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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 94–068–1]

Tuberculosis in Cattle and Bison; State Designation

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the tuberculosis regulations concerning the interstate movement of cattle and bison by raising the designation of Louisiana from a modified accredited State to an accredited-free State. We have determined that Louisiana meets the criteria for designation as an accredited-free State.

DATES: Effective Date: Interim rule effective July 19, 1994.

Comments: Consideration will be given only to comments received on or before September 19, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 94–068–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

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

SUPPLEMENTARY INFORMATION:

Background

Bovine tuberculosis is the contagious, infectious, and communicable disease caused by *Mycobacterium bovis*. The tuberculosis regulations, contained in 9 CFR part 77 (referred to below as the regulations), regulate the interstate movement of cattle and bison because of tuberculosis. Cattle or bison not known to be affected with or exposed to tuberculosis are eligible for interstate movement without restriction if those cattle or bison are moved from jurisdictions designated as accredited-free States or modified accredited States. The regulations restrict the interstate movement of cattle or bison not known to be affected with or exposed to tuberculosis if those cattle or bison are moved from jurisdictions designated as nonmodified accredited States.

The status of a State is based on its freedom from evidence of tuberculosis, the effectiveness of the State's tuberculosis eradication program, and the degree of the State's compliance with the standards contained in the "Uniform Methods and Rules—Bovine Tuberculosis Eradication," which is part of the regulations via incorporation by reference in part 77. A State must have no findings of tuberculosis in any cattle or bison in the State for at least 5 years in order to be designated as an accredited-free State.

Before publication of this interim rule, Louisiana was designated in § 77.1 of the regulations as a modified accredited State. However, Louisiana now meets the requirements for designation as an accredited-free State. Therefore, we are amending the regulations by removing Louisiana from the list of modified accredited States in § 77.1 and adding it to the list of accredited-free States in that section.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is warranted, as Louisiana currently meets the criteria for designation as an accredited-free State. This action provides prospective cattle and bison buyers with accurate and up-to-date information, which may affect the marketability of cattle and bison since some prospective buyers prefer to buy cattle and bison from accredited-free States.

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

Executive Order 12866 and Regulatory Flexibility Act

This interim rule has been reviewed under Executive Order 12866.

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

There are approximately 19,500 cattle herds in Louisiana. An estimated 905 of the herds are owned by small entities. Changing the status of Louisiana may enhance the marketability of cattle and bison from the State, since some prospective cattle and bison buyers prefer to buy cattle and bison from accredited-free States. This may result in some beneficial economic impact on some small entities. However, based on our experience in similar designations of other States, the impact should not be significant.

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

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

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

Paperwork Reduction Act

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

List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

Accordingly, 9 CFR part 77 is amended as follows:

PART 77—TUBERCULOSIS

1. The authority citation for part 77 continues to read as follows:

Authority: 21 U.S.C. 111, 114, 114a, 115–117, 120, 121, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 77.1 [Amended]

2. In § 77.1, in the definition for *Modified accredited states*, paragraph (2) is amended by removing "Louisiana,".

3. In § 77.1, in the definition for *Accredited-free states*, paragraph (2) is amended by adding "Louisiana," immediately after "Kentucky,".

Done in Washington, DC, this 13th day of July 1994.

B. Glen Lee,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–17517 Filed 7–18–94; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 94–AWP–10]

Revocation of Restricted Area R–3104, Island of Kahoolawe, HI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action removes Restricted Area R–3104, Island of Kahoolawe, HI. Legislation returning Kahoolawe Island to the State of Hawaii was signed into law by the President on November 11, 1993, as part of the Defense Appropriations Bill. The Department of the Navy subsequently submitted a proposal to disestablish the restricted area.

EFFECTIVE DATE: 0901 UTC, August 18, 1994.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Military Operations Program Office (ATM–420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–7666.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to part 73 of the Federal Aviation Regulations removes Restricted Area R–3104, Island of Kahoolawe, HI. Legislation returning Kahoolawe Island to the State of Hawaii was signed into law by the President on November 11, 1993, as part of the Defense Appropriations Bill. The Department of the Navy has terminated the use of R–3104 as a weapons range and has determined the area to be in excess of naval requirements. The Navy has requested that the FAA disestablish R–3104. This action returns formerly restricted airspace to public use. Because this action is a minor technical amendment in which the public is not particularly interested, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Section 73.31 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8B dated March 9, 1994.

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

Environmental Review

This action disestablishes restricted airspace. In accordance with FAA Order 1050.1D, "Policies and Procedures for Considering Environmental Impacts," this action is not subject to environmental assessments and procedures.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510, 1522; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§73.31 [Amended]

2. Section 73.31 is amended as follows:

R–3104 Island of Kahoolawe, HI [Removed]

Issued in Washington, DC, on July 7, 1994.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 94–17393 Filed 7–18–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 200

[Docket No. R–94–1623; FR–3028–F–02]

RIN: 2502–AF26

Changes to the Minimum Property Standards: Seismic Standards

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule would amend the Minimum Property Standards (MPS) in 24 CFR part 200, subpart S, to specify that seismic design is a mandatory standard requirement for applicable housing. In addition, the rule would update a reference to a private sector seismic design standard currently incorporated into the MPS. This change to the MPS is needed to comply with the requirements of Executive Order 12699, the National Earthquake Hazards Reduction Program Reauthorization Act, and the Cranston-Gonzalez National Affordable Housing Act. These revisions

would ensure the structural integrity of applicable housing, and would protect the Department's insurance fund.

EFFECTIVE DATE: August 18, 1994.

FOR FURTHER INFORMATION CONTACT: Donald R. Fairman, Acting Director, Manufactured Housing and Construction Standards Division, Department of Housing and Urban Development, 451 Seventh Street SW, Mail Room B133, Washington, DC 20410–8000, telephone (202) 755–7440, or (202) 708–4594 (voice/TDD). (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

Background

On August 4, 1993, the Department published in the **Federal Register** a proposed rule (58 FR 41445) to amend the Minimum Property Standards (MPS) in 24 CFR part 200, subpart S. All housing constructed under the Department of Housing and Urban Development ("Department" or "HUD") mortgage insurance and low-rent public housing programs is required to meet or exceed the HUD-established MPS.

Section 526 of the National Housing Act (12 U.S.C. 1735f–4) authorizes the Secretary of Housing and Urban Development (Secretary) to prescribe standards for determining the acceptability of care-type facilities and one- and two-family and multifamily residential structures. Accordingly, the Secretary prescribed minimum property standards in 24 CFR part 200, subpart S. Provisions governing the health and safety criteria applicable to multifamily housing were simplified in 1984 (49 FR 18690, May 1, 1984), to rely on criteria already established in State or local codes or nationally recognized model codes.

This simplification was extended to care-type housing insured under HUD programs by a final rule published August 11, 1986 (51 FR 28696). The change implemented by that rule consolidated the requirements applicable to multifamily and care-type housing, allowing the Department to rely on established codes that have been determined by HUD to be comparable to one of the national model codes.

By a separate rule (50 FR 39586, September 27, 1985), the minimum property standards applicable to one- and two-family dwellings also were simplified to rely on criteria already established in State or local codes or one of the nationally recognized model codes. This rule was described (50 FR 39586) as being similar in many respects to the 1984 rule amending the minimum property standards for multifamily housing.

Executive and Legislative Mandates

The Department is subject to three separate directives that require it to address seismic safety issues in regulations governing programs operated by the Department. The first of these directives is an Executive Order issued by former President Bush. The other two directives are the National Earthquake Hazards Reduction Program Reauthorization Act, approved November 16, 1990 (Pub. L. 101–614) (NEHRP Reauthorization Act), and section 947 of the Cranston-Gonzalez National Affordable Housing Act, approved November 28, 1990 (Pub. L. 101–625) (NAHA).

On January 5, 1990, former-President Bush signed Executive Order 12699, "Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction" (Executive Order). In part, the purpose of this Executive Order is "to reduce risks to the lives of persons who would be affected by earthquake failures of federally assisted or regulated buildings, and to protect public investments, all in a cost-effective manner." The Executive Order applies only to new buildings being constructed with Federal involvement. Each Federal agency is made responsible for developing and implementing its own cost-effective seismic safety program commensurate with its specific program responsibilities. However, section 4(a) of the Executive Order charges the Interagency Committee on Seismic Safety in Construction (ICSSC) to use consensus procedures in recommending cost-effective seismic design and construction standards that would satisfy the requirements of the Executive Order. The Department has been working with the ICSSC to identify and meet the Department's responsibilities under the Executive Order.

Although the Executive Order does not create rights that make it privately enforceable, its provisions are made mandatory by section 8(a) of the NEHRP Reauthorization Act. Under the NEHRP Reauthorization Act each Federal agency is required to issue final regulations that comply with the Executive Order.

Finally, section 947 of NAHA requires the Secretary to develop seismic safety standards for properties assisted under HUD programs. The Secretary expressly is permitted to defer to local building codes that meet the seismic safety requirements established, and is authorized to utilize the resources of the National Earthquake Hazards Reduction Program (see 42 U.S.C. 7704).

The ICSSC was established as part of this Program in 1978, in response to the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701–7706). Since that time, the ICSSC has been working with Federal agencies and the private sector to develop appropriate, generally recognized, seismic safety standards. This final rule permits the Department to benefit from the efforts of the ICSSC, by referencing private sector seismic design and construction standards, as intended under section 3(a) of the Executive Order. In accordance with ICSSC recommendations, in this final rule the Department is adopting the seismic requirements included in the American Society of Civil Engineers (ASCE) standard ASCE 7–88, Minimum Design Loads for Buildings and Other Structures.

The Department expects to follow the recommendations of the ICSSC in applying the requirements that would be established by this final rule, as long as those recommendations would promote the purposes of the Department's programs. For example, the seismic safety requirements would apply where HUD assistance is provided through loan or mortgage insurance programs, and the requirements will apply to additions and renovations to existing buildings. Further, an addition or renovation should not decrease the seismic resistance of an existing building.

Elements of Final Rule

Since 1984, most of the private standards referenced in the MPS have been changed, often because the sponsoring organization has updated a standard. ASCE 7–88, adopted by the sponsoring organization in 1988, but not published until July 1990, recently was incorporated by reference in 24 CFR part 200, Appendix A (58 FR 60246, November 15, 1993). This standard was formerly listed as ANSI A58.1–1982; with a sponsorship change of the standard from the American National Standards Institute (ANSI) to the American Society of Civil Engineers (ASCE), and the revisions published by ASCE in 1990, the Department revised its reference to this standard to be consistent with section 526 of the National Housing Act, OMB Circular A–119, and the goals of the Department. This final rule will simply mandate compliance with the seismic design requirements of ASCE 7–88.

In addition, the Department is correcting minor typographical errors in current regulatory text. Other changes that had been included in the proposed rule have already been adopted recently by the Department in a separate

rulemaking and, therefore, are not included in this final rule.

This final rule concerns those property standards applicable to multifamily and care-type housing and to one- and two-family dwellings. Because manufactured homes eligible for insurance are subject to different minimum standards, the Department will propose a separate rule to mandate seismic standards appropriate for that category of housing.

Comments

Two public comments were received on the proposed rule published in the **Federal Register** on August 4, 1993. One comment was from the American Society of Civil Engineers (ASCE), and the other was from the National Institute of Standards and Technology (NIST), U.S. Department of Commerce.

The ASCE comment stated that ANSI/ASCE Standard 7–88, Minimum Design Loads for Buildings and Other Structures (November 1990) (ASCE 7–88 in this preamble), was under review for change and should be considered as an interim standard. They also pointed out that ASCE was planning to publish changes to ASCE 7–88 in late 1993 or early 1994 and requested the Department to consider waiting for these changes. Although the Department appreciates the ASCE comment, we must comply with the mandate in Executive Order 12699 and the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101–625, approved November 28, 1990) (NAHA), which requires HUD to adopt seismic requirements for its programs. Therefore, this rule references the standard that has been reviewed by the Department and approved for incorporation by reference. Newer ASCE requirements can be considered for possible revisions to any HUD standards to which they would apply.

The Department of Commerce, National Institute of Standards and Technology (NIST), point out that the 1982 and 1984 editions of the model codes are not considered acceptable for seismic design. The Department acknowledges this problem and has changed these references to refer to the 1993 editions of the model codes. These changes are in conformity with changes to the MPS that were made in a final rule published November 15, 1993, in the **Federal Register** (58 FR 60246).

NIST also noted that the Interagency Committee on Seismic Safety in Construction (ICSSC) has reviewed the 1991 edition of the ICBO Building Code, the 1992 edition of the BOCA National Building Code, and the 1992 edition of the SBCCI Southern Standard Building Code, and found that all provide a level of safety substantially equivalent to that defined in the NEHRP Recommended Provisions.

Other Matters

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. The major portion of the rule is designed to effectuate statutory requirements broadly, so that affected parties are permitted to choose among reasonable alternatives in complying with the statutory requirements. Generally, these requirements are imposed separately through State and local building codes that have been, or are being, updated to include the seismic safety standards. This rule would comply with the statutory requirements by specifically referencing existing standards, which have been reviewed and determined to be adequate.

Environmental Impact

At the time of publication of the proposed rule, a finding of no significant impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The proposed rule is adopted by this final rule without significant change. Accordingly, the initial finding of no significant impact remains applicable, and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the office of the Rules Docket Clerk at the above address.

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 final rule have federalism implications, and are subject to review under the order. Specifically, the rule provides for additional building design and construction standards to be applied to certain buildings in which federal assistance is provided. Because current building standards are met largely through compliance with existing State and local building codes, the additional requirement imposed by this rule may encourage States and local jurisdictions to adopt more stringent seismic design standards. This approach would allow local contractors to continue to rely upon the State and local codes in building to meet any federal requirements.

However, this rule is intended to implement statutory requirements that are broadly applicable to federal programs government-wide, and are not limited to HUD programs. In an effort for consistency and simplification, and as a result of information provided by the Interagency Committee on Seismic Safety in Construction, a great majority of State and local governments have already adopted acceptable seismic design and construction standards in their State and local codes. In large part, the movement to include seismic standards in building design and construction was led by the national model code organizations, whose model codes are often adopted by State and local governments.

Therefore, while the Department recognizes the potential federalism implications of this rule, the Department believes any federalism impact on State and local governments would be a function of the government-wide Federal requirements, rather than this discrete rule. Therefore, a more comprehensive review under Executive Order 12612 is not required, because the implementation of the statutes and Executive Order 12699 leaves little discretion with the Department to lessen these impacts.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive order 12606, *The Family*, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

Regulatory Agenda

This rule was listed as Item No. 1590 in the Department's Semiannual Agenda of Regulations published on April 25, 1994 (59 FR 20424, 20448), in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage

insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

For the reasons set out in the preamble, title 24, subpart S of the Code of Federal Regulations, is amended as follows:

PART 200—INTRODUCTION

Subpart S—Minimum Property Standards

1. The authority citation for Part 200 is revised to read as follows:

Authority: 12 U.S.C. 1701–1715z–18; 42 U.S.C. 3535(d).

2. Section 200.925a is amended by revising paragraph (c)(2) and by adding a sentence at the end of paragraph (c)(3), to read as follows:

§ 200.925a Multifamily and care-type minimum property standards.

* * * * *

(c) * * *

(2) A State or local building code will be partially accepted if it regulates most of the areas on the list. However, no code may be partially accepted if it fails to regulate the subarea for seismic design (see § 200.925b(c)(5)), or if it fails to regulate subareas in more than one of the following major areas listed in § 200.925b: fire safety, light and ventilation, structural loads and seismic design, foundation systems, materials standards, construction components, glass, mechanical, plumbing, electrical, and elevators.

(3) * * * However, for earthquake loads (see § 200.925b(c)(5)), ASCE 7–88 is mandatory.

* * * * *

3. Section 200.925b is amended by revising the heading for paragraph (c) and paragraph (c)(5) to read as follows:

§ 200.925b Residential and institutional building code comparison items.

* * * * *

(c) *Structural loads and seismic design.* * * *

(5) Earthquake loads (in localities identified by ASCE 7–88 (formerly ANSI A58.1–82) as being in seismic zones 1, 2, 3, or 4, and Guam).

* * * * *

4. Section 200.925c is amended by revising the introductory text of paragraph (c) to read as follows:

§ 200.925c Model codes.

* * * * *

(c) *Designation of Model Codes.* When a multifamily or care-type property is to comply with a model code, it shall comply with one of the model codes designated in paragraphs (c)(1), (2), or (3) of this section, and with any other code or codes identified in the same paragraph. However, seismic design is a mandatory requirement. In addition, the property shall comply with all of the standards that are incorporated into the code or codes by reference. By the time of application for insurance or other benefits, the developer or other interested party shall notify the Department of the code or group of codes to which the developer intends to comply.

* * * * *

5. Section 200.926 is amended by revising paragraph (c)(2) and adding a sentence at the end of paragraph (c)(3), to read as follows:

§ 200.926 Minimum property standards for one and two family dwellings.

* * * * *

(c) * * *

(2) A State or local building code will be partially accepted if it regulates most of the areas on the list. However, no code may be partially accepted if it fails to regulate the subarea for seismic design (see § 200.926a(c)(5)), or if it fails to regulate subareas in more than one of the following major areas listed in § 200.926a: fire safety, light and ventilation, structural loads and seismic design, foundation systems, materials standards, construction components, glass, mechanical, plumbing, and electrical.

(3) * * * However, for earthquake loads (see § 200.926a(c)(5)), ASCE 7–88 is mandatory.

* * * * *

6. Section 200.926a is amended by revising the heading of paragraph (c) and paragraphs (c)(3) and (c)(5), to read as follows:

§ 200.926a Residential building code comparison items.

* * * * *

(c) *Structural loads and seismic design.* * * *

(3) Snow loads (for jurisdictions with snow loading conditions identified in Section 7 of ASCE–7–88 (formerly ANSI A58.1–82); * * *

(5) Earthquake loads (for jurisdictions in seismic zones 3 or 4, as identified in Section 9 of ASCE–7–88 (formerly ANSI A58.1–82)).

