amount are required to deposit all depository taxes (as described in paragraph (h)(2) of this section) due on and after the applicable effective date by electronic funds transfer (as defined in paragraph (h)(3) of this section) unless exempted under paragraph (h)(4) of this section. In general, each applicable effective date has one 12-month determination period. However, for the applicable effective date January 1, 1996, there are two determination periods. If the applicable threshold amount is exceeded in either of those determination periods, the taxpayer becomes subject to the requirement to deposit by electronic funds transfer, effective January 1, 1996. The threshold amounts, determination periods, and applicable effective dates are as follows:

Threshold amount	Determination period	Applicable effective date
$78 million	1–1–93 to 12–31–93	January 1, 1995.
47 million	1–1–93 to 12–31–93	January 1, 1996.
47 million	1–1–94 to 12–31–94	January 1, 1996.
50 thousand	1–1–95 to 12–31–95	January 1, 1997.
50 thousand	1–1–96 to 12–31–96	January 1, 1998.
20 thousand	1–1–97 to 12–31–97	January 1, 1999.

(B) Once a taxpayer is required to deposit by electronic funds transfer pursuant to paragraph (h)(1)(ii) of this section, the taxpayer will continue to deposit by electronic funds transfer. Until such time as a taxpayer is required by this section to deposit by electronic funds transfer, the taxpayer may voluntarily make deposits by electronic funds transfer, or must make deposits following the rules of § 31.6302–1(h), pertaining to deposits by Federal tax deposit (FTD) coupon.

(C) Any taxpayer whose deposits are being made by a third party bulk data processor pursuant to an agreement described in paragraph (h)(1)(i) of this section, and who is required to deposit by electronic funds transfer pursuant to this paragraph (h)(1)(ii), may have its deposits that are subject to such agreement made by the third party bulk data processor until the expiration or termination of the agreement. The taxpayer, however, is responsible for making deposits by electronic funds transfer of those depository taxes not subject to such agreement.

(2) *Taxes required to be deposited by electronic funds transfer.* Any taxpayer who is required under paragraph (h)(1)(ii) of this section to deposit by electronic funds transfer the taxes imposed by chapters 21, 22, and 24 of the Internal Revenue Code must also deposit by electronic funds transfer, beginning with the same applicable effective date, the taxes required to be deposited under §§ 1.6302–1, 1.6302–2, 1.6302–3 of this chapter, 31.6302(c)–3, and 40.6302(c)–1 of this chapter.

(3) *Electronic funds transfer defined.* For purposes of this section, an *electronic funds transfer* is any transfer of depository taxes made in accordance with Revenue Procedure 94–48, 1994–29 I.R.B. (see § 601.601(d)(2) of this chapter), or in accordance with procedures subsequently published by the Commissioner.

(4) *Exemptions.* The Commissioner of Internal Revenue will identify by guidance published in the Internal Revenue Bulletin those categories of taxpayers, if any, that are to be exempted from the requirement to deposit by electronic funds transfer. (See § 601.601(d)(2)(ii)(*b*) of this chapter.)

(5) *Separation of deposits.* A deposit for one return period must be made separately from a deposit for another return period.

(6) *Payment of balance due.* If the aggregate amount of taxes reportable on the applicable tax return for the return period exceeds the total amount deposited by the taxpayer with regard to the return period, then the balance due must be remitted in accordance with the applicable form and instructions.

(7) *Time deemed deposited.* A deposit by electronic funds transfer will be deemed made—

(i) At the time a debit is made (the amount is withdrawn from the taxpayer's account) if the Government's authorized financial agent debits the taxpayer's account; or

(ii) In all other cases, at the time the funds are credited to Treasury's general account.

(8) *Time deemed paid.* In general, amounts deposited under this paragraph (h) will be considered paid at the time deemed deposited under paragraph (h)(7) of this section, or on the last day prescribed for filing the return (determined without regard to any extension of time for filing the return), whichever is later. In the case of the taxes imposed by chapters 21 and 24 of the Internal Revenue Code, for purposes of section 6511 and the regulations thereunder (relating to the period of limitation on credit or refund), if an amount is deposited prior to April 15th of the calendar year immediately succeeding the calendar year that includes the period for which the amount was deposited, the amount will be considered paid on April 15th.

Par. 7. Section 31.6302(c)–3T is added to read as follows:

§ 31.6302(c)–3T Use of Government depositaries in connection with tax under the Federal Unemployment Tax Act—deposits required to be made by electronic funds transfer after December 31, 1994 (temporary).

(a) through (b) [Reserved].

(c) *Manner of deposit—deposits required to be made by electronic funds transfer.* For the requirement to deposit tax under the Federal Unemployment Tax Act by electronic funds transfer, see § 31.6302–1T(h). A taxpayer not required to deposit by electronic funds transfer pursuant to § 31.6302–1T(h) remains subject to the rules of § 31.6302(c)–3(b).

PART 40—EXCISE TAX PROCEDURAL REGULATIONS

Par. 8. The authority citation for part 40 is amended by adding an entry in numerical order to read as follows:

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

Section 40.6302(c)–1T also issued under 26 U.S.C. 6302 (a) and (h). * * *

Par. 9. Section 40.6302(c)–1T is added to read as follows:

§ 40.6302(c)–1T Use of Government depositaries—deposits required to be made by electronic funds transfer after December 31, 1994 (temporary).

(a) through (d)(1) [Reserved].

(d)(2) *Deposits by electronic funds transfer.* For the requirement to deposit excise taxes by electronic funds transfer, see § 31.6302–1T(h) of this chapter. A taxpayer not required to deposit by electronic funds transfer pursuant to § 31.6302–1T(h) of this chapter remains subject to the rules of § 40.6302(c)–1(d).

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

Approved: June 27, 1994.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 94–16477 Filed 7–6–94; 1:01 pm]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 31 and 40

[IA–03–94]

RIN 1545–AS79

Federal Tax Deposits by Electronic Funds Transfer

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross reference to temporary regulations and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations that provide guidance relating to the deposit of taxes by electronic funds transfer under section 6302(h) of the Internal Revenue Code. The text of the temporary regulations also serves as the comment document for this notice of proposed rulemaking. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by September 12, 1994. Outlines of topics to be discussed at the public hearing scheduled for October 3, 1994, beginning at 10:00 a.m. must be received by September 12, 1994.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (IA–03–94), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (IA–03–94), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. The public hearing will be held in the IRS Auditorium.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Vincent G. Surabian, 202–622–6232 (not a toll-free number). Concerning submissions and the public hearing, Michael Slaughter 202–622–7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations (TD 8553) published in the Rules and Regulations section of this issue of the **Federal Register** contain amendments to the Income Tax Regulations (26 CFR part 1), the Regulations on Employment Taxes and Collection of Income Tax at the Source (26 CFR part 31), and the Excise Tax Procedural Regulations (26 CFR part 40). These amendments relate to the deposits of taxes by electronic funds transfer. The final regulations that will result from the regulations proposed in this notice would be based on the text of the temporary regulations and would provide rules for the gradual phase-in of the requirement for taxpayers to deposit certain taxes by electronic funds transfer.

The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains these proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these rules and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, a copy of this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) that are timely submitted to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for October 3, 1994, beginning at 10:00 a.m. at the IRS Auditorium. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit written comments by September 12, 1994, and submit an outline of the topics to be discussed and the time to be devoted to each topic by September 12, 1994.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving comments has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Vincent G. Surabian, Office of the Assistant Chief Counsel (Income Tax & Accounting), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social Security, Unemployment compensation.

26 CFR Part 40

Excise taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1, 31 and 40 are proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entry "Section 1.6302–1(a)" and adding entries in numerical order to read as follows:

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

Section 1.6302–1 also issued under 26 U.S.C. 6302 (c) and (h).

Sections 1.6302–2 and 1.6302–3 also issued under 26 U.S.C. 6302(h). * * *

Par. 2. Section 1.6302–1 is amended as follows:

1. The heading for paragraph (b) is revised.

2. The text of paragraph (b) is redesignated paragraph (b)(1) and a heading for (b)(1) is added.

3. Paragraph (b)(2) is added.

4. The revised and added provisions read as follows:

§ 1.6302–1 Use of Government depositaries in connection with corporation income and estimated income taxes and certain taxes of tax-exempt organizations.

* * * * *

(b) *Manner of deposit*—(1) *Deposit by Federal tax deposit coupon.* * * *

(2) *Deposit by electronic funds transfer.* For the requirement to deposit corporation income and estimated income taxes and certain taxes of tax-exempt organizations by electronic funds transfer, see § 31.6302–1T(h) of this chapter. A taxpayer not required to deposit by electronic funds transfer

pursuant to § 31.6302–1T(h) of this chapter remains subject to the rules of § 1.6302–(b)(1).

* * * * *

Par. 3. Section 1.6302–2 is amended as follows:

1. The heading for paragraph (b) is revised.

2. Paragraph (c) is redesignated paragraph (b)(6).

3. A new paragraph (c) is added.

4. The revised and added provisions read as follows:

§ 1.6302–2 Use of Government depositaries for payment of tax withheld on nonresident aliens and foreign corporations.

* * * * *

(b) *Deposits by Federal tax deposit coupon.* * * *

(c) *Deposits by electronic funds transfer.* For the requirement to deposit taxes withheld on nonresident aliens and foreign corporations by electronic funds transfer, see § 31.6302–1T(h) of this chapter. A taxpayer not required to deposit by electronic funds transfer pursuant to § 31.6302–1T(h) of this chapter remains subject to the rules of § 1.6302–2(b).

* * * * *

Par. 4. In § 1.6302–3, paragraph (c) is revised to read as follows:

§ 1.6302–3 Use of Government depositaries in connection with estimated taxes of certain trusts.

* * * * *

(c) *Cross-references.* For further guidance and instructions for certain banks and financial institutions acting as fiduciaries with respect to taxable trusts, see Revenue Procedure 89–49, 1989–2 C.B. 615 (see § 601.601(d)(2) of this chapter) or any successor revenue procedure. For the requirement to deposit estimated tax payments of taxable trusts by electronic funds transfer, see § 31.6302–1T(h) of this chapter.

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Par. 5. The authority citation for part 31 is amended by removing the entry "Sections 31.6302–1 through 31.6302–3" and adding entries in numerical order to read as follows:

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

Sections 31.6302–1 through 31.6302–3 also issued under 26 U.S.C. 6302(a), (c) and (h). * * *

Section 31.6302(c)–3 also issued under 26 U.S.C. 6302(h).

Par. 6. In § 31.6302–1, paragraph (h) is redesignated paragraph (i), and new paragraph (h) is added to read as follows:

§ 31.6302–1 Federal tax deposit rules for withheld income taxes and taxes under the Federal Insurance Contributions Act (FICA) attributable to payments made after December 31, 1992.

[The text of proposed paragraph (h) is the same as the text of § 31.6302–1T(h) published elsewhere in this issue of the **Federal Register**].

Par. 7. Section 31.6302(c)–3 is amended as follows:

1. The heading for paragraph (b) is revised.

2. Paragraph (c) is revised.

3. Paragraph (d) is added.

4. The revised and added provisions read as follows:

§ 31.6302(c)–3 Use of Government depositaries in connection with tax under the Federal Unemployment Tax Act.

* * * * *

(b) *Manner of deposit—deposits required to be made by Federal tax deposit (FTD) coupon.* * * *

(c) *Manner of deposit—deposits required to be made by electronic funds transfer.* For the requirement to deposit tax under the Federal Unemployment Tax Act by electronic funds transfer, see § 31.6302–1T(h). A taxpayer not required to deposit by electronic funds transfer pursuant to § 31.6302–1T(h) remains subject to the rules of § 31.6302(c)–3(b).

(d) *Effective date.* The provisions of paragraphs (a) and (b) of this section apply with respect to calendar quarters beginning after December 31, 1969. The provisions of paragraph (c) of this section apply with respect to calendar quarters beginning on or after January 1, 1995.

PART 40—EXCISE TAX PROCEDURAL REGULATIONS

Par. 8. The authority citation for part 40 is amended by removing the entry "Sections 40.6302(c)–1, 40.6302(c)–2, 40.6302(c)–3 and 40.6302(c)–4" and adding entries in numerical order to read as follows:

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

Section 40.6302(c)–1 also issued under 26 U.S.C. 6302 (a) and (h).

Sections 40.6302(c)–2, 40.6302(c)–3 and 40.6302(c)–4 also issued under 26 U.S.C. 6302(a).

Par. 9. Section 40.6302(c)–1 is amended as follows:

1. The text of paragraph (d) is redesignated paragraph (d)(1) and a paragraph heading is added for (d)(1).

2. Paragraph (d)(2) is added.

3. The added provisions read as follows:

§ 40.6302(c)–1 Use of Government depositaries.

* * * * *

(d) *Remittance of deposits*—(1) *Deposits by Federal tax deposit coupon.* * * *

(2) *Deposits by electronic funds transfer.* For the requirement to deposit excise taxes by electronic funds transfer, see § 31.6302–1T(h) of this chapter. A taxpayer not required to deposit by electronic funds transfer pursuant to § 31.6302–1T(h) of this chapter remains subject to the rules of § 40.6302(c)–1(d)(1).

* * * * *

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

[FR Doc. 94–16478 Filed 7–6–94; 1:01 pm]

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federal register

Monday
July 11, 1994

Part III

Department of Agriculture

Cooperative State Research Service

National Competitive Research Initiative Grants Program (Competitive Research Grants Program) Fiscal Year 1994: Supplementary Solicitation for Applications; Solar Ultraviolet Radiation Monitoring; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

National Competitive Research Initiative Grants Program (Competitive Research Grants Program) Fiscal Year 1994: Supplementary Solicitation for Applications; Solar Ultraviolet Radiation Monitoring

Applications are invited for competitive grant awards in agricultural, forest, and related environmental sciences under the National Competitive Research Initiative Grants Program (NCRIGP) administered by the Office of Grants and Program Systems, Cooperative State Research Service (CSRS), for fiscal year 1994. This solicitation is supplementary to those previously released in the **Federal Register** on September 7, 1993 (58 FR 47184) and on October 8, 1993 (58 FR 52570).

Authority

The authority for this program is contained in section 2(b) of the Act of August 4, 1965, as amended (7 U.S.C. 450i(b)). Under this program, subject to the availability of funds, the Secretary may award competitive research grants, for periods not to exceed five years, for the support of research projects to further the programs of the Department of Agriculture (USDA). Proposals may be submitted by any State agricultural experiment station, college, university, other research institution or organization, Federal agency, private organization, corporation, or individual. Proposals from scientists at non-United States organizations will not be considered for support.

Pursuant to Section 719 of Public Law No. 103–111, (the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1994), funds available in Fiscal Year 1994 to pay indirect costs on research grants awarded competitively by CSRS may not exceed 14 per centum of the total Federal funds provided under each award.

In addition, pursuant to Section 727 (b) of Public Law No. 103–111, in case any equipment or products may be authorized to be purchased with funds provided under this program, entities receiving such funds are encouraged to use such funds to purchase only American-made equipment or products.

Applicable Regulations and Statutory Guidance

Regulations applicable to this program include, but are not limited to, the following: (a) the regulations governing the NCRIGP, 7 CFR Part 3200, which set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals and the awarding of grants, and regulations relating to the post-award administration of grant projects; (b) the USDA Uniform Federal Assistance Regulations, 7 CFR Part 3015; (c) the USDA Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, 7 CFR Part 3016; (d) Section 1402 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3101), which-sets forth purposes that research supported by the NCRIGP should address; and (e) Section 1404 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3103), which defines "sustainable agriculture."

RESEARCH PROGRAM TO BE SUPPORTED (Supplementary to those published in the September 7, 1993 **Federal Register** (58 FR 47184) and in the October 8, 1993 **Federal Register** (58 FR 52570)):

CSRS is soliciting proposals, subject to the availability of funds, for support of high priority research of importance to agriculture, forestry, and related environmental sciences, in the following Research Program:

Solar Ultraviolet Radiation Monitoring

The total amount available in fiscal year 1994 for grant awards in the research program area of Solar Ultraviolet Radiation Monitoring is approximately $800,000.

The National Research Initiative Competitive Grants Program, in addition to providing support for research on biological response to predicted effects of stratospheric ozone depletion, invited applications in 1991 for development of instrumentation for a solar ultraviolet radiation monitoring network. Based on the results now available from that earlier activity, the Department desires to support continued development of high quality spectroradiometers for measurements of ultraviolet-B radiation and utilization of the spectroradiometers in research to accurately determine ultraviolet-B radiation at ground level. Such information will more accurately document levels of UV radiation reaching the Earth's surface. Such knowledge is needed in order to develop an understanding of the response of living systems to current conditions, to forecast future effects, and to develop response strategies for mitigating effects resulting from any future increases in UV radiation. The following specific program area and guidelines are provided as a base from which proposals may be developed.

Proposals developed for the Solar Ultraviolet Radiation Monitoring program should include field instrumentation for high quality spectral irradiance measurements and a research plan for data collection, analysis, and use. Emphasis should be placed on the following instrumentation specifications and operating protocols:

General: The instrument should measure the global horizontal terrestrial solar UV–B spectral irradiance over the spectral wavelength region from 280–400 nm. Overall network radiometric uncertainty should be no more than 10% (3 sigma) at 295 nm decreasing to less than 5% (3 sigma) at 340 nm. These and following specifications are applicable over the ambient range of temperature, humidity, and pressure found in northern temperate latitudes.

Wavelength range: 280–400 nm.

Dynamic range: Spectral irradiance measurements are to be made over a maximum solar signal of 1.0 W/m^2 nm at 400 nm decreasing to less than 10^{-6} W/m^2 nm at 290 nm.

Accuracy and precision: Instruments must maintain their calibration in the field without shelter up to 40° Celsius for a month time period.

Wavelength:

a. Resolution of wavelength setting (smallest setable difference): ±0.02 nm;

b. Repeatability: ±0.02 nm;

c. Accuracy: ±0.02 nm;

d. Bandpass: <=0.3 nm;

e. Stray light: < 10^{-8} at greater than +5 bandwidths from center wavelength.

Intensity:

a. Resolution: is to be 0.001 of full scale from all decade ranges from 1 to 1×10^{-5} W/m^2 nm and 2×10^{-8} W/m^2 nm for ranges less than or equal to 1×10^{-6}.

b. Repeatability: must be within 0.2% of the decade range value.

c. Accuracy: instrument shall hold a calibration to an accuracy of ± 1% of signal level between 1.0 W/m^2 nm and 10^{-6} W/m^2 nm.

Finally, instrument calibration and characterization with regard to the criteria specified herein, and standardization among the several instruments, is considered critical. The research plan should give consideration to data collection, storage, retrieval, processing, and statistical analysis. It is expected that these data will be handled in a manner appropriate for use by the U.S. and international scientific communities; for support of atmospheric science research; model development and validation; and documentation of UV–B climatology.

In accordance with Section 2(b)(7) of the Act of August 4, 1965, as amended (7 U.S.C. 450i(b)), funds will not be awarded for the planning, repair, rehabilitation or acquisition, or construction of a building or facility or purchase or installation of fixed equipment.

Proposals are invited from investigator(s) at a single or multiple institutions with the proper competence and facilities to accomplish the objectives.

Investigators are encouraged to contact the Program Director at 202–401–4871 prior to developing a proposal for this program.

When to Submit

To be considered for funding during fiscal year 1994, proposals submitted in response to this announcement must be postmarked by August 15, 1994. It is preferable that proposals be submitted via Express Mail or overnight courier to assure their prompt receipt. The bill of lading for such submissions must be dated no later than the above postmark date.

Where to Obtain Additional Materials

The solicitation, which contains Research Program descriptions and detailed instructions on how to apply, may be obtained by contacting the office indicated below. Please note that Part 1 of the Program Description is necessary for preparing a proposal. If you do not already have Part 1, please request that document as well.

NRICGP, c/o Proposal Services Branch
AMD/CSRS/USDA, Room 303
Aerospace Center, AG BOX 2245,
Washington, DC 20250–2245,
Telephone: (202) 401–5048

These materials may also be requested via Internet by sending a message with your name, mailing address (not e-mail), phone number, and list of materials that you are requesting to psb@csrs.esusda.gov. The materials will then be mailed to you (not e-mailed) as quickly as possible.

Done at Washington, DC, this 5th day of July 1994.

William D. Carlson,

Associate Administrator, Cooperative State Research Service.

[FR Doc. 94–16689 Filed 7–8–94; 8:45 am]

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federal register

Monday
July 11, 1994

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

Notice of Fund Availability for the Rental Voucher Program and Rental Certificate Program

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–94–3789; FR–3705–N–01]

NOFA for the Rental Voucher Program and Rental Certificate Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of fund availability for FY 1994 and procedures for allocating funds and approving housing agency applications.

SUMMARY: The purpose of the Rental Voucher and the Rental Certificate Programs is to assist eligible families to pay the rent for decent, safe, and sanitary housing. This notice states the fund allocation available for award of "fair share" rental vouchers and rental certificates. The notice identifies the amount of housing assistance budget authority available for each allocation area and HUD State or Area Office jurisdiction during Fiscal Year 1994.

This notice also:

(1) Invites Public Housing Agencies (PHAs) and Indian Housing Authorities (IHAs), herein referred to as housing agencies (HAs), to submit applications for housing assistance funds;

(2) Provides instructions to HAs governing the submission of applications; and

(3) Describes procedures for rating, ranking, and approving HA applications.

DATES: Applications for all funding under this NOFA must be received in the HUD State or Area Office/Native American Programs Office by 3:00 p.m. local time (i.e., time at the office where the application is submitted) on August 25, 1994.

ADDRESSES: The basic application, Form HUD–52515, and all other necessary application materials may be obtained from, and completed applications are to be submitted to, the appropriate HUD State or Area Office/Native American Programs Office for the jurisdiction in which the applicant is located (see Section II, Application Processing, of the NOFA).