* * * * *

§ 200.926c [Amended]

7. The table titled "Schedule for Model Code Supplements to Local or State Codes" in § 200.926c is amended by revising the heading, "Deficient major from § 200.926a as determined by field office review", and item (c), "Structural loads * * *", in the first (left-hand) column, to read, respectively, as follows: "Deficient major items from § 200.926a as determined by field office review" and "(c) Structural loads and seismic design * * *".

§ 200.926e [Amended]

8. Section 200.926e is amended by removing each reference to "ANSI A58.1–82" where it occurs in paragraphs (b), (c) introductory text (two occurrences), (c)(2), and (d), and replacing each occurrence with the reference "ASCE 7–88".

§ 200.937 [Amended]

9. Section 200.937(a)(2) is amended by revising the address, "1430 Broadway, New York, NY 10018", listed for the American National Standards Institute, Inc., to read as follows: "11 West 42nd Street, New York, NY 10036".

Dated: June 28, 1994.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 94–17403 Filed 7–18–94; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, 1917, 1918, 1926, and 1928

RIN: 1218–AB42

Retention of DOT Markings, Placards, and Labels

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule.

SUMMARY: OSHA is hereby issuing a final rule that requires employers who receive a package, transport vehicle, freight container, motor vehicle or rail freight car which contains a hazardous material and which is required to be marked, placarded, or labeled in accordance with the U.S. Department of Transportation's (DOT) Hazardous Materials Regulations, to retain the markings, placards, and labels on the package, transport vehicle, freight container, motor vehicle or rail freight car. Such markings, placards and labels generally must be retained on packages until the packaging is sufficiently cleaned of residue and purged of vapors to remove any potential hazards and retained on transport vehicles, freight containers, motor vehicles or rail freight cars until hazardous material which requires the marking or placarding is removed therefrom. This rule is issued pursuant to section 6(b) of the

Occupational Safety and Health Act of 1970 (the Act) and in accordance with section 29 of Public Law 101–615, the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA).

DATES: Effective date: This final rule shall take effect on October 17, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, OSHA Office of Public Affairs, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, telephone (202) 219–8151.

SUPPLEMENTARY INFORMATION: Public Law 101–615, the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA), 104 Stat. 3244, was enacted by Congress on November 17, 1990. Section 29 of HMTUSA reads as follows:

> Not later than 18 months after the date of enactment of this Act, the Secretary of Labor, in consultation with the Secretary of Transportation and the Secretary of the Treasury, shall issue under section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655(b)) standards requiring any employer who receives a package, container, motor vehicle, rail freight car, aircraft, or vessel which contains a hazardous material and which is required to be marked, placarded, or labeled in accordance with regulations issued under the Hazardous Materials Transportation Act to retain the markings, placards, and labels, and any other information as may be required by such regulations on the package, container, motor vehicle, rail freight car, aircraft, or vessel, until the hazardous materials have been removed therefrom.

The Congressional rationale for this requirement was provided in Senate Report No. 101–449, (p. 16), as follows:

> In November 1988, six Kansas City firemen were killed when the arson-caused fire they were fighting caused the violent explosion of an unmarked truck-trailer parked at a highway construction site. Because the trailer's hazardous materials placards had been removed, the firemen were unaware of the danger it posed. The Secretaries of Labor, Transportation and the Treasury should cooperate in order to ensure that placards and labels required on hazardous materials and explosives, both in transportation and at stationary facilities, be retained until such materials have been removed to the extent that they no longer pose a safety risk.

In response to the Congressional mandate, OSHA issued a proposed rule on September 10, 1993 to address the requirements of HMTUSA (58 FR 47690). A 30-day period was provided during which interested parties were invited to submit comments and information relative to the proposed rule. All comments submitted were collected in Docket No. H–022I, Exhibit No. 5, and prefixed with "Ex. 5" or "Ex. L5" (the latter denotes comments received after the close of the comment period). All comments received were reviewed and considered in developing this final rule. Most commenters supported OSHA's proposal; however, certain issues were raised that persuaded OSHA to modify the final standard in some respects or otherwise provide further clarification.

As with the proposed rule, OSHA believes that this final rule will impose no significant compliance burdens on industry. This was also substantiated in comments to the record.

Congress was specific in its mandate to OSHA for this rule, and the rule itself is limited to implementing the Congressional mandate. In this final rule, OSHA has slightly elaborated on the statutory language to the extent necessary to ensure that its requirements are clear and do not impose undue burdens on affected employers vis-a-vis other federal regulations. This regulation is essentially a continuation of the DOT's Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180). Employers may wish to consult those regulations in regard to complying with this section.

Discussion of Comments to NPRM and Summary and Explanation of the Final Rule

OSHA received 45 comments in response to its Notice of Proposed Rulemaking on the Retention of Markings and Placards. The NPRM requested specific information on costs, current practices with respect to the retention of DOT markings, placards and labels and any foreseeable problems in achieving the requirements of the proposed rule.

Most commenters supported the Agency's approach in responding to the congressional mandate for this action. However, some commenters pointed out potential sources of confusion for affected employers if appropriate modifications were not made to the final rule. Other commenters expressed a need for clarification of certain aspects of the proposal, particularly those relating to the scope of the standard and the relationship between DOT-required labeling and that required by OSHA's Hazard Communication Standard (HCS) at 29 CFR 1910.1200.

Only minimal information was submitted regarding costs. However, of those commenters who responded to this question, the majority agreed with OSHA's assessment that the rule would have only minimal economic impact. The commenters who stated that the costs would not be insignificant appeared to base their findings on what OSHA believes was a misunderstanding of the intent of the proposed rule.

Major Issues Raised

A. Scope

The NPRM did not make a distinction as to the size of packagings of hazardous materials for which employers would be required to retain the necessary DOT marking, label or placard. A significant number of commenters, however, (see, e.g., Exs. 5–3, 5–21, 5–23, 5–24, 5–25, 5–30, 5–32, 5–34, 5–35 and 5–36) pointed out that without restricting the regulation to bulk packaging, employers would be faced with confusing, redundant, and sometimes, inconsistent labeling requirements between DOT and OSHA's HCS. (There was no criticism about the retention provisions for transport vehicles, freight containers, motor vehicles or rail freight cars.)

The HCS requires, in 29 CFR 1910.1200 (f), that manufacturers, importers, and distributors label, tag, or mark any containers of hazardous materials leaving the workplace with the identity of the hazardous material, appropriate hazard warnings and the name and address of the chemical manufacturer, importer or other responsible party. The HCS further requires that such labels, tags and markings be affixed in a manner that does not conflict with the HMR. Consequently, the HCS warning labels, tags or markings do not appear on the outer packagings of combination packagings (e.g., bottles in a box). The inner packagings are required to be labeled in accordance with the HCS, while the outside packaging is marked or labeled in accordance with the HMR. However, in some cases the DOT label and marking may appear on the same non-bulk packages as those required to be labeled under the HCS. This situation caused concern among commenters who questioned the need to retain DOT labels and marking where labeling was already required under HCS.

The Amoco Corporation (Ex. 5–21) summarized its concerns as follows:

> Amoco supports OSHA's proposal requiring employers who receive bulk packages of materials defined as hazardous * * * to maintain the markings, labels, or placards in accordance with the requirements set forth in 49 CFR Part 171 to 180. However, we feel that retention and maintenance of the markings and labels for non-bulk packages would be significantly burdensome to both large and small businesses alike.
>
> * * * We approve of OSHA limiting their rulemaking to the intent expressed by Congress, and from the rationale excerpted from the report, we believe that intent focused solely on hazardous materials transported in bulk packages.

Similar concerns were expressed by the Organization Resources Counselors (Ex. 5–23):

* * * [T]he proposed rule raises concerns over the broad range of containers proposed to be covered. In achieving the congressional mandate, we believe the rule should be limited to requirements for retention and maintenance of placards on bulk containers, such as truck trailers and rail tank cars, only. * * * ORC believes the congressional mandate does not extend to labeling of non-bulk containers for which labeling requirements already exist under other regulations.

If the final rule were to apply to non-bulk packagings, according to at least one commenter, potential liability issues could arise. With respect to replacing labels that may be lost or deteriorated, Oxychem (Ex. 5–35) cautioned:

* * * Sending a replacement placard for bulk shipping containers does not pose a liability issue for a company because the product is easy to trace through the transportation equipment number. * * * [S]ending a replacement label to be affixed by nonvendor employees to a nonbulk package raises several liability issues. The nonbulk package could be mislabeled resulting in improper handling or misuse of the product.

OSHA has crafted language which it concludes fulfills the intent of the statute, is protective of employees and meets the concerns of the commenters. All bulk packages must at all times retain their DOT marking until they are cleaned or purged. Such packages are often reshipped and the large size of the DOT marking is a safety advantage. DOT markings must be retained on non-bulk packages which will be reshipped. Clearly, the DOT marking is needed for reshipment.

However, OSHA concludes that the OSHA HCS label is fully protective for all employees and emergency responders for non-bulk packages which will not be reshipped. That label was designed to protect against all types of hazards. OSHA concludes therefore that it will be sufficient if an HCS label is on a non-bulk package when it is out of transportation, will not be reshipped and is at its final location at a factory or other worksite. This should respond to the commenters who feared that retaining both HCS and DOT labels at that stage might confuse their employees.

Additional concerns were expressed regarding the labeling of inner packagings of combination packagings. For example, Penske Truck Leasing Co. (Ex.5–20) stated:

* * * Manufacturers and distributors pack hazardous materials for transportation in various packaging, i.e., cans, plastic cases, cylinders, etc. These receptacles generally require an outer packaging for various reasons such as ease of handling, palletization, and storage. The packaging may contain one or more receptacles (containers) of the same hazardous material. The packaging is properly labeled with the DOT hazard warning. Upon entering the workplace, the employer * * * removes the packaging to find that the receptacle is not marked with the corresponding DOT hazard label and markings. * * * Under the proposed rule, it is implied that the employer would have to label and mark each container in this situation.

The above commenter was also concerned that the rule would require the labeling of packages that, when in transportation, are excepted from the labeling requirement of the DOT's HMR. It was not OSHA's intention to require labeling of containers that were not originally required to be labeled in accordance with the DOT's HMR. As previously stated, this final rule requires employers to retain labels on packages, this rulemaking does not require employers to label the packages. Inner packagings removed from an outer packaging that is required to be marked or labeled under DOT's HMR are not required to have the DOT marking or label affixed. However, those inner packages are required to have the OSHA HCS label. If the inner packages are to be reshipped, they would, of course, need the appropriate DOT label. In addition, packages which are excepted from the DOT's marking, labeling or placarding requirements, are not required under the DOT's HMR to be marked, labeled or placarded when stored at the workplace, but they would be required to be labeled under the OSHA HCS.

One commenter pointed out that sometimes employers receive hazardous materials which have the DOT-required labels affixed and subsequently store them at remote sites in trailers that are not intended for transportation and therefore are not required to be placarded (Ex. 5–2). The situation that the commenter raises is a small part of a much broader problem. OSHA believes that the communication of hazards at all storage locations (e.g. trailers, warehouses and storage tanks) is an important area for consideration. However, this issue is not within the scope of the statute directing this rulemaking.

In another matter related to the scope of this rule, the American Trucking Association requested a clarification as to whether the rule placed an obligation on operators of transport vehicles (5–22). Similarly, the Agricultural Retailers Association (Ex. L5–37) wanted assurance that the responsibility for retaining DOT placards, markings and labels transfers to the receiving employer. In response to both concerns, the final rule applies to the employer who receives the containers of hazardous materials and not the person responsible for transporting such material unless the material is still under the control of the transporter at its final destination when it is out of transportation.

B. Discrepancy Between DOT and OSHA Definitions of Flammable and Combustible

A number of commenters (Exs. 5–9, 5–25, 5–29, 5–34 and L5–41) raised the issue of the discrepancy between DOT and OSHA with respect to the definitions of flammable and combustible liquids. Commenters correctly stated that OSHA defines a flammable liquid as one with a flashpoint less than 100° F. and a combustible liquid as one with a flashpoint between 100° F and 200° F. Commenters stated that DOT defines a flammable liquid as a material with a flashpoint of below 141° F. and a combustible liquid as a material with a flash point greater than 141° F but below 200° F. OSHA has conferred with the DOT on this issue and was informed that while these statements are correct, DOT does allow in 49 CFR 173.150 (f), for domestic transportation, flammable liquids with a flash point greater than 100° F to be reclassed as a combustible liquid. A combustible liquid is not required to be labeled under DOT's HMR and, therefore, the provisions of this rule regarding the retention of required DOT labels would not apply. OSHA believes that this clarification should satisfy the concerns of commenters who raised the issue of combustible and flammable liquids being defined differently by OSHA and DOT. However, the broader issue of different definitions presents other technical, policy and legal issues and involves many institutions nationally and internationally. These issues cannot be properly addressed nor be solved in this rulemaking.

C. Duration Required for Retention of Hazard Warnings

Paragraph (a)(1) of the proposed standard required that markings, placards and labels remain on the package, freight container, etc. of hazardous material until the hazardous materials are removed therefrom so that they no longer pose a health or safety risk. A number of comments (see, e.g. Exs. 5–10, 5–13, 5–17, 5–23, 5–25, 5–27, 5–29, 5–34, 5–36, L5–40, L5–41 and L5–42) suggested that the language in this

provision was ambiguous and employers would be uncertain as to when DOT labels, placards and markings could be removed without being in violation of the rule. Various suggestions were offered regarding how to clarify this issue, ranging from deleting paragraph (a)(1) (Exs. 5–25, 5–29, L5–40) to allowing removal of the markings and placards as long as no more than a *de minimis* amount of the hazardous material remains in a container (Ex 5–10).

In the final standard OSHA has amended the language in paragraphs (a) and (b) so that it is now clear. Employers need only retain the DOT label, marking or placard until such time as the packaging which contained the hazardous material is sufficiently cleaned of residue and purged of vapor to remove any potential hazard. Paragraph (b), which requires the retention of markings and placards on transport vehicles, etc., states that markings and placards may be removed from transport vehicles if the transport vehicle no longer contains hazardous material subject to the marking or placarding requirements of the DOT's HMR. In the alternative, employers will be in compliance if they choose to retain the appropriate DOT hazard warning on packaging containing only the residue of the hazardous chemical in the same manner as when it contained a greater quantity of the hazardous material.

In the case where an outside package, (including transport vehicles), contains smaller packages of hazardous materials, DOT hazard warnings need be retained on the outside packaging only until the inner packages are removed. However, if a contained package leaks into the outer packaging, the cleaning and purging requirement applies.

D. Other Issues

The Edison Electric Institute (Ex 5–26) requested an exemption from this standard for Nuclear Regulatory Commission licensees whose radioactive material handling practices are already regulated by the NRC. This request was made on the basis of a Memorandum of Understanding (MOU) between the NRC and OSHA which gives the NRC jurisdiction in regulating most situations involving hazards that may be associated with NRC-licensed nuclear facilities, including worksite conditions which affect the safety of radioactive materials and thus the health and safety of workers.

The MOU, however, is not relevant in this case since OSHA is not regulating radioactive materials themselves but is only requiring an extension of DOT requirements. Since the DOT requirements already apply to employers handling radioactive materials, this standard does not represent any change. Therefore, including an exemption in the standard is not appropriate.

There was some confusion regarding paragraph (a)(2) of the proposed rule which required that markings, placards and labels be maintained in a manner that ensures the legend is visible. In effect, all that was intended by this provision was to assure that the label, placard, or marking be kept sufficiently clean (unobscured by dust, dirt, mud, etc.) that it would be easily seen in the event of an emergency or as necessary to prevent a hazardous situation. The provision was never intended to place restrictions on how or where DOT-labeled materials should be stored. However, since one commenter (Ex. L5–42) objected to the use of the term "legend," the provision has been revised as paragraph (c) in the final rule to read: "Such markings, placards and labels shall be maintained in a manner that assures they are readily visible." This does not mean that non-bulk packages with DOT labels that are stored in a warehouse (e.g. cartons containing 4-gallon cans of a hazardous material) have to be arranged in a manner which allows every label to be in view at all times. Rather it requires that where DOT hazard warnings are required to be retained, that such warnings are maintained in a manner that ensures that the message which the hazard warning is intended to convey is not compromised. In other words, at least some labeling should be visible for each type of hazardous material.

Additional minor changes were also suggested (Exs. 5–33 and L5–42) that OSHA agrees are appropriate for completeness and has incorporated in the final rule. Specifically, the title of the final rule has been amended to include the term "label." The terms "aircraft" and "vessel" have been deleted from the regulatory text as there are no specific DOT requirements to affix warning labels to an aircraft or vessel. The term "container" was also changed to "freight container" as Ex. 5–33 suggested. The section has been editorially revised in order to be more consistent with the DOT's HMR and in order that the section is more readily understandable. For example, the requirements for packages versus transport vehicles have been separated into two separate paragraphs.

Suggestions also were made (Exs. 5–19 and 5–25) to delete the phrase "* * * and other information as may be required by such regulations * * *" from paragraph (a). The commenters were concerned that the phrase might be interpreted as requiring materials not designed for display (e.g. manifests) to be kept on the container, package, etc. by the receiving employer. While this language was consistent with Section 29 of HMTUSA, OSHA did not intend it to place an additional burden on employers. OSHA is therefore removing this language from the final rule to eliminate any misconceptions about the requirements of the final rule.

Several commenters suggested that OSHA should go beyond the Congressional mandate in developing this rule. For example, the Laborers' Health & Safety Fund of North America recommended that the rule be expanded to cover hazardous materials being loaded or stored prior to shipment (Ex. 5–8). DOT's regulations generally do not apply until a material is offered for transportation. To require marking, labeling or placarding in accordance with the HMR prior to a material being offered for transportation is beyond the scope of this rulemaking.

The New York Department of State pointed out that mixed loads of hazardous materials are identified with the all purpose "dangerous" placard. While the vehicle may be parked, the shipping papers may have been taken away by the driver, thus removing a vital asset to the identification of hazards of the contents (Ex. 5–14). OSHA interprets the Congressional mandate to be limited to the retention of DOT hazards warnings which are designed for display. Consequently, shipping papers are not included.