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Director, Operations Branch, Rental Assistance Division, Office of Public and Indian Housing, Room 4220, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–8000, telephone (202) 708–0477. Hearing- or speech-impaired individuals may call HUD's TDD number (202) 708–4594. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB), under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and have been assigned OMB control number 2577–0169.

I. Purpose and Substantive Description

A. Authority

The regulations governing the Rental Certificate and the Rental Voucher Programs are published at 24 CFR parts 882 and 887, respectively. The regulations for allocating housing assistance budget authority under section 213(d) of the Housing and Community Development Act of 1974 are published at 24 CFR part 791, subpart D.

B. Allocation Amounts

(1) Housing Needs Formula

In this fiscal year, approximately $975 million of budget authority for the rental voucher and certificate programs is available for fair share formula allocation. (This amount may be reduced by up to $100 million (or some other amount) to increase the level of funding for litigation or desegregation.) This funding will support additional units for HA rental voucher and rental certificate programs. Of this amount, approximately $624 million is for rental vouchers and approximately $351 million is for rental certificates. This budget authority is being allocated to HUD State or Area Office and allocation areas under this NOFA, using the housing needs factors established in accordance with 24 CFR 791.402. For purposes of this NOFA, the Department is using the metropolitan area designations that were in effect prior to December 31, 1992, since detailed census data tabulations for the new metropolitan area designations are not available, yet. In addition, $51.3 million is retained in a Headquarters Reserve which will not be allocated by formula.

(2) Metropolitan/Non-Metropolitan Mix

Separate housing needs factors were developed for the metropolitan and non-metropolitan allocation areas within each HUD State or Area Office jurisdiction. On a nationwide basis, approximately 90 percent of the Fiscal Year 1994 "fair share" budget authority for the Rental Voucher Program and Rental Certificate Program is designated for metropolitan areas. The metropolitan housing needs factors were applied to the housing assistance budget authority available for use in metropolitan areas and the non-metropolitan housing needs factors were applied to the housing assistance budget authority available for use in non-metropolitan areas.

The allocation areas were established by the HUD field offices to ensure sufficient competition among HAs (including State and regional or multi-county HAs) operating housing programs within the HUD-established allocation areas.

(3) Program Type

This notice announces the fair share allocation of housing assistance budget authority (See Attachment 1) for the Rental Voucher Program and for the Rental Certificate Program to each HUD State or Area Office for designated allocation areas, based on the housing needs factors. The allocation of housing assistance budget authority to each allocation area, however, is the total for both programs. The allocations have been structured to give HUD State or Area Offices flexibility in approving HA applications for the rental voucher program or the rental certificate program. It is not necessary that each allocation area within a HUD State or Area Office jurisdiction be provided both rental vouchers and rental certificates. This notice also provides, for each allocation area, an estimate of the total number of rental vouchers and rental certificates that could be funded from the housing assistance available in the allocation area. These estimates are based on the average fair market rents for two-bedroom units in the HUD State or Area Office's jurisdiction. The actual number of units assisted will vary from these estimates in the actual bedroom size mix that is funded in a given area.

(4) Potential Additional Funding

If additional rental voucher or rental certificate funding becomes available for incremental use during Fiscal Year 1994, the Department plans to distribute any additional funding to HUD State or Area Offices using the same percentage distribution as reflected in Attachment 1 to this NOFA. Any additional funding will be used under the competitive requirements of this NOFA to fund HA applications which were approvable but not funded, or approved and funded at less than 100 percent of the requested amount.

C. Family Self-Sufficiency Program

Unless specifically exempted by HUD, any rental voucher or rental certificate

funding reserved in FY 94 (except funding for renewals or amendments) will be used to establish the minimum size of a PHA's FSS program.

D. HA Eligibility

All HAs are invited by this notice to submit applications for the incremental funding for the Rental Voucher Program (24 CFR part 887) and the Rental Certificate Program (24 CFR part 882).

II. Application Process

A. Application Requirements

All the items in Section III of this NOFA must be included in the application submitted to the HUD State or Area Office/Native American Programs Office. The application may include an explanation of how the application meets, or will meet, the selection criteria listed in this NOFA. The maximum point total available under the selection criteria in this NOFA is 95.

B. Selection Criteria/Rating Factors

(1) Selection Criterion 1

HA Administrative Capability (40 points).

(a) Description: Overall HA administrative capability in the Rental Voucher, Rental Certificate, and Moderate Rehabilitation Programs is either excellent or good. Administrative Capability is evidenced by factors such as leasing rates and correct administration of housing quality standards (HQS), compliance with the portability requirements for rental vouchers and rental certificates, compliance with Fair Housing and Equal Opportunity program requirements, assistance payment computation, timely submission of budgets and financial statements, and rent reasonableness requirements. For purposes of this NOFA, an HA administering a Rental Voucher, Rental Certificate, or Moderate Rehabilitation Program will not be rated on the administration of its Public or Indian Housing Program. If an HA is not administering a Rental Voucher, Rental Certificate, or Moderate Rehabilitation Program, HUD will rate HA administration of the Public or Indian Housing Program. If an HA is not administering a Rental Voucher, Rental Certificate, Moderate Rehabilitation, Public Housing or Indian Housing Program, HUD will assess the administrative capability of the HA based on such factors as experience of staff, support of the HA by the local government, and the HA's administrative experience with non-HUD housing programs.

(b) Rating and Assessment:

(i) HUD review of HA Operations:

- 8 Points—Assign 8 points if HA has no review findings outstanding, or all review findings have been corrected, for HUD HA management reviews, Fair Housing & Equal Opportunity reviews, or Inspector General audits as of the deadline date for submission of applications under this NOFA.
- 5 Points—Assign 5 points if HA has less than five review findings outstanding and all findings are being addressed.
- 2 Points—Assign 2 points if HA has five or more review findings outstanding and all findings are being addressed.
- 0 Points—Assign 0 points if HA has any review findings outstanding and the findings are not being addressed.

(ii) Compliance with Section 8 Portability rules:

- 8 Points—Assign 8 points if HA is in compliance with all provisions of the portability rules.
- 5 Points—Assign 5 points if HA is in general compliance with portability rules, but has some minor compliance issues.
- 2 Points—Assign 2 points if HA has some major compliance issues under portability which are being addressed.
- 0 Points—Assign 0 points if HA is not in compliance with portability rules and issues are not being addressed.

(iii) Housing Quality Standards (HQS) Inspections:

- 8 Points—Assign 8 points if HA had more than 95% of its units pass HQS inspections by HUD at the last review or HUD is aware of actions taken by the HA to improve the number of units that pass HQS inspections to 95% or more.
- 6 Points—Assign 6 points if HA had more than 90% of its units pass HQS inspections by HUD at the last review, or HUD is aware of actions taken by the HA to improve the number of units that pass HQS inspections to 90% or more.
- 4 Points—Assign 4 points if HA had more than 85% of its units pass HQS inspections by HUD at the last review, or HUD is aware of actions taken by the HA to improve the number of units that pass HQS inspections to 85% or more.
- 2 Points—Assign 2 points if HA had more than 80% of its units pass HQS inspections by HUD at the last review, or HUD is aware of actions taken by the HA to improve the number of units that pass HQS inspections to 80% or more.
- 0 Points—Assign 0 points if HA had 80% or less of its units pass HQS inspections by HUD at the last review and HUD is not aware of actions taken by the HA to improve the number of units that pass HQS inspections to 80% or more.

(iv) Percentage of Units Leased as of September 30, 1993. HUD staff should use the percentage of units under ACC for a period of one year for the tenant-based rental assistance programs administered by an HA. HUD may use a report on leasing for another period if the September 30, 1993, report is not reflective of HA performance.

- 8 Points—Assign 8 points if HA had 98% or more of its rental certificates and rental vouchers under lease.
- 6 Points—Assign 6 points if HA had 96% or more of its rental certificates and rental vouchers under lease.
- 4 Points—Assign 4 points if HA had 94% or more of its rental certificates and rental vouchers under lease.
- 2 Points—Assign 2 points if HA had 90% or more of its rental certificates and rental vouchers under lease.
- 0 Points—Assign 0 points if HA had less than 90% of its rental certificates and rental vouchers under lease.

(v) Timely Submission of HA Budget and Financial Statements to HUD.

- 8 Points—Assign 8 points if the HA submitted both its most recent fiscal year Section 8 budget at least 30 days prior to the start of the HA fiscal year and its year-end Section 8 annual financial statements within the required 45 days of the end of the HA's fiscal year.
- 4 Points—Assign 4 points if the HA submitted either its most recent fiscal year budget at least 30 days prior to the start of the HA's fiscal year or its year-end Section 8 annual financial statements within the required 45 days of the end of the HA fiscal year.
- 0 Points—Assign 0 points if the HA is unable to document the timely submission of the budget and financial statements.

(2) Selection Criterion 2: Underfunding of Housing Needs (45 points).

(a) Description: The degree to which the housing needs of the primary area specified in the HA's application from which the HA draws families to assist (primary area) have previously been underfunded, relative to the needs of other localities within the same allocation area, taking into account such factors as the number of assisted housing units and the number of very low-income renter households with housing problems, eligible for such assistance. The HUD State or Area Office/Native American Programs Office will, wherever practicable, consider needs being met by all Federally assisted rental housing programs, including the FmHA Section 515 Rural Rental Housing program, but will, as a minimum, consider assistance provided under the Rental Voucher Program, the

Rental Certificate Program, other Section 8 Programs, and the Public or Indian Housing Program.

In accordance with Notice PIH 91–45 (HUD), the HUD State or Area Office/ Native American Programs Office will notify FmHA of applications it receives and ask that FmHA provide advisory comments concerning the market for additional assisted housing or the possible impact the proposed units may have on FmHA projects. Applications for which FmHA has provided comments expressing concerns about market need or the continued stability of existing FmHA projects, with which HUD agrees, will receive zero points for this criterion.

(b) Rating and Assessment: To receive points under this criterion, an application must propose funding in an area which has been previously underfunded or proportionately funded relative to the need for housing in the same allocation area.

The assignment of points is based on the degree to which the needs in the primary area specified in the application have been underfunded, taking into account the number of assisted housing units and the number of very low-income renter households with housing problems. The determination of point values will be based on a comparison of the percentage of housing need served in the primary area specified in the application to the percentage of need served in the allocation area since the 1990 census. The percentages for the allocation areas and the primary areas are to be rounded to the nearest whole number.

The HUD State or Area Office/Native American Programs Office will evaluate whether housing need in the primary area specified in the application has been underfunded and will assign one of the three point-values, as follows:

- 45 Points. Housing need in the primary area specified in the application has been severely underfunded. A primary area with a percentage of need served that is equal to or less than one-third the allocation area's percentage will be determined to be severely underfunded.
- 30 Points. Housing need in the primary area specified in the application has been moderately underfunded. An application with a percentage of need served that is greater than one-third the allocation area's percentage but equal to or less than two-thirds of the allocation area percentage will be determined to be moderately underfunded.
- 15 Points. Housing need in the primary area specified in the application has been proportionately funded. An application with a percentage of need served that is greater than two-thirds the allocation area's percentage but equal to or less than the allocation area percentage will be determined to be proportionately funded.
- 0 Points. Housing need in the primary area specified in the application has been overfunded. A primary area with a percentage of need served that is greater than the allocation area percentage will be determined to have been overfunded.

(3) Selection Criterion 3: Local Initiatives (5 points).

(a) Description. The application must describe the extent to which HAs demonstrate locally initiated efforts in support of their Rental Voucher and Rental Certificate Programs or comparable tenant-based rental assistance programs. Evaluation of a locality's contribution is measured competitively by the extent to which a locality is able to provide services or cash contributions or demonstrate its intention to provide this kind of support in the future, as compared to services or contributions provided by other localities of like program size.

(b) Rating and Assessment. The HUD State or Area Office/Native American Programs Office will assign one of two point-values, as follows:

- 5 points: The State or locality provides significant local support (e.g., financial, manpower for inspection services) to its Rental Voucher or Rental Certificate Program.
- 2 points: The State or locality provides minimal local support to its Rental Voucher or Rental Certificate Program.
- 0 points: The State or locality does not provide support to the HA's Rental Voucher or Rental Certificate Program.

(4) Selection Criterion 4: Efforts of HAs to Establish a Family Self-Sufficiency Program (10 points Deduction).

(a) Description: The application must describe the efforts undertaken by the PHA to establish a Section 8 Family Self-Sufficiency (FSS) program including (1) submission to HUD of an Action Plan, and (2) creation of a Program Coordinating Committee. If a PHA is not administering a Rental Voucher or Rental Certificate Program, the HUD State or Area Office will rate HA administration of the Public Housing FSS program, if applicable. All activities rated under this criterion must have been completed prior to the submission of an application under this NOFA. The score of the PHA application must be reduced if the PHA received an FSS Incentive award of Section 8 funding in FY 1992 and the PHA has failed to complete the required implementation steps as described below. Also, the score of a PHA application must be reduced if the PHA received funding in FY 1993 (unless the HUD State or Area Office granted a total exception to the FSS program requirement) and the PHA has failed to complete the required implementation steps as described below.

(b) Rating and Assessment: The HUD State or Area Office must deduct point values as shown below:

- 10 point Deduction—Deduct 10 points if (1) the HA has failed to establish a Program Coordinating Committee and provide the names, duties and experience of all members (24 CFR 984.202(a) & (b)) to HUD, and (2) the HA has failed to submit an Action Plan to HUD within 90 days of notification by HUD of approval of the PHA's application for units under the FY 91/92 FSS incentive award competition or HUD approval of the HA's first application, commencing in FY 93, for rental certificates or rental vouchers (24 CFR 984.201(c)(1)).
- 5 point Deduction—Deduct 5 points if (1) the HA has failed to establish a Program Coordinating Committee and provide the names, duties and experience of all members or (2) the HA has failed to submit an Action Plan in accordance with 24 CFR 984.201(c)(1).

(5) Selection Criterion 5: Efforts of HA to Provide Area-Wide Housing Opportunities for Families (5 points).

(a) Description: Many HAs have undertaken voluntary efforts to provide area-wide housing opportunities for families. HAs in metropolitan and non-metropolitan areas are eligible for points under this criterion. These HAs have established cooperative agreements with other HAs or created a consortium of HAs in order to facilitate the transfer of families and their rental assistance between HAs. In addition, HAs have established relationships with non-profit groups to provide families with additional counseling to increase the likelihood of a successful move by the families to low-poverty areas.

(b) Rating and Assessment: The HUD State or Area Office/Native American Programs Office will assign point values as shown below:

- 5 points—Assign 5 points if the HA documents that it has taken steps to increase area-wide housing opportunities for families such as being a member of an established consortium of HAs including at least 50 percent of the HAs in its housing market, providing extra counseling to families, establishing a relationship with other groups including non-profit agencies, or

participating in other activities that facilitate area-wide housing opportunities for families.

• 0 Points—Assign 0 points if the HA is unable to document area-wide efforts as shown in this criterion.

C. Unacceptable Applications

(1) After the 14-calendar day technical deficiency correction period (refer to Section IV, Corrections to Deficient Applications, of this NOFA), the HUD State or Area Office/Native American Programs Office will disapprove HA applications that it determines are not acceptable for processing (refer to Section III(F), Checklist of Technical Requirements, of this NOFA). The HUD State or Area Office/Native American Programs Office notification of rejection letter must state the basis for the decision.

(2) Applications that fall into any of the following categories will not be processed:

(a) The Department of Justice has brought a civil rights suit against the applicant HA, and the suit is pending.

(b) There has been an adjudication of a civil rights violation in a civil action brought against the HA by a private individual, unless the HA is operating in compliance with a court order, or implementing a HUD approved resident selection and assignment plan or compliance agreement designed to correct the areas of noncompliance.

(c) There are outstanding findings of noncompliance with civil rights statutes, Executive Orders, or regulations, as a result of formal administrative proceedings, or the Secretary has issued a charge against the applicant under the Fair Housing Act, unless the applicant is operating under a conciliation or compliance agreement designed to correct the areas of non-compliance.

(d) HUD has denied application processing under Title VI of the Civil Rights Act of 1964, the Attorney General's Guidelines (28 CFR 50.3), and the HUD Title VI regulations (24 CFR 1.8) and procedures (HUD Handbook 8040.1), or under section 504 of the Rehabilitation Act of 1973 and HUD regulations (24 CFR 8.57).

(e) The HA has serious unaddressed, outstanding Inspector General audit findings, fair housing and equal opportunity monitoring review findings, or HUD State or Area Office/Native American Programs Office management review findings for one or more of its Rental Voucher, Rental Certificate, or Moderate Rehabilitation Programs, or, in the case of an HA that is not currently administering a Rental Voucher, Rental Certificate, or Moderate Rehabilitation Program, for its Public Housing Program or Indian Housing Program.

(f) The leasing rate for rental vouchers and rental certificates under ACC for at least one year is less than 85 percent, or, in the case of an HA not currently administering a Rental Voucher or Rental Certificate Program, the leasing rate for all units available for occupancy in the Public or Indian Housing Program is less than 85 percent. (For a State or regional HA, the HUD State or Area Office/Native American Programs Office shall determine the HA's combined leasing rate for metropolitan and non-metropolitan areas, and shall use the combined rate in determining whether to accept the application under this paragraph.)

(g) The HA is involved in litigation and HUD determines that the litigation may seriously impede the ability of the HA to administer an additional increment of rental vouchers or rental certificates.

D. Local Government Comments

Section 213 of the Housing and Community Development Act of 1974 requires that HUD independently determine that there is a need for the housing assistance requested in applications, and solicit and consider comments relevant to this determination from the chief executive officer of the unit of general local government. The HUD State or Area Office/Native American Programs Office will obtain Section 213 comments from the unit of general local government in accordance with 24 CFR part 791, subpart C, Applications for Housing Assistance in Areas Without Housing Assistance Plans. Comments submitted by the unit of general local government must be considered before an application can be approved.

For purposes of expediting the application process, the HA should encourage the chief executive officer of the unit of general local government to submit a letter with the HA application commenting on the HA application in accordance with Section 213. Since HUD cannot approve an application until the 30-day comment period is closed, the Section 213 letter should not only comment on the application, but also state that HUD may consider the letter to be the final comments and that no additional comments will be forthcoming from the local unit of government.

E. Funding Applications

(1) *Maximum Funding Allowed.* The HUD State or Area Office/Native American Programs Office may not approve funding for an HA under this NOFA for more than the greater of 10 percent of the HA rental vouchers and rental certificates under reservation or 50 units.

(2) *Minimum Funding Allowed.* The HUD State or Area Office/Native American Programs Office may not approve funding for an HA under this NOFA for less than 25 units, unless:

(a) The HA requests fewer than 25 units; or

(b) The residual budget authority in using the rank order funding process after funding higher ranked applications is insufficient to fund at least 25 units; or

(c) The total budget authority available to the allocation area will fund less than 25 units.

(3) *Funding Procedure.* The HUD State or Area Office must develop a procedure for approval of applications (including applications rated by the Native American Programs Office) for each allocation area in rank order until all the housing assistance budget authority is used. Where a HUD State or Area Office funds applications according to rank order for each allocation area, only to find it has some number of units left, but not enough to fund the next fundable application in its entirety or for the minimum of 25 units, that application can be funded to the extent of the number of units available.

The HUD State or Area Office may elect to approve 100 percent of the units requested in all applications that score above a HUD State or Area Office-determined funding cut-off, up to the maximum number of units allowed.

The HUD State or Area Office may elect to approve less than 100 percent of the units requested in all applications for each allocation area that score above a HUD State or Area Office-determined funding cut-off, up to the maximum number of units allowed.

If applications are to be funded at less than 100 percent of the units requested in the applications, the HUD State or Area Office must either (i) approve the same percentage of the number of units requested in each application or (ii) divide approvable applications into two or more categories, for example, those scoring over 80 points, and those scoring between 50 and 80 points.

If the HUD State or Area Office elects to divide applications into two categories, the HUD State or Area Office may choose to approve a different percentage for applications in each of the two ranking categories so that a higher percentage of units requested would be approved for all applications in the higher category and a lower percentage of units requested would be approved for all applications in the

lower category. The HUD State or Area Office must approve the same percentage of each application within each of the two ranking categories unless there are insufficient funds to approve the minimum 25 units. If the HUD State or Area Office is unable to fund all the applications for the minimum funding allowed in either of the two categories, the HUD State or Area Office must reduce the applicable percentage factor in the category in order to fund all applications for the minimum 25 units (unless the HA requested less than 25 units or the total budget authority available to the allocation area will fund less than 25 units).

If an HA applies for a specific program (i.e., rental vouchers or rental certificates) and funding for the specified program is not available in the metropolitan area or non-metropolitan allocation area, the HUD State or Area Office will award the available form of assistance, even though not specifically requested by the applicant.

The HUD State or Area Office must promptly notify the applicable Native American Programs Office for each allocation area as to the status of any applications from IHAs and, if applicable, the amount of budget authority to be made available for IHA applications that were rated high enough to receive funding.

F. Reallocations of Funds

Each HUD State or Area Office must make every reasonable effort to use all available funds. It may be necessary, however, to reallocate funds from one HUD State or Area Office to another when the funds are not likely to be used in the HUD State or Area Office to which they were initially assigned. In such cases, the following procedures shall be followed:

(1) *Reallocations Within the Same State.* If the allocation of funds to a HUD State or Area Office cannot be awarded within the office jurisdiction during Fiscal Year 1994, Headquarters will reallocate those funds to another HUD State or Area Office in the same State where they can be used during Fiscal Year 1994.

(2) *Reallocations Between States.* If a HUD State or Area Office cannot use funds within the same State, Headquarters will reallocate those funds to another HUD State or Area Office for use in a State where they can be used during Fiscal Year 1994.

(3) *Reallocations Between Metropolitan and Non-metropolitan Areas.* The HUD State or Area Office must follow the original fund assignments for metropolitan and non-metropolitan areas when it reallocates unused budget authority among allocation areas. If there are not enough approvable applications for the designated metropolitan or non-metropolitan budget authority, the HUD State or Area Office may switch the budget authority between a metropolitan and a non-metropolitan area within the same State, provided that an offsetting switch can be made in another State within the HUD State or Area Office. If an offsetting switch cannot be made and the metropolitan or non-metropolitan amounts require changes to the fund assignments, the HUD State or Area Office must obtain the approval of the Budget Division, Office of Management and Policy, Office of Public and Indian Housing, before switching budget authority between a metropolitan and a non-metropolitan area.

(4) A request for Headquarters approval of a reallocation within or between States must explain the reasons that funds cannot be used in the original State, the amount being withdrawn from the original State, the program type, and the metropolitan/non-metropolitan mix, and the amount to be reallocated. These requests must be submitted to Headquarters (ATTENTION: Budget Division, Office of Management and Policy, Office of Public and Indian Housing) for approval.

G. Notification of Funds Awarded

(1) After the HUD State or Area Offices have reviewed, rated, and ranked applications, and the HUD State or Area Offices and Native American Programs Offices have approved the applications, each HUD State or Area Office and each Native American Programs Office must submit to Headquarters a list of all approved applications. The application approval list is due in Headquarters (ATTENTION: Rental Assistance Division, Office of Public and Indian Housing) on the tenth working day following the date set by Headquarters for completion of application ranking and selections.

(2) The Offices must provide the following information for each application approved:

(a) The name and address of the HA,

(b) The project number, and the number of rental vouchers and the number of rental certificates, as applicable, approved for the HA; and

(c) The amount of contract authority and budget authority, stated separately for rental vouchers and rental certificates.

H. Administrative Fees

(1) The administrative fees for incremental units in the Fiscal Year 1994 appropriations are specified as follows:

(a) *FY 1994 Incremental (Fees Provided by FY 1994 Appropriation):*

	Rental vouchers	Rental certificates
(1) On-going	8.2%	8.2%
(2) Preliminary	$275	$275
(3) Hard-to-House	$45	$45

(b) *FY 1994 Opt-outs/Public Housing Demolition (Replacements and Relocation) Section 23 Conversions:*

	Rental vouchers	Rental Certificates
(1) On-going	6.5%	7.65%
(2) Preliminary	$215	$250
(3) Hard-to-House	$45	$45

(c) *Renewal of Rental Vouchers and Rental Certificates:*

	Rental vouchers	Rental certificates
(1) On-going	6.5%	7.65%
(2) Preliminary	$0	$0
(3) Hard-to-House	$45	$45

(2) For budget preparation, submission of requisitions, and approving year-end operating statements, HAs should use the March 2, 1994, Notice PIH 94–9, Administrative Fee Requirements for the Section 8 Rental Voucher and Rental Certificate Programs, to determine the blended rate for all rental voucher or rental certificate increments for a given HA.

I. Headquarters Reserve

The Department is retaining in a Headquarters Reserve approximately $51.3 million of the $1.0 billion of budget authority available for allocation by formula for rental vouchers and rental certificates. Funds in the Headquarters Reserve will not be allocated by formula because these funds will be used in connection with natural disasters, litigation, desegregation, and other housing emergencies, consistent with 24 CFR 791.407. Headquarters will notify HAs when they are eligible to receive assistance from the Headquarters Reserve and may invite the HAs to submit applications.

J. Other Allocations

In addition to the budget authority for "fair share" rental vouchers and rental certificates, additional budget authority (including carryover budget authority) is available for allocation in Fiscal Year 1994 for rental vouchers and rental certificates for the following purposes:

(1) Relocation, Demolition and Disposition (HOPE I, II, Section 5(h), Section 18 and Urban Revitalization)

Headquarters will allocate funds directly to the HUD State or Area Offices to assist families living in public housing projects that are being demolished or disposed with HUD approval; to provide replacement housing in connection with Section 18, Urban Revitalization, HOPE I or Section 5(h) activities; or relocation assistance to families affected by HOPE I, HOPE II, and Section 5(h) activities; or assistance to non-purchasing families affected by HOPE II activities. HUD State or Area Office/Native American Programs Office requests for funding under this category will be approved on a first-come, first-served basis after notification by HUD that an application for public housing demolition or disposition, Section 18, Urban Revitalization, HOPE I, HOPE II, or Section 5(h) was approved. HUD State or Area Office/Native American Programs Office requests should include all data pertinent to determining the eligibility of the request for funding under the appropriate program and the amount of funds required. Replacement housing assistance will be provided in the form of 5-year rental voucher or rental certificate funding. (Approximately 2,988 units and $99.852 million in budget authority.)

(2) Rental Voucher and Rental Certificate Renewals

Headquarters will allocate funds directly to the HUD State or Area Offices/Native American Programs Offices for the renewal of rental voucher and rental certificate funding increments expiring in Fiscal Year 1994. Renewal funding will be provided in-kind (i.e., rental voucher funding for expiring rental voucher increments, and rental certificate funding for expiring rental certificate increments). (Approximately 177,000 units and $4.7 billion in budget authority.)

(3) Section 23 Conversions

Headquarters will allocate rental certificate funds directly to the HUD State or Area Offices for tenant-based rental assistance to residents of Section 23 leased housing for which leases are expiring. HUD State or Area Office requests for funding under this category will be approved on a first-come, first-served basis. HUD State or Area Offices must include all data necessary to determine the amount of funds required. (Approximately 374 units and $7.4 million in budget authority.)

(4) Section 8 Amendments

Headquarters will allocate Rental Certificate Program cost amendments to provide budget authority increases to HA rental certificate programs. Headquarters will allocate the funds on an as needed basis. (Approximately $289.6 million in budget authority.)

(5) HA Portability Fees

Headquarters will allocate these funds to pay special preliminary fees to HAs under Rental Voucher and Rental Certificate Program portability provisions. The Department issued a HUD Notice PIH 92–14 (PHA), dated April 22, 1992, that describes administrative procedures for requesting the special preliminary fees. These funds will be allocated to the HAs on a first-come, first-served basis. (Approximately $6 million in budget authority.)

(6) Litigation

Headquarters will allocate funding to meet the anticipated needs in settlement of litigation. (Approximately 1,312 units and $43.8 million in budget authority.)

(7) Moving to Opportunity Demonstration—National Competition

Headquarters will allocate funding to assist families with children to move out of areas with high concentrations of persons living in poverty through contracts with nonprofit organizations. Appropriations were provided for rental certificates and rental vouchers to be used in a demonstration limited to cities with populations over 350,000 in metropolitan areas of over 1,500,000 population. HUD will conduct a national competition for Section 8 funding. The criteria will be published in a NOFA. (Approximately 4,364 units and $164 million in budget authority.)

(8) Family Unification Demonstration—National Competition

Headquarters will allocate funding to assist families with children for whom the lack of adequate shelter is a primary factor which would result in the imminent placement of the family's child, or children, in out-of-home care or delay in the discharge of the child, or children, to the family from out-of-home care. HUD will conduct a national competition for Section 8 funding. The criteria will be published in a NOFA. (Approximately 2,200 units and $77.4 million in budget authority.)

(10) Veterans Affairs Supportive Housing—National Competition

Headquarters will allocate funding under this joint effort between HUD and the Department of Veterans Affairs whereby rental vouchers are provided to assist homeless veterans to obtain rental housing after they have received treatment from a Veterans Affairs (VA) medical facility. HUD is conducting a national competition. The criteria will be published in a NOFA. (Approximately 700 units and $18.35 million in budget authority.)

(12) Disaster Funding for Northridge, CA Earthquake

Headquarters allocated funding from a supplemental appropriation from Congress for rental certificates to assist very low-income families who were involuntarily displaced from their homes as a result of the Northridge earthquake in the Los Angeles area. (Approximately 15,000 units and $200 million in budget authority.)

III. Checklist of Application Submission Requirements

A. Obtaining Application Materials

An Application Kit, which includes Form HUD–52515, Application for Existing Housing, may be obtained from the local HUD State or Area Office/Native American Programs Office. (Except as provided for Indian Housing Authorities in Section III(B), Submitting Applications, of this NOFA, only an original application and one copy should be submitted; it is not necessary to submit additional copies of the application.) In addition, the basic application and other required submissions are available from the HUD State or Area Office, as follows: Form HUD–52515; Certification for a Drug-Free Workplace; Text for the Certification Regarding Lobbying; and Standard Form LLL, Disclosure of Lobbying Activities.

B. Submitting Applications

HA applications must be received in the HUD State or Area Office/Native American Programs Office by 3:00 p.m. local time (i.e., the time at the office where the application is to be submitted) on August 25, 1994.

The Native American Programs Office is the place of official receipt for IHA applications. An IHA also must submit, at the same time, a copy of its application to the HUD State or Area Office that has jurisdiction over the portion of the State in which the IHA is located. HUD State or Area Offices/

Native American Programs Offices will be responsible for notifying their HAs of the exact address and room number where applications are to be submitted. Copies transmitted via facsimile (FAX) transmission will not be accepted for processing.

C. General

(1) Applications must be submitted to the local HUD State or Area Office/ Native American Programs Office on Form HUD–52515 in accordance with the applicable program regulations.

(2) The application should include a narrative description of how the application meets, or will meet, the application selection criteria. Failure to submit a narrative description is not cause for application rejection; however, the HUD State or Area Office/Native American Programs Office can only rate and rank the application based on information the Office has on-hand.

(3) Attachment 1 at the end of this notice lists the HUD State or Area Offices and the number of units and budget authority available for each allocation area. HAs should limit their applications for the "fair share" program to a reasonable number of rental vouchers and rental certificates, based on the capacity of the HA to lease all the units within 12 months of ACC execution. The number of units on the HA application may not exceed the greater of: (a) Ten percent (10%) of the total rental vouchers and rental certificates under reservation for the HA; or (b) 50 units.

(4) HAs shall submit only one application (Form HUD–52515) for an allocation area. If both rental vouchers and rental certificates are requested on the same application, then the application will be given two project numbers, one for the Rental Voucher Program and one for the Rental Certificate Program. The total number of units applied for may not exceed the ten percent or 50-unit limitation.

(5) Regional and State-wide HAs may submit one application for each allocation area, and each application will be considered separately. Each regional or State-wide HA application may request up to ten percent (10%) of the total rental vouchers and rental certificates the HA has under reservation for each allocation area as applicable, or 50 units, whichever is greater.

(6) The HUD State or Area Office/ Native American Programs Office will reduce the number of units requested in any application that exceeds the ten percent or 50-unit limit to the greater of ten percent (10%) of the total number of rental vouchers and rental certificates identified on the latest HUD-approved budget for the HA.

D. Certification Regarding Drug-Free Workplace

The Drug-Free Workplace Act of 1988 requires grantees of Federal agencies to certify that they will provide a drug-free workplace. Thus, each HA must certify (even though it has done so previously) that it will comply with the drug-free workplace requirements in accordance with 24 CFR part 24, subpart F.

E. Certification Regarding Lobbying

Section 319 of the Department of the Interior Appropriations Act, Public Law 101–121, approved October 23, 1989, (31 U.S.C. 1352) (the Byrd Amendment) generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The Department's regulations on these restrictions on lobbying are codified at 24 CFR part 87. To comply with 24 CFR 87.110, any HA (other than an IHA that meets the definition of "person" in 24 CFR 87.105) submitting an application under this NOFA for more than $100,000 of budget authority assistance must submit a certification and, if warranted, a Disclosure of Lobbying Activities. To assist HAs, the texts for the Certification Regarding Lobbying and Standard Form LLL, Disclosure Form to Report Lobbying are available from the HUD State or Area Office.

F. Checklist for Technical Requirements

The following checklist specifies the required information that must be submitted in the HA's application. It is recommended, but not required, that the application contain a narrative explaining how the application meets the selection criteria.

INITIAL SCREENING CHECKLIST—APPLICATION FOR RENTAL VOUCHERS AND RENTAL CERTIFICATES

Housing agency		HUD state or area office		
Yes	No	Yes	No	
☐	☐	☐	☐	The application contains a completed Form HUD 52515.
☐	☐	☐	☐	The application specifies the number of rental vouchers and/or rental certificates requested.
☐	☐	☐	☐	The application states by number of bedrooms the total number of units requested by the HA (i.e., one bedroom units, two bedroom units).
☐	☐	☐	☐	The application demonstrates that it is responsive to the condition of the housing stock in the community and the housing assistance needs of low income families (including the elderly, handicapped, disabled, large families and those displaced) residing in or expected to reside in the community.
☐	☐	☐	☐	The application demonstrates that the applicant qualifies as a public housing agency and is legally qualified and authorized to participate in the rental assistance programs for the area in which the programs are to be carried out. Such demonstration includes: (i) The relevant enabling legislation, (ii) any rules and regulations adopted or to be adopted by the agency to govern its operations, and (iii) a supporting opinion from the agency counsel. If such documents are currently on file in the HUD State or Area Office/Native American Programs Office, they do not have to be resubmitted.
☐	☐	☐	☐	The application includes a statement that the housing quality standards to be used in the operation of the program will be as set forth in 24 CFR 882.109 and/or 24 CFR 887.251 or that variations in the Acceptability Criteria are proposed or have been approved by the HUD State or Area Office/ Native American Programs Office. In the latter case, each proposed variation shall be specified and justified.

Housing agency		Field office		
Yes	No	Yes	No	
☐	☐	☐	☐	The application contains the HA schedule of leasing, which must provide for the expeditious leasing of units in the program. In developing the schedule, an HA must specify the number of units in the program that are expected to be leased at the end of each three-month interval. The schedule must project lease-up by eligible families within twelve months or sooner after execution of the ACC by HUD.
☐	☐	☐	☐	The application (for rental vouchers and/or rental certificates) contains estimates of the average adjusted income for prospective participants for each bedroom size.

REQUIREMENT FOR DRUG-FREE WORKPLACE CERTIFICATION, AND ANTI-LOBBYING CERTIFICATION AND DISCLOSURE STATEMENT

Housing agency		Field office		
Yes	No	Yes	No	
☐	☐	☐	☐	The application meets HUD's drug-free workplace requirements set out at 24 CFR part 24, subpart F. (The application contains an executed Certification for a Drug-Free Workplace.)
☐	☐	☐	☐	The application meets HUD's regulations regarding anti-lobbying set out at 24 CFR 87. The anti-lobbying requirements apply to applications that, if approved, would result in the HA obtaining more than $100,000 in budget authority. The Department has determined that IHAs established by an Indian tribe as a result of the exercise of their sovereign power are excluded from coverage, but IHAs established under State law are not excluded from coverage. To comply, HAs must submit an Anti-lobbying Certification and, if warranted, a Disclosure of Lobbying Activities.

IV. Corrections to Deficient Applications

To be eligible for processing, an application must be received by the appropriate HUD State or Area Office/Native American Programs Office no later than the date and time specified in Section II of this NOFA. The HUD State or Area Office/Native American Programs Office will initially screen all applications and notify HAs of technical deficiencies by letter.

If an application has technical deficiencies, the HA will have 14 calendar days from the date of the issuance of written notification to submit the missing or corrected information to the HUD State or Area Office and/or Native American Programs Office. Curable technical deficiencies relate only to items that do not improve the substantive quality of the application relative to the rating factors.

All HAs must submit corrections within 14 calendar days from the date of HUD's letter notifying the applicant of any such deficiency. Information received after 3 p.m. local time (i.e., the time in the appropriate HUD State or Area Office/Native American Programs Office), of the fourteenth calendar day of the correction period will not be accepted and the application will be rejected as incomplete. All HAs are encouraged to review the initial screening checklist provided in Section III of this notice. The checklist identifies all technical requirements needed for application processing. An HA application that does not comply with the requirements of 24 CFR 882.204(a) or 887.55(b) and this notice, including the drug-free workplace certification and the anti-lobbying certification/disclosure requirements, after the expiration of the 14-day cure period will be rejected from processing.

V. Other Matters

A. 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 is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street, SW, Washington, D.C. 20410.

B. Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this notice will not have substantial direct effects on states or their political subdivisions, or the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the Order. This notice is a funding notice and does not substantially alter the established roles of the Department, the States, and local governments, including HAs.

C. Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this notice does not have potential for significant impact on family formation, maintenance, and general well-being within the meaning of the Executive Order and, thus, is not subject to review under the Order. This is a funding notice and does not alter program requirements concerning family eligibility.

D. Section 102 of the HUD Reform Act: Documentation and Public Access Requirements.

HUD Responsibilities

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a)

and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

E. Section 103 of the HUD Reform Act

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a) (Reform Act) was published on May 13, 1991 (56 FR 22088), and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (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 HUD State or Area Office Counsel, or Headquarters counsel for the program to which the question pertains.

F. Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (the "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance. IHAs established by an Indian tribe as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but IHAs established under State law are not excluded from the statute's coverage.

G. Section 112 of the Reform Act

Section 112 of the HUD Reform Act added a new section 13 to the Department of Housing and Urban Development Act (42 U.S.C. 3537b). Section 13 contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

Any questions about the rule should be forwarded to the Director, Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–3000. Telephone: (202) 708–3815 (TDD/Voice) (this is not a toll-free number). Forms necessary for compliance with the rule may be obtained from the local HUD office.

Authority: 42 U.S.C. 1437a, 1437c, 1437f.

Dated: July 1, 1994.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

BILLING CODE 4210–33–P

FISCAL YEAR 1994 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION

PAGE 01

HUD REGION I (BOSTON)

DOLLARS UNITS-COMPONENT PARTS OF ALLOCATION AREA

BOSTON, MASSACHUSETTS OFFICE
METROPOLITAN ALLOCATION AREAS

Western Massachusetts	4 032,028	90	BERKSHIRE county towns of: Cheshire, Dalton, Hinsdale Lanesborough, Lee, Lenox, Pittsfield, Richmond, Stockbridge HAMPDEN county towns of: Agawam, Chicopee, East Longmeadow Hampden, Holyoke, Longmeadow, Ludlow, Monson, Montgomery Palmer, Russell, Southwick, Springfield, Westfield West Springfield, Wilbraham, HAMPSHIRE county towns of: Belchertown, Easthampton, Granby, Huntington, Northampton Southampton, South Hadley
Worcester County	3,240,331	73	MIDDLESEX county towns of: Ashby, WORCESTER county towns of: Ashburnham, Fitchburg, Leominster, Lunenburg, Westminster WORCESTER county towns of: Auburn, Barre, Boylston, Brookfield Charlton, Clinton, Douglas, Dudley, East Brookfield, Grafton Holden, Leicester, Millbury, Northborough, Northbridge North Brookfield, Oxford, Paxton, Princeton, Rutland Shrewsbury, Spencer, Sterling, Sutton, Uxbridge, Webster Westborough, West Boylston, Worcester
Boston	21,035,088	474	BRISTOL county towns of: Mansfield, Norton, Raynham, ESSEX county towns of: Lynn, Lynnfield, Nahant, Saugus, MIDDLESEX county towns of: Acton, Arlington, Ashland, Ayer, Bedford Belmont, Boxborough, Burlington, Cambridge, Carlisle, Concord Everett, Framingham, Groton, Holliston, Hopkinton, Hudson Lexington, Lincoln, Littleton, Malden, Marlborough, Maynard Medford, Melrose, Natick, Newton, North Reading, Reading Sherborn, Shirley, Somerville, Stoneham, Stow, Sudbury Townsend, Wakefield, Waltham, Watertown, Wayland, Weston Wilmington, Winchester, Woburn, NORFOLK county towns of: Bellingham, Braintree, Brookline, Canton, Cohasset, Dedham Dover, Foxborough, Franklin, Holbrook, Medfield, Medway Millis, Milton, Needham, Norfolk, Norwood, Quincy, Randolph Sharon, Stoughton, Walpole, Wellesley, Westwood, Weymouth Wrentham, PLYMOUTH county towns of: Carver, Duxbury, Hanover Hanson, Hingham, Hull, Kingston, Lakeville, Marshfield Middleborough, Norwell, Pembroke, Plymouth, Plympton, Rockland Scituate, SUFFOLK county towns of: Boston, Chelsea, Revere Winthrop, WORCESTER county towns of: Berlin, Bolton, Harvard Hopedale, Lancaster, Mendon, Milford, Southborough, Upton
Northeast	4,348,168	97	ESSEX county towns of: Amesbury, Andover, Boxford, Georgetown Groveland, Haverhill, Lawrence, Merrimac, Methuen, Newbury Newburyport, North Andover, Salisbury, West Newbury, MIDDLESEX county towns of: Billerica, Chelmsford, Dracut, Dunstable Lowell, Pepperell, Tewksbury, Tyngsborough, Westford, ESSEX county towns of: Beverly, Danvers, Essex, Gloucester, Hamilton Ipswich, Manchester, Marblehead, Middleton, Peabody, Rockport Rowley, Salem, Swampscott, Topsfield, Wenham
Southeast	3,892,539	88	BRISTOL county towns of: Easton, NORFOLK county towns of: Avon PLYMOUTH county towns of: Abington, Bridgewater, Brockton East Bridgewater, Halifax, West Bridgewater, Whitman, BRISTOL county towns of: Fall River, Somerset, Swansea, Westport BRISTOL county towns of: Acushnet, Dartmouth, Fairhaven