Finally, Growmark suggested that this rulemaking presents OSHA with an opportunity to consider making all hazard warnings on vehicles, warehouses, storage tanks, etc. more uniform so that emergency responders could recognize and respond to one type of marking instead of having to learn dual systems (Ex. 5–11).

OSHA is aware that employers and others have expressed a need for consistency in labeling practices. However, this issue is beyond the scope of the specific authorizing statute and would require a major and lengthy interagency approach to complete. Moreover, the Agency published a Request for Information in the context of the Hazard Communication Standard on May 17, 1990 (see 55 FR 20580). The issue is still being considered with respect to what action the Agency should take in the context of that standard.

In a similar matter concerning the authority granted the Agency by the HMTUSA legislation, at least one commenter (Ex. 5–4) suggested that

since the real issue addressed in the legislation was hazard communication, the requirement to retain DOT hazard warnings should have been integrated in the Hazard Communication Standard in lieu of issuing a separate regulation. OSHA, however, believes that Congress was quite specific in its instructions to the Secretary of Labor that this requirement apply to DOT regulations and that it be addressed as a separate rule. Paragraph (d) does, however, make this final rule better integrated with the Hazard Communication Standard.

Finally, Amoco (Ex. 5–21) raised the issue of whether the rule would apply to an employer's current inventory of DOT-labeled materials and whether changes to the existing markings and labels would be required. In response to this comment, the Agency is allowing 90 days following publication of the final rule in the **Federal Register** for employers to come into compliance. The rule requires no changes in the content of the label. However, OSHA is providing what it believes is sufficient time for employers to replace labels, markings or placards that may have been removed, or to empty containers of hazardous materials. Once the effective date of the rule has passed, employers will be subject to OSHA citations if packages, transport vehicles, freight containers, etc. of hazardous materials covered by DOT's HMR are present in the workplace, do not have the appropriate DOT hazard warning and violate the standard. It is not possible for OSHA compliance officers to readily know the date transport vehicles or packages were received and DOT warnings were removed. The 90-day period is a realistic time in which to replace removed placards, markings or labels or to empty containers.

Because Congress has directed that OSHA issue this regulation for all employers covered by the OSH Act, this notice includes separate but identical standards for general industry (§ 1910.1201), construction (§ 1926.60), shipyards (§ 1915.100), marine terminals (§ 1917.29) and longshoring (§ 1918.100). The general industry standard will also be added to the list of Part 1910 standards which apply to agricultural operations, as a new paragraph (a)(7) of § 1928.21.

As with the proposed rule, OSHA has consulted with delegated officials of the Secretary of Transportation and the Secretary of the Treasury, as required by HMTUSA, in preparing this final rule.

Regulatory Flexibility Act

OSHA has not performed a Regulatory Impact Analysis for this standard since adoption of the proposed requirements would add no new regulatory burden on employers with respect to either cost or information collection.

Executive Orders 12866, 12612, and 12778

This rule is not a significant regulatory action for the purposes of Executive Order 12866. It also does not have federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612. This rule has been certified in accordance with Executive Order 12778 regarding Civil Justice Reform.

Paperwork Reduction Act

This rulemaking action imposes no paperwork burdens under the Paperwork Reduction Act.

List of Subjects in 29 CFR Parts 1910, 1915, 1917, 1918, 1926, and 1928

Occupational safety and health, hazardous materials transportation, hazardous substances, explosives, chemicals, health, safety.

Authority and Signature

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, Washington, D.C. 20210.

Accordingly, pursuant to section 29 of the Hazardous Materials Transportation Uniform Safety Act of 1990 (Pub. L. 101–615, 104 Stat. 3244), sections 4 and 6(b) of the Occupational Safety and Health Act (29 U.S.C. 653, 655), Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941), Sec. 107, Contract Work Hours and Safety Standards Act (40 U.S.C. 333), Secretary of Labor's Order No. 1–90 (55 FR 9033) and 29 CFR Part 1911, Parts 1910, 1915, 1917, 1918, 1926 and 1928 of 29 CFR are amended as set forth below.

Signed this 14th day of July 1994.

Joseph A. Dear,

Assistant Secretary of Labor.

OSHA is amending Parts 1910, 1915, 1917, 1918, 1926, and 1928 of Title 29 of the Code of Federal Regulations as follows:

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

PART 1915—OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR SHIPYARD EMPLOYMENT

PART 1917—MARINE TERMINALS

PART 1918—SAFETY AND HEALTH REGULATIONS FOR LONGSHORING

PART 1926—SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION

1. The authority citation for subpart Z of Part 1910 is revised to read as follows:

Authority: Secs. 6, 8 Occupational Safety and Health Act, 29 U.S.C. 655, 657: Secretary of Labor's Order 12–71 (36 FR 8754), 9–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033), as applicable; and 29 CFR Part 1911.

All of subpart Z issued under section 6(b) of the Occupational Safety and Health Act, except those substances which have exposure limits listed in Tables Z–1, Z–2 and Z–3 of 29 CFR 1910.1000. The latter were issued under Section 6(a) (29 U.S.C. 655(a)).

Section 1910.1000, Tables Z–1, Z–2 and Z–3 also issued under 5 U.S.C. 533. Section 1910.1000, Tables Z–1, Z–2 and Z–3 not issued under 29 CFR Part 1911 except for the arsenic (organic compounds), benzene and cotton dust listings.

Section 1910.1001 also issued under Sec. 107 of Contract Work Hours and Safety Standards Act, 40 U.S.C. 333.

Section 1910.1002 not issued under 29 U.S.C. 655 or 29 CFR Part 1911; also issued under 5 U.S.C. 553.

Section 1910.1025 also issued under 5 U.S.C. 553.

Section 1910.1043 also issued under 5 U.S.C. 551 et seq.

Section 1910.1201 also issued under Sec. 29, Hazardous Materials Transportation Uniform Safety Act of 1990 (Public Law 101–615, 104 Stat. 3244 (49 U.S.C. 1801–1819 and 5 U.S.C. 553).

Sections 1910.1200, 1910.1499 and 1910.1500 also issued under 5 U.S.C. 553.

2. The authority citation for part 1915 is revised to read as follows:

Authority: Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order Nos. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033) as applicable; and 29 CFR part 1911.

Section 1915.99 also issued under 5 U.S.C. 553.

Section 1915.100 also issued under Section 29, Hazardous Materials Transportation Uniform Safety Act of 1990 (Public Law 101–615, 104 Stat. 3244 (49 U.S.C. 1801–1819 and 5 U.S.C. 553).

3. The authority citation for part 1917 is revised to read as follows:

Authority: Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order Nos. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033) as applicable; 29 CFR Part 1911.

Section 1917.28 also issued under 5 U.S.C. 553.

Section 1917.129 also issued under Sec. 29, Hazardous Materials Transportation Uniform Safety Act of 1990 (Public Law 101–615, 104 Stat. 3244) and 5 U.S.C. 553.

4. The authority citation for part 1918 is revised to read as follows:

Authority: Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order Nos. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033) as applicable.

Section 1918.90 also issued under 5 U.S.C. 553 and 29 CFR Part 1911.

Section 1918.100 also issued under Sec. 29, Hazardous Materials Transportation Uniform Safety Act of 1990 (Public Law 101–615, 104 Stat. 3244 (49 U.S.C. 1801–1819, 5 U.S.C. 553, and 29 U.S.C. Part 1911).

5. The authority citation for subpart D of part 1926 is revised to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order Nos. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033) as applicable.

Section 1926.59 also issued under 5 U.S.C. 553 and 29 CFR Part 1911.

Section 1926.60 also issued under Sec. 29, Hazardous Materials Transportation Uniform Safety Act of 1990 (Public Law 101–615, 104 Stat. 3244), 5 U.S.C. 553, and 29 U.S.C. Part 1911.

PARTS 1910, 1915, 1917, 1918, AND 1926—[AMENDED]

6. Parts 1910, 1915, subpart F; 1917, subpart B; 1918, subpart I and 1926, subpart D of Title 29 of the Code of Federal Regulations are amended by adding identical sections as §§ 1910.1201, 1915.100, 1917.29, 1918.100 and 1926.61 to read as follows:

§ *.*** Retention of DOT markings, placards and labels.**

(a) Any employer who receives a package of hazardous material which is required to be marked, labeled or placarded in accordance with the U. S. Department of Transportation's Hazardous Materials Regulations (49 CFR Parts 171 through 180) shall retain those markings, labels and placards on the package until the packaging is sufficiently cleaned of residue and purged of vapors to remove any potential hazards.

(b) Any employer who receives a freight container, rail freight car, motor vehicle, or transport vehicle that is required to be marked or placarded in accordance with the Hazardous Materials Regulations shall retain those markings and placards on the freight container, rail freight car, motor vehicle or transport vehicle until the hazardous materials which require the marking or placarding are sufficiently removed to prevent any potential hazards.

(c) Markings, placards and labels shall be maintained in a manner that ensures that they are readily visible.

(d) For non-bulk packages which will not be reshipped, the provisions of this section are met if a label or other acceptable marking is affixed in accordance with the Hazard Communication Standard (29 CFR 1910.1200).

(e) For the purposes of this section, the term "hazardous material" and any other terms not defined in this section have the same definition as in the Hazardous Materials Regulations (49 CFR Parts 171 through 180).

PART 1928—OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR AGRICULTURE

7. The authority citation for Part 1928 is revised to read as follows:

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order Nos. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable; 29 CFR Part 1911.

Section 1928.21 also issued under Sec. 29, Hazardous Materials Transportation Uniform Safety Act of 1990 (Public Law 101–615, 104 Stat. 3244 (49 U.S.C. 1801–1819 and 5 U.S.C. 553).

PART 1928—[AMENDED]

8. Section 1928.21 is amended by adding and reserving paragraph (a)(6) and adding a new paragraph (a)(7) reading as follows:

§ 1928.21 Applicable standards in 29 CFR Part 1910.

(a) * * *

(6) [Reserved]

(7) Retention of DOT markings, placards and labels —§ 1910.1201.

* * * * *

[FR Doc. 94–17534 Filed 7–18–94; 8:45 am]

BILLING CODE 4510–26–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN43–1–6393A; FRL–5014–1]

Approval and Promulgation of Implementation Plan; Indiana

AGENCY: United States Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) approves Indiana's 1990 base year ozone precursor emissions inventory for Lake and Porter Counties as a revision to the Indiana ozone State Implementation Plan (SIP). The emissions inventory was submitted by the State of Indiana to satisfy a Federal requirement that States containing ozone nonattainment areas submit inventories of actual ozone precursor emissions. In the proposed rules section of this **Federal Register**, USEPA is proposing approval of and soliciting public comment on this requested SIP revision. If adverse comments are received on this direct final rule, USEPA will withdraw this final rule and address the comments received in response to this final rule in a final rule on the related proposed rule which is being published in the proposed rules section of this **Federal Register**.

EFFECTIVE DATE: This action will be effective September 19, 1994, unless notice is received by August 18, 1994, that someone wishes to submit adverse comments. If the effective date of this action is delayed due to adverse comments, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be sent to J. Elmer Bortzer, Chief, Regulation Development Section (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois. 60604. Copies of Indiana's emission inventory submittals and USEPA's technical support documents are available for public review during normal business hours, between 8:00 a.m. and 4:30 p.m., at the above address.

FOR FURTHER INFORMATION CONTACT: Edward Doty, Regulation Development Section (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604 Telephone: (312) 886–6057.

SUPPLEMENTARY INFORMATION:

I. Emission Inventory Policy and Guidelines

Under the Clean Air Act (Act), as amended in 1990, States have the responsibility to inventory emissions contributing to the violation of a National Ambient Air Quality Standard (NAAQS), to track these emissions over time, and to ensure that control strategies are being implemented that reduce emissions and move areas towards attainment of the NAAQS. States containing ozone nonattainment areas are required, under section 182(a)(1) of the Act, to submit by November 15, 1992, a comprehensive, accurate, and current inventory of actual ozone precursor emissions (emissions of Volatile Organic Compounds [VOC], Oxides of Nitrogen [NO_X], and Carbon Monoxide [CO]) for each ozone nonattainment area. This inventory must include base year (1990) emissions from point, area, on-road mobile, and non-road mobile anthropogenic (man-made) sources and biogenic (natural or plant generated) sources in the ozone nonattainment area(s) and the ozone precursor emissions from major stationary sources (with VOC, CO, or NO_X emissions equal to or exceeding 100 tons per year) located within 25 miles of the nonattainment area(s). The emissions inventory must be established for the peak ozone season (those months when peak hourly ozone concentrations occur in excess of the primary ozone National Ambient Air Quality Standard [NAAQS], generally June through August in Indiana) and must represent typical weekday emissions. Available guidance for preparing and reviewing the emission inventories is provided in the General Preamble to Title I of the Act. See 57 FR 13498 (April 16, 1992). Additional guidance is identified in the Technical Support Document (TSD) for this rulemaking.

The Act also requires States with ozone nonattainment areas designated as moderate, serious, severe, or extreme to submit a plan by November 15, 1993, to reduce VOC emissions by 15 percent by November 15, 1996. The baseline level of emissions, from which the 15 percent reduction is calculated, is determined by adjusting the base year emissions inventory to exclude biogenic emissions and certain emission reductions not creditable toward the 15 percent Reasonable Further Progress (RFP) requirement. The 1990 base year emissions inventory is the primary emissions inventory from which the RFP projection inventory, future periodic inventories, and attainment demonstration modeling inventories are derived. Further information on these inventories and their purposes can be found in the "Emission Inventory Requirements for Ozone State Implementation Plans," U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, March 1991.

As a primary tool for the review of the quality of emission inventory submittals, the USEPA has developed three levels (I, II, and III) of emission inventory quality assurance review checklists. The Level I and II reviews are used to determine that all required components of the base year emission inventory and its associated documentation are present. These reviews also evaluate the level of quality of the supporting documentation and data provided by the State and assess whether the emission estimates were developed according to current USEPA guidance. The Level III review evaluates 10 crucial aspects and the overall acceptability of the emission inventory submittal. Failure to meet one of these crucial aspects would lead to disapproval of the emission inventory submittal. The 10 crucial requirements of the emission inventory submittal are:

1. An Inventory Preparation Plan (IPP) must be submitted by the State and approved by the USEPA. In addition, a Quality Assurance (QA) plan contained within the IPP must have been implemented and documented.

2. The emission inventory submittal must contain adequate documentation showing the procedures and input data used and the input data sources.

3. The point source portion of the inventory must be complete.

4. The point source emissions must have been prepared or calculated in accordance with current USEPA guidance.

5. The area source portion of the inventory must be complete.

6. The area source emissions must have been calculated in accordance with current USEPA policy.

7. The biogenic emissions must have been calculated using USEPA's PC-Biogenic Emissions Inventory System (PC–BEIS) or other equivalent techniques in accordance with current USEPA guidance.

8. The Vehicle Miles Travelled (VMT) estimates used in the calculation of on-road mobile source emissions must have been developed in accordance with USEPA guidance and must have been adequately documented in the inventory submittal.

9. The MOBILE emission factor model must have been correctly applied to produce emission factors for each of the vehicle classes.

10. Non-road mobile source emissions must have been prepared in accordance with current USEPA guidance for all of the non-road source categories.

The base year emission inventory may be approved if it passes the Level I, II, and III reviews. Detailed Level I and II review procedures and questions can be found in the "Quality Review Guidelines for 1990 Base Year Emission Inventories," U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, July 27, 1992. Level III review procedures and criteria are specified in a memorandum from David Mobley, Emission Inventory Branch, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, to the Chief of the Regulation Development Branch, Region V, et al., titled "Final Emission Inventory Level III Acceptance Criteria," October 7, 1992.

The Act requires States to observe certain procedural requirements in developing and submitting SIP revisions, including the base year emissions inventory submittal. Section 110(a)(2) of the Act provides that each SIP revision submitted by a State must be adopted after reasonable notice and public hearing. Final approval of the emissions inventory will not occur until the State revises the emissions inventory to address public comments. Future changes to the base year inventory (due to previously missed sources or to corrected source emission factors or activity levels) that impact the 15 percent RFP calculations or demonstration of attainment and that require a revised emission control strategy will be required to be addressed in a SIP revision.

II. Indiana's Emission Inventory Submittals

On January 15, 1994, the Indiana Department of Environmental Management (IDEM) submitted the final, adopted base year ozone precursor emissions inventory for Lake and Porter Counties. The emissions inventory submittal covers the emissions of VOC, NO_X, and CO for this ozone nonattainment area. In addition to emissions from the ozone nonattainment area, the submittals also cover VOC, NO_X, and CO emissions from major stationary sources (with actual emissions for any of the covered pollutants equal to or in excess of 100 tons per year) in all counties located within 25 miles of the ozone nonattainment area.

Prior to developing the base year emission inventories, the State of Indiana developed an IPP as required by the USEPA. This IPP was approved by the USEPA in March 1992.

Emissions contained in the emissions inventory cover the general source categories of point sources, area sources, on-road mobile sources, off-road mobile sources, and biogenic sources. Emission inventory summary tables in the submittal include a more detailed source category breakdown as requested by the USEPA. All emission summaries were accompanied by documentation covering the sources and values of input data and by sample calculations.

To determine up-to-date point source emissions, the State sent emission inventory questionnaires to all facilities contained in the State's Aerometric Information Retrieval System (AIRS) and to all sources in the subject area which hold an air emissions permit issued by the State. The questionnaires contained all key data fields necessary to calculate typical summer weekday emissions. To assure full coverage of emitting point sources, the State also consulted other data sources, such as manufacturer's listings, newly issued construction permits, and other databases, including Superfund Amendments and Reauthorization Act (SARA) Title III, section 313 summaries, and the Toxic Release Inventory.

The point source portion of the emissions inventory includes detailed facility-specific emission listings with emissions determined at the segment level and at the facility total level. Point source emissions at these source levels were listed for all facilities in the ozone nonattainment area with emissions of VOC or NO_X equal to or greater than 10 tons per year or with emissions of CO equal to or greater than 100 tons per year (facilities with less emissions were also included in the point source portion of the emissions inventory). Exceedance of the emission cutoff for VOC, NO_X, or CO resulted in the reporting of all VOC, NO_X, and CO emissions for a given facility. Point source emissions were calculated using emission factors contained in AIRS or using techniques outlined in the approved IPP. Emission factors used were generally obtained from the AIRS Facility Subsystem (AFS), AP–42 Compilation of Air Pollution Emission Factors, National Acid Precipitation Assessment Program emission inventory, direct stack test data, or other USEPA guidelines. The point source listings included with emission inventory submittals (on file at the Region 5 office) identify the emission factors, source activity levels or throughputs, operating schedules, control equipment efficiencies, and rule effectiveness estimates used for each facility and facility segment.