FISCAL YEAR 1994 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
			Freetown, New Bedford, PLYMOUTH county towns of: Marion Mattapoisett, Rochester, BRISTOL county towns of: Attleboro North Attleborough, Rehoboth, Seekonk, NORFOLK county towns of: Plainville, WORCESTER county towns of: Blackstone Millville
NONMETROPOLITAN ALLOCATION AREAS			
Nonmetropolitan Statewide	1 850,564	44	BARNSTABLE, BERKSHIRE county towns of: Adams, Alford, Becket Clarksburg, Egremont, Florida, Great Barrington, Hancock Monterey, Mount Washington, New Ashford, New Marlborough North Adams, Otis, Peru, Sandisfield, Savoy, Sheffield Tyringham, Washington, West Stockbridge, Williamstown, Windsor BRISTOL county towns of: Berkley, Dighton, Taunton, DUKES FRANKLIN, HAMPDEN county towns of: Blandford, Brimfield Chester, Granville, Holland, Tolland, Wales, HAMPSHIRE county towns of: Amherst, Chesterfield, Cummington, Goshen, Hadley Hatfield, Middlefield, Pelham, Plainfield, Ware, Westhampton Williamsburg, Worthington, NANTUCKET, PLYMOUTH county towns of: Wareham, WORCESTER county towns of: Athol, Gardner Hardwick, Hubbardston, New Braintree, Oakham, Petersham Phillipston, Royalston, Southbridge, Sturbridge, Templeton Warren, West Brookfield, Winchendon
HARTFORD, CONNECTICUT OFFICE METROPOLITAN ALLOCATION AREAS			
Brideport-Milford, Norwalk, Stamford	4,137,069	93	FAIRFIELD county towns of: Bridgeport, Easton, Fairfield Monroe, Shelton, Stratford, Trumbull, NEW HAVEN county towns of: Ansonia, Beacon Falls, Derby, Milford, Oxford, Seymour FAIRFIELD county towns of: Norwalk, Weston, Westport, Wilton FAIRFIELD county towns of: Darien, Greenwich, New Canaan Stamford
Bristol, Danbury, New Britain, Waterbury	2,952,334	65	HARTFORD county towns of: Bristol, Burlington, LITCHFIELD county towns of: Plymouth, FAIRFIELD county towns of: Bethel Brookfield, Danbury, New Fairfield, Newtown, Redding Ridgefield, Sherman, LITCHFIELD county towns of: Bridgewater New Milford, HARTFORD county towns of: Berlin, New Britain Plainville, Southington, LITCHFIELD county towns of: Bethlehem Thomaston, Watertown, WOODbury, NEW HAVEN county towns of: Middlebury, Naugatuck, Prospect, Southbury, Waterbury, Wolcott
Hartford	4,212,220	94	HARTFORD county towns of: Avon, Bloomfield, Canton East Granby, East Hartford, East Windsor, Enfield, Farmington Glastonbury, Granby, Hartford, Manchester, Marlborough Newington, Rocky Hill, Simsbury, South Windsor, Suffield West Hartford, Wethersfield, Windsor, Windsor Locks LITCHFIELD county towns of: Barkhamsted, New Hartford MIDDLESEX county towns of: East Haddam, NEW LONDON county towns of: Colchester, TOLLAND county towns of: Andover, Bolton Columbia, Coventry, Ellington, Hebron, Somers, Stafford Tolland, Vernon, Willington
Middletown, N.London, Norwich, N. Haven-Merid	4,687,148	106	MIDDLESEX county towns of: Cromwell, Durham, East Hampton Haddam, Middlefield, Middletown, Portland, NEW LONDON county towns of: Bozrah, East Lyme, Franklin, Griswold, Groton Ledyard, Lisbon, Montville, New London, North Stonington Norwich, Old Lyme, Preston, Salem, Sprague, Stonington

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
			Waterford. WINDHAM county towns of: Canterbury. MIDDLESEX county towns of: Clinton, Killingworth. NEW HAVEN county towns of: Bethany, Branford, Cheshire, East Haven, Guilford, Hamden Madison, Meriden, New Haven, North Branford, North Haven Orange, Wallingford, West Haven, Woodbridge
NONMETROPOLITAN ALLOCATION AREAS			
Nonmetropolitan Connecticut Statewide	865,952	22	HARTFORD county towns of: Hartland. LITCHFIELD county towns of: Canaan, Colebrook, Cornwall, Goshen, Harwinton, Kent Litchfield, Morris, Norfolk, North Canaan, Roxbury, Salisbury Sharon, Torrington, Warren, Washington, Winchester. MIDDLESEX county towns of: Chester, Deep River, Essex, Old Saybrook Westbrook. NEW LONDON county towns of: Lebanon, Lyme Voluntown. TOLLAND county towns of: Mansfield, Union. WINDHAM county towns of: Ashford, Brooklyn, Chaplin, Eastford, Hampton Killingly, Plainfield, Pomfret, Putnam, Scotland, Sterling Thompson, Windham, Woodstock
MANCHESTER, NEW HAMPSHIRE OFFICE METROPOLITAN ALLOCATION AREAS			
Vermont - Burlington	747,057	18	CHITTENDEN county towns of: Burlington, Charlotte, Colchester Essex, Hinesburg, Jericho, Milton, Richmond, St George Shelburne, South Burlington, Williston, Winooski. FRANKLIN county towns of: Georgia. GRAND ISLE county towns of: Grande Isle, South Hero
Metropolitan New Hampshire	2,522,874	62	ROCKINGHAM county towns of: Atkinson, Brentwood, Danville Derry, East Kingston, Hampstead, Kingston, Newton, Plaistow Salem, Sandown, Seabrook, Windham. HILLSBOROUGH county towns of: Bedford, Goffstown, Manchester. MERRIMACK county towns of: Allenstown, Hooksett. ROCKINGHAM county towns of: Auburn Candia. HILLSBOROUGH county towns of: Pelham. HILLSBOROUGH county towns of: Amherst, Brookline, Hollis, Hudson Litchfield, Merrimack, Milford, Mont Vernon, Nashua, Wilton ROCKINGHAM county towns of: Londonderry. ROCKINGHAM county towns of: Exeter, Greenland, Hampton, New Castle, Newfields Newington, Newmarket, North Hampton, Portsmouth, Rye, Stratham STRAFFORD county towns of: Barrington, Dover, Durham Farmington, Lee, Madbury, Milton, Rochester, Rollinsford Somersworth
Metropolitan Maine	2,273,683	56	PENOBSCOT county towns of: Bangor, Brewer, Eddington, Glenburn Hampden, Hermon, Holden, Kenduskeag, Old Town, Orono Orrington, Penobscot Indian I, Veazie. WALDO county towns of: Winterport. ANDROSCOGGIN county towns of: Auburn, Greene Lewiston, Lisbon, Mechanic Falls, Poland, Sabattus. CUMBERLAND county towns of: Cape Elizabeth, Cumberland, Falmouth Freeport, Gorham, Gray, North Yarmouth, Portland, Raymond Scarborough, South Portland, Standish, Westbrook, Windham Yarmouth. YORK county towns of: Buxton, Hollis Old Orchard Beach. YORK county towns of: Berwick, Eliot Kittery, North Berwick, South Berwick, Wells, York
NONMETROPOLITAN ALLOCATION AREAS			
Nonmetropolitan Vermont Statewide	1,088,402	31	ADDISON, BENNINGTON, CALEDONIA, CHITTENDEN county towns of: Bolton, Buels, Huntington, Underhill, Westford. ESSEX FRANKLIN county towns of: Bakersfield, Berkshire, Enosburg

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	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
			Fairfax, Fairfield, Fletcher, Franklin, Highgate, Montgomery Richford, St. Albans, St. Albans, Sheldon, Swanton, GRAND ISLE county towns of: Alburg, Isle La Motte, North Hero, LAMOILLE ORANGE, ORLEANS, RUTLAND, WASHINGTON, WINDHAM, WINDSOR
Nonmetropolitan New Hampshire Statewide	1,107,176	34	BELKNAP, CARROLL, CHESHIRE, COOS, GRAFTON, HILLSBOROUGH county towns of: Antrim, Bennington, Deering, Francestown, Greenfield Greenville, Hancock, Hillsborough, Lyndeborough, Mason New Boston, New Ipswich, Peterborough, Sharon, Temple, Weare Windsor, MERRIMACK county towns of: Andover, Boscawen, Bow Bradford, Canterbury, Chichester, Concord, Danbury, Dunbarton Epsom, Franklin, Henniker, Hill, Hopkinton, Loudon, Newbury New London, Northfield, Pembroke, Pittsfield, Salisbury Sutton, Warner, Webster, Wilmot, ROCKINGHAM county towns of: Chester, Deerfield, Epping, Fremont, Hampton Falls, Kensington Northwood, Nottingham, Raymond, South Hampton, STRAFFORD county towns of: Middleton, New Durham, Strafford, SULLIVAN
Nonmetropolitan Maine Statewide	1,682,575	50	ANDROSCOGGIN county towns of: Durham, Leeds, Livermore Livermore Falls, Minot, Turner, Wales, AROOSTOOK, CUMBERLAND county towns of: Baldwin, Bridgton, Brunswick, Casco Harpswell, Harrison, Naples, New Gloucester, Pownal, Sebago FRANKLIN, HANCOCK, KENNEBEC, KNOX, LINCOLN, OXFORD, PENOBSCOT county towns of: Alton, Argyle, Bradford, Bradley, Burlington Carmel, Carroll, Charleston, Chester, Clifton, Corinna Corinth, Dexter, Dixmont, Drew, East Millinocket, Edinburg Enfield, Etna, Exeter, Garland, Grand Falls, Greenbush Greenfield, Howland, Hudson, Kingman, Lagrange, Lakeville, Lee Levant, Lincoln, Lowell, Mattawamkeag, Maxfield, Medway Milford, Millinocket, Mount Chase, Newburgh, Newport North Penobscot, Passadumkeag, Patten, Plymouth, Prentiss Seboeis, Springfield, Stacyville, Stetson, Summit, Twombly Webster, Whitney, Winn, Woodville, PISCATAQUIS, SAGADAHOC SOMERSET, WALDO county towns of: Belfast, Belmont, Brooks Burnham, Frankfort, Freedom, Islesboro, Jackson, Knox, Liberty Lincolnville, Monroe, Montville, Morrill, Northport, Palermo Prospect, Searsmont, Searsport, Stockton Springs, Swanville Thorndike, Troy, Unity, Waldo, WASHINGTON, YORK county towns of: Acton, Alfred, Arundel, Biddeford, Cornish, Dayton Kennebunk, Kennebunkport, Lebanon, Limerick, Limington, Lyman Newfield, Parsonfield, Saco, Sanford, Shapleigh, Waterboro
PROVIDENCE, RHODE ISLAND OFFICE METROPOLITAN ALLOCATION AREAS Statewide Metropolitan Allocation Area	4,983,364	130	NEWPORT county towns of: Little Compton, Tiverton, WASHINGTON county towns of: Hopkinton, Westerly, PROVIDENCE county towns of: Burrillville, Central Falls, Cumberland, Lincoln North Smithfield, Pawtucket, Smithfield, Woonsocket, BRISTOL county towns of: Barrington, Bristol, Warren, KENT county towns of: Coventry, East Greenwich, Warwick, West Warwick NEWPORT county towns of: Jamestown, PROVIDENCE county towns of: Cranston, East Providence, Foster, Glocester, Johnston North Providence, Providence, Scituate, WASHINGTON county towns of: Exeter, Narragansett, North Kingstown, Richmond South Kingstown

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
NONMETROPOLITAN ALLOCATION AREAS			
Statewide Nonmetropolitan Allocation Area	275,435	5	KENT county towns of: West Greenwich, NEWPORT county towns of: Middletown, Newport, Portsmouth, WASHINGTON county towns of: Charlestown, New Shoreham
HUD REGION II (NEW YORK)			
BUFFALO, NEW YORK OFFICE			
METROPOLITAN ALLOCATION AREAS			
ALBANY-SCHENECTADY-TROY/GLENS FALLS, NY	3,338,036	107	ALBANY, GREENE, MONTGOMERY, RENSSELAER, SARATOGA, SCHENECTADY WARREN, WASHINGTON
BUFFALO-NIAGARA FALLS/JAMESTOWN-DUNKIRK, NY	5,207,802	166	ERIE, NIAGARA, CHAUTAUQUA
SYRACUSE/UTICA-ROME/BINGHAMTON/ELMIRA, NY	4,710,672	151	MADISON, ONONDAGA, OSWEGO, HERKIMER, ONEIDA, BROOME, TIOGA CHEMUNG
ROCHESTER, NY	4,527,865	144	LIVINGSTON, MONROE, ONTARIO, ORLEANS, WAYNE
NONMETROPOLITAN ALLOCATION AREAS			
NORTHEAST NEW YORK	1,079,030	36	CLINTON, ESSEX, FRANKLIN, FULTON, HAMILTON, JEFFERSON, LEWIS ST LAWRENCE
SOUTHEAST NEW YORK	1,408,754	47	TOMPKINS, CAYUGA, CORTLAND, COLUMBIA, CHENANGO, DELAWARE OTSEGO, SCHOHARIE
SOUTHWEST NEW YORK	746,580	26	ALLEGANY, CATTARAUGUS, GENESEE, SCHUYLER, SENECA, STEUBEN WYOMING, YATES
NEW YORK, NEW YORK OFFICE			
METROPOLITAN ALLOCATION AREAS			
Nassau County	3,858,285	90	NASSAU
Suffolk County	3,219,702	76	SUFFOLK
New York Pmsa	129,045,515	3037	NEW YORK; PUTNAM, ROCKLAND, WESTCHESTER
Dutchess & Orange Counties	2,422,528	57	ORANGE, DUTCHESS
NONMETROPOLITAN ALLOCATION AREAS			
Sullivan & Ulster Counties	612,650	17	SULLIVAN, ULSTER
NEWARK, NEW JERSEY OFFICE			
METROPOLITAN ALLOCATION AREAS			
BERGEN-PASSAIC NJ	8,654,717	187	BERGEN, PASSAIC
JERSEY CITY NJ	8,136,908	177	HUDSON
NEWARK NJ	15,174,068	329	ESSEX, MORRIS, SUSSEX, UNION, WARREN
SOUTHERN NEW JERSEY	6,563,333	143	ATLANTIC, BURLINGTON, CAMDEN, CAPE MAY, CUMBERLAND, GLOUCESTER SALEM
CENTRAL NEW JERSEY	8,289,382	180	HUNTERDON, MERCER, MIDDLESEX, MONMOUTH, OCEAN, SOMERSET
HUD REGION III (PHILADELPHIA)			
BALTIMORE, MARYLAND OFFICE			
METROPOLITAN ALLOCATION AREAS			
MARYLAND METROPOLITAN	12,879,195	357	ANNE ARUNDEL, BALTIMORE, CARROLL, HARFORD, HOWARD QUEEN ANNE'S, BALTIMORE, ALLEGANY, WASHINGTON, CALVERT CHARLES, FREDERICK, CECIL
NONMETROPOLITAN ALLOCATION AREAS			
MARYLAND NON METROPOLITAN	700,687	20	CAROLINE, DORCHESTER, GARRETT, KENT, ST MARY'S, SOMERSET TALBOT, WICOMICO, WORCESTER
CHARLESTON, WEST VIRGINIA OFFICE			

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	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
METROPOLITAN ALLOCATION AREAS			
ALL METRO COUNTIES	2,035,809	68	KANAWHA, PUTNAM, MINERAL, CABELL, WAYNE, WOOD, BROOKE, HANCOCK MARSHALL, OHIO
NONMETROPOLITAN ALLOCATION AREAS			
ALL NONMETRO COUNTIES	2,088,637	86	BARBOUR, BERKELEY, BOONE, BRAXTON, CALHOUN, CLAY, DODDRIDGE FAYETTE, GILMER, GRANT, GREENBRIER, HAMPSHIRE, HARDY, HARRISON JACKSON, JEFFERSON, LEWIS, LINCOLN, LOGAN, MCDOWELL, MARION MASON, MERCER, MINGO, MONONGALIA, MONROE, MORGAN, NICHOLAS PENDLETON, PLEASANTS, POCAHONTAS, PRESTON, RALEIGH, RANDOLPH RITCHIE, ROANE, SUMMERS, TAYLOR, TUCKER, TYLER, UPSHUR WEBSTER, WETZEL, WIRT, WYOMING
PHILADELPHIA, PENNSYLVANIA OFFICE			
METROPOLITAN ALLOCATION AREAS			
ALLENTOWN/BETHLEHEM	2,233,466	62	CARBON, LEHIGH, NORTHAMPTON
HARRISBURG/LEBANON/CARLISLE	2,277,027	63	CUMBERLAND, DAUPHIN, LEBANON, PERRY
LANCASTER/READING/YORK	4,147,784	117	LANCASTER, BERKS, ADAMS, YORK
PHILADELPHIA/WILMINGTON	16,592,847	465	BUCKS, CHESTER, DELAWARE, MONTGOMERY, PHILADELPHIA, NEW CASTLE
SCRANTON/WILKES-BARRE/STATE COL./WILLIAMSPORT	3,453,027	97	COLUMBIA, LACKAWANNA, LUZERNE, MONROE, WYOMING, CENTRE LYCOMING
NONMETROPOLITAN ALLOCATION AREAS			
NONMETROPOLITAN DELAWARE/PENNSYLVANIA	1,752,713	57	BRADFORD, CLINTON, FRANKLIN, JUNIATA, MIFFLIN, MONTOUR NORTHUMBERLAND, PIKE, SCHUYLKILL, SNYDER, SULLIVAN SUSQUEHANNA, TIOGA, UNION, WAYNE, KENT, SUSSEX
PITTSBURGH, PENNSYLVANIA OFFICE			
METROPOLITAN ALLOCATION AREAS			
ALL METRO COUNTIES	9,501,121	340	BLAIR, BEAVER, ERIE, CAMBRIA, SOMERSET, ALLEGHENY, FAYETTE WASHINGTON, WESTMORELAND, MERCER
NONMETROPOLITAN ALLOCATION AREAS			
ALL NONMETRO COUNTIES	1,706,835	59	ARMSTRONG, BEDFORD, BUTLER, CAMERON, CLARION, CLEARFIELD CRAWFORD, ELK, FOREST, FULTON, GREENE, HUNTINGDON, INDIANA JEFFERSON, LAWRENCE, MCKEAN, POTTER, VENANGO, WARREN
RICHMOND, VIRGINIA OFFICE			
METROPOLITAN ALLOCATION AREAS			
Richmond-Petersburg-Hopewell, VA MSA	2,810,937	89	CHARLES CITY, CHESTERFIELD, DINWIDDIE, GOOCHLAND, HANOVER HENRICO, NEW KENT, POWHATAN, PRINCE GEORGE, COLONIAL HEIGHTS HOPEWELL, PETERSBURG, RICHMOND
Norfolk-Virginia Beach-Newport News, Va MSA	4,043,964	131	GLOUCESTER, JAMES CITY, YORK, CHESAPEAKE, HAMPTON NEWPORT NEWS, NORFOLK, POQUOSON, PORTSMOUTH, SUFFOLK VIRGINIA BEACH, WILLIAMSBURG
All Other MSAs	2,320,071	75	ALBEMARLE, FLUVANNA, GREENE, CHARLOTTESVILLE, PITTSYLVANIA DANVILLE, AMHERST, CAMPBELL, LYNCHBURG, SCOTT, WASHINGTON BRISTOL, BOTETOURT, ROANOKE, ROANOKE, SALEM, STAFFORD
NONMETROPOLITAN ALLOCATION AREAS			
Nonmetro Portion of Virginia	2,800,786	108	ACCOMACK, ALLEGHANY, AMELIA, APPOMATTOX, AUGUSTA, BATH BEDFORD, BLAND, BRUNSWICK, BUCHANAN, BUCKINGHAM, CAROLINE CARROLL, CHARLOTTE, CLARKE, CRAIG, CULPEPER, CUMBERLAND DICKENSON, ESSEX, FAUQUIER, FLOYD, FRANKLIN, FREDERICK, GILES GRAYSON, GREENSVILLE, HALIFAX, HENRY, HIGHLAND, ISLE OF WIGHT KING AND QUEEN, KING GEORGE, KING WILLIAM, LANCASTER, LEE LOUISA, LUNENBURG, MADISON, MATHEWS, MECKLENBURG, MIDDLESEX

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
			MONTGOMERY, NELSON, NORTHAMPTON, NORTHUMBERLAND, NOTTOWAY ORANGE, PAGE, PATRICK, PRINCE EDWARD, PULASKI, RAPPAHANNOCK RICHMOND, ROCKBRIDGE, ROCKINGHAM, RUSSELL, SHENANDOAH, SMYTH SOUTHAMPTON, SPOTSYLVANIA, SURRY, SUSSEX, TAZEWELL, WARREN WESTMORELAND, WISE, WYTHE, BEDFORD, BUENA VISTA, CLIFTON FORGE COVINGTON, EMPORIA, FRANKLIN, FREDERICKSBURG, GALAX HARRISONBURG, LEXINGTON, MARTINSVILLE, NORTON, RADFORD SOUTH BOSTON, STAUNTON, WAYNESBORO, WINCHESTER
WASHINGTON, D C OFFICE			
METROPOLITAN ALLOCATION AREAS			
Washington, D C	20,302,293	392	MONTGOMERY, PRINCE GEORGE'S, WASHINGTON, ARLINGTON, FAIRFAX LOUDOUN, PRINCE WILLIAM, ALEXANDRIA, FAIRFAX, FALLS CHURCH MANASSAS, MANASSAS PARK
HUD REGION IV (ATLANTA)			
ATLANTA, GEORGIA OFFICE			
METROPOLITAN ALLOCATION AREAS			
GA METRO ALLOCATION AREA NO 1	7,335,436	233	FULTON, DE KALB, BARROW, BUTTS, CHEROKEE, CLAYTON, COBB COWETA, DOUGLAS, FAYETTE, FORSYTH, GWINNETT, HENRY, NEWTON PAULDING, ROCKDALE, SPALDING, WALTON
GA METRO ALLOCATION AREA NO 2	5,482,173	174	BIBB, CHATTAHOOCHEE, HOUSTON, JONES, MUSCOGEE, PEACH, CATOOSA CHATHAM, CLARKE, COLUMBIA, DADE, DOUGHERTY, EFFINGHAM, JACKSON LEE, MCDUFFIE, MADISON, OCONEE, RICHMOND, WALKER
NONMETROPOLITAN ALLOCATION AREAS			
GA NONMETRO ALLOCATION AREA NO 1	3,875,138	182	APPLING, ATKINSON, BACON, BAKER, BALDWIN, BANKS, BARTOW BEN HILL, BERRIEN, BLECKLEY, BRANTLEY, BROOKS, BRYAN, BULLOCH BURKE, CALHOUN, CAMDEN, CANDLER, CARROLL, CHARLTON, CHATTOOGA CLAY, CLINCH, COFFEE, COLQUITT, COOK, CRAWFORD, CRISP, DAWSON DECATUR, DODGE, DOOLY, EARLY, ECHOLS, ELBERT, EMANUEL, EVANS FANNIN, FLOYD, FRANKLIN, GILMER, GLASCOCK, GLYNN, GORDON GRADY, GREENE, HABERSHAM, HALL, HANCOCK, HARALSON, HARRIS HART, HEARD, IRWIN, JASPER, JEFF DAVIS, JEFFERSON, JENKINS JOHNSON, LAMAR, LANIER, LAURENS, LIBERTY, LINCOLN, LONG LOWNDES, LUMPKIN, MCINTOSH, MACON, MARION, MERIWETHER, MILLER MITCHELL, MONROE, MONTGOMERY, MORGAN, MURRAY, OGLETHORPE PICKENS, PIERCE, PIKE, POLK, PULASKI, PUTNAM, QUITMAN, RABUN RANDOLPH, SCHLEY, SCREVEN, SEMINOLE, STEPHENS, STEWART, SUMTER TALBOT, TALIAFERRO, TATTNALL, TAYLOR, TELFAIR, TERRELL, THOMAS TIFT, TOOMBS, TOWNS, TREUTLEN, TROUP, TURNER, TWIGGS, UNION UPSON, WARE, WARREN, WASHINGTON, WAYNE, WEBSTER, WHEELER WHITE, WHITFIELD, WILCOX, WILKES, WILKINSON, WORTH
BIRMINGHAM, ALABAMA OFFICE			
METROPOLITAN ALLOCATION AREAS			
METROPOLITAN ALLOCATION AREA 1	1,221,059	49	DALE, HOUSTON, AUTAUGA, ELMORE, MONTGOMERY, RUSSELL
METROPOLITAN ALLOCATION AREA 2	1,058,232	43	BALDWIN, MOBILE
METROPOLITAN ALLOCATION AREA 4	3,032,489	121	CALHOUN, BLOUNT, JEFFERSON, ST CLAIR, SHELBY, WALKER TUSCALOOSA
METROPOLITAN ALLOCATION AREA 3	1,502,746	59	MADISON, COLBERT, LAUDERDALE, LAWRENCE, MORGAN, ETOWAH
NONMETROPOLITAN ALLOCATION AREAS			
NON-METROPOLITAN ALLOCATION AREA 1	460,735	22	COFFEE, PIKE, LEE, HENRY, GENEVA, CRENSHAW, BULLOCK, BARBOUR

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	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
			CHAMBERS
NON-METROPOLITAN ALLOCATION AREA 2	347,524	17	BUTLER, LOWNDES, MACON, COVINGTON, DALLAS
NON-METROPOLITAN ALLOCATION AREA 3	379,495	18	JACKSON, MARSHALL, DE KALB, CHEROKEE, WINSTON, LIMESTONE LAMAR, FRANKLIN, CULLMAN
NON-METROPOLITAN ALLOCATION AREA 4	408,480	19	CLEBURNE, CLAY, COOSA, TALLADEGA, TALLAPOOSA, RANDOLPH, HALE GREENE, FAYETTE, BIBB, CHILTON
NON-METROPOLITAN ALLOCATION AREA 5	338,805	16	CHOCTAW, CLARKE, CONECUH, ESCAMBIA, MARENGO, MARION, MONROE PERRY, PICKENS, SUMTER, WASHINGTON, WILCOX
CARIBBEAN OFFICE			
METROPOLITAN ALLOCATION AREAS			
METRO #1	2,192,451	81	FLORIDA MUNICIPIO, HORMIGUEROS MUNICIPIO, LUQUILLO MUNICIPIO BARCELONETA MUNICIPIO, QUEBRADILLAS MUNICIPIO ANASCO MUNICIPIO, AGUAS BUENAS MUNICIPIO LAS PIEDRAS MUNICIPIO, NARANJITO MUNICIPIO, GURABO MUNICIPIO CAMUY PUEBLO, LOIZA MUNICIPIO, JUNCOS MUNICIPIO DORADO MUNICIPIO, HATILLO MUNICIPIO, MOCA MUNICIPIO COROZAL MUNICIPIO, VEGA ALTA MUNICIPIO, CATANO MUNICIPIO SAN GERMAN MUNICIPIO, SAN LORENZO MUNICIPIO, CIDRA MUNICIPIO AGUADA MUNICIPIO, CANOVANAS MUNICIPIO, FAJARDO MUNICIPIO CABO ROJO MUNICIPIO, MANATI MUNICIPIO, ISABELA MUNICIPIO TOA ALTA MUNICIPIO, JUANA DIAZ MUNICIPIO, RIO GRANDE MUNICIPIO CAYEY MUNICIPIO, HUMACAO MUNICIPIO, VEGA BAJA MUNICIPIO
METRO #2	1,394,348	51	TOA BAJA MUNICIPIO, GUAYNABO MUNICIPIO, ARECIBO MUNICIPIO MAYAGUEZ MUNICIPIO, CAGUAS MUNICIPIO, AGUADILLA MUNICIPIO TRUJILLO ALTO MUNICIPIO
METRO #3	3,273,508	123	PONCE MUNICIPIO, BAYAMON MUNICIPIO, SAN JUAN MUNICIPIO CAROLINA MUNICIPIO
NONMETROPOLITAN ALLOCATION AREAS			
Caribbean - Nonmetropolitan Areas	1,046,831	49	ADJUNTAS MUNICIPIO, AIBONITO MUNICIPIO, ARROYO MUNICIPIO BARRANQUITAS MUNICIPIO, CEIBA MUNICIPIO, CIALES MUNICIPIO COAMA MUNICIPIO, COMERIO MUNICIPIO, CULEBRA MUNICIPIO GUANICA MUNICIPIO, GUAYAMA MUNICIPIO, GUAYANILLA MUNICIPIO JAYUYA MUNICIPIO, LAJAS MUNICIPIO, LARES MUNICIPIO LAS MARIAS MUNICIPIO, MARICAO MUNICIPIO, MAUNABO MUNICIPIO MOROVIS MUNICIPIO, NAGUABO MUNICIPIO, OROCOVIS MUNICIPIO PATILLAS MUNICIPIO, PENUELAS MUNICIPIO, RINCON MUNICIPIO SABANA GRANDE MUNICIPIO, SALINAS MUNICIPIO SAN SEBASTIAN MUNICIPIO, SANTA ISABEL MUNICIPIO UTUADO MUNICIPIO, VIEQUES MUNICIPIO, VILLALBA MUNICIPIO YABUCOA MUNICIPIO, YAUCO MUNICIPIO, VIRGIN ISLANDS
COLUMBIA, SOUTH CAROLINA OFFICE			
METROPOLITAN ALLOCATION AREAS			
Metropolitan Allocation Area 1	4,674,527	179	ANDERSON, AIKEN, BERKELEY, CHARLESTON, DORCHESTER, YORK LEXINGTON, RICHLAND, FLORENCE, GREENVILLE, PICKENS SPARTANBURG
NONMETROPOLITAN ALLOCATION AREAS			
Nonmetropolitan Allocation Area 1	1,920,211	89	ABBEVILLE, ALLENDALE, BAMBERG, BARNWELL, BEAUFORT, CALHOUN CHEROKEE, CHESTER, CHESTERFIELD, CLARENDON, COLLETON DARLINGTON, DILLON, EDGEFIELD, FAIRFIELD, GEORGETOWN GREENWOOD, HAMPTON, HORRY, JASPER, KERSHAW, LANCASTER, LAURENS LEE, MCCORMICK, MARION, MARLBORO, NEWBERRY, OCONEE, ORANGEBURG

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
			SALUDA, SUMTER, UNION, WILLIAMSBURG
GREENSBORO, NORTH CAROLINA OFFICE			
METROPOLITAN ALLOCATION AREAS			
CHARLOTTE-GASTONIA MSA	2,421,534	89	CABARRUS, GASTON, LINCOLN, MECKLENBURG, ROWAN, UNION
GREENSBORO--WINSTON-SALEM--HIGH POINT MSA	2,119,091	78	DAVIDSON, DAVIE, FORSYTH, GUILFORD, RANDOLPH, STOKES, YADKIN
RALEIGH-DURHAM MSA	2,103,476	78	DURHAM, FRANKLIN, ORANGE, WAKE
ALL OTHER METROPOLITAN AREAS, N.C.	2,139,129	79	BUNCOMBE, ALAMANCE, CUMBERLAND, ALEXANDER, BURKE, CATAWBA ONSLOW, NEW HANOVER
NONMETROPOLITAN ALLOCATION AREAS			
NON-METROPOLITAN COUNTIES, WESTERN N.C.	2,053,961	87	ALLEGHANY, ANSON, ASHE, AVERY, CALDWELL, CASWELL, CHATHAM CHEROKEE, CLAY, CLEVELAND, GRAHAM, GRANVILLE, HAYWOOD HENDERSON, IREDELL, JACKSON, JOHNSTON, LEE, MCDOWELL, MACON MADISON, MITCHELL, MONTGOMERY, MOORE, PERSON, POLK, RICHMOND ROCKINGHAM, RUTHERFORD, STANLY, SURRY, SWAIN, TRANSYLVANIA VANCE, WARREN, WATAUGA, WILKES, YANCEY
NON-METROPOLITAN COUNTIES, EASTERN N.C.	2,487,736	107	BEAUFORT, BERTIE, BLADEN, BRUNSWICK, CAMDEN, CARTERET, CHOWAN COLUMBUS, CRAVEN, CURRITUCK, DARE, DUPLIN, EDGECOMBE, GATES GREENE, HALIFAX, HARNETT, HERTFORD, HOKE, HYDE, JONES, LENOIR MARTIN, NASH, NORTHAMPTON, PAMLICO, PASQUOTANK, PENDER PERQUIMANS, PITT, ROBESON, SAMPSON, SCOTLAND, TYRRELL WASHINGTON, WAYNE, WILSON
JACKSON, MISSISSIPPI OFFICE			
METROPOLITAN ALLOCATION AREAS			
Metropolitan Allocation Area No. 1	1,864,193	67	HANCOCK, HARRISON, HINDS, MADISON, RANKIN, DE SOTO, JACKSON
NONMETROPOLITAN ALLOCATION AREAS			
Nonmetropolitan Allocation Area No. 1	3,379,216	159	ADAMS, ALCORN, AMITE, ATTALA, BENTON, BOLIVAR, CALHOUN CARROLL, CHICKASAW, CHOCTAW, CLAIBORNE, CLARKE, CLAY, COAHOMA COPIAH, COVINGTON, FORREST, FRANKLIN, GEORGE, GREENE, GRENADA HOLMES, HUMPHREYS, ISSAQUENA, ITAWAMBA, JASPER, JEFFERSON JEFFERSON DAVIS, JONES, KEMPER, LAFAYETTE, LAMAR, LAUDERDALE LAWRENCE, LEAKE, LEE, LEFLORE, LINCOLN, LOWNDES, MARION MARSHALL, MONROE, MONTGOMERY, NESHOBA, NEWTON, NOXUBEE OKTIBBEHA, PANOLA, PEARL RIVER, PERRY, PIKE, PONTOTOC PRENTISS, QUITMAN, SCOTT, SHARKEY, SIMPSON, SMITH, STONE SUNFLOWER, TALLAHATCHIE, TATE, TIPPAH, TISHOMINGO, TUNICA UNION, WALTHALL, WARREN, WASHINGTON, WAYNE, WEBSTER, WILKINSON WINSTON, YALOBUSHA, YAZOO
JACKSONVILLE, FLORIDA OFFICE			
METROPOLITAN ALLOCATION AREAS			
MIAMI-HIALEAH	12,192,996	347	DADE
WEST PALM BEACH-FT PIERCE	2,131,035	60	PALM BEACH, MARTIN, ST LUCIE
TAMPA-ST PETERSBURG-CLEARWATER	4,990,520	142	HERNANDO, HILLSBOROUGH, PASCO, PINELLAS
JACKSONVILLE-OCALA-DAYTONA BEACH-GAINESVILLE	4,954,567	141	CLAY, DUVAL, NASSAU, ST JOHN, MARION, VOLUSIA, ALACHUA BRADFORD
ORLANDO-MELBOURNE	2,957,541	84	ORANGE, OSCEOLA, SEMINOLE, BREVARD
PENSACOLA-FT WALTON-PANAMA CITY-TALLAHASSEE	2,262,865	63	ESCAMBIA, SANTA ROSA, OKALOOSA, BAY, GADSDEN, LEON
LAKELAND-BRADENTON-NAPLES-SARASOTA-FT MYERS	2,627,996	75	POLK, MANATEE, COLLIER, SARASOTA, LEE
FT LAUDERDALE-HOLLYWOOD	2,742,254	78	BROWARD
NONMETROPOLITAN ALLOCATION AREAS			
NONMETROPOLITAN ALLOCATION AREA 1	1,419,010	50	BAKER, CALHOUN, CHARLOTTE, CITRUS, COLUMBIA, DE SOTO, DIXIE

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
LOUISVILLE, KENTUCKY OFFICE			
METROPOLITAN ALLOCATION AREAS			
METROPOLITAN ALLOGATION AREA 1	3,341,798	126	BOURBON, BULLITT, CLARK, FAYETTE, JEFFERSON, JESSAMINE, OLDHAM SCOTT, SHELBY, WOODFORD
METROPOLITAN ALLOCATION AREA 2	1,556,010	59	BOONE, BOYD, CAMPBELL, CARTER, CHRISTIAN, DAVIESS, GREENUP HENDERSON, KENTON
NONMETROPOLITAN ALLOCATION AREAS			
NONMETROPOLITAN ALLOCATION AREA - NORTHEAST	342,063	16	BRACKEN, ROBERTSON, MASON, FLEMING, LEWIS, MONTGOMERY, BATH ROWAN, POWELL, MENIFEE, MORGAN, ELLIOTT, LAWRENCE, JOHNSON MARTIN
NONMETROPOLITAN ALLOCATION AREA - SOUTH CENTR	578,271	27	ANDERSON, FRANKLIN, HARRISON, NICHOLAS, CUMBERLAND, ADAIR GREEN, TAYLOR, CLINTON, RUSSELL, WAYNE, MCCREARY, PULASKI CASEY, LINCOLN, GARRARD, MADISON
NONMETROPOLITAN ALLOCATION AREA - SOUTHEAST	896,115	40	ESTILL, LEE, WOLFE, MAGOFFIN, FLOYD, PIKE, JACKSON, LAUREL WHITLEY, KNOX, BELL, CLAY, LESLIE, HARLAN, OWSLEY, BREATHITT PERRY, KNOTT, LETCHER, ROCKCASTLE
NONMETROPOLITAN ALLOCATION AREA - MIDWEST	453,958	20	UNION, WEBSTER, MCLEAN, HANCOCK, OHIO, BUTLER, LOGAN, SIMPSON WARREN, ALLEN, MONROE, METCALFE, BARREN, HART, EDMONSON
NONMETROPOLITAN ALLOCATION AREA - FAR WEST	426,729	18	FULTON, BALLARD, CARLISLE, HICKMAN, MCCRACKEN, GRAVES CALLOWAY, MARSHALL, LIVINGSTON, CRITTENDEN, LYON, TRIGG CALDWELL, HOPKINS, MUHLENBERG, TODD
NONMETROPOLITAN ALLOCATION AREA - NORTH CETN\	465,133	22	GRAYSON, BRECKINRIDGE, MEADE, HARDIN, LARUE, NELSON, MARION WASHINGTON, SPENCER, TRIMBLE, HENRY, CARROLL, GALLATIN, OWEN GRANT, PENDLETON, MERCER, BOYLE
KNOXVILLE, TENNESSEE OFFICE			
METROPOLITAN ALLOCATION AREAS			
METROPOLITAN ALLOCATION AREA 1	3,136,440	122	HAMILTON, MARION, SEQUATCHIE, CARTER, HAWKINS, SULLIVAN UNICOI, WASHINGTON, ANDERSON, BLOUNT, GRAINGER, JEFFERSON KNOX, SEVIER, UNION
NONMETROPOLITAN ALLOCATION AREAS			
NON-METROPOLITAN ALLOCATION AREA 1	727,560	33	BLEDSOE, BRADLEY, CAMPBELL, CLAIBORNE, COCKE, CUMBERLAND FENTRESS, GREENE, GRUNDY, HAMBLEN, HANCOCK, JOHNSON, LOUDON MCMINN, MEIGS, MONROE, MORGAN, PICKETT, POLK, RHEA, ROANE SCOTT
NASHVILLE, TENNESSEE OFFICE			
METROPOLITAN ALLOCATION AREAS			
MEMPHIS-JACKSON TN. ALLOCATION AREA	3,307,061	117	SHELBY, TIPTON, MADISON
NASHVILLE-CLARKSVILLE TN. ALLOCATION AREA	2,984,674	105	CHEATHAM, DAVIDSON, DICKSON, ROBERTSON, RUTHERFORD, SUMNER WILLIAMSON, WILSON, MONTGOMERY
NONMETROPOLITAN ALLOCATION AREAS			
WEST TN. ALLOCATION AREA	635,470	30	BENTON, CARROLL, CHESTER, CROCKETT, DECATUR, DYER, FAYETTE GIBSON, HARDEMAN, HARDIN, HAYWOOD, HENDERSON, HENRY, LAKE LAUDERDALE, MCNAIRY, OBION, WEAKLEY
MIDDLE TN. ALLOCATION AREA	740,271	33	BEDFORD, CANNON, CLAY, COFFEE, DE KALB, FRANKLIN, GILES HICKMAN, JACKSON, LAWRENCE, LEWIS, LINCOLN, MACON, MARSHALL

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
			MAURY, MOORE, OVERTON, PERRY, PUTNAM, SMITH, VAN BUREN, WARREN WAYNE, WHITE, STEWART, HOUSTON, HUMPHREYS, TROUSDALE
HUD REGION V (CHICAGO)			
CHICAGO, ILLINOIS OFFICE			
METROPOLITAN ALLOCATION AREAS			
METRO I CHICAGO	37,054,158	932	COOK
METRO II CHICAGO COLLAR COUNTIES	4,086,318	103	LAKE, KANE, KENDALL, GRUNDY, WILL, MCHENRY, DU PAGE
METRO III ROCKFORD	1,917,770	49	BOONE, WINNEBAGO
METRO IV BLOOMINGTON CHAMPAIGN DECATUR KANKE.	2,101,299	52	MCLEAN, CHAMPAIGN, MACON, KANKAKEE
METRO V PEORIA ROCK ISLAND SPRINGFIELD	2,467,582	60	PEORIA, TAZEWELL, WOODFORD, HENRY, ROCK ISLAND, MENARD SANGAMON
METRO VI ST. LOUIS-ILLINOIS PORTION	2,145,712	54	CLINTON, JERSEY, MADISON, MONROE, ST CLAIR
NONMETROPOLITAN ALLOCATION AREAS			
NON-METRO I	1,105,294	40	ADAMS, BROWN, BUREAU, CALHOUN, CARROLL, CASS, FULTON, GREENE HANCOCK, HENDERSON, JO DAVIESS, KNOX, LEE, MARSHALL, MCDONOUGH MERCER, OGLE, PIKE, PUTNAM, SCHUYLER, SCOTT, STARK, STEPHENSON WARREN, WHITESIDE
NON-METRO II	1,415,316	55	BOND, CHRISTIAN, COLES, DE KALB, DE WITT, DOUGLAS, EFFINGHAM FAYETTE, FORD, IROQUOIS, LA SALLE, LIVINGSTON, LOGAN, MACOUPIN MASON, MONTGOMERY, MORGAN, MOULTRIE, PIATT, SHELBY, VERMILION
NON-METRO III	1,031,626	39	ALEXANDER, CLARK, CLAY, CRAWFORD, CUMBERLAND, EDGAR, EDWARDS FRANKLIN, GALLATIN, HAMILTON, HARDIN, JACKSON, JASPER JEFFERSON, JOHNSON, LAWRENCE, MARION, MASSAC, PERRY, POPE PULASKI, RANDOLPH, RICHLAND, SALINE, UNION, WABASH, WASHINGTON WAYNE, WHITE, WILLIAMSON
CINCINNATI, OHIO OFFICE			
METROPOLITAN ALLOCATION AREAS			
CINCINNATI OFFICE - METROPOLITAN	7,131,400	252	BUTLER, CLERMONT, GREENE, HAMILTON, MIAMI, MONTGOMERY, WARREN
NONMETROPOLITAN ALLOCATION AREAS			
CINCINNATI OFFICE - NONMETROPOLITAN	403,560	16	ADAMS, BROWN, CLINTON, DARKE, HIGHLAND, PREBLE
CLEVELAND, OHIO OFFICE			
METROPOLITAN ALLOCATION AREAS			
AKRON-CANTON MSA Area	2,381,426	82	PORTAGE, SUMMIT, CARROLL, STARK
CLEVELAND-STEUBENVILLE-YOUNGSTOWN METRO Area	8,435,254	290	CUYAHOGA, GEAUGA, LAKE, MEDINA, JEFFERSON, MAHONING, TRUMBULL
LORAIN-TOLEDO-MANSFIELD MSA AREA	2,764,172	95	FULTON, LUCAS, WOOD, RICHLAND, LORAIN
NONMETROPOLITAN ALLOCATION AREAS			
Cleveland Nonmetro Area	1,363,326	54	ASHLAND, ASHTABULA, COLUMBIANA, CRAWFORD, DEFIANCE, ERIE HANCOCK, HARRISON, HENRY, HOLMES, HURON, OTTAWA, PAULDING SANDUSKY, SENECA, TUSCARAWAS, WAYNE, WILLIAMS, WYANDOT
COLUMBUS, OHIO OFFICE			
METROPOLITAN ALLOCATION AREAS			
COLUMBUS OFFICE - METROPOLITAN	5,404,979	193	LAWRENCE, DELAWARE, FAIRFIELD, FRANKLIN, LICKING, MADISON PICKAWAY, UNION, CLARK, ALLEN, AUGLAIZE, WASHINGTON, BELMONT
NONMETROPOLITAN ALLOCATION AREAS			
COLUMBUS OFFICE - NONMETROPOLITAN SOUTH	834,234	35	ATHENS, FAYETTE, GALLIA, HOCKING, JACKSON, MEIGS, MORGAN PERRY, PIKE, ROSS, SCIOTO, VINTON
COLUMBUS OFFICE - NONMETROPOLITAN NORTH	731,165	30	CHAMPAIGN, COSHOCTON, GUERNSEY, HARDIN, KNOX, LOGAN, MARION MERCER, MONROE, MORROW, MUSKINGUM, NOBLE, PUTNAM, SHELBY