Area source emissions were calculated using a variety of information sources and guidance from the USEPA. Where appropriate, point source emissions have been subtracted from the calculated area source emissions to account for source coverage overlap and to avoid double counting of emissions in the emission totals. For all appropriate source categories, the State assumed a rule effectiveness level of 80 percent.

In preparing the area source emissions, the State used the following USEPA guidance documents: *Procedures for the Preparation of Emission Inventories for Carbon Monoxide and Precursors of Ozone, Volumes I and II,* EPA–450/4–91–016 and EPA–450/4–91–014, May 1991; and *Procedures for Emission Inventory Preparation, Volume IV: Mobile Sources,* EPA–450/4–81–026d, revised in July 1989. The new Volume IV guidance, issued in the Spring of 1992, was used to estimate railroad and aircraft emissions. Estimates of other off-road mobile source emissions were based on USEPA's 1991 off-road mobile source emission study. In making other area source estimates, the State followed the approved IPP.

The State has entered the calculated area source emission estimates into USEPA's AIRS Area and Mobile Source System (AIRS/AMS). The data are well documented in both hardcopy and in computer data files submitted with the emission inventory submittals as additional documentation.

On-road mobile source emissions were calculated using USEPA's *Procedures for Emission Inventory Preparation, Volume IV: Mobile Sources* (as revised in 1989) and USEPA's MOBILE5A model. Daily Vehicle Miles Travelled (VMT) and speed data by county and roadway type were obtained from the Indiana Department of Transportation (InDOT), who used the Highway Performance Monitoring System (HPMS) to determine VMT by roadway functional class. The VMT provided by InDOT were annual average daily traffic levels. Insufficient data existed to allow the VMT to be adjusted to the summer months and the day of week levels. To QA the VMT estimates, the local Metropolitan Planning Organization (MPO) was requested to confirm the VMT estimates or to correct them if needed based on more representative data. The VMT were quality assured through comparison with current roadway traffic counts.

The MPO recommended vehicle speeds based on the use of local transportation models. The estimated speeds were used in conjunction with USEPA-recommended defaults for vehicle mixtures to determine emission rates for each roadway type. Fuel volatility was assumed to comply with USEPA requirements for the area. The ambient temperature used in the mobile source emissions modeling was derived from the average maximum and minimum temperatures on the ten highest ozone days for the period of 1988 through 1990 using an approach recommended by the USEPA. The emission factors determined using MOBILE5A were combined with the total VMT for each functional roadway class to determine the total mobile source emissions for each county. All parameters used in the mobile source emissions modeling, including the parameters used by the MOBILE5A model, were well documented.

The biogenic emissions for each of the counties were determined using USEPA's PC–BEIS model. Included in the documentation of the application of this model was a description of the methodology used to determine temperature inputs for the model. The temperature inputs were determined using the technique recommended by the USEPA. The applications of PC–BEIS also included the use of land use data supplied by the USEPA.

The State of Indiana held public hearings on the emissions inventory on June 28, 1993, and July 6, 1993. Comments received during these public hearings were used to make appropriate corrections in the emissions inventory.

The emissions in units of tons/day for an average day are summarized below:

LAKE AND PORTER COUNTIES

Source type	VOC	CO	NO_X
Point Sources ..	79.23	709.32	302.94
Area Sources ..	41.91	5.14	5.60
On-Road Mobile Sources .	134.54	771.28	83.10
Off-Road Mobile Sources .	11.68	78.16	27.94
Biogenic Sources	21.44	.....	.....
Totals	288.80	1,563.90	419.58

III. Final Rulemaking Action

The USEPA has conducted Level I, II, and III quality assurance reviews of the emission inventory submittals and has concluded that the State of Indiana has met the requirements of section 182(a)(1) of the Act by submitting an ozone precursor emissions inventory that include comprehensive, accurate,

and current actual emissions from all identified sources in the subject ozone nonattainment area. In particular, the Indiana submittals meet the 10 crucial criteria contained in the Level III quality assurance review. The emissions inventory is, therefore, approved for incorporation in the SIP as satisfying the requirements of section 182(a)(1) of the Act.

Because USEPA considers this action noncontroversial and routine, we are approving it without prior proposal. The action will become effective on September 19, 1994. However, if the USEPA receives adverse comments by August 18, 1994, then the USEPA will publish a notice that withdraws the action, and will address the comments received in response to this final rule in the final rule on the requested SIP revision which has been proposed for approval in the proposed rules section of this **Federal Register**. The comment period will not be extended or reopened.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future notice will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for 2 years. The USEPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993. The OMB has exempted this regulatory action from Executive Order 12866 review.

Nothing in this section should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to any SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

The SIP approvals under section 110 and subchapter I, part D, of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids the USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Nitrogen dioxide, Ozone, and Volatile organic compounds.

Dated: June 30, 1994.

Valdas V. Adamkus,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart P—Indiana

2. Section 52.777 is amended by adding paragraph (g) to read as follows:

§ 52.777 Control strategy: Photochemical oxidants (hydrocarbons).

* * * * *

(g) The base year ozone precursor emission inventory requirement of section 182(a)(1) of the Clean Air Act, as amended in 1990, has been satisfied for Lake and Porter Counties, Indiana.

* * * * *

[FR Doc. 94–17431 Filed 7–18–94; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Health Resources and Services Administration

42 CFR Part 51a

RIN 0905–AD88

Maternal and Child Health (MCH) Project Grants

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Final rule.

SUMMARY: This final rule amends existing regulations governing the Maternal and Child Health (MCH) Federal Set-Aside programs under sections 502(a) and 502(b) of Title V of the Social Security Act (42 U.S.C. 702(a) and 702(b)). This rule revises the regulations to: increase flexibility to fit changing policy concerns; implement requirements established under the Omnibus Budget Reconciliation Act of 1989 (OBRA '89) addressing collection of data from funded projects, and make other changes that are technical or clarifying in nature. The rule updates the existing regulations in accord with current Department policy and statutory amendments made to sections 501(a), 502(a), 502(b), and 506(a)(3).

EFFECTIVE DATE: This regulation is effective August 18, 1994.

FOR FURTHER INFORMATION CONTACT: Lynn Squire, Legislative Officer, Maternal and Child Health Bureau, HRSA, HHS, Office of Program Development, Parklawn Building, room 18–20, 5600 Fishers Lane, Rockville, MD 20857; telephone number: 301–443–2778.

SUPPLEMENTARY INFORMATION: On July 21, 1993, the Secretary published in the **Federal Register** (58 FR 38995) a Notice of Proposed Rulemaking (NPRM) proposing to revise existing regulations governing the MCH Federal Set-Aside programs to bring them into conformity with current Department policy and statutory amendments to these programs. The Maternal and Child Health (MCH) Services Block Grant is the only federally authorized program devoted exclusively to maternal and child health. First authorized under Title V of the Social Security Act (the Act) in 1935 and reorganized as a block grant under the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35), the program provides funds primarily to States to develop the maternal and child health infrastructure and public health system which supports the establishment of

community-based, family-centered systems of preventive, primary and specialized care that coordinate and integrate public and private sector resources for women of childbearing age, infants, children, adolescents, and families, particularly those who are low income, have limited access to care, or have a child with special health care needs.

Sections 502(a) and 502(b) of Title V, as amended by the Omnibus Budget Reconciliation Act (OBRA) of 1989 (Pub. L. 101–239), govern the MCH Federal Set-Aside programs. These sections require that specified portions of the annual appropriation for the MCH Block Grant be set aside and retained by the Secretary to support projects in designated categories. Section 502(a) established the federal set-aside for Special Projects of Regional and National Significance (SPRANS), which supports grants, contracts, and cooperative agreements for: training; research; genetic disease and newborn screening; hemophilia treatment centers; and special Maternal and Child Health Improvement Projects (MCHIP). Section 502(b) was authorized under section 6502(a)(3)(b) of OBRA '89. It establishes a set-aside, consisting of 12.75 percent of annual appropriated amounts above $600 million, for special projects termed "Community Integrated Service Systems (CISS)" projects. The purposes of these special projects are identified under section 501(a)(3) of the Act. They include the development and expansion of: maternal and infant home visiting programs; programs to increase the numbers of obstetricians and gynecologists participating in Titles V and XIX; integrated MCH service delivery systems; MCH centers operating under not-for-profit hospitals; rural MCH projects; and outpatient and community based services for children with special health care needs. Regulations published at 51 FR 7726, March 5, 1986 (and codified at 42 CFR 51a), focus only on the SPRANS federal set-aside under 502(a). The regulations have not been revised since their initial publication.

The NPRM proposed to: (1) Replace references to "crippled children" with "children with special health care needs" in all sections of the regulations, as mandated under section 9527 of COBRA; (2) change the heading and revise the wording in § 51a.1 to reflect the intent of the section, which is to expand the regulation's applicability to the CISS program under section authorized under section 502(b)(1)(A) of the Act by OBRA '89; (3) In § 51a.3, change the language to clarify and more clearly distinguish between eligibility requirements for applicants for research, training, and other grant categories under the Federal Maternal and Child Health Set-Aside program; (4) make minor wording changes in § 51a.4, to better describe the application process and to more clearly distinguish between requirements for research applications and those for other grant categories; (5) amend § 51a.5 to incorporate into the Secretary's funding decisions consideration of MCH-related Healthy People 2000 objectives, as required by OBRA '89 under section 501(a) of the Act. The amended § 51a.5 would also incorporate a statutory funding preference for certain CISS project strategies in areas of high infant mortality, as required by OBRA '89 under section 502(b)(2) of the Act. In addition, to better reflect the diversity of project categories for which applications are currently solicited and their responsiveness to changing needs, the NPRM proposed to replace obsolete and inflexible evaluation criteria in the section. The new criteria would be consistent with Part 116 of the PHS Grants Administration Manual, applicable to decisions on funding awards, while increasing opportunities for the Secretary to develop criteria as needed for specific project categories. Category-specific evaluation criteria would be published in program announcements and/or application guidances; (6) In § 51a.7, make technical changes to eliminate obsolete references as a result of changes in Department regulations, and to correct other errors in references; and (7) add a new § 51a.8 to set out conditions which grantees must meet. Requirements in paragraph (a) would implement amendments to section 506(a)(3) of the Act made by OBRA '89, which address collection of data from funded SPRANS projects concerning the number of individuals served or trained, as appropriate.

In addition, the NPRM proposed information collections which have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 and assigned control number 0915–0169. It also proposed to add a provision giving the Secretary discretion to impose such additional conditions on grantees as the Secretary views as necessary, using language identical to that in many other PHS grant program regulations. Additionally, technical and ministerial revisions were proposed to bring existing regulations into compliance with current major departmental policy initiatives and grants policy language.

The public comment period on the proposed regulations closed on September 20, 1993. The Department received 4 letters of public comment on this NPRM. All significant comments have been considered and discussed. Comments relating to the information collection requirements in § 51a.8 highlight the Department's responsibility to provide grantees with clear and explicit instructions for completing prescribed forms. There are no substantive differences between the proposed rule and the final rule as a result of our review of public comments.

The comments received on the proposed rule and the Department's responses to the comments are discussed below under the section numbers of the regulations affected.

Part 51a—Project Grants for Maternal and Child Health

One respondent expressed support for the proposed replacement of all references to "crippled" children in all sections of the regulation to "children with special health care needs." The Department is making this change to conform with Section 9527 of the Consolidated Omnibus Reconciliation Act of 1985 (COBRA) [Pub. L. 99–272], which substitutes the term 'Children with Special Health Care Needs' for 'Crippled Children' throughout Title V

Section 51a.5 What criteria will DHHS use to decide which projects to fund?

One respondent was concerned that some potential SPRANS and CISS applicants do not work closely enough or early enough with the State Title V agency in developing their grant proposals. This respondent suggested adding "the quality of coordination with the state Title V program" to the criteria used by the Department to review projects for funding.

The Department wishes to stress that it considers a key objective of these new rules to be the elimination of obsolete and overly-rigid evaluation criteria in order to better accommodate the broad diversity of project categories in which grants are awarded; in recent years, the number of separate categories and subcategories has exceeded 35. Limiting regulatory review criteria to the minimum required by Part 116 of the Public Health Service (PHS) Grants Administration Manual does not affect the Department's ability to publish in annual program announcements and/or application guidelines additional criteria for any grant category. This limitation is also consistent with Executive Order 12875 of October 26, 1993, which discourages executive departments from promulgating any regulation "that is not required by

statute and that creates a mandate upon a State, local, or tribal government".

The Department will include category-appropriate review criteria in the application guidelines it distributes for each grant category. Most demonstration grant categories can be expected to contain review criteria relating to meaningful and timely consultation and collaboration by applicants with the State Title V agency, as well as with other State, local, and tribal governments regarding matters that uniquely affect their communities. The Department notes, however, that the statute does not condition awards under the MCH Federal Set-Aside programs on coordination with the State Title V agency and that such coordination may not be relevant for every grant category. The statutory emphasis on "regional and national significance" reflects Congressional intent that some categories should properly serve interests beyond those of the host State. Because both categorical diversity and changing priorities over time are fully accommodated by customizing annual announcements and/or guidelines, the Department is making no changes to the review criteria in this section.

This respondent also suggested that priorities for funding within the SPRANS and CISS programs be determined in consultation with State Title V programs. Agency discretion in selection of priorities for funding in both the SPRANS and CISS programs is actually extremely limited. The major SPRANS categories are identified in section 502(a) and CISS project categories are specified in some detail in sections and 502(b) of Title V. Subcategories and priorities under SPRANS can change from year to year; typically, however, they are designed to fulfill specific Congressional or Administration program directives. The Department has an established mechanism for soliciting comments from the public on proposed priorities for Title V grant programs. Annual announcements of the availability of funding for SPRANS and CISS invite public comment on the published program priorities. When application deadlines prevent consideration of public comments in developing priorities for the current fiscal year, they are considered for the following fiscal year. In addition, numerous formal and informal opportunities currently exist for consultation and exchanges of views on grant priorities between the Department's central and regional office officials and State Title V programs and their chosen representatives.

One respondent pointed out a misprint in the NPRM listing of CISS funding preferences, which is corrected in the final regulation. The misprint resulted in incorrectly combining two separate statutory categories—integrated maternal and child health service systems and maternal and child health centers operating under the direction of not-for-profit hospitals—and in omitting the category of outpatient and community based services for children with special health care needs.

Section 51a.8 What other conditions apply to these grants?

OBRA '89 added a requirement (under sec. 506(a)(3) of the Act) for annual collection of data from SPRANS and CISS project grants, including: (1) Information on the number of individuals served or trained; (2) a copy of any evaluation conducted by the recipient; and (3) a list of Healthy Children 2000 objectives addressed by the project and data on how the project met the objectives.

Two respondents raised concerns regarding the applicability of individual-oriented reporting requirements to projects whose objectives or activities are primarily population-based, such as infrastructure building, needs assessment, quality control, or policy development. The Department appreciates these concerns. To accommodate variations in the targeting of the major types of SPRANS/CISS grants, the Department has developed and OMB has approved for a one-year period, through November 1994, a "SPRANS/CISS Uniform Data Collection Instrument" for use in this annual data collection, which will usually take place in the spring of each fiscal year. Following the submission by SPRANS/CISS grantees of their completed data forms, the Maternal and Child Health Bureau (MCHB) will compile the data in compliance with the legislative mandate for information on the number of persons served or trained. Four separate SPRANS/CISS Uniform Data Collection Instrument forms have been designed for use in FY 1994, customized for projects focusing on: (1) Training; (2) research; (3) data analysis; and (4) other discretionary grants. The development of the forms to be used in this information collection was guided by an active data development committee within the MCHB. The forms were sent to all Public Health Service Regional Offices for review. In addition, draft data collection instruments were disseminated in FY 1993 for field testing to nine institutions representing each major type of SPRANS/CISS grantee, i.e. training, research, genetics, hemophilia, and MCH improvement projects.

Smoke Free Workplace

Public Law 103–227, enacted on March 31, 1994, prohibits smoking in certain facilities in which minors will be present. The Department of Health and Human Services is now preparing to implement the provision of that law. Until those implementation plans are in place, PHS continues to strongly encourage all grant recipients to provide a smoke free workplace and promote the nonuse of all tobacco products.

Regulatory Flexibility Act and Executive Order 12866

These regulations govern a financial assistance program in which participation is voluntary. The Department believes that the resources required to implement the new requirements in this final rule are minimal. In accordance with the requirements of the Regulatory Flexibility Act of 1980, the Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

The Department also has determined that this rule is not a major rule under Executive Order 12866; therefore, a regulatory impact analysis is not required. The rule will not exceed the threshold level of $100 million established in section (b) of Executive Order 12866.

Paperwork Reduction Act

This rule contains information collections which have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 and assigned control number 0915–0169. The title, description, and respondent description of the information collections are shown below with an estimate of the annual reporting, notification and recordkeeping burdens. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: SPRANS/CISS Uniform Data Collection Instrument.

Description: Information will be collected from funded projects to enable the Secretary to respond to congressional reporting mandates required by OBRA '89 concerning individuals served or trained by projects, their responsiveness to Healthy Children 2000 objectives, and their evaluation status.

Description of Respondents: Recipients of SPRANS and CISS project awards.

Estimated Annual Reporting and Recordkeeping Burden:

Section	No. of respondents	Responses per respondent	Hours per response	Total hours
Reporting:				
§51a.8	580	1	4	2,320
Total Burden				2,320

We received one comment on the estimated annual reporting burden published in the NPRM. The estimate of four hours per response was based on initial information provided to MCHB by a sampling of grantees' data specialists. Feedback from the field test has confirmed the general accuracy of the estimated burden. Prior to expiration of OMB approval for this data collection, in November 1994, the utility of the data instrument will be reviewed and an analysis of grantee experience in complying with the requirements will be done. The estimated reporting burden remains the same as in the proposed rule.

List of Subjects in 42 CFR Part 51a

Grand programs—health, Health care, Health professions, Handicapped, Maternal and child health.

Dated: April 12, 1994.

Philip R. Lee,

Assistant Secretary for Health.

Approved: July 7, 1994.

Donna E. Shalala,

Secretary.

(*Catalog of Federal Domestic Assistance*, No. 93.110, Maternal and Child Health Consolidated Federal Programs).

Accordingly, 42 CFR Part 51a is amended as set forth below:

PART 51a—PROJECT GRANTS FOR MATERNAL AND CHILD HEALTH

1–2. The authority citation for Part 51a is revised to read as follows:

Authority: Sec. 1102 of the Social Security Act, 49 Stat. 647 (42 U.S.C. 1302); sec. 502(a), 502(b)(1)(A), and 506(a)(3) of the Social Security Act, 95 Stat. 819–20 (42 U.S.C. 702(a), 702(b)(1)(A) and 706(a)(3)).

3. Section 51a.1 is revised to read as follows:

§ 51a.1 To which programs does this regulation apply?

The regulation in this part applies to grants, contracts, and other arrangements under section 502(a) and 502(b)(1)(A) of the Social Security Act, as amended (42 U.S.C. 702(a) and 702(b)(1)(A)), the Maternal and Child Health (MCH) Federal Set-Aside project grant programs. Section 502(a) authorizes funding for special projects of regional and national significance (SPRANS), research and training projects with respect to maternal and child health and children with special health care needs (including early intervention training and services development); genetic disease testing, counseling and information programs; comprehensive hemophilia diagnostic and treatment centers; projects for screening and follow-up of newborns for sickle cell anemia and other genetic disorders; and special maternal and child health improvement projects. Section 502(b)(1)(A) authorizes funding for projects termed community integrated service system (CISS) projects for the development and expansion of: maternal and infant health home visiting; projects to increase the participation of obstetricians and pediatricians in title V and title XIX programs; integrated maternal and child health service systems; maternal and child health centers operating under the direction of not-for-profit hospitals; rural maternal and child health programs; and outpatient and community-based services programs for children with special health care needs.

4. Section 51a.3 is revised to read as follows:

§ 51a.3 Who is eligible to apply for Federal funding?

(a) With the exception of training and research, as described in paragraph (b) of this section, any public or private entity, including an Indian tribe or tribal organization (as those terms are defined at 25 U.S.C. 450b) is eligible to apply for federal funding under this Part.

(b) Only public or nonprofit private institutions of higher learning may apply for training grants. Only public or nonprofit institutions of higher learning and public or private nonprofit agencies engaged in research or in programs relating to maternal and child health and/or services for children with special health care needs may apply for grants contracts or cooperative agreements for research in maternal and child health services or in services for children with special health care needs.

5. Section 51a.4 is revised to read as follows:

§ 51a.4 How is application made for Federal funding?

An application for funding under the MCH Federal Set-Aside project grant programs must be submitted to the Secretary at such time and in such manner as the Secretary may prescribe. It must include a budget and narrative plan of the manner in which the project will meet each of the requirements prescribed by the Secretary. The plan must describe the project in sufficient detail to identify clearly the nature, need, and specific objectives of, and methodology for carrying out, the project. (Approved by the Office of Management and Budget under control number 0915–0050)

6. Section 51a.5 is revised to read as follows:

§ 51a.5 What criteria will DHHS use to decide which projects to fund?

(a) The Secretary will determine the allocation of funds available under sections 502(a) and 502(b)(1)(A) of the Act for each of the activities described in § 51a.1.

(b) Within the limit of funds determined by the Secretary to be available for each of the activities described in § 51a.1, the Secretary may award Federal funding for projects under this part to applicants which will, in his or her judgment, best promote the purpose of title V of the Social Security Act and address achievement of Healthy Children 2000 objectives,[1] taking, the following factors into account:

[1] Healthy Children 2000: National Health Promotion and Disease Prevention Objectives Related to Mothers, Infants, Children, Adolescents, and Youth is a special compendium of health status goals and national health objectives affecting mothers, infants, children, adolescents, and youth originally published in Healthy People 2000 in September 1990. 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).

(1) The extent to which the project will contribute to the advancement of maternal and child health and/or improvement of the health of children with special health care needs;

(2) The extent to which the project is responsive to policy concerns applicable to MCH grants and to program objectives, requirements, priorities and/or review criteria for specific project categories, as published in program announcements or guidance materials.

(3) The extent to which the estimated cost to the Government of the project is reasonable, considering the anticipated results;

(4) The extent to which the project personnel are well qualified by training and/or experience for their roles in the project and the applicant organization has adequate facilities and personnel; and

(5) The extent to which, insofar as practicable, the proposed activities, if well executed, are capable of attaining project objectives.

(c) For the following types of CISS projects, preference for funding will be given to qualified applicants in areas with a high infant mortality rate (relative to the latest average infant mortality rate in the United States or in the State in which the area is located):

(1) Projects for the development and expansion of maternal and infant health home visiting;

(2) Projects to increase the participation of obstetricians and pediatricians in title V and title XIX programs;

(3) Integrated maternal and child health service systems;

(4) Maternal and child health centers operating under the direction of not-for-profit hospitals;

(5) Rural maternal and child health programs; and

(6) Outpatient and community based services for children with special health care needs.

7. Section 51a.7(a) is revised to read as follows:

§ 51a.7 What other DHHS regulations apply?

(a) Several other DHHS regulations apply to awards under this part. These include, but are not limited to:

42 CFR Part 50—Policies of general applicability:

Subpart B—Sterilization of persons in federally assisted family planning projects.

Subpart C—Abortions and related medical services in federally assisted programs of the Public Health Service.

Subpart E—Maximum allowable cost for drugs.

45 CFR Part 76—Governmentwide debarment and suspension (nonprocurement) and governmentwide requirements for drug-free workplace (grants).

45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Service—Effectuation of title VI of the Civil Rights Act of 1964.

45 CFR Part 81—Practice and procedure for hearings under Part 80 of this title.

45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance.

45 CFR Part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance.

45 CFR Part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance.

45 CFR Part 93—New restrictions on lobbying.

(b) In addition to the above regulations, the following apply to projects funded through grants:

42 CFR Part 50—Policies of general applicability:

Subpart D—Public Health Service grant appeals procedure.

45 CFR Part 16—Procedures of the Departmental Grant Appeals Board.

45 CFR Part 74—Administration of grants to nonprofit organizations.

45 CFR Part 75—Informal grant appeals procedures.

45 CFR Part 92—Administration of grants to State and local governments.

* * * * *

8. Section 51a.8 is added to read as follows:

§ 51a.8 What other conditions apply to these grants?

(a) Recipients of project grants will be required to submit such additional information to the Secretary on an annual basis as the Secretary determines, including:

(1) the number of individuals served or trained, as appropriate under the project;

(2) a copy of any evaluation conducted by the recipient; and

(3) a list of Healthy Children 2000 objectives addressed by the project and data on how the project contributed toward meeting the objectives.

(b) The Secretary may at the time of award of project grants under this Part impose additional conditions, including conditions governing the use of information or consent forms, when, in the Secretary's judgment, they are necessary to advance the approved program, the interest of public health, or the conservation of grant funds.

[FR Doc. 94–17218 Filed 7–18–94; 8:45 am]

BILLING CODE 4160–15–M

Health Care Financing Administration

42 CFR Parts 412, 413, and 418

[BPD–436–F]

RIN 0938–AD71

Medicare Program; Periodic Interim Payments for Hospitals and Other Providers

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule responds to public comments on the January 21, 1988 final rule with comment period that implemented section 9311 of the Omnibus Budget Reconciliation Act of 1986. The January 21, 1988 rule described the circumstances under which the periodic interim payment (PIP) method is available for services furnished by hospitals and other providers.

EFFECTIVE DATE: This final regulation is effective on August 18, 1994.

FOR FURTHER INFORMATION CONTACT: Linda Hite, (410) 966–4530.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1861(v)(1)(A) of the Social Security Act (the Act) defines reasonable cost under Medicare as the cost actually incurred, excluding any cost unnecessary in the efficient delivery of needed health services. That section of the Act also provides that reasonable costs must be determined in accordance with regulations that establish the methods to be used and the items to be included for purposes of determining which costs are allowable for various types or classes of institutions, agencies, and services.

Under Medicare, providers are paid for inpatient and outpatient services that they furnish to beneficiaries under Part A (Hospital Insurance) or Part B (Supplementary Medical Insurance). Currently, most hospitals are paid for their hospital inpatient operating costs and capital-related costs under the prospective payment systems in accordance with sections 1886(d) and (g) of the Act and regulations at 42 CFR part 412. Under these systems, Medicare payment is made at a predetermined,

specific rate for inpatient operating costs and inpatient capital-related costs for each hospital discharge based on the information contained in actual bills submitted.

Hospital outpatient services, hospitals and hospital units that are excluded from the prospective payment systems, as well as most other providers, are paid, in part, an amount based on the reasonable cost of items and services furnished to beneficiaries, in accordance with the regulations at 42 CFR part 413.

Since actual reasonable cost cannot be determined until the end of a provider's cost reporting period, an interim rate of payment, approximating actual cost as closely as possible, is determined by the intermediaries for each provider, and interim payments are made on that basis during the year. These interim payments are required by section 1815(a) of the Act, which states that we must pay providers at least monthly during the cost reporting period, pending a final determination of cost on the basis of a submitted cost report and any necessary adjustments. After receipt of the provider's cost report, the intermediary determines what the actual payment for the period should have been and a retroactive adjustment is made. The regulations that implement these policies are located at § 413.64.

There are two methods of interim payment for inpatient hospital services for hospitals not receiving payment under the prospective payment systems. One method is based on actual bills submitted by the hospital. Under this method, interim payments are calculated by applying a predetermined per diem amount to the number of Medicare patient days reflected on actual bills or by applying a predetermined percentage to the charges reflected on the actual bills submitted. The predetermined per diem amount or percentage factor applied to billed patient days or charges represents an estimate of the hospital's previous year's costs, adjusted to ensure that the current year's rate of payment is as close as possible to the current year's costs.

Under the second method, referred to as the periodic interim payment (PIP) method, interim payments are not based on individual bills. Instead, payment is based on the estimated annual costs attributable to estimated Medicare utilization of a hospital, and equal biweekly payments are made to hospitals without regard to the submission of individual bills. PIP has been available for inpatient hospital services since 1968. It was offered to qualified hospitals as an alternative to regular interim reimbursement, which requires submission of a bill to receive payment.

With either of these interim payment methods, any overestimation or underestimation of the hospital's actual costs, to the extent not adjusted during the year, is adjusted at the time of cost report settlement.

Under the prospective payment system, hospitals are paid, for most of the Part A inpatient services they furnish, a prospectively determined amount for each discharge based on actual bills submitted. This amount constitutes final payment for each discharge claimed. Although no form of interim payment is necessary for hospitals operating under the prospective payment system, we extended the option to these hospitals to elect to receive PIP when the prospective payment system was implemented in order to avoid cash flow problems in the early stages of the system. Thus, prospective payment hospitals that met the qualifications for receiving PIP could elect to receive this type of interim payment, which would be based on their estimated annual prospective payment amounts. The PIP payment is made 2 weeks after the end of a biweekly period of services. In these circumstances, year-end reconciliation is required.

Although the PIP method of interim payment is not based on actual bills submitted, a PIP hospital must continue to submit bills for subsequent intermediary verification of the accuracy of the rate. The rate is reviewed at least twice per year for hospitals paid under the prospective payment system and at least quarterly for hospitals and other providers paid on a reasonable cost basis. If necessary, as determined by the reviews, the rate is adjusted. Interim payments may be further adjusted based on cumulative payment data for the year.

On August 15, 1986, we published a final rule in the **Federal Register** (51 FR 29386) concerning interim payments. In that rule, we took the following actions, which were to be effective on July 1, 1987:

- We eliminated PIP as an optional method of payment for inpatient hospital services furnished to Medicare beneficiaries, except for services furnished by a rural hospital with fewer than 100 beds.
- In order to alleviate the cash flow problems that certain hospitals encounter, we provided for one interim payment to hospitals subject to the prospective payment system for each case in which a patient remains in the hospital more than 30 covered days. Under this provision any interim payment made was to be applied against the final payment made for the discharge.
- We also eliminated PIP for hospitals receiving payment under a demonstration project authorized by section 402(a) of the Social Security Amendments of 1967 (Public Law 90-248) or section 222(a) of the Social Security Amendments of 1972 (Public Law 92–603), and for those hospitals paid under State reimbursement control systems authorized by section 1886(c) of the Act and approved by HCFA. However, under this provision, these hospitals were to be permitted to use a form of interim payment similar to PIP if that type of payment is specifically approved by HCFA as a part of the demonstration or control system.
- We provided that payment for direct medical education and other inpatient hospital costs excluded from the prospective payment system was to continue to be made biweekly on an interim payment basis.

We issued the August 15, 1986 final rule because evidence indicated that the PIP method had increasingly become a burden for the intermediaries and that it resulted in the expenditures of considerable resources in attempting to identify and correct overpayments and underpayments. We stated that eliminating PIP for all hospitals (that is, those paid on the basis of reasonable costs and those subject to prospective payment) would allow intermediaries to utilize their resources more effectively to better control payments to hospitals and all other providers. Furthermore, we stated that the elimination of PIP would encourage hospitals to submit their bills on a more timely basis since hospitals receiving PIP have less incentive to bill timely than hospitals not receiving PIP.

On October 21, 1986, the Omnibus Budget Reconciliation Act of 1986 (Public Law 99–509) was enacted. In effect, except for the provision dealing with a special interim payment to prospective payment hospitals experiencing unusually long lengths of stay (discussed below), section 9311 of Public Law 99–509 overrode the August 15, 1986, final rule. Specifically, section 9311(a) of Public Law 99–509 added a new paragraph (e) to section 1815 of the Act that provides for the following——

- Payment must be made available for inpatient hospital services furnished by a prospective payment hospital, including distinct part psychiatric or rehabilitation units, on a PIP basis (rather than on the basis of bills actually submitted) in the following cases:

—The hospital's fiscal intermediary fails to meet the requirements of section

1816(c)(2) of the Act concerning the prompt payment of claims for 3 consecutive months, the hospital requests payment on a PIP basis, and the hospital meets the requirements applicable to payment on a PIP basis that were in effect as of October 1, 1986. The hospital can continue to receive PIP payments until its fiscal intermediary meets the prompt payment of claims requirements for 3 consecutive calendar months.

—The hospital has a disproportionate share adjustment percentage (as established in section 1886(d)(5)(F)(iv) of the Act) of at least 5.1 percent as computed for purposes of establishing the average standardized amounts for discharges occurring during Federal fiscal year (FY) 1987 and the hospital requests payment on a PIP basis. Hospitals meeting this criterion can receive PIP only if they were being paid on a PIP basis as of June 30, 1987 and the hospital continues to meet the requirements applicable to payment on a PIP basis that were in effect as of October 1, 1986.

—The hospital is located in a rural area, has 100 or fewer beds, and the hospital requests payment on a PIP basis. Again, hospitals meeting this criterion can receive PIP only if they were being paid on a PIP basis as of June 30, 1987, and the hospital continues to meet the requirements applicable to payment on a PIP basis that were in effect as of October 1, 1986.

• Payment on a PIP basis must be made available under the standards established in § 405.454(j) (redesignated as § 413.64(h)), as in effect on October 1, 1986, for the following services if the provider qualifies for and elects to receive PIP payment:

—Inpatient hospital services of a hospital excluded from the prospective payment system.

—Inpatient hospital services of a hospital receiving payment under a State hospital reimbursement system under section 1814(b)(3) or 1886(c) of the Act, if payment on a PIP basis is an integral part of that reimbursement system.

—Skilled nursing facility services.

—Home health services.

—Hospice care.

• The Secretary may make appropriate accelerated payments to hospitals subject to the prospective payment system that have significant cash flow problems resulting from operations of its intermediary or from unusual circumstances of the hospital's operation.

On January 21, 1988, we published a final rule with comment period (53 FR 1621) that implemented section 9311(a) of the Omnibus Budget Reconciliation Act of 1986 (Public Law 99–509, enacted October 21, 1986). In that final rule, in addition to implementing section 9311(a) of Public Law 99–509, we deleted the provision at § 413.64(k)(5) permitting a special interim payment for long lengths of stay cases.

This provision had been set forth in our August 15, 1986, final rule (51 FR 29386), before the enactment of Public Law 99–509. As explained in detail in our January 21, 1988, final rule (53 FR 1625), the amendments made by section 9311(a) of Public Law 99–509 did not include any provision for interim payments to prospective payment hospitals that are not on PIP, and we believed that, in light of the changes it was making to PIP, Congress did not believe such a provision was necessary. Therefore, we deleted this provision from the regulations. However, as a result of comments received objecting to the elimination of this provision, we reconsidered our position and subsequently revised our policy in regulations at § 412.116(d) in the final rule published on September 1, 1989 (54 FR 36495). (This issue is also discussed below in response to public comments.)

II. Discussion of Comments

In response to the January 21, 1988 final rule with comment period (53 FR 1621), we received 31 comments from or on behalf of hospitals and their associations. The following is a summary of the comments and our responses to them.

A. Capital-Related Costs of Inpatient Hospital Services

As part of the January 21, 1988 final rule, which dealt primarily with PIP, we made an unrelated change to the regulations. Section 413.64(k)(6), dealing with reductions in capital payments under section 1886(g)(3) of the Act, was revised and redesignated as a new § 412.113(a)(2). As part of that change, we made a technical change in § 412.113(a)(1) by removing the language, "For cost reporting periods beginning before October 1, 1986," to reflect the fact that hospitals subject to the prospective payment system continued to be paid in part on a hospital-specific basis during the transition period to fully prospective payment, which was in effect for cost reporting periods beginning on or after October 1, 1983, and before October 1, 1987.