FISCAL YEAR 1994 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
			VAN WERT
DETROIT, MICHIGAN OFFICE			
METROPOLITAN ALLOCATION AREAS			
ANN ARBOR,FLINT,SAGINAW-BAY-MIDLAND MSAs	3,624,098	116	WASHTENAW, GENESEE, BAY, MIDLAND, SAGINAW
WAYNE COUNTY	9,130,366	290	WAYNE
DETROIT PMSA LESS WAYNE COUNTY	4,236,415	135	LAPEER, LIVINGSTON, MACOMB, MONROE, OAKLAND, ST CLAIR
NONMETROPOLITAN ALLOCATION AREAS			
DETROIT OFFICE NON-METRO	512,699	21	ALCONA, ALPENA, ARENAC, GLADWIN, HURON, IOSCO, LENAWEE MONTMORENCY, OGEMAW, OSCODA, PRESQUE ISLE, SANILAC, SHIAWASSEE TUSCOLA
GRAND RAPIDS, MICHIGAN OFFICE			
METROPOLITAN ALLOCATION AREAS			
GRAND RAPIDS--LANSING-E. LANSING MSAs	2,856,440	98	KENT, OTTAWA, CLINTON, EATON, INGHAM
CALHOUN,BERRIEN,JACKSON,KALAMAZOO&MUSKEGON CO	2,250,122	77	CALHOUN, BERRIEN, JACKSON, KALAMAZOO, MUSKEGON
NONMETROPOLITAN ALLOCATION AREAS			
Nonmetropolitan All	1,863,930	68	ALGER, ALLEGAN, ANTRIM, BARAGA, BARRY, BENZIE, BRANCH, CASS CHARLEVOIX, CHEBOYGAN, CHIPPEWA, CLARE, CRAWFORD, DELTA DICKINSON, EMMET, GOGEBIC, GRAND TRAVERSE, GRATIOT, HILLSDALE HOUGHTON, IONIA, IRON, ISABELLA, KALKASKA, KEWEENAW, LAKE LEELANAU, LUCE, MACKINAC, MANISTEE, MARQUETTE, MASON, MECOSTA MENOMINEE, MISSAUKEE, MONTCALM, NEWAYGO, OCEANA, ONTONAGON OSCEOLA, OTSEGO, ROSCOMMON, ST JOSEPH, SCHOOLCRAFT, VAN BUREN WEXFORD
INDIANAPOLIS, INDIANA OFFICE			
METROPOLITAN ALLOCATION AREAS			
METRO NORTH	2,869,560	99	LAKE, PORTER, ST JOSEPH, ELKHART, ALLEN, DE KALB, WHITLEY
METRO CENTRAL	4,220,282	144	TIPPECANOE, HOWARD, TIPTON, BOONE, HAMILTON, HANCOCK HENDRICKS, JOHNSON, MARION, MORGAN, SHELBY, MADISON, DELAWARE
METRO SOUTH	2,628,947	89	CLAY, VIGO, MONROE, DEARBORN, POSEY, VANDERBURGH, WARRICK CLARK, FLOYD, HARRISON
NONMETROPOLITAN ALLOCATION AREAS			
NONMETRO NORTH	600,629	27	NEWTON, BENTON, JASPER, LA PORTE, STARKE, PULASKI, WHITE CARROLL, MARSHALL, FULTON, CASS, KOSCIUSKO, MIAMI, WABASH HUNTINGTON, WELLS, ADAMS, LAGRANGE, NOBLE, STEUBEN
NONMETRO CENTRAL	618,415	26	WARREN, VERMILLION, FOUNTAIN, PARKE, MONTGOMERY, PUTNAM CLINTON, GRANT, BLACKFORD, JAY, RANDOLPH, HENRY, WAYNE, RUSH FAYETTE, UNION
NONMETRO SOUTH	747,164	34	SULLIVAN, KNOX, GIBSON, OWEN, GREENE, DAVIESS, MARTIN, PIKE DUBOIS, SPENCER, PERRY, LAWRENCE, ORANGE, CRAWFORD, BROWN JACKSON, WASHINGTON, BARTHOLOMEW, DECATUR, JENNINGS, SCOTT JEFFERSON, RIPLEY, FRANKLIN, OHIO, SWITZERLAND
MILWAUKEE, WISCONSIN OFFICE			
METROPOLITAN ALLOCATION AREAS			
Metropolitan Allocation Area #1	2,841,942	94	CALUMET, OUTAGAMIE, WINNEBAGO, DOUGLAS, CHIPPEWA, EAU CLAIRE BROWN, LA CROSSE, ST CROIX, SHEBOYGAN, MARATHON
Metropolitan Allocation Area #2	2,831,576	92	ROCK, KENOSHA, DANE, RACINE
Metropolitan Allocation Area #3	5,729,722	187	MILWAUKEE, OZAUKEE, WASHINGTON, WAUKESHA
NONMETROPOLITAN ALLOCATION AREAS			
Nonmetropolitan Allocation Area #1	785,088	32	COLUMBIA, CRAWFORD, DODGE, GRANT, GREEN, IOWA, JEFFERSON

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
			LAFAYETTE, RICHLAND, SAUK, VERNON, WALWORTH
Nonmetropolitan Allocation Area #2	796,053	35	ASHLAND, BARRON, BAYFIELD, BUFFALO, BURNETT, CLARK, DUNN, IRON JACKSON, JUNEAU, MONROE, PEPIN, PIERCE, POLK, PRICE, RUSK SAWYER, TAYLOR, TREMPEALEAU, WASHBURN, WOOD
Nonmetropolitan Allocation Area #3	858,214	35	ADAMS, DOOR, FLORENCE, FOND DU LAC, FOREST, GREEN LAKE KEWAUNEE, LANGLADE, LINCOLN, MANITOWOC, MARINETTE, MARQUETTE OCONTO, ONEIDA, PORTAGE, SHAWANO, VILAS, WAUPACA, WAUSHARA MENOMINEE
MINNEAPOLIS-ST. PAUL, MINNESOTA OFFICE			
METROPOLITAN ALLOCATION AREAS			
MINNEAPOLIS/ST. PAUL MSA	8,437,673	231	ANOKA, CARVER, CHISAGO, DAKOTA, HENNEPIN, ISANTI, RAMSEY SCOTT, WASHINGTON, WRIGHT
GREATER MINNESOTA METRO	1,806,401	50	ST LOUIS, OLMSTED, CLAY, BENTON, SHERBURNE, STEARNS
NONMETROPOLITAN ALLOCATION AREAS			
NORTHERN MINNESOTA	822,079	32	KITTSON, ROSEAU, MARSHALL, PENNINGTON, RED LAKE, POLK, NORMAN LAKE OF THE WOODS, BELTRAMI, CLEARWATER, MAHNOMEN, HUBBARD BECKER, WILKIN, OTTER TAIL, GRANT, DOUGLAS, TRAVERSE, STEVENS POPE, KOOCHICHING, ITASCA, AITKIN, CARLTON, LAKE, COOK, CASS CROW WING, WADENA, TODD, MORRISON, MILLE LACS, KANABEC, PINE
SOUTHWESTERN MINNESOTA	446,317	17	BIG STONE, SWIFT, CHIPPEWA, LAC QUI PARLE, YELLOW MEDICINE KANDIYOHI, MEEKER, RENVILLE, MCLEOD, LINCOLN, LYON, REDWOOD PIPESTONE, MURRAY, COTTONWOOD, ROCK, NOBLES, JACKSON
SOUTHEASTERN MINNESOTA	755,626	30	SIBLEY, NICOLLET, LE SUEUR, BROWN, WATONWAN, BLUE EARTH WASECA, MARTIN, FARIBAULT, RICE, GOODHUE, WABASHA, STEELE DODGE, WINONA, FREEBORN, MOWER, FILLMORE, HOUSTON
HUD REGION VI (FORT WORTH)			
FORT WORTH, TEXAS OFFICE			
METROPOLITAN ALLOCATION AREAS			
DALLAS, TEXAS	5,726,412	185	COLLIN, DALLAS, DENTON, ELLIS, KAUFMAN, ROCKWALL
CENTRAL TEXAS	1,742,990	55	BELL, CORYELL, TOM GREEN, MCLENNAN
EAST TEXAS	1,266,254	40	GREGG, HARRISON, GRAYSON, BOWIE, SMITH
FORT WORTH-ARLINGTON	2,374,403	76	JOHNSON, PARKER, TARRANT
FAR WEST TEXAS	3,559,141	115	EL PASO, MIDLAND, ECTOR
WEST TEXAS	1,800,405	56	TAYLOR, POTTER, RANDALL, LUBBOCK, WICHITA
NEW MEXICO	2,336,087	75	BERNALILLO, DONA ANA, LOS ALAMOS, SANTA FE
NONMETROPOLITAN ALLOCATION AREAS			
WEST TEXAS NONMETRO	1,478,579	54	MILAM, LAMPASAS, SAN SABA, HAMILTON, MILLS, HILL, KIMBLE REAGAN, MASON, COKE, SUTTON, CONCHO, SCHLEICHER, CROCKETT MARTIN, MENARD, STERLING, IRION, NOLAN, KENT, BROWN, JONES STONEWALL, HASKELL, STEPHENS, FISHER, SCURRY, EASTLAND, KNOX COMANCHE, RUNNELS, COLEMAN, MITCHELL, SHACKELFORD THROCKMORTON, CALLAHAN, REEVES, ANDREWS, MARION, HOWARD, PECOS GAINES, TERRELL, CRANE, UPTON, LOVING, WARD, DAWSON, GLASSCOCK BORDEN, WINKLER, BAILEY, KING, COCHRAN, LAMB, DICKENS, LYNN GARZA, MOTLEY, HOCKLEY, TERRY, FLOYD, CROSBY, HALE, YOAKUM HUDSPETH, JEFF DAVIS, CULBERSON, BREWSTER, PRESIDIO, JACK YOUNG, HARDEMAN, ARCHER, CLAY, MONTAGUE, FOARD, COTTLE, BAYLOR WILBARGER, HEMPHILL, HANSFORD, HALL, SWISHER, GRAY, ROBERTS DONLEY, OLDHAM, DEAF SMITH, MOORE, DALLAM, HUTCHINSON COLLINGSWORTH, WHEELER, CHILDRESS, PARMER, CASTRO, LIPSCOMB

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
			CARSON, SHERMAN, HARTLEY, OCHILTREE, BRISCOE, ARMSTRONG MCCULLOCH
EAST TEXAS NONMETRO	1,088,285	48	LIMESTONE, BOSQUE, FREESTONE, FALLS, HUNT, PALO PINTO, WISE ERATH, HOOD, SOMERVELL, NAVARRO, FANNIN, COOKE, FRANKLIN HOPKINS, TITUS, DELTA, MORRIS, RED RIVER, LAMAR, CASS HENDERSON, CAMP, RAINS, CHEROKEE, VAN ZANDT, RUSK, ANDERSON WOOD, UPSHUR, PANOLA
NEW MEXICO NONMETRO	989,332	39	CATRON, CHAVES, COLFAX, CURRY, DE BACA, EDDY, GRANT, GUADALUPE HARDING, HIDALGO, LEA, LINCOLN, LUNA, MCKINLEY, MORA, OTERO QUAY, RIO ARRIBA, ROOSEVELT, SANDOVAL, SAN JUAN, SAN MIGUEL SIERRA, SOCORRO, TAOS, TORRANCE, UNION, VALENCIA
HOUSTON, TEXAS OFFICE			
METROPOLITAN ALLOCATION AREAS			
SOUTHEAST TEXAS	2,496,677	85	HARDIN, JEFFERSON, ORANGE, BRAZORIA, BRAZOS, GALVESTON
HOUSTON PMSA	8,445,142	285	FORT BEND, HARRIS, LIBERTY, MONTGOMERY, WALLER
NONMETROPOLITAN ALLOCATION AREAS			
HOUSTON AREA NONMETRO	902,919	37	ANGELINA, AUSTIN, BURLESON, CHAMBERS, COLORADO, GRIMES HOUSTON, JASPER, LEON, MADISON, MATAGORDA, NACOGDOCHES, NEWTON POLK, ROBERTSON, SABINE, SAN AUGUSTINE, SAN JACINTO, SHELBY TRINITY, TYLER, WALKER, WASHINGTON, WHARTON
LITTLE ROCK, ARKANSAS OFFICE			
METROPOLITAN ALLOCATION AREAS			
ARK-METRO	2,520,058	95	WASHINGTON, CRAWFORD, SEBASTIAN, FAULKNER, LONOKE, PULASKI SALINE, CRITTENDEN, JEFFERSON, MILLER
NONMETROPOLITAN ALLOCATION AREAS			
NW	637,252	29	BAXTER, BENTON, BOONE, CARROLL, MADISON, MARION, NEWTON SEARCY, CLARK, CONWAY, GARLAND, HOT SPRING, JOHNSON MONTGOMERY, PERRY, PIKE, POPE, YELL, FRANKLIN, LOGAN, POLK SCOTT
NE	466,163	24	CLEBURNE, FULTON, INDEPENDENCE, IZARD, JACKSON, SHARP, STONE VAN BUREN, WHITE, WOODRUFF, CLAY, CRAIGHEAD, GREENE, LAWRENCE RANDOLPH
E	575,297	27	MISSISSIPPI, POINSETT, MONROE, PRAIRIE, CROSS, LEE, PHILLIPS ST FRANCIS
S	504,332	26	ARKANSAS, ASHLEY, BRADLEY, CHICOT, CLEVELAND, DESHA, DREW GRANT, LINCOLN, CALHOUN, COLUMBIA, DALLAS, HEMPSTEAD, HOWARD LAFAYETTE, LITTLE RIVER, NEVADA, OUACHITA, SEVIER, UNION
NEW ORLEANS, LOUISIANA OFFICE			
METROPOLITAN ALLOCATION AREAS			
Baton Rouge Metro Area	1,188,307	43	ASCENSION PARISH, EAST BATON ROUGE PARISH, LIVINGSTON PARISH WEST BATON ROUGE PARISH
South-Western Louisiana Metro Areas	1,708,299	62	LAFOURCHE PARISH, TERREBONNE PARISH, LAFAYETTE PARISH ST MARTIN PARISH, CALCASIEU PARISH
North-Central Louisiana Metro Areas	1,693,645	62	BOSSIER PARISH, CADDO PARISH, OUACHITA PARISH, RAPIDES PARISH
New Orleans Metro Area	5,618,410	205	JEFFERSON PARISH, ORLEANS PARISH, ST BERNARD PARISH ST CHARLES PARISH, ST JOHN THE BAPTIST PAR ST TAMMANY PARISH
NONMETROPOLITAN ALLOCATION AREAS			
North-Western Louisiana	413,252	20	WEBSTER PARISH, CLAIBORNE PARISH, LINCOLN PARISH BIENVILLE PARISH, DE SOTO PARISH, RED RIVER PARISH

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
			WINN PARISH, SABINE PARISH, NATCHITOCHES PARISH, GRANT PARISH VERNON PARISH.
South-Western Louisiana	652,769	32	BEAUREGARD PARISH, ALLEN PARISH, EVANGELINE PARISH ST. LANDRY PARISH, JEFFERSON DAVIS PARISH, ACADIA PARISH CAMERON PARISH, VERMILION PARISH, IBERIA PARISH ST. MARY PARISH, ASSUMPTION PARISH
North-Eastern Louisiana	347,772	18	UNION PARISH, MOREHOUSE PARISH, EAST CARROLL PARISH WEST CARROLL PARISH, JACKSON PARISH, RICHLAND PARISH MADISON PARISH, CALDWELL PARISH, FRANKLIN PARISH TENSAS PARISH, LA SALLE PARISH, CATAHOULA PARISH CONCORDIA PARISH, AVOYELLES PARISH
South-Eastern Louisiana	435,172	21	POINTE COUPEE PARISH, WEST FELICIANA PARISH EAST FELICIANA PARISH, ST. HELENA PARISH, TANGIPAHOA PARISH WASHINGTON PARISH, ST. JAMES PARISH, PLAQUEMINES PARISH IBERVILLE PARISH
OKLAHOMA CITY, OKLAHOMA OFFICE			
METROPOLITAN ALLOCATION AREAS			
WESTERN METRO	2,598,550	102	COMANCHE, CANADIAN, CLEVELAND, LOGAN, MCCLAIN, OKLAHOMA POTTAWATOMIE, GARFIELD
EASTERN METRO	1,471,716	58	CREEK, OSAGE, ROGERS, TULSA, WAGONER, SEQUOYAH
NONMETROPOLITAN ALLOCATION AREAS			
NONMET WESTERN NONMETRO	1,044,593	48	ALFALFA, BEAVER, BECKHAM, BLAINE, CADDO, CARTER, CIMARRON COTTON, CUSTER, DEWEY, ELLIS, GARVIN, GRADY, GRANT, GREER HARMON, HARPER, JACKSON, JEFFERSON, JOHNSTON, KAY, KINGFISHER KIOWA, LINCOLN, LOVE, MAJOR, MARSHALL, MURRAY, NOBLE, PAYNE PONTOTOC, ROGER MILLS, SEMINOLE, STEPHENS, TEXAS, TILLMAN WASHITA, WOODS, WOODWARD
NONMET EASTERN NONMETRO	758,744	38	ADAIR, ATOKA, BRYAN, CHEROKEE, CHOCTAW, COAL, CRAIG, DELAWARE HASKELL, HUGHES, LATIMER, LE FLORE, MCCURTAIN, MCINTOSH, MAYES MUSKOGEE, NOWATA, OKFUSKEE, OKMULGEE, OTTAWA, PAWNEE PITTSBURG, PUSHMATAHA, WASHINGTON
SAN ANTONIO, TEXAS OFFICE			
METROPOLITAN ALLOCATION AREAS			
Metropolitan Area A	2,315,609	78	HIDALGO, CAMERON, WEBB
Metropolitan Area B	3,591,880	121	BEXAR, COMAL, GUADALUPE
Metropolitan Area C	2,205,161	75	TRAVIS, WILLIAMSON, HAYS
Metropolitan Area D	1,413,740	48	VICTORIA, NUECES, SAN PATRICIO
NONMETROPOLITAN ALLOCATION AREAS			
Nonmetropolitan Area A	381,533	17	VAL VERDE, EDWARDS, REAL, KERR, BANDERA, KINNEY, UVALDE MEDINA, MAVERICK, ZAVALA, FRIO, DIMMIT, LA SALLE
Nonmetropolitan Area B	372,456	17	ATASCOSA, MCMULLEN, LIVE OAK, BEE, REFUGIO, ARANSAS, DUVAL JIM WELLS, KLEBERG, ZAPATA, JIM HOGG, BROOKS, KENEDY, STARR WILLACY
Nonmetropolitan Area C	428,511	20	CALHOUN, GOLIAD, JACKSON, KARNES, DE WITT, LAVACA, WILSON GONZALES, KENDALL, GILLESPIE, LLANO, BURNET, BLANCO, CALDWELL BASTROP, LEE, FAYETTE
HUD REGION VII (KANSAS CITY)			
DES MOINES, IOWA OFFICE			
METROPOLITAN ALLOCATION AREAS			

FISCAL YEAR 1994 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
Metro-East	2,054,651	67	BLACK HAWK, BREMER, DUBUQUE, JOHNSON, LINN, SCOTT
Metro-West	1,552,645	51	DALLAS, POLK, POTTAWATTAMIE, WARREN, WOODBURY
NONMETROPOLITAN ALLOCATION AREAS			
Non-Metro-East	928,418	38	ALLAMAKEE, BENTON, BUCHANAN, BUTLER, CEDAR, CHICKASAW, CLAYTON CLINTON, DELAWARE, DES MOINES, FAYETTE, GRUNDY, HARDIN, HENRY HOWARD, IOWA, JACKSON, JONES, LEE, LOUISA, MARSHALL, MUSCATINE POWESHIEK, TAMA, WASHINGTON, WINNESHIEK
Non-Metro-Northwest/Central	872,043	37	AUDUBON, BUENA VISTA, CALHOUN, CARROLL, CERRO GORDO, CHEROKEE CLAY, CRAWFORD, DICKINSON, EMMET, FLOYD, FRANKLIN, GREENE GUTHRIE, HAMILTON, HANCOCK, HUMBOLDT, IDA, KOSSUTH, LYON MITCHELL, MONONA, O'BRIEN, OSCEOLA, PALO ALTO, PLYMOUTH POCAHONTAS, SAC, SIOUX, WEBSTER, WINNEBAGO, WORTH, WRIGHT
Non-Metro-Southwest/Central	881,550	37	ADAIR, ADAMS, APPANOOSE, BOONE, CASS, CLARKE, DAVIS, DECATUR FREMONT, HARRISON, JASPER, JEFFERSON, KEOKUK, LUCAS, MADISON MAHASKA, MARION, MILLS, MONROE, MONTGOMERY, PAGE, RINGGOLD SHELBY, STORY, TAYLOR, UNION, VAN BUREN, WAPELLO, WAYNE
KANSAS CITY, MISSOURI OFFICE			
METROPOLITAN ALLOCATION AREAS			
WESTERN MISSOURI METROPOLITAN ALLOCATION AREA	4,162,988	146	BUCHANAN, CASS, CHRISTIAN, CLAY, GREENE, JACKSON, JASPER LAFAYETTE, NEWTON, PLATTE, RAY
KANSAS METROPOLITAN ALLOCATION AREA	3,110,166	108	BUTLER, DOUGLAS, HARVEY, JOHNSON, LEAVENWORTH, MIAMI, SEDGWICK SHAWNEE, WYANDOTTE
NONMETROPOLITAN ALLOCATION AREAS			
KANSAS NON METROPOLITAN ALLOCATION AREA	1,599,185	58	ALLEN, ANDERSON, ATCHISON, BARBER, BARTON, BOURBON, BROWN CHASE, CHAUTAUQUA, CHEROKEE, CHEYENNE, CLARK, CLAY, CLOUD COFFEY, COMANCHE, COWLEY, CRAWFORD, DECATUR, DICKINSON DONIPHAN, EDWARDS, ELK, ELLIS, ELLSWORTH, FINNEY, FORD FRANKLIN, GEARY, GOVE, GRAHAM, GRANT, GRAY, GREELEY, GREENWOOD HAMILTON, HARPER, HASKELL, HODGEMAN, JACKSON, JEFFERSON JEWELL, KEARNY, KINGMAN, KIOWA, LABETTE, LANE, LINCOLN, LINN LOGAN, LYON, MCPHERSON, MARION, MARSHALL, MEADE, MITCHELL MONTGOMERY, MORRIS, MORTON, NEMAHA, NEOSHO, NESS, NORTON OSAGE, OSBORNE, OTTAWA, PAWNEE, PHILLIPS, POTTAWATOMIE, PRATT RAWLINS, RENO, REPUBLIC, RICE, RILEY, ROOKS, RUSH, RUSSELL SALINE, SCOTT, SEWARD, SHERIDAN, SHERMAN, SMITH, STAFFORD STANTON, STEVENS, SUMNER, THOMAS, TREGO, WABAUNSEE, WALLACE WASHINGTON, WICHITA, WILSON, WOODSON
WESTERN MISSOURI NON METROPOLITAN ALLOCATION	778,131	35	ANDREW, ATCHISON, BARRY, BARTON, BATES, BENTON, CALDWELL CAMDEN, CARROLL, CEDAR, CHARITON, CLINTON, DADE, DALLAS DAVIESS, DE KALB, GENTRY, GRUNDY, HARRISON, HENRY, HICKORY HOLT, JOHNSON, LACLEDE, LAWRENCE, LINN, LIVINGSTON, MCDONALD MERCER, MILLER, MORGAN, NODAWAY, PETTIS, POLK, PULASKI, PUTNAM ST CLAIR, SALINE, STONE, SULLIVAN, TANEY, VERNON, WEBSTER WORTH
OMAHA, NEBRASKA OFFICE			
METROPOLITAN ALLOCATION AREAS			
Metro-Nebraska	2,102,995	74	DAKOTA, DOUGLAS, LANCASTER, SARPY, WASHINGTON
NONMETROPOLITAN ALLOCATION AREAS			
Nonmetropolitan Nebraska	1,245,915	51	ADAMS, ANTELOPE, ARTHUR, BANNER, BLAINE, BOONE, BOX BUTTE BOYD, BROWN, BUFFALO, BURT, BUTLER, CASS, CEDAR, CHASE, CHERRY CHEYENNE, CLAY, COLFAX, CUMING, CUSTER, DAWES, DAWSON, DEUEL

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
			DIXON, DODGE, DUNDY, FILLMORE, FRANKLIN, FRONTIER, FURNAS GAGE, GARDEN, GARFIELD, GOSPER, GRANT, GREELEY, HALL, HAMILTON HARLAN, HAYES, HITCHCOCK, HOLT, HOOKER, HOWARD, JEFFERSON JOHNSON, KEARNEY, KEITH, KEYA PAHA, KIMBALL, KNOX, LINCOLN LOGAN, LOUP, MCPHERSON, MADISON, MERRICK, MORRILL, NANCE NEMAHA, NUCKOLLS, OTOE, PAWNEE, PERKINS, PHELPS, PIERCE PLATTE, POLK, RED WILLOW, RICHARDSON, ROCK, SALINE, SAUNDERS SCOTTS BLUFF, SEWARD, SHERIDAN, SHERMAN, SIOUX, STANTON THAYER, THOMAS, THURSTON, VALLEY, WAYNE, WEBSTER, WHEELER YORK
ST. LOUIS, MISSOURI OFFICE			
METROPOLITAN ALLOCATION AREAS			
Metropolitan Allocation Area	6,027,745	202	BOONE, FRANKLIN, JEFFERSON, ST CHARLES, ST LOUIS, ST LOUIS
NONMETROPOLITAN ALLOCATION AREAS			
Nonmetropolitan Allocation Area	1,360,337	60	ADAIR, AUDRAIN, BOLLINGER, BUTLER, CALLAWAY, CAPE GIRARDEAU CARTER, CLARK, COLE, COOPER, CRAWFORD, DENT, DOUGLAS, DUNKLIN GASCONADE, HOWARD, HOWELL, IRON, KNOX, LEWIS, LINCOLN, MACON MADISON, MARIES, MARION, MISSISSIPPI, MONITEAU, MONROE MONTGOMERY, NEW MADRID, OREGON, OSAGE, OZARK, PEMISCOT, PERRY PHELPS, PIKE, RALLS, RANDOLPH, REYNOLDS, RIPLEY STE GENEVIEVE, ST FRANCOIS, SCHUYLER, SCOTLAND, SCOTT SHANNON, SHELBY, STODDARD, TEXAS, WARREN, WASHINGTON, WAYNE WRIGHT
HUD REGION VIII (DENVER)			
DENVER, COLORADO REGIONAL OFFICE			
METROPOLITAN ALLOCATION AREAS			
DENVER COLORADO PMSA	4,489,783	149	ADAMS, ARAPAHOE, DENVER, DOUGLAS, JEFFERSON
COLORADO NORTHERN FRONT RANGE METRO	1,783,011	59	BOULDER, LARIMER, WELD
COLORADO SOUTHERN FRONT RANGE METRO	1,313,278	43	EL PASO, PUEBLO
MONTANA/WYOMING METRO	867,823	29	YELLOWSTONE, CASCADE, NATRONA, LARAMIE
NORTH/SOUTH DAKOTA METRO	1,156,831	38	BURLEIGH, MORTON, CASS, GRAND FORKS, PENNINGTON, MINNEHAHA
UTAH METRO AREAS	3,229,477	107	UTAH, DAVIS, SALT LAKE, WEBER
NONMETROPOLITAN ALLOCATION AREAS			
COLORADO/UTAH NONMETRO	1,669,073	48	ALAMOSA, ARCHULETA, BACA, BENT, CHAFFEE, CHEYENNE, CLEAR CREEK CONEJOS, COSTILLA, CROWLEY, CUSTER, DELTA, DOLORES, EAGLE ELBERT, FREMONT, GARFIELD, GILPIN, GRAND, GUNNISON, HINSDALE HUERFANO, JACKSON, KIOWA, KIT CARSON, LAKE, LA PLATA LAS ANIMAS, LINCOLN, LOGAN, MESA, MINERAL, MOFFAT, MONTEZUMA MONTROSE, MORGAN, OTERO, OURAY, PARK, PHILLIPS, PITKIN PROWERS, RIO BLANCO, RIO GRANDE, ROUTT, SAGUACHE, SAN JUAN SAN MIGUEL, SEDGWICK, SUMMIT, TELLER, WASHINGTON, YUMA, BEAVER BOX ELDER, CACHE, CARBON, DAGGETT, DUCHESNE, EMERY, GARFIELD GRAND, IRON, JUAB, KANE, MILLARD, MORGAN, PIUTE, RICH SAN JUAN, SANPETE, SEVIER, SUMMIT, TOOELE, UINTAH, WASATCH WASHINGTON, WAYNE
MONTANA/WYOMING NONMETRO	1,963,043	65	BEAVERHEAD, BIG HORN, BLAINE, BROADWATER, CARBON, CARTER CHOUTEAU, CUSTER, DANIELS, DAWSON, ANACONDA-DEER LODGE COUN FALLON, FERGUS, FLATHEAD, GALLATIN, GARFIELD, GLACIER GOLDEN VALLEY, GRANITE, HILL, JEFFERSON, JUDITH BASIN, LAKE LEWIS AND CLARK, LIBERTY, LINCOLN, MCCONE, MADISON, MEAGHER

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
			MINERAL, MISSOULA, MUSSELSHELL, PARK, PETROLEUM, PHILLIPS PONDERA, POWDER RIVER, POWELL, PRAIRIE, RAVALLI, RICHLAND ROOSEVELT, ROSEBUD, SANDERS, SHERIDAN, BUTTE-SILVER BOW STILLWATER, SWEET GRASS, TETON, TOOLE, TREASURE, VALLEY WHEATLAND, WIBAUX, YELLOWSTONE NATIONAL PAR, ALBANY, BIG HORN CAMPBELL, CARBON, CONVERSE, CROOK, FREMONT, GOSHEN HOT SPRINGS, JOHNSON, LINCOLN, NIOBRARA, PARK, PLATTE SHERIDAN, SUBLETTE, SWEETWATER, TETON, UINTA, WASHAKIE, WESTON
NORTH/SOUTH DAKOTA NONMETRO	1,783,875	49	ADAMS, BARNES, BENSON, BILLINGS, BOTTINEAU, BOWMAN, BURKE CAVALIER, DICKEY, DIVIDE, DUNN, EDDY, EMMONS, FOSTER GOLDEN VALLEY, GRANT, GRIGGS, HETTINGER, KIDDER, LA MOURE LOGAN, MCHENRY, MCINTOSH, MCKENZIE, MCLEAN, MERCER, MOUNTRAIL NELSON, OLIVER, PEMBINA, PIERCE, RAMSEY, RANSOM, RENVILLE RICHLAND, ROLETTE, SARGENT, SHERIDAN, SIOUX, SLOPE, STARK STEELE, STUTSMAN, TOWNER, TRAILL, WALSH, WARD, WELLS, WILLIAMS AURORA, BEADLE, BENNETT, BON HOMME, BROOKINGS, BROWN, BRULE BUFFALO, BUTTE, CAMPBELL, CHARLES MIX, CLARK, CLAY, CODINGTON CORSON, CUSTER, DAVISON, DAY, DEUEL, DEWEY, DOUGLAS, EDMUNDS FALL RIVER, FAULK, GRANT, GREGORY, HAAKON, HAMLIN, HAND HANSON, HARDING, HUGHES, HUTCHINSON, HYDE, JACKSON, JERAULD JONES, KINGSBURY, LAKE, LAWRENCE, LINCOLN, LYMAN, MCCOOK MCPHERSON, MARSHALL, MEADE, MELLETTE, MINER, MOODY, PERKINS POTTER, ROBERTS, SANBORN, SHANNON, SPINK, STANLEY, SULLY, TODD TRIPP, TURNER, UNION, WALWORTH, YANKTON, ZIEBACH
HUD REGION IX (SAN FRANCISCO)			
HONOLULU, HAWAII OFFICE			
METROPOLITAN ALLOCATION AREAS			
HONOLULU, HI MSA	6,012,398	109	HONOLULU
NONMETROPOLITAN ALLOCATION AREAS			
NONMETROPOLITAN ALLOCATION AREA	1,743,902	34	HAWAII, KAUAI, MAUI, GUAM
LOS ANGELES, CALIFORNIA OFFICE			
METROPOLITAN ALLOCATION AREAS			
Los Angeles County, CA	80,107,162	1659	LOS ANGELES
Orange County, CA	10,727,583	222	ORANGE
Riverside and San Bernardino Counties, CA	7,845,138	162	RIVERSIDE, SAN BERNARDINO
Kern-Ventura-Santa Barbara Counties, CA	7,707,265	160	KERN, VENTURA, SANTA BARBARA
San Diego County, CA	13,642,881	283	SAN DIEGO
NONMETROPOLITAN ALLOCATION AREAS			
S.Luis Obispo-Imperial-Inyo-Mono Counties, CA	1,367,966	34	SAN LUIS OBISPO, IMPERIAL, INYO, MONO
PHOENIX, ARIZONA OFFICE			
METROPOLITAN ALLOCATION AREAS			
METROPOLITAN ARIZONA	6,014,104	199	MARICOPA, PIMA, YUMA, LA PAZ
NONMETROPOLITAN ALLOCATION AREAS			
NONMETROPOLITAN ARIZONA ALLOCATION AREA EAST	637,516	21	APACHE, COCHISE, GILA, GRAHAM, GREENLEE, PINAL, SANTA CRUZ
NONMETROPOLITAN ARIZONA ALLOCATION AREA WEST	497,613	17	COCONINO, MOHAVE, NAVAJO, YAVAPAI
SACRAMENTO, CALIFORNIA OFFICE			
METROPOLITAN ALLOCATION AREAS			
METROPOLITAN ALLOCATION AREA 1	4,309,707	123	SACRAMENTO, SAN JOAQUIN

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
METROPOLITAN ALLOCATION AREA 2	1,370,486	40	YOLO, SUTTER, YUBA
METROPOLITAN ALLOCATION AREA 3	1,269,501	37	BUTTE, SHASTA
METROPOLITAN ALLOCATION AREA 4	544,252	16	EL DORADO, PLACER
NONMETROPOLITAN ALLOCATION AREAS			
NONMETROPOLITAN ALLOCATION AREA 1	787,207	23	ALPINE, AMADOR, CALAVERAS, COLUSA, GLENN, LASSEN, MODOC NEVADA, PLUMAS, SIERRA, SISKIYOU, TEHAMA, TRINITY, TUOLUMNE
SAN FRANCISCO, CALIFORNIA OFFICE			
METROPOLITAN ALLOCATION AREAS			
METROPOLITAN ALLOCATION AREA 1	7,581,652	152	FRESNO, MERCED, STANISLAUS, TULARE
METROPOLITAN ALLOCATION AREA 2	14,132,349	283	ALAMEDA, CONTRA COSTA
METROPOLITAN ALLOCATION AREA 3	17,807,618	357	MARIN, SAN FRANCISCO, SAN MATEO
METROPOLITAN ALLOCATION AREA 4	11,634,758	233	MONTEREY, SANTA CLARA, SANTA CRUZ
METROPOLITAN ALLOCATION AREA 5	3,960,322	79	SONOMA, NAPA, SOLANO
METROPOLITAN ALLOCATION AREA 6	3,925,885	79	CLARK, WASHOE
NONMETROPOLITAN ALLOCATION AREAS			
NONMETROPOLITAN ALLOCATION AREA	2,150,467	63	CHURCHILL, DOUGLAS, ELKO, ESMERALDA, EUREKA, HUMBOLDT, LANDER LINCOLN, LYON, MINERAL, NYE, PERSHING, STOREY, WHITE PINE CARSON CITY, DEL NORTE, HUMBOLDT, KINGS, LAKE, MADERA MARIPOSA, MENDOCINO, SAN BENITO
HUD REGION X (SEATTLE)			
ANCHORAGE, ALASKA OFFICE			
METROPOLITAN ALLOCATION AREAS			
Anchorage	597,272	16	ANCHORAGE BOROUGH
NONMETROPOLITAN ALLOCATION AREAS			
Nonmetro Alaska	851,972	18	ALEUTIAN ISLANDS CENSUS, BETHEL CENSUS AREA BRISTOL BAY BOROUGH, DILLINGHAM CENSUS AREA FAIRBANKS NORTH STAR BOR, HAINES BOROUGH, JUNEAU BOROUGH KENAI PENINSULA BOROUGH, KETCHIKAN GATEWAY BOROUG KOBUK CENSUS AREA, KODIAK ISLAND BOROUGH MATANUSKA-SUSITNA BOROUG, NOME CENSUS AREA NORTH SLOPE BOROUGH, PRINCE OF WALES-OUTER KE, SITKA BOROUGH SKAGWAY-YAKUTAT-ANGOON C, SOUTHEAST FAIRBANKS CENS VALDEZ-CORDOVA CENSUS AR, WADE HAMPTON CENSUS AREA WRANGELL-PETERSBURG CENS, YUKON-KOYUKUK CENSUS ARE
PORTLAND, OREGON OFFICE			
METROPOLITAN ALLOCATION AREAS			
Portland/Vancouver	5,582,573	170	CLACKAMAS, MULTNOMAH, WASHINGTON, YAMHILL, CLARK
Ida-Ore Metro	2,799,715	85	ADA, JACKSON, LANE, MARION, POLK
NONMETROPOLITAN ALLOCATION AREAS			
Idaho Nonmetro	1,667,396	51	ADAMS, BANNOCK, BEAR LAKE, BENEWAH, BINGHAM, BLAINE, BOISE BONNER, BONNEVILLE, BOUNDARY, BUTTE, CAMAS, CANYON, CARIBOU CASSIA, CLARK, CLEARWATER, CUSTER, ELMORE, FRANKLIN, FREMONT GEM, GOODING, IDAHO, JEFFERSON, JEROME, KOOTENAI, LATAH, LEMHI LEWIS, LINCOLN, MADISON, MINIDOKA, NEZ PERCE, ONEIDA, OWYHEE PAYETTE, POWER, SHOSHONE, TETON, TWIN FALLS, VALLEY WASHINGTON
OREGON NONMETRO	2,297,294	71	KLICKITAT, SKAMANIA, BAKER, BENTON, CLATSOP, COLUMBIA, COOS CROOK, CURRY, DESCHUTES, DOUGLAS, GILLIAM, GRANT, HARNEY HOOD RIVER, JEFFERSON, JOSEPHINE, KLAMATH, LAKE, LINCOLN, LINN

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	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
			MALHEUR, MORROW, SHERMAN, TILLAMOOK, UMATILLA, UNION, WALLOWA WASCO, WHEELER
SEATTLE, WASHINGTON OFFICE			
METROPOLITAN ALLOCATION AREAS			
METRO-1	6,917,858	195	KING, SNOHOMISH
METRO-2	3,402,052	97	PIERCE, WHATCOM, KITSAP, THURSTON
METRO-3	2,778,316	79	SPOKANE, BENTON, FRANKLIN, YAKIMA
NONMETROPOLITAN ALLOCATION AREAS			
WASHINGTON NONMETRO	2,128,743	68	ADAMS, ASOTIN, CHELAN, CLALLAM, COLUMBIA, COWLITZ, DOUGLAS FERRY, GARFIELD, GRANT, GRAYS HARBOR, ISLAND, JEFFERSON KITTITAS, LEWIS, LINCOLN, MASON, OKANOGAN, PACIFIC PEND OREILLE, SAN JUAN, SKAGIT, STEVENS, WAHKIAKUM WALLA WALLA, WHITMAN

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federal register

Monday
July 11, 1994

Part V

Department of Justice

Bureau of Prisons

28 CFR Part 571
Release Preparation Program; Final Rule

List of Bureau of Prisons Institutions; Notice

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 571

[BOP–1018–F]

RIN 1120–AA24

Release Preparation Program

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is revising its regulations on inmate release preparation to provide for greater standardization for institution programs and to make various editorial or organizational changes. As revised, this program is intended to enhance the likelihood that sentenced inmates will successfully reintegrate into the community upon their release from incarceration.

EFFECTIVE DATE: August 10, 1994.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its regulations on Pre-Release Program (28 CFR part 571, subpart A), which will now be entitled Release Preparation Program. A final rule on this subject was published in the **Federal Register** June 30, 1980 (45 FR 44234) and was amended on September 30, 1983 (48 FR 45053).

The primary change in these amendments is to provide for greater standardization in release preparation programming at Bureau institutions. New section 571.13 contains the core curriculum of topics/courses to be offered. Other amendments are primarily editorial in nature and make no change in the intent of the regulations. For ease of use, the entire subpart is being revised. A summary of the changes follows.

As noted above, the title of the program has been changed from "pre-release program" to "release preparation program". This change is reflected in revised § 571.10, § 571.11 (b) and (d) (formerly § 571.11(a) (2) and (4)), § 571.12 (a) and (b).

Section 571.10 is further amended to reflect the Bureau's recognition of the continuity of an inmate's needs for release preparation and to standardize the release preparation program for all sentenced inmates reintegrating into the community from Bureau facilities.

Section 571.11 is further amended by adjusting the codification for the purpose of editorial consistency. Former paragraph (a)(1) has been removed. This provision is addressed more completely in new § 571.13 (b). As revised, the introductory text and paragraph (a) of new § 571.11 specify that a designated staff member has the responsibility to determine the general release needs of the inmate population. These provisions replace the provisions of former paragraphs (a) introductory text and (a)(2). Former paragraphs (a) (3) and (4) are revised as paragraphs (b) and (d), and a new paragraph (c) is added specifying that the designated staff member chairs the institution's Release Preparation Program Committee.