Comment: One commenter requested that the date be changed to October 1, 1987 and that the language be reinserted in § 412.113(a)(1). The request was made to reflect the fact that for cost reporting periods beginning on or after October 1, 1987, with the exception of sole community hospitals (see § 412.92), prospectively determined payments based on national and regional standardized rates do not depend upon an individual hospital's cost experience. Therefore, according to the commenter, the capital consistency rule (discussed fully in the final prospective payment system rule published September 30, 1988 (53 FR 38517)) addressed in § 412.113(a)(1) would not be applicable for periods beginning on or after October 1, 1987. The commenter also believed that the capital consistency rule should not be applicable to sole community hospitals after that date, notwithstanding that those hospitals continue to receive a prospective payment, part of which is based on their own cost experience.

Response: As we explained in our September 30, 1988, final rule (53 FR 38517), the consistency rule required that the classification of capital-related and direct medical education costs remain constant for each hospital during the prospective payment transition period. This rule was necessary since a portion of the prospectively determined payment during the transition to fully Federal standardized rates was based upon a hospital's own cost experience (that is, the hospital-specific rate).

In that final rule, we noted that the consistency rule, for capital-related costs and for direct medical education costs, was no longer necessary due to the expiration of the prospective payment transition period. Accordingly, we removed the language from the regulations text concerning the consistency rule. With regard to the commenter's concern regarding sole community hospitals, we agree that the capital consistency rule is no longer applicable for these hospitals.

Comment: A commenter noted that the capital reduction percentages in § 412.113(a)(2) have been superseded by section 4006 of the Omnibus Budget Reconciliation Act of 1987 (Public Law 100–203).

Response: Section 4006 of OBRA 1987 amended section 1886(g)(3)(A) of the Act and provided that the inpatient capital reduction be increased to 12 percent for FY 1988, effective for discharges or portions of cost reporting periods occurring on or after January 1, 1988. For discharges or portions of cost reporting periods occurring in FY 1989, the reduction was 15 percent. Section

6002 of OBRA 1989 amended section 1886(g)(3)(A) of the Act and mandated a reduction of 15 percent of payments for capital-related costs of hospital inpatient services identified under section 1886(d) attributable to portions of cost reporting periods or discharges occurring during the period beginning January 1, 1990 and ending September 30, 1990. Section 4001(a) of OBRA 1990 extended the 15 percent reduction applicable to prospective payment hospitals to September 30, 1991. These provisions were incorporated into regulations at § 412.113 on August 30, 1991 (56 FR 43448).

In addition to those changes, additional changes to § 412.113 were necessary to conform the regulations with the statute. Specifically, we revised § 412.113(a)(2) (B), (C), and (D) to conform the dates and the percentages specified in these sections to the law.

B. Special Interim Payment for Unusually Long Lengths of Stay

Comment: Twenty-nine commenters objected to our elimination of the provision for special interim payments for unusually long lengths of stay. The commenters generally stated that the fact that the legislation did not address this provision indicated Congressional intent that it be retained. They noted that the legislation included a specific provision permitting the Secretary to make appropriate accelerated payments to a hospital subject to the prospective payment system that has significant cash-flow problems resulting from the operation of its intermediary or from unusual circumstances of the hospital's operation. They asserted that this provision was intended to address a variety of unusual circumstances that cause cash-flow problems, including situations in which a hospital experiences cash-flow problems due to long-stay patients.

Many commenters said that we had originally provided for the special interim payments in order to alleviate the cash-flow problems that certain hospitals might encounter after they no longer received PIP. The commenters indicated that a cash-flow shortage continues to be a problem for a hospital that cannot receive any Medicare payment for a patient who has been in the hospital for an unusually long stay. Some commenters stated that the problem was more acute for small hospitals or for rural hospitals, but all believed that not receiving an interim payment for a long-stay patient represented a hardship to a hospital.

Some pointed out that an interim payment is particularly important for long-stay patients because, generally, the most intensive resource consumption occurs early in a patient's stay. Others commented that the problem is exacerbated in areas where there is a shortage of Medicare-participating skilled nursing facility (SNF) beds, since such shortages tend to increase the number of long-stay patients remaining in the hospitals awaiting SNF placement.

One commenter recommended that the threshold for interim billing be based on the outlier threshold for the DRG assigned to the case and that the hospital should be given an opportunity to submit an interim bill for long-stay patients every 30 days after the original interim bill.

Response: Due to the importance of this issue to the hospital industry, we have already responded to these comments and addressed these issues in a final rule published on September 1, 1989 (54 FR 36495). As we explained in detail in that document, based on our review of these comments, we reconsidered our position on this issue and revised § 412.116(d) accordingly.

Prospective payment system hospitals that do not receive PIP may request special interim payments after a patient has been in the hospital at least 60 covered days and thereafter at intervals of at least 60 days. The initial special interim payment will be made at the rate for the appropriate DRG based on the diagnosis, procedures and other pertinent information reported on the initial interim bill.

The payment for the initial interim bill will be determined as if the bill were the final bill. That is, the intermediary will pay the hospital based on the DRG determined for the bill plus any outlier payments as of the date of the last day for which services have been billed. Subsequent interim bills, including the final bill, will be processed as adjustment bills, with payment determined as if the bill were the final bill. Generally, the adjusted payment from subsequent bills will result from outlier payments accruing since the previous bill. These special interim payments were effective September 1, 1989 for all qualifying current and subsequent inpatient admissions.

C. Method of Payment

Comment: One commenter asked that we reconsider our position and revoke the regulation that eliminates PIP for many hospitals. The commenter pointed out that as hospitals deplete their working capital, operating cash becomes very critical, and the new regulation will create additional cash-flow problems for the hospital industry.

Response: We believe that the regulation properly implements the statutory provisions, and, therefore, should continue in effect. However, as discussed above, we have reconsidered our elimination of the provision for an interim payment after a Medicare beneficiary's length of stay exceeds 60 days. The special interim payment provision at § 412.116(d) should assist prospective payment hospitals in maintaining cash flow in cases of long-stay Medicare patients.

D. Periodic Interim Payments

Comment: One commenter stated that certain disproportionate share hospitals and small rural hospitals that could elect PIP under the provisions in § 412.116 (b)(1)(ii) or (b)(1)(iii) may not have been given clear instructions in sufficient time to make a proper request for PIP prior to July 1, 1987, as required in §§ 412.116 (b)(1)(ii) and (b)(1)(iii). Accordingly, the commenter requested that HCFA provide a 60-day window of opportunity to eligible disproportionate share and small rural hospitals to request PIP.

Response: We believe that eligible disproportionate share and small rural hospitals had adequate notice to request PIP prior to July 1, 1987. In May of 1987, we issued Program Memorandum A–87–4 that advised intermediaries to notify the hospitals to request PIP. (Subsequent instructions were included in the Intermediary Manual Part 3, section 3600.1.) Intermediaries, accordingly, notified their providers. Since we received no other comments indicating any problems in this regard, we do not believe that an additional extension was necessary for these hospitals to request PIP.

E. Payment to Providers of Service

Comment: One commenter asked whether a small rural hospital that qualifies for prospective payment as an urban hospital under section 1886(d)(8)(B) of the Act, as added by section 4005(a) of the Omnibus Budget Reconciliation Act of 1987 (Public Law 100–203), would become ineligible to receive PIP when section 4005(a) went into effect.

Response: Section 1886(d)(8)(B) of the Act provides that if certain conditions are met, hospitals located in a rural county adjacent to one or more urban areas are treated, for purposes of determining prospective payment amounts, as being located in the urban metropolitan statistical area to which the greatest number of workers in the county commute. This provision relates solely to the amount of prospective payment a hospital will receive based

on its geographic classification, and does not change the status of small rural hospitals that have qualified to receive PIP under section 1815(e) of the Act.

F. Payment to Hospitals Subject to the Prospective Payment System

Comment: In the January 21, 1988 final rule, we stated that when an intermediary that had not met the prompt payment standard has again met that standard for 3 consecutive calendar months, the hospitals will receive notice (concurrent with their removal from PIP) that they will no longer receive PIP, effective with discharges occurring the first day of the month following the third consecutive month in which the requirements were met (53 FR 1624). One commenter asserted that this policy did not provide sufficient time for intermediaries to change the payment method from PIP to claim-by-claim. The commenter also pointed out that providers would have no advance notice of PIP removal. Another commenter suggested that removal should be no sooner than 2 weeks after notification.

Response: We agree that providers need advance notification of removal from PIP, and intermediaries need additional time to make changes in their payment method. Accordingly, intermediaries now will notify hospitals as follows:

If an intermediary that has consistently failed (that is, for 3 consecutive months) to meet the prompt payment requirements subsequently meets the requirements for 2 consecutive calendar months, it must so notify its hospitals within 7 working days after the end of the 2nd month. Within 7 working days after the end of the following month, the intermediary must notify the hospitals whether it met or failed the prompt payment requirements for that month.

- If the intermediary failed to meet the requirements, its hospitals may continue to receive PIP, and the intermediary is not required to further notify the hospitals until the intermediary again meets the prompt payment requirements for 2 consecutive calendar months.
- If the intermediary met the requirements (that is, complied with the prompt payment requirements for 3 consecutive calendar months), the intermediary will notify its hospitals that they will no longer receive PIP effective with discharges occurring on the first day of the following month, that is, 30 days after the intermediary meets the requirements. The intermediary is not required to further notify the hospitals regarding its timeliness in paying claims until it again fails to meet the prompt payment requirements for 2 consecutive calendar months.

If an intermediary has consistently met the requirements but subsequently fails to meet them for 2 consecutive calendar months, it must so notify the hospitals within 7 working days after the end of the 2nd month. Within 7 working days after the end of the following month, the intermediary must notify the hospitals whether it met or failed to meet the requirements for that month.

- If the intermediary met the requirements, the hospitals continue not to receive PIP, and the intermediary is not required to further notify the hospitals until the intermediary again fails to meet the requirements for 2 consecutive calendar months.
- If the intermediary failed to meet the requirements (that is, did not comply with prompt payment requirements for 3 consecutive calendar months), the intermediary will notify the hospitals that they may request to receive PIP.

If a hospital's request is received by the intermediary by the 15th day of the month (or the first regular business day after the 15th day of the month), the intermediary will initiate PIP for a qualifying hospital effective with discharges occurring on or after the first day of the following month, that is, 30 days after the intermediary failed to meet the requirements for 3 consecutive calendar months. If the hospital's request is not received by the intermediary by the 15th day of the month (or the first regular business day after the 15th day of the month), the intermediary will process the request for PIP under its usual procedures for PIP requests. The intermediary is not required to further notify its hospitals regarding its timeliness in paying claims until it meets the prompt payment requirements for 2 consecutive calendar months.

G. Limitation on Reelection

In addition to the changes discussed above, we are making an additional revision to the PIP regulations at § 412.116(b)(4)(iii) concerning the limitation on the reelection of PIP. Although we received no public comments on this issue, we believe that the change is necessary to remedy a flaw in the regulations set forth in our January 21, 1988, final rule, and that it is clearly beneficial to hospitals. Section 412.116(b)(4)(iii) provides that if a disproportionate share hospital or a small rural hospital receiving PIP under the criteria set forth in § 412.116 (b)(1)(ii) or (b)(1)(iii), respectively, is removed from PIP, either by its own request or by the intermediary, it may reelect to receive PIP only under the criteria set forth in § 412.116(b)(1)(i). (That is, the availability of PIP to the hospital would be subject to the intermediary's prompt payment of claims.) We believe that if a hospital requests to be removed from PIP, § 412.116(b)(4)(iii) should continue to apply. However, § 412.116(b)(4)(iii) may, in some cases, discourage intermediaries from properly removing hospitals that no longer qualify since such hospitals could no longer receive PIP except under the provisions of § 412.116(b)(1)(i).

Accordingly, we are revising § 412.116(b)(4)(iii) to provide that if an intermediary removes a qualifying disproportionate share hospital or a small rural hospital from PIP because the hospital no longer meets the requirements for PIP under § 413.64(h), a hospital qualifying under § 412.116 (b)(1)(ii) or (b)(1)(iii) may subsequently reelect to receive PIP, subject to the requirements of § 413.64(h). This reelection also applies in situations, with regard to a hospital that has changed ownership or undergone a change in management, in which the intermediary removes the hospital from PIP temporarily to evaluate whether or not the hospital, under its new ownership or new management, meets the requirements of § 413.64(h).

H. Editorial Comment

Comment: One commenter pointed out two errors in the preamble of the January 21, 1988 final rule. Specifically, the commenter noted that on page 1621, column 3, paragraph 3, in the sentence reading "These interim payments are determined by estimating the reimbursable amount for the year based on the previous year's experience and on information for the current year and dividing that amount in to 29 equal payments made biweekly.", "29" should be changed to "26". Also, in the same paragraph, the last sentence reading "These payments will continue to be made on a biweekly basis" should have read "These payments will continue to be made 2 weeks after the end of a biweekly period of service."

Response: The commenter correctly suggested that the preamble read incorrectly. However, the regulations at § 412.116(c) do read correctly, and thus we did not believe it was necessary to publish a correction notice. We note that payment for the indirect teaching adjustment and capital-related costs are no longer made on a biweekly basis. As discussed in the September 30, 1988 **Federal Register** (53 FR 38517), payment for the indirect teaching

adjustment is now made on a bill-by-bill basis. In addition, the payment methodology for hospital inpatient capital-related costs for hospitals paid under the prospective payment system has been revised. Under the current methodology, in effect since October 1, 1991, a predetermined amount per discharge is made for Medicare inpatient capital-related costs. However, payments on an interim basis are still made for direct medical education.

III. Changes to the Regulations

This final rule responds to the comments concerning the changes we made in the January 21, 1988, final rule with comment period (53 FR 1621). As discussed in section II above, we are making, or have made, the following changes to the regulations.

- As a result of comments received objecting to the elimination of the provision for special interim payments for unusually long lengths of stay, we reconsidered our position and revised our policy. Due to the importance of this issue to the hospital industry, we have already published this policy in regulations at § 412.116(d) in the final rule published on September 1, 1989 (54 FR 36495).
- As discussed above, we are revising § 412.116(b)(4)(iii) to provide that if a hospital that is receiving periodic interim payments under the criterion set forth in §§ 412.116 (b)(1)(ii) or (b)(1)(iii) is removed from that method of payment at its own request, it may reelect to receive periodic interim payments only under the criterion set forth in paragraph § 412.116(b)(1)(i). However, if the hospital is removed from that method of payment by its intermediary because it no longer meets the requirements for PIP under § 413.64(h), a hospital qualifying under the provisions of §§ 412.116 (b)(1)(ii) or (b)(1)(iii) may later reelect to receive periodic interim payments subject to the requirements in § 413.64(h).
- As a result of section 9311(a) of Public Law 99–509, PIP was made available for prospective payment hospitals, including distinct part psychiatric or rehabilitation units, if—(1) The intermediary fails to meet the prompt payment requirements for three consecutive months, (2) the hospital has a disproportionate share adjustment percentage of at least 5.1 percent, or (3) the hospital is a rural hospital that has 100 or fewer beds. These provisions were discussed extensively in the January 21, 1988, final rule with comment period (53 FR 1623), and were at that time incorporated in regulations at § 412.116(b). Section 9311(a) of Public Law 99–509 also allowed hospices to receive PIP. This provision was also addressed in the preamble to the January 21, 1988, final rule with comment period (53 FR 1625), and was at that time incorporated in regulations at § 418.307. However, when we added § 412.116(b) in the January 21, 1988 rule, we did not also specify in § 413.64(h) that PIP was available to distinct part psychiatric and rehabilitation units, and to hospices. To remedy that inadvertent omission, we are now adding § 413.64(h)(2) (v) and (vi) to specify that PIP is available to distinct part psychiatric units and rehabilitation units, and to hospices, respectively. In addition, we are revising § 418.307 by adding the explanation of how payments are made under the PIP method, now located only in § 413.64(h).

IV. Impact Statement

Unless the Secretary certifies that a final rule will not have a significant economic impact on a substantial number of small entities, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612). For purposes of the RFA, we consider all hospitals to be small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any final rule that may have significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. With the exception of hospitals located in certain rural counties adjacent to urban areas, for purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds.

This final rule confirms and responds to comments on our January 21, 1988 interim final rule. We received no comments on our statement in that rule that the PIP provisions would not have a substantial economic impact, and we are making no significant changes in this final rule.

We have determined, and the Secretary certifies, that this final rule will not have a significant effect on either a substantial number of small entities or on small rural hospitals. Therefore, we have not prepared a regulatory flexibility analysis or an analysis of the effects of this rule on small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was not reviewed by the Office of Management and Budget.

V. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

List of Subjects

42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 418

Health facilities, Hospice care, Medicare, Reporting and recordkeeping requirements.

42 CFR Chapter IV, is amended as follows:

A. Part 412 is amended as set forth below:

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

1. The authority citation for Part 412 continues to read as follows:

Authority: Secs. 1102, 1815(e), 1820, 1871 and 1886 of the Social Security Act (42 U.S.C. 1302, 1395g(e), 1395i–4, 1395hh and 1395ww).

2. In § 412.116, paragraph(b)(4)(iii) is revised to read as follows:

§ 412.116 Method of Payment.

* * * * *

(b) *Periodic interim payments* * * *

* * * * *

(4) *Termination of periodic interim payments.* * * *

* * * * *

(iii) *Limitation on reelection.* If a hospital that is receiving periodic interim payments under the criterion set forth in paragraph (b)(1)(ii) or (b)(1)(iii) of this section is removed from that method of payment at its own request, it may reelect to receive periodic interim payments only under the criterion set forth in paragraph (b)(1)(i) of this section. However, if the hospital is removed from that method of payment by its intermediary because it no longer meets the requirements of § 413.64(h) of this chapter, that hospital may subsequently reelect to receive periodic interim payments if it qualifies

under the provisions of paragraph (b)(1)(ii) or (b)(1)(iii) of this section, subject to the requirements in § 413.64(h) of this chapter.

* * * * *

B. Part 413 is amended as follows:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES

1. The authority citation for Part 413 continues to read as follows:

Authority: Secs. 1102, 1814(b), 1815, 1833(a), (i), and (n), 1861(v), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395f(b), 1395g, 1395l(a), (i), and (n), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww); sec. 104(c) of Pub. L. 100–360 as amended by sec. 608(d)(3) of Pub. L. 100–485 (42 U.S.C. 1395ww (note)); and sec. 101(c) of Pub. L. 101–234 (42 U.S.C. 1395ww (note)).

2. In § 413.64, paragraphs (h) (2), (3), (4), (5), and (6), are redesignated as paragraphs (h) (3), (4), (5), (6), and (7), respectively; a new paragraph (h)(2) is added; paragraphs (h)(1) (i), (ii), (iii), and (iv) are redesignated as paragraphs (h)(2) (i), (ii), (iii), and (iv) respectively; paragraph (h)(1) is revised; and new paragraphs (h)(2) (v) and (vi) are added to read as follows:

§ 413.64 Payments to providers: Specific rules.

* * * * *

(h) *Periodic interim payment method of reimbursement*—(1) *Covered services furnished before July 1, 1987.* In addition to the regular methods of interim payment on individual provider billings for covered services, the periodic interim payment (PIP) method is available for Part A hospital and SNF inpatient services and for both Part A and Part B HHA services.

(2) *Covered services furnished on or after July 1, 1987.* Effective with claims received on or after July 1, 1987, the periodic interim payment (PIP) method is available for the following:

* * * * *

(v) Part A services furnished in hospitals paid under the prospective payment system, including distinct part psychiatric or rehabilitation units, as described in § 412.116(b) of this chapter.

(vi) Services furnished in a hospice as specified in part 418 of this chapter. Payment on a PIP basis is described in § 418.307 of this chapter.

* * * * *

C. Part 418 is amended as follows:

PART 418—HOSPICE CARE

1. The authority citation for Part 418 continues to read as follows:

Authority: Secs. 1102, 1812(a)(4), 1812(d), 1813(a)(4), 1814(a)(7), 1814(i), 1816(e)(5), 1861(dd), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395d(a)(4), 1395d(d), 1395e(a)(4), 1395f(a)(7), 1395f(i), 1395h(e)(5), 1395x(dd), and 1395hh); and sec. 353 of the Public Health Service Act (42 U.S.C. 263a).

2. Section 418.307 is revised to read as follows:

§ 418.307 Periodic interim payments.

Subject to the provisions of § 413.64(h) of this chapter, a hospice may elect to receive periodic interim payments (PIP) effective with claims received on or after July 1, 1987. Payment is made biweekly under the PIP method unless the hospice requests a longer fixed interval (not to exceed one month) between payments. The biweekly interim payment amount is based on the total estimated Medicare payments for the reporting period (as described in §§ 418.302–418.306). Each payment is made 2 weeks after the end of a biweekly period of service as described in § 413.64(h)(5) of this chapter. Under certain circumstances that are described in § 413.64(g) of this chapter, a hospice that is not receiving PIP may request an accelerated payment.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: March 24, 1994.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: May 16, 1994.

Donna E. Shalala,

Secretary.

[FR Doc. 94–17309 Filed 7–18–94; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 12

RIN 1090–AA41

Administrative and Audit Requirements and Cost Principles for Assistance Programs

AGENCY: Office of the Secretary, Interior.

ACTION: Final rule.

SUMMARY: This final rule is in response to section 310 of Public Law 103–138 and sections 502 and 503 of Public Law 103–126. Public Law 103–138, the "Department of the Interior and Related Agencies Appropriations Act, 1994," and Public Law 103–126, the "Energy and Water Development Appropriations Act, 1994," extend the Buy American requirements which had been included in the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993, to awards of financial assistance under the Department's general appropriation for Fiscal Year 1994, as well as to similar awards by the Bureau of Reclamation. These provisions require that no funds appropriated or transferred pursuant to the Act can be expended by an entity unless the entity agrees that in expending the assistance they will comply with sections 2 through 4 of the Act of March 3, 1933 (41 U.S.C. 10a–10c, popularly known as the "Buy American Act").

EFFECTIVE DATE: August 18, 1994.

FOR FURTHER INFORMATION CONTACT: Dean A. Titcomb (Chief, Acquisition and Assistance Division), (202) 208–6431.

SUPPLEMENTARY INFORMATION: On October 5, 1992, the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993 ("the Act") was signed into law. Section 319 of the Act was entitled "Buy American Requirements." The section applied to funds appropriated or transferred pursuant to the Act for the purchase of any equipment or product that may be authorized to be purchased with financial assistance. The provision expressed the "sense of the Congress" that entities receiving the assistance, purchase only American-made equipment and products.

Section 319(b)(2) required that in providing the financial assistance under the Act, the Secretary shall provide to each recipient of the assistance a notice describing the requirement. No other specific guidance was given regarding the implementation of this requirement.

The Department proposed to revise 43 CFR part 12, by adding subpart E to implement these requirements. No specific guidance was provided by Congress, so the Department decided to base its implementation upon similar rules in the Federal Acquisition Regulation (FAR).

The Department published a notice of proposed rulemaking on August 12, 1993 (58 FR 42918) to implement the requirements included in the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993. However, the final rule was not published before the end of Fiscal Year 1993.

Following the inclusion of the Buy American Requirements in the Department of the Interior and Related Agencies Appropriations Act, 1994 and the Energy and Water Development Appropriations Act, 1994, the Department published a notice reopening the comment period on January 14, 1994 (59 FR 2343).

The Department proposed to continue its plans to revise 43 CFR part 12, by adding subpart E to implement the requirements and to issue a final rule based on the proposed rule published on August 12, 1993.

Only one public comment was received in response to the notice of proposed rulemaking. Although the purpose of reopening the comment period was to allow for the receipt of more comments to be considered prior to publication of the final rule, no additional public comments were received.

Comments on the Proposed Rule

The commenter requested an exemption from the provisions of the "Buy American Act" because application of the provisions would entail unreasonable costs unless documentation of the exempted articles or the applicability of exception criteria was done. In addition, the commenter stated that although these criteria are reasonable, maintaining the additional layer of administration to monitor and document such exceptions would be burdensome and self-defeating for using the Department's funding assistance most effectively.

While we are sympathetic with their dilemma, the Department lacks the authority to grant a blanket exemption to the provisions of the Act.

Several internal comments received were considered and changes were made in the final rule to reflect them. A discussion of these changes follows:

Definitions for *concern, labor surplus area, labor surplus area concern* and *small business* have been added to § 12.705 in response to a comment that without definitions, the terms are subject to more than one interpretation.

Language in subparagraph (e) of § 12.710(e) has been revised and reflects a modified version of FAR coverage.

In subparagraph (d)(4) of § 12.710; subparagraphs (a) and (c) of § 12.715; subparagraph (a) of § 12.720; subparagraphs (b) (3) and (4) of § 12.730; subparagraphs (a) (2) and (3) of § 12.810; and subparagraphs (a) and (b) of § 12.815 the head of the grantee organization or a designee at a level no lower than the grantee's designated awarding official now makes the nonavailability determination or has approval authority. This change was made in response to a comment that to require recipients to obtain Departmental approval when not specifically required by statute imposed an unnecessary administrative and paperwork burden.

In § 12.720, the list of excepted articles, materials and supplies has been removed from the rule. A reference to the existing list in FAR § 25.108 (48 CFR 25.108) is included instead.

In § 12.820, the language has been changed to state that violation of the Buy American Act is a cause for debarment and information concerning a failure to comply with the requirements shall be promptly reported, investigated, and referred when appropriate to the Department of the Interior employee responsible for administering the assistance agreement. This change was made in response to a comment that the existing language precluded application of any discretion or judgement in applying debarment remedy in the case of a Buy American Act violation. The commenter also stated that the existing language denied the recipient any opportunity for the due process hearings required by the debarment regulations and denied the recipient any opportunity to lessen the punishment by implementing corrective or remedial actions. The new language describes the review process more comprehensively.

In subparagraph (b) of § 12.725, the word, "grantee" has been added to more clearly specify that the awarding official of the organization shall insert the clause at § 12.730, Buy American Act-Supplies and the word, "in" was inserted before solicitations.

In § 12.825, the word, "grantee" has been added to more clearly specify that the awarding official of the grantee organization shall insert the clause at § 12.830, Buy American Act-Construction Materials.

Several typographical errors have now been corrected. These include the following:

Section 12.110 Policy, has been corrected to read § 12.710.

The reference to § 12.120 in subparagraph (a)(3) in § 12.810 has been corrected to read § 12.720.

Because of the applicability of different appropriation acts and a slight change in the language, the wording in the notice in subparagraph (b) of § 12.710 has been changed to account for the reference to language in Public Law 103–138. A separate notice has been added with subparagraph (c) of § 12.710 to account for the reference to language in Public Law 103–126 and its use only for awards made by the Bureau of Reclamation.

Clarification was requested regarding the use of the term "agency" since in the rule it could be read in some places as referring to the Federal granting agency, but in others it looked like it meant some level in the recipient organization. The change made to use the term, "head of the grantee organization or a designee at a level no lower than the grantee's designated awarding official" adds clarity.

Another commenter asked that clarification be added concerning whether the Buy American Act takes precedence over related State laws (thus requiring equal consideration of all domestic products) or whether States may continue to apply their own restriction, as long as the resultant award is for a domestic product. Our interpretation of 43 CFR part 12, Subpart C, is that States are required to ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. On this basis, the requirements of the Act take precedence over related State laws.

Executive Order 12866, Paperwork Reduction Act, and Regulatory Flexibility Act

This rule was not subject to Office of Management and Budget review under Executive Order 12866.

The Department has determined that this rule will not have a significant economic impact on a substantial number of small entities since it is anticipated that no additional costs will be imposed on a substantial number of small entities as a result of the rule. This rule does not contain a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Environmental Effects

The Department has determined that this rule does not constitute a major Federal action having a significant impact on the human environment under the National Environmental Policy Act of 1969.

Executive Order No. 12778

The Department has certified to the Office of Management and Budget that this rule meets the applicable standards provided in Sections 2(a) and 2(b)(2) of Executive Order No. 12778.

List of Subjects in 43 CFR Part 12

Cooperative agreements, Grants administration, Grant program.

Dated: June 29, 1994.

Ira Michael Heyman,

Acting Assistant Secretary-Policy, Management and Budget.

Title 43, part 12 of the Code of Federal Regulations is amended as set forth below:

PART 12—ADMINISTRATIVE AND AUDIT REQUIREMENTS AND COST PRINCIPLES FOR ASSISTANCE PROGRAMS

1. The authority citation for part 12 is revised to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 7501; 41 U.S.C. 701 *et seq.*; sec. 310, Pub. L. 103–138, 107 Stat. 1379; sections 502 and 503, Pub. L. 103–126, 107 Stat. 1312; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12674, 3 CFR, 1989 Comp., p. 215; E.O. 12731, 3 CFR, 1990 Comp., p. 306; OMB Circular A–102; OMB Circular A–110; OMB Circular A–128; and OMB Circular A–133.

2. Part 12 is amended by adding Subpart E to read as set forth below.

Subpart E—Buy American Requirements for Assistance Programs

Buy American Act—Supplies

Sec.

12.700 Scope.
12.705 Definitions.
12.710 Policy.
12.715 Evaluating offers.
12.720 Excepted articles, materials, and supplies.
12.725 Solicitation provisions and contract clause.
12.730 Buy American Act—Supplies.

Buy American Act—Construction Materials

12.800 Scope.
12.805 Definitions.
12.810 Policy.
12.815 Evaluating offers.
12.820 Violations.
12.825 Solicitation provision and contract clause.
12.830 Buy American Act—Construction materials.

Subpart E—Buy American Requirements for Assistance Programs

Buy American Act—Supplies

§ 12.700 Scope.

This subpart implements section 310 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1994 (Public Law 103–138, 107 Stat. 1312) and section 502 of the Energy and Water Development Appropriations Act, 1994 (Public Law 103–126, 107 Stat. 1379). This subpart requires that no funds appropriated or transferred pursuant to the respective Act may be expended by an entity unless the entity agrees that in expending the assistance the entity will comply with sections 2 through 4 of the Act of March 3, 1933 (41 U.S.C. 10a–10c, popularly known as the "Buy American Act"). It applies to procurement contracts under grants and cooperative agreements which provide for the purchase of equipment and products. Section 502 of Public Law 103–126, 107 Stat. 1379, only applies to awards made by the Bureau of Reclamation.

§ 12.705 Definitions.

Components, as used in this subpart, means those articles, materials, and supplies incorporated directly into the end products.

Concern, as used in this subpart, means any business entity organized for profit (even if its ownership is in the hands of a nonprofit entity) with a place of business located in the United States and which makes a significant contribution to the U.S. economy through payment of taxes and/or use of American products, to an individual, partnership, corporation, joint venture, association, or cooperative.

Domestic end product, as used in this subpart, means (a) an unmanufactured end product mined or produced in the United States; or (b) an end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. (In determining if an end product is domestic, only the end product and its components shall be considered.) The cost of each component includes transportation costs to the place of incorporation into the end product and any applicable duty (whether or not a duty-free entry certificate is issued). Components of foreign origin of the same class or kind for which determinations have been made in accordance with § 12.710(c) (3) and (4) are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic. On acquisitions above $25,000 in value, components of Canadian origin are treated as domestic.

Domestic offer, as used in this subpart, means an offered price for a domestic end product, including transportation to destination.

End product, as used in this subpart, means those articles, materials, and supplies to be acquired for public use under the grant, cooperative agreement, or procurement contract awarded under the grant or cooperative agreement.

Foreign end product, as used in this subpart, means an end product other than a domestic end product.

Foreign offer, as used in this subpart, means an offered price for a foreign end product, including transportation to destination and duty (whether or not a duty-free entry certificate is issued).

Instrumentality, as used in this subpart, does not include an agency or division of the government of a country.

Labor surplus area, as used in this subpart, means a geographical area identified by the Department of Labor in accordance with 20 CFR part 654, subpart A, as an area of concentrated unemployment or underemployment or an area of labor surplus.

Labor surplus area concern, as used in this subpart, means a concern that together with its first-tier subcontractors will perform substantially in labor surplus areas. Performance is substantially in labor surplus areas if the costs incurred under the contract on account of manufacturing, production, or performance of appropriate services in labor surplus areas exceed 50 percent of the contract price.

United States, as used in this subpart, means the states thereof, the District of Columbia, and the territories and possessions of the United States.

§ 12.710 Policy.

(a) In the case of any equipment or product that may be authorized to be purchased with financial assistance provided under Public Law 103–138, it is the sense of Congress that entities receiving the assistance should, in expending the assistance, purchase only American-made equipment and products.

(b) In awarding financial assistance under Public Law 103–138, bureaus and offices excluding the Bureau of Reclamation shall provide to each recipient of the assistance a notice providing the statement in the following format:

Notice

Pursuant to Sec. 310 of the Department of the Interior and Related Agencies Appropriations Act, 1994, Public Law 103–138, 107 Stat. 1312, please be advised of the following:

In the case of any equipment or product that may be authorized to be purchased with financial assistance provided using funds made available in this Act, it is the sense of the Congress that entities receiving the assistance should, in expending the assistance, purchase only American-made equipment and products.

(c) In awarding financial assistance under Public Law 103–126, the Bureau

of Reclamation shall provide to each recipient of the assistance a notice providing the statement in the following format:

Notice

Pursuant to Sec. 503 of the Energy and Water Development Appropriations Act, 1994, Public Law 103–126, please be advised of the following:

In the case of any equipment or products that may be authorized to be purchased with financial assistance provided under this Act, it is the sense of the Congress that entities receiving such assistance should, in expending the assistance, purchase only American-made equipment and products.

(d) The Buy American Act requires that only domestic end products be acquired for public use, except articles, materials, and supplies—

(1) For use outside the United States;

(2) For which the cost would be unreasonable, as determined in accordance with § 12.715;

(3) For which the agency head determines that domestic preference would be inconsistent with the public interest; or

(4) That are not mined, produced, or manufactured in the United States in sufficient and reasonable available commercial quantities, of a satisfactory quality (see § 12.720).

(e) The grantee's contracting officer may make a nonavailability determination under § 12.710(d)(4) for a procurement contract awarded under the grant or cooperative agreement if—

(1) The procurement action was conducted by full and open competition;

(2) The procurement action was publicly advertised; and

(3) No offer for a domestic end product was received; or

(f) The head of the grantee's contracting activity or designee may make a nonavailability determination under § 12.710(d)(4) for any circumstance other than specified in paragraph (e) of this section.

§ 12.715 Evaluating offers.

(a) Unless the head of the grantee organization or a designee at a level no lower than the grantee's designated awarding official determines otherwise, the offered price of a domestic end product is unreasonable when the lowest acceptable domestic offer exceeds the lowest acceptable foreign offer (see § 12.705), inclusive of duty, by—

(1) More than 6 percent, if the domestic offer is from a large business that is not a labor surplus area concern; or

(2) More than 12 percent, if the domestic offer is from a small business concern or any labor surplus area concern.

(b) The evaluation in paragraph (a) of this section shall be applied on an item-by-item basis or to any group of items on which award may be made as specifically provided by the solicitation.

(c) If an award of more than $250,000 would be made to a domestic concern if the 12-percent factor were applied, but not if the 6-percent factor were applied, the head of the grantee organization or a designee at a level no lower than the grantee's designated awarding official shall decide whether award to the domestic concern would involve unreasonable cost.

§ 12.720 Excepted articles, materials, and supplies.

(a) As indicated in the Federal Acquisition Regulation (FAR), one or more agencies have determined that the articles, materials, and supplies on the list referred to in paragraph (b) of this section are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. This referenced list in paragraph (b) of this section is furnished for information only; an article, material or supply listed therein may be treated as domestic only when the head of the grantee organization or a designee at a level no lower than the grantee's designated awarding official has made a determination that it is not mined, produced, or manufactured in the United States in sufficient and reasonably available quantities of a satisfactory quality.

(b) Refer to the current list of excepted articles, materials, and supplies in FAR 25.108 (48 CFR 25.108).

§ 12.725 Solicitation provisions and contract clause.

(a) When quotations are obtained orally, vendors shall be informed that only domestic end products, other than end products excepted on a blanket or individual basis (see § 12.720), shall be acceptable, unless the price for an offered domestic end product is unreasonable (see § 12.715).

(b) The grantee awarding officer shall insert the clause at § 12.730, Buy American Act—Supplies, in solicitations for procurement contracts awarded under the grant or cooperative agreement for the purchase of supplies, or for services involving the furnishing of supplies, for use within the United States.

§ 12.730 Buy America Act—Supplies

As prescribed in § 12.725, insert the following clause:

Buy American Act—Supplies

(a) The Buy American Act (41 U.S.C. 10) provides that the Government give preference to domestic end products.

Components, as used in this clause, means those articles, materials, and supplies incorporated directly into the end products.

Domestic end product, as used in this clause, means an unmanufactured end product mined or produced in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the products referred to in paragraphs (b)(2) or (3) of this clause shall be treated as domestic.

End products, as used in this clause, means those articles, materials, and supplies to be acquired for public use under this contract.

(b) The contractor shall deliver only domestic end products, except those—

(1) For use outside the United States;

(2) That the Government determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality;

(3) For which the head of the grantee organization or a designee at a level no lower than the grantee's designated awarding official determines that domestic preference would be inconsistent with the public interest; or

(4) For which the head of the grantee organization or a designee at a level no lower than the grantee's designated awarding official determines the cost to be unreasonable (see § 12.715).

(End of clause)

Buy American Act—Construction Materials

§ 12.800 Scope.

This subpart implements the Buy American Act (41 U.S.C. 10). It applies to procurement contracts awarded under a grant or cooperative agreement for the construction, alteration, or repair of any public building or public work in the United States.

§ 12.805 Definitions.

Components, as used in this subpart, means those articles, materials, and supplies incorporated directly into construction materials.

Construction, as used in this subpart, means construction, alteration, or repair of any public building or public work in the United States.

Construction materials, as used in this subpart, means an article, material, and supply brought to the construction site for incorporation into the building or work.

Construction material also includes an item brought to the site pre-

assembled from articles, materials, and supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, which are discrete systems incorporated into a public building or work and which are produced as a complete system, shall be evaluated as a single and distinct construction material regardless of when or how the individual parts or components of such systems are delivered to the construction site.

Domestic construction material, as used in this section, means: (a) An unmanufactured construction material mined or produced in the United States, or (b) a construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. (In determining whether a construction material is domestic, only the construction material and its components shall be considered.) The cost of each component includes transportation costs to the place of incorporation into the construction material and any applicable duty (whether or not a duty-free entry certificate is issued). Components of foreign origin of the same class or kind for which determinations have been made in accordance with § 12.810(a)(3) are treated as domestic.

Foreign construction material, as used in this section, means as construction material other than a domestic construction material.

United States (see § 12.705).

§ 412.810 Policy.

(a) The Buy American Act requires that only domestic construction materials be used in construction in the United States, except when—

(1) The cost would be unreasonable as determined in accordance with § 12.815;

(2) The head of the grantee organization or a designee at a level no lower than the grantee's designated awarding official determines that use of a particular domestic construction material would be impracticable; or

(3) The head of the grantee organization or a designee at a level no lower than the grantee's designated awarding official determines the construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality (see § 12.720).

(b) When it is determined for any reasons stated in this section that certain foreign construction materials may be used, the excepted materials shall be listed in the agreement. Findings justifying the exception shall be available for public inspection.

§ 12.815 Evaluating offers.

(a) The restrictions of the Buy American Act do not apply when the head of the grantee organization or a designee at a level no lower than the grantee's designated awarding official determines that using a particular domestic construction material would unreasonably increase the cost or would be impracticable.

(b) When proposed awards are submitted to the head of the grantee organization or a designee at a level no lower than the grantee's designated awarding official for approval, each submission shall include a description of the materials, including unit and quantity, estimated costs, location of the construction project, name and address of the proposed contractor, and a detailed justification of the impracticability of using domestic materials.

§ 12.820 Violations.

Violation of the Buy American Act in the performance of a procurement construction contract under a grant or cooperative agreement is a cause for debarment. Information concerning a failure to comply with the clause at § 12.830, Buy American Act—Construction Materials, shall be promptly reported, investigated, and referred, when appropriate to the appropriate U.S. Department of the Interior employee responsible for administering the grant or cooperative agreement. (For debarment procedures, see subpart D of this part).

§ 12.825 Solicitation provision and contract clause.

The grantee awarding official shall insert the clause at § 12.830, Buy American Act—Construction Materials, in solicitations for procurement contracts awarded under a grant or cooperative agreement for construction inside the United States.

§ 12.830 Buy American Act—Construction materials.

As prescribed in § 12.825, insert the following clause in solicitations for procurement contracts awarded under a grant or cooperative agreement for construction inside the United States:

Buy American Act—Construction Materials

(a) The Buy American Act (41 U.S.C. 10) provides that the Government give preference to domestic construction material.

Components, used in this clause, means those articles, materials, and supplies incorporated directly into construction materials.

Construction material, as used in this clause, means an article, material, or supply brought to the construction site for incorporation into the building or work. Construction material also includes an item brought to the site pre-assembled from articles, materials or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, which are discrete systems incorporated into a public building or work and which are produced as a complete system, shall be evaluated as a single and distinct construction material regardless of when or how the individual parts or components of such systems are delivered to the construction site.

Domestic construction material, as used in this clause, means (a) an unmanufactured construction material mined or produced in the United States, or (b) a construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the construction materials determined to be unavailable pursuant to § 12.810(a)(3) of 43 CFR part 12, subpart E shall be treated as domestic.

(b) The contractor agrees that only domestic construction material will be used by the contractor, subcontractors, materialmen, and suppliers in the performance of this agreement, except for foreign construction materials, if any, listed in this agreement.

(End of clause)

[FR Doc. 94–17359 Filed 7–18–94; 8:45 am]

BILLING CODE 4310–RF–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 5b

RIN: 0925–AD31

Privacy Act; Exempt System

AGENCY: Office of the Secretary, HHS.

ACTION: Final rule.

SUMMARY: The Department of Health and Human Services (HHS) is exempting a proposed system of records, 09–37–0021, "Public Health Service Records Related to Investigations of Scientific Misconduct, HHS/OASH/ORI," from certain requirements of the Privacy Act to protect records compiled during investigations of scientific misconduct and other related decision records leading to the investigation and to protect the identity of confidential sources in such investigations.

EFFECTIVE DATE: August 18, 1994.

FOR FURTHER INFORMATION CONTACT:
Barbara Bullman, J.D. (301) 443–5300.

SUPPLEMENTARY INFORMATION: In 1989, the Public Health Service (PHS) established two offices, the Office of Scientific Integrity Review (OSIR) and the Office of Scientific Integrity (OSI), to address matters relating to scientific misconduct in the course of research funded by the Public Health Service (54 FR 11080, March 16, 1989). The OSIR and OSI were abolished recently and their functions transferred to the Office of Research Integrity (ORI) (57 FR 24262–3, June 8, 1992).

The records in the ORI contain information obtained prior to, during, and following investigations of scientific misconduct. The records are located in the ORI, in the PHS Agency Misconduct Program Officers' files and in PHS Agency senior intramural research managers' offices. The system also contains records that were transferred to ORI from the other offices which had primary responsibility for misconduct functions prior to ORI's establishment. The PHS is preparing to organize and operate these records as a "system of records" as defined by the Privacy Act. This system will be published so that the system becomes final on or after the date this rule becomes final.

Section 552a(k)(2) of the Privacy Act provides that an agency head may exempt a system of records from certain provisions of the Act, if the system of records contains investigatory material compiled for law enforcement purposes. If the records result in a denial of any right, privilege, or benefit to an individual, that individual would be entitled by Federal law to access the file, except for that information which would reveal a confidential source who was provided information under an express promise of confidentiality. Further, section 552a(k)(5) permits an agency to exempt a system of records which is comprised of investigatory material for use in determining suitability, eligibility, or qualifications for Federal civilian employment or financial assistance, but only to the extent that the exemption is required to prevent revealing a confidential source.

On June 12, 1992, the Secretary published a proposed rule in the **Federal Register** to exempt the ORI-related system of records from certain provisions of the Privacy Act (57 FR 25005). The comment period was open through July 13, 1992. Three responses were received that addressed the exemptions. The comments were from one institutional representative and two representatives of professional associations. PHS has also considered comments received from members of the PHS Advisory Committee on Scientific Integrity.

In general, these comments opposed withholding from the respondent the identity of individuals who provide information on allegations of misconduct under an express promise of confidentiality pursuant to exemptions (k)(5) and (k)(2). The comments indicated that the accused had a right to know the identity and source of the accusations and that this right outweighed the need to protect the identity of the individuals providing such information. In addition, one of the commenters believed that the subject of an investigation should have access to all the records in the file prior to a determination of misconduct.

After considering the comments, PHS believes that the exemptions are necessary to carry out its responsibilities effectively. It is essential to the credibility and effectiveness of the ORI that ORI be able to maintain the confidentiality of individuals providing information pertinent to scientific misconduct cases. In certain instances, sources of information necessary for a thorough investigation may be reluctant to provide sensitive information unless they can be assured that their identities will not be revealed. In addition, the exemptions are necessary to prevent premature disclosure of records which may impede the investigation. In practice, the respondent during the course of the investigation has an opportunity to be interviewed by ORI on matters related to the alleged or apparent incidents of research misconduct. The interviews are transcribed and a copy provided to the respondent. In addition, the respondent may have (1) Reasonable access to copies of any research data under review and (2) an opportunity to submit information and evidence and obtain a copy of the draft investigative report to comment on.

Other Federal agencies that conduct investigations into violations of law or regulations have established systems that are exempt from the access, amendment and certain other provisions permitted by the exemption provisions of the Privacy Act. PHS believes that the (k)(2) and (k)(5) exemptions are essential to assure that the investigative files will not be disclosed inappropriately. Except for information that would reveal the identity of a confidential source, the exemptions will not prohibit a respondent from having a reasonable opportunity of obtaining access to his or her file in those cases in which a finding of scientific misconduct has become final and an administrative action has been imposed.

There is no substantive difference between the proposed rule and the final rule. Accordingly, the Department is exempting this system under paragraphs (k)(2) and (k)(5) of the Privacy Act from the notification, access, correction, and amendment provisions of the Privacy Act (paragraphs (c)(3), (d), (e)(4) (G) and (H), and (f)). However, consideration will be given on a case-by-case basis to requests for access, notification, and corrections which are addressed to the system manager.

Impact Analyses

The Department has determined that the amendment to exempt a system of records from certain requirements of the Privacy Act is not a major rule within the meaning of Executive Order 12291 and it will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act. The rule affects only a small number of research grants funded by the PHS as compared to the total number awarded annually. Finally, this rule does not impose any new information collection requirement under the Paperwork Reduction Act.

List of Subjects in 45 CFR Part 5b

Privacy.

For the reasons set out in the preamble, title 45, part 5b is amended as set forth below:

Dated: June 30, 1994.
Philip R. Lee,
Assistant Secretary for Health.
Approved: July 5, 1994.
Donna E. Shalala,
Secretary, Health and Human Services.

PART 5b—PRIVACY ACT REGULATIONS

1. The authority citation for part 5b is unchanged and reads as follows:

Authority: 5 U.S.C. 301, 5 U.S.C. 552a.

2. In part 5b, § 5b.11 is amended by adding paragraph (b)(2)(vii) as follows:

§ 5b.11 Exempt systems.

* * * * *

(b) * * *

(2) * * *

(vii) Pursuant to subsections (k)(2) and (k)(5) of the Act:

Public Health Service Records Related to Investigations of Scientific Misconduct, HHS/OASH/ORI.

[FR Doc. 94–17482 Filed 7–18–94; 8:45 am]
BILLING CODE 4160–17–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 14

RIN 1018–AB22

Humane and Healthful Transport of Wild Mammals and Birds to the United States

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service issues a technical amendment to regulations published on June 17, 1992, pertaining to the humane and healthful transport of wild mammals and birds to the United States. This technical amendment updates the edition of the Live Animals Regulations (LAR) published by the International Air Transport Association (IATA), that is incorporated by reference. This action to incorporate by reference the 20th edition of the International Air Transport Association Live Animals Regulations is for the convenience of the public and in order to facilitate consistency and enforceability.

EFFECTIVE DATE: This final rule is effective on July 19, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Marshall P. Jones, Chief, Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Dr., Room 432, Arlington, VA 22203, telephone (703) 358–2093.

SUPPLEMENTARY INFORMATION: On June 17, 1992, the U.S. Fish and Wildlife Service (Service) published a final rule (57 FR 27094) amending regulations pertaining to the humane and healthful transport of wild mammals and birds to the United States. That rule became effective September 15, 1992. That rule, 50 CFR part 14, Subpart J, incorporates by reference the 18th edition of the LAR of the IATA, such that all primary enclosures used to transport live wild mammals or birds to the United States are required to comply with the Container Requirements of the 18th LAR. Since the publication of the final rule, IATA has published the 20th edition of the LAR, effective October 1, 1993. The 20th LAR contains no major substantive differences from the 18th LAR, but does clarify some of the Container Requirements. When the public orders the LAR from IATA, they can only obtain the 20th edition. If the public complies with the 20th LAR, they will satisfy all of the requirements of the final rule for the Humane and Healthful Transport of Wild Mammals and Birds (50 CFR Part 14). This final rule to incorporate by reference the 20th edition of the LAR is therefore for the convenience of the public and in order to facilitate consistency and enforceability. On March 17, 1994, the Service published in the **Federal Register** (59 FR 12578) a proposed rule to implement this technical amendment to the IATA regulations. The Service received no comments on this proposed rule. The 20th edition of the LAR is the only edition of the LAR that is currently available to the public. Therefore, the Service has determined that this final rule can be effective upon publication in the **Federal Register.**

Executive Orders 12866, 12612, and 12630 and the Regulatory Flexibility Act

The Department has determined that the revision to 50 CFR Part 14 has not been reviewed by the Office of Management and Budget under Executive Order 12866. This final rule is a technical amendment that allows the regulation to conform with the current edition of a publication that has been incorporated by reference, which will make compliance and enforcement more practical and efficient. Also, this current action is not expected to have significant taking implications, as per Executive Order 12630, since compliance with the revised regulations will have neither greater nor lesser effect on constitutionally protected individual property rights. This revision to Part 14 does not have a significant economic effect on a substantial number of small entities as described by the Regulatory Flexibility Act. Small entities are already required to comply with the current regulations and the 18th edition of the IATA Live Animals Regulations. It is expected that the revisions would reduce the burden on small entities by adopting the current edition of the industry guidelines rather than imposing a requirement for an outdated version. Since the rule applies to importations of live wildlife into the United States, it does not contain any Federalism impacts as described in Executive Order 12612.

Author

The author of this final rule is Mark Phillips, Office of Management Authority, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/358–2093).

List of Subjects in 50 CFR Part 14

Exports, Imports, Incorporation by reference, Labeling, Reporting requirements, Transportation, and wildlife.

Final Regulation Promulgation

Accordingly, part 14 of Chapter I of Title 50 of the Code of Federal Regulations is amended as follows:

PART 14—[AMENDED]

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

Authority: 18 U.S.C. 42(c); 16 U.S.C. 3371–3378; 16 U.S.C. 1538 (d)–(f), 1540(f); 16 U.S.C. 1382; 16 U.S.C. 705, 712; 31 U.S.C. 483(a).

2. Section 14.106 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 14.106 Primary enclosures.

* * * * *

(a) The Container Requirements of the Live Animal Regulations (LAR), 20th edition, October 1, 1993, published by the International Air Transport Association (IATA) shall be complied with by all parties transporting wild mammals or birds to the United States. * * *

* * * * * *

Dated: June 30, 1994.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 94–17505 Filed 7–18–94; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 931235–4107; I.D. 071194A]

Pacific Halibut Fisheries

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

ACTION: Notice of inseason action.

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

EFFECTIVE DATE: June 27, 1994.

FOR FURTHER INFORMATION CONTACT: Steven Pennoyer, telephone 907-586-7221; Gary Smith, telephone 206-526-

6140; or Donald McCaughran, telephone 206-634-1838.

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

Inseason Action

1994 Halibut Landing Report No. 8

Area 4C Closes on June 30

The IPHC estimates that the 700,000 lb (317.5 mt) catch limit for Area 4C, the waters surrounding the Pribilof Islands, will be obtained by June 30. Area 4C will be closed to halibut fishing at 12:00 noon Alaska Daylight Time on that date until further notice.

Area 4B Commercial Fishery

Landings through June 25 from Area 4B total nearly 100,000 lb (45.4 mt). Vessel operators intending to fish in this area are reminded that the vessel clearances required prior to fishing, and prior to unloading and/or departing from Area 4B, can only be obtained at Nazan Bay on Atka Island. A 10,000 lb (4.5 mt) fishing period limit will apply to each 12-hour fishing period in Area 4B. After 15 percent (315,000 lb (142.9 mt)) of the Area 4B catch limit has been taken, the area will be closed until August 15, when it will reopen for a 96-hour fishing period without fishing period limits.

Dated: July 12, 1994.

David S. Crestin,

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

[FR Doc. 94-17434 Filed 7-18-94; 8:45 am]

BILLING CODE 3510-22-F

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50 CFR Part 625

[Docket No. 940241-4155; I.D. 062294B]

Summer Flounder Fishery

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

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule published on Friday, June 3, 1994 (59 FR 28809), that amended the regulations implementing the Fishery Management Plan for the Summer Flounder Fishery.

EFFECTIVE DATE: July 18, 1994.

FOR FURTHER INFORMATION CONTACT: Hannah Goodale, Fishery Policy Analyst, 508-281-9101.

Correction of Publication

Accordingly, the publication on June 3, 1994, of the final rule [I.D. 013194A], which was the subject of FR Doc. 94-13518, is corrected as follows:

§ 625.8 [Corrected]

1. On page 28810, in the first column, amendatory instruction "2." the designation "(c)(9)" is corrected to read "(c)(11)."

2. On page 28810, in the first column, § 625.8, under paragraph (c)(9), the paragraph designation "(9)" is corrected to read "(11)".

Dated: July 13, 1994.

Charles Karnella,

Acting Program Management Officer, National Marine