In § 571.12, paragraph (b) has been revised to remove reference to requirements for inmate participation in a specific number of sessions. The intent of the revised paragraph is that the inmate is responsible for registering in recommended release preparation courses. Documentation of the inmate's participation in the program serves to help staff measure the institutional adjustment of the inmate.

The provisions in former paragraphs (c), (d), and (e) of § 571.12 have been revised as paragraphs (c), (d), and (e) of a new § 571.13 on the institution release preparation program. New paragraph (a) of § 571.13 specifies that the institution's release preparation program shall be administered by the Release Preparation Program Committee. New paragraph (b) of § 571.13 states the core curriculum of the institution program: health and nutrition, employment, personal finance/consumer skills, information/community resources, release requirements and procedures, and personal growth and development.

Because these changes are administrative in nature and do not impose further restrictions on inmates, the Bureau finds good cause for exempting the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and delay in effective date. Members of the public may submit comments concerning this rule by writing to the previously cited address. These comments will be considered but will receive no response in the **Federal Register**.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly this rule was not reviewed by the Office of Management and Budget. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 571

Prisoners.

Wade B. Houk,

Acting Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), part 571 in subchapter D of 28 CFR, chapter V is amended as set forth below.

SUBCHAPTER D—COMMUNITY PROGRAMS AND RELEASE

PART 571—RELEASE FROM CUSTODY

1. The authority citation for 28 CFR part 571 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3565, 3568–3569 (Repealed in part as to offenses committed on or after November 1, 1987), 3582, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166 and 4201–4218 (Repealed as to offenses committed on or after November 1, 1987); 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5031–5042; 28 U.S.C. 509, 510; U.S. Const., Art. II, Sec. 2; 28 CFR 0.95–0.99, 1.1–1.10.

2. Subpart B, consisting of §§ 571.10 through 571.12, is revised to consist of §§ 571.10 through 571.13 and reads as follows:

Subpart B—Release Preparation Program

Sec.

571.10 Purpose and scope.
571.11 Program responsibility.
571.12 General characteristics.
571.13 Institution release preparation program.

Subpart B—Release Preparation Program

§ 571.10 Purpose and scope.

The Bureau of Prisons recognizes that an inmate's preparation for release begins at initial commitment and continues throughout incarceration and until final release to the community. This policy establishes a standardized release preparation program for all sentenced inmates reintegrating into the community from Bureau facilities.

§ 571.11 Program responsibility.

The Warden shall designate to a staff member the responsibility to:

(a) Determine the general release needs of the inmate population;

(b) Coordinate the institution release preparation program;

(c) Chair the Release Preparation Program Committee;

(d) Contact and schedule volunteers from the local community to participate in the release preparation program.

§ 571.12 General characteristics.

(a) Staff shall structure the release preparation program to make extensive use of staff, inmate, and community resources.

(b) Staff shall strongly encourage and support an inmate's participation in the institution release preparation program. Staff shall document the inmate's participation in the program in the inmate's central file.

§ 571.13 Institution release preparation program.

(a) The institution release preparation program shall be administered by the Release Preparation Program Committee.

(b) The institution release preparation program will be based on a core curriculum of topics/courses organized into six broad categories. The six categories are:

(1) Health and nutrition.
(2) Employment.
(3) Personal finance/consumer skills.
(4) Information/community resources.
(5) Release requirements and procedures.
(6) Personal growth and development.

(c) To assist in the release process, the Warden may, in accordance with the Bureau of Prisons' rule on furloughs, grant an inmate a furlough for release preparation purposes.

(d) Staff shall help an inmate obtain proper identification (social security card, driver's license, birth certificate, and/or any other documents needed by the inmate) prior to release.

(e) An inmate who is not being released through a Community Corrections Center (CCC) may ask staff to request the assistance of a United States Probation Officer in establishing a release plan. Bureau staff are to encourage the inmate to give at least one employment lead or contact. Where the inmate or the inmate's family has already identified employment, the case manager shall notify the United States Probation Officer so that the usual verification of release plans may be made. Where employment has not been identified, the case manager shall notify the United States Probation Officer of the employment need. This notification should ordinarily occur at least six weeks prior to the inmate's release.

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BILLING CODE 4410–05–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

List of Bureau of Prisons Institutions

AGENCY: Bureau of Prisons, Justice.

ACTION: Notice.

SUMMARY: In this document, the Bureau of Prisons is publishing a consolidated listing of its institutions. The following institutions have been added to the listing: Federal Correctional Institutions at Cumberland, Maryland; Greenville, Illinois; and Pekin, Illinois; a Federal Medical Center at Carswell, Texas; and a Federal Transportation Center at Oklahoma City, Oklahoma. The former Federal Correctional Institution at Fort Worth, Texas has been redesignated as a Federal Medical Center. The Federal Prison Camp at Tyndall Air Force Base and the Federal Medical Center at Carville, Louisiana have been closed and consequently have been removed from the listing. Finally, the names of certain Bureau institutions located on military reservations have been shortened for the sake of consistency and ease of reference.

ADDRESS: Office of General Counsel, Bureau of Prisons, 320 First Street NW., HOLC Room 754, Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, (202) 514–6655.

SUPPLEMENTARY INFORMATION: Attorney General Order No. 646–76 (41 FR 14805), as amended, classifies and lists the various Bureau of Prisons institutions. Attorney General Order No. 960–81, Reorganization Regulations, published in the **Federal Register** October 27, 1981 (at 46 FR 52339 et seq.) delegated to the Director, Bureau of Prisons, in 28 CFR 0.96(q), the authority to establish and designate Bureau of Prisons institutions. The last listing of the Bureau's institutions was published in the **Federal Register** on August 20, 1993 (58 FR 44424).

This notice is not a rule within the meaning of the Administrative Procedure Act, 5 U.S.C. 551(4), the Regulatory Flexibility Act, 5 U.S.C. 601(2), or Executive Order No. 12291, Sec. 1(a).

By virtue of the authority vested in the Attorney General in 18 U.S.C. 3621, 4001, 4003, 4042, 4081, and 4082 (repealed in part October 12, 1984) and delegated to the Director, Bureau of Prisons by 28 CFR 0.96(q), it is hereby ordered as follows:

The following institutions are established and designated as places of confinement for the detention of persons held under authority of any Act of Congress, and for persons charged with or convicted of offenses against the United States or otherwise placed in the custody of the Attorney General of the United States.

A. The Bureau of Prisons institutions at the following locations are designated as U.S. Penitentiaries:

(1) Allenwood, Pennsylvania;
(2) Atlanta, Georgia;
(3) Florence, Colorado;
(4) Leavenworth, Kansas;
(5) Lewisburg, Pennsylvania;
(6) Lompoc, California;
(7) Marion, Illinois; and
(8) Terre Haute, Indiana.

B. The Bureau of Prisons institutions at the following locations are designated as Federal Correctional Institutions:

(1) Allenwood, Pennsylvania (Low Security);
(2) Allenwood, Pennsylvania (Medium Security);
(3) Ashland, Kentucky;
(4) Bastrop, Texas;
(5) Big Spring, Texas;
(6) Butner, North Carolina;
(7) Cumberland, Maryland;
(8) Danbury, Connecticut;
(9) Dublin, California;
(10) El Reno, Oklahoma;
(11) Englewood, Colorado;
(12) Estill, South Carolina;
(13) Fairton, New Jersey;
(14) Florence, Colorado;
(15) Fort Dix, New Jersey;
(16) Greenville, Illinois;
(17) Jessup, Georgia;
(18) La Tuna, Texas;
(19) Lompoc, California;
(20) Loretto, Pennsylvania;
(21) Manchester, Kentucky;
(22) Marianna, Florida;
(23) McKean, Pennsylvania;
(24) Memphis, Tennessee;
(25) Milan, Michigan;
(26) Morgantown, West Virginia;
(27) Oakdale, Louisiana (formerly Oakdale I);
(28) Otisville, New York;
(29) Oxford, Wisconsin;
(30) Pekin, Illinois;
(31) Petersburg, Virginia;
(32) Phoenix, Arizona;
(33) Ray Brook, New York;
(34) Safford, Arizona;
(35) Sandstone, Minnesota;
(36) Schuylkill, Pennsylvania;
(37) Seagoville, Texas;
(38) Sheridan, Oregon;
(39) Talladega, Alabama;
(40) Tallahassee, Florida;
(41) Terminal Island, California;
(42) Texarkana, Texas;
(43) Three Rivers, Texas; and
(44) Tucson, Arizona.

C. The Bureau of Prisons institutions at the following locations are designated as Federal Prison Camps:

(1) Alderson, West Virginia;
(2) Allenwood, Pennsylvania;
(3) Boron, California;
(4) Bryan, Texas;
(5) Duluth, Minnesota;
(6) Eglin, Florida;
(7) El Paso, Texas;
(8) Montgomery, Alabama;
(9) Millington, Tennessee;
(10) Nellis, Nevada;
(11) Pensacola, Florida;
(12) Seymour-Johnson, North Carolina; and
(13) Yankton, South Dakota.

D. The Bureau of Prisons institutions at the following locations house inmates who are primarily pre-trial detainees and are designated as:

Federal Detention Center

(1) Oakdale, Louisiana (formerly Oakdale II).

Metropolitan Correctional Centers

(1) Chicago, Illinois;
(2) Miami, Florida;
(3) New York, New York; and
(4) San Diego, California.

Metropolitan Detention Centers

(1) Brooklyn, New York;
(2) Guaynabo, Puerto Rico; and
(3) Los Angeles, California.

E. The Bureau of Prisons institution at Springfield, Missouri is designated as the U. S. Medical Center for Federal Prisoners.

F. The Bureau of Prisons institutions at the following locations are designated as Federal Medical Centers:

(1) Carswell, Texas;
(2) Fort Worth, Texas;
(3) Lexington, Kentucky; and
(4) Rochester, Minnesota.

G. The Bureau of Prisons institution at Oklahoma City, Oklahoma is designated as the Federal Transportation Center.

Wade B. Houk,

Acting Director, Federal Bureau of Prisons.

[FR Doc. 94–16694 Filed 7–8–94; 8:45 am]

BILLING CODE 4410–05–P

federal register

Monday
July 11, 1994

Part VI

Department of Education

Federal Interagency Coordinating Council Meeting; Notice

DEPARTMENT OF EDUCATION

Federal Interagency Coordinating Council Meeting (FICC)

AGENCY: Federal Interagency Coordinating Council, Education.

ACTION: Notice of a public meeting.

SUMMARY: This notice describes the schedule and agenda of a forthcoming meeting of the Federal Interagency Coordinating Council. Notice of this meeting is required under section 685(c) of the Individuals with Disabilities Education Act, as amended, and is intended to notify the general public of their opportunity to attend the meeting. The meeting will be accessible to individuals with disabilities.

DATE AND TIME: July 28, 1994, from 1 p.m. to 4:30 p.m.

ADDRESS: Hubert H. Humphrey Building, room 703A/727A, 200 Independence Avenue SW., Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Connie Garner, U.S. Department of Education, 400 Maryland Avenue SW., room 4613, Switzer Building, Washington, DC 20202–2644. Telephone: (202) 205–8124. Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–8170.

SUPPLEMENTARY INFORMATION: The Federal Interagency Coordinating Council (FICC) is established under section 685 of the Individuals with Disabilities Education Act, as amended (20 U.S.C. 1484a). The Council is established to: (1) minimize duplication across Federal, State and local agencies of programs and activities relating to early intervention services for infants and toddlers with disabilities and their families and preschool services for children with disabilities; (2) ensure effective coordination of Federal early intervention and preschool programs, including Federal technical assistance and support activities; and (3) identify gaps in Federal agency programs and services and barriers to Federal interagency cooperation. To meet these purposes, the FICC seeks to: (1) identify areas of conflict, overlap, and omissions in interagency policies related to the provision of services to infants, toddlers, and preschoolers with disabilities; (2) develop and implement joint policy interpretations on issues related to infants, toddlers, and preschoolers that cut across Federal agencies, including modifications or regulations to eliminate barriers to interagency programs and activities; and (3) coordinate the provision of technical assistance and dissemination of best practice information. The FICC is chaired by the Assistant Secretary for Special Education and Rehabilitative Services.

At this meeting the FICC plans to: (1) Update the membership on the IDEA reauthorization process; and (2) discuss innovations in the use of information-highway technology by children with disabilities and their families.

The meeting of the FICC is open to the public. Written public comment will be accepted at the conclusion of the meeting. These comments will be included in the summary minutes of the meeting. The meeting will be physically accessible with meeting materials provided in both braille and large print. Interpreters for persons who are hearing impaired will be available. Individuals with disabilities who plan to attend and need other reasonable accommodations should contact the contact person named above in advance of the meeting.

Summary minutes of the FICC meetings will be maintained and available for public inspection at the U.S. Department of Education, 400 Maryland Avenue SW., room 4613, Switzer Building, Washington, DC 20202–2644, from the hours of 9 a.m. to 5 p.m., weekdays, except Federal holidays.

Thomas F. Hehir,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 94–16634 Filed 7–8–94; 8:45 am]

BILLING CODE 4000–01–M

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H.R. 1758/P.L. 103–272

To revise, codify, and enact without substantive change certain general and permanent laws, related to transportation, as subtitles II, III, and V-X of title 49, United States Code, "Transportation", and to make other technical improvements in the Code. (July 5, 1994; 108 Stat. 745; 657 pages)

H.R. 2559/P.L. 103–273

To designate the Federal building located at 601 East 12th Street in Kansas City, Missouri, as the "Richard Bolling Federal Building" and the United States Courthouse located at Ninth and Locust Streets, in Kansas City, Missouri, as the "Charles Evans Whittaker United States Courthouse". (July 5, 1994; 108 Stat. 1402; 1 page)

H.R. 3724/P.L. 103–274

To designate the United States courthouse located in Bridgeport, Connecticut, as the "Brien McMahon Federal Building". (July 5, 1994; 108 Stat. 1403; 1 page)

H.R. 4568/P.L. 103–275

Making supplemental appropriations for the Department of Housing and Urban Development for the fiscal year ending September 30, 1994, and for other purposes. (July 5, 1994; 108 Stat. 1404; 2 pages)

H.R. 4581/P.L. 103–276

To provide for the imposition of temporary fees in connection with the handling of complaints of violations of the Perishable Agricultural Commodities Act, 1930. (July 5, 1994; 108 Stat. 1406; 1 page)

H.R. 4635/P.L. 103–277

To extend the Export Administration Act of 1979. (July 5, 1994; 108 Stat. 1407, 1 page)

Last List July 8, 1994

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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40–49	(869–019–00098–4)	13.00	Apr. 1, 1993
50–299	(869–019–00099–2)	13.00	Apr. 1, 1993
300–499	(869–017–00100–0)	23.00	Apr. 1, 1993
500–599	(869–022–00101–9)	6.00	[4] Apr. 1, 1990

Title	Stock Number	Price	Revision Date
600-End	(869-019-00102-6)	8.00	Apr. 1, 1993
27 Parts:			
1-199	(869-019-00103-4)	37.00	Apr. 1, 1993
200-End	(869-022-00104-3)	13.00	Apr. 1, 1994
28 Parts:			
1-42	(869-019-00105-1)	27.00	July 1, 1993
43-end	(869-019-00106-9)	21.00	July 1, 1993
29 Parts:			
0-99	(869-019-00107-7)	21.00	July 1, 1993
100-499	(869-019-00108-5)	9.50	July 1, 1993
500-899	(869-019-00109-3)	36.00	July 1, 1993
900-1899	(869-019-00110-7)	17.00	July 1, 1993
1900-1910 (§§ 1901.1 to 1910.999)	(869-019-00111-5)	31.00	July 1, 1993
1910 (§§ 1910.1000 to end)	(869-019-00112-3)	21.00	July 1, 1993
1911-1925	(869-019-00113-1)	22.00	July 1, 1993
1926	(869-019-00114-0)	33.00	July 1, 1993
1927-End	(869-019-00115-8)	36.00	July 1, 1993
30 Parts:			
1-199	(869-019-00116-6)	27.00	July 1, 1993
200-699	(869-019-00117-4)	20.00	July 1, 1993
700-End	(869-019-00118-2)	27.00	July 1, 1993
31 Parts:			
0-199	(869-019-00119-1)	18.00	July 1, 1993
200-End	(869-019-00120-4)	29.00	July 1, 1993
32 Parts:			
1-39, Vol. I		15.00	[2] July 1, 1984
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1-39, Vol. III		18.00	[2] July 1, 1984
1-190	(869-019-00121-2)	30.00	July 1, 1993
191-399	(869-019-00122-1)	36.00	July 1, 1993
400-629	(869-019-00123-9)	26.00	July 1, 1993
630-699	(869-019-00124-7)	14.00	[5] July 1, 1991
700-799	(869-019-00125-5)	21.00	July 1, 1993
800-End	(869-019-00126-3)	22.00	July 1, 1993
33 Parts:			
1-124	(869-019-00127-1)	20.00	July 1, 1993
125-199	(869-019-00128-0)	25.00	July 1, 1993
200-End	(869-019-00129-8)	24.00	July 1, 1993
34 Parts:			
1-299	(869-019-00130-1)	27.00	July 1, 1993
300-399	(869-019-00131-0)	20.00	July 1, 1993
400-End	(869-019-00132-8)	37.00	July 1, 1993
35	(869-019-00133-6)	12.00	July 1, 1993
36 Parts:			
1-199	(869-019-00134-4)	16.00	July 1, 1993
200-End	(869-019-00135-2)	35.00	July 1, 1993
37	(869-019-00136-1)	20.00	July 1, 1993
38 Parts:			
0-17	(869-019-00137-9)	31.00	July 1, 1993
18-End	(869-019-00138-7)	30.00	July 1, 1993
39	(869-019-00139-5)	17.00	July 1, 1993
40 Parts:			
1-51	(869-019-00140-9)	39.00	July 1, 1993
52	(869-019-00141-7)	37.00	July 1, 1993
53-59	(869-019-00142-5)	11.00	July 1, 1993
60	(869-019-00143-3)	35.00	July 1, 1993
61-80	(869-019-00144-1)	29.00	July 1, 1993
81-85	(869-019-00145-0)	21.00	July 1, 1993
86-99	(869-019-00146-8)	39.00	July 1, 1993
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190-259	(869-019-00149-2)	17.00	July 1, 1993
260-299	(869-019-00150-6)	39.00	July 1, 1993
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700-789	(869-019-00154-9)	26.00	July 1, 1993
790-End	(869-019-00155-7)	26.00	July 1, 1993
41 Chapters:			
1, 1-1 to 1-10		13.00	[3] July 1, 1984
1, 1-11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3-6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
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10-17		9.50	[3] July 1, 1984
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18, Vol. III, Parts 20-52		13.00	[3] July 1, 1984
19-100		13.00	[3] July 1, 1984
1-100	(869-019-00156-5)	10.00	July 1, 1993
101	(869-019-00157-3)	30.00	July 1, 1993
102-200	(869-019-00158-1)	11.00	[5] July 1, 1991
201-End	(869-019-00159-0)	12.00	July 1, 1993
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1-399	(869-019-00160-3)	24.00	Oct. 1, 1993
400-429	(869-019-00161-1)	25.00	Oct. 1, 1993
430-End	(869-019-00162-0)	36.00	Oct. 1, 1993
43 Parts:			
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4000-End	(869-019-00165-4)	14.00	Oct. 1, 1993
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45 Parts:			
1-199	(869-019-00167-1)	22.00	Oct. 1, 1993
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500-1199	(869-019-00169-7)	30.00	Oct. 1, 1993
1200-End	(869-019-00170-1)	22.00	Oct. 1, 1993
46 Parts:			
1-40	(869-019-00171-9)	18.00	Oct. 1, 1993
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140-155	(869-019-00175-1)	12.00	Oct. 1, 1993
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166-199	(869-019-00177-8)	17.00	Oct. 1, 1993
200-499	(869-019-00178-6)	20.00	Oct. 1, 1993
500-End	(869-019-00179-4)	15.00	Oct. 1, 1993
47 Parts:			
0-19	(869-019-00180-8)	24.00	Oct. 1, 1993
20-39	(869-019-00181-6)	24.00	Oct. 1, 1993
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1 (Parts 1-51)	(869-019-00185-9)	36.00	Oct. 1, 1993
1 (Parts 52-99)	(869-019-00186-7)	23.00	Oct. 1, 1993
2 (Parts 201-251)	(869-019-00187-5)	16.00	Oct. 1, 1993
2 (Parts 252-299)	(869-019-00188-3)	12.00	Oct. 1, 1993
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15-28	(869-019-00191-3)	31.00	Oct. 1, 1993
29-End	(869-019-00192-1)	17.00	Oct. 1, 1993
49 Parts:			
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100-177	(869-019-00194-8)	30.00	Oct. 1, 1993
178-199	(869-019-00195-6)	20.00	Oct. 1, 1993
200-399	(869-019-00196-4)	27.00	Oct. 1, 1993
400-999	(869-019-00197-2)	33.00	Oct. 1, 1993
1000-1199	(869-019-00198-1)	18.00	Oct. 1, 1993
1200-End	(869-019-00199-9)	22.00	Oct. 1, 1993
50 Parts:			
1-199	(869-019-00200-6)	20.00	Oct. 1, 1993
200-599	(869-019-00201-4)	21.00	Oct. 1, 1993
600-End	(869-019-00202-2)	22.00	Oct. 1, 1993
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1994. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1993. The CFR volume issued July 1, 1991, should be retained.

[6] No amendments to this volume were promulgated during the period January 1, 1993 to December 31, 1993. The CFR volume issued January 1, 1993, should be retained.

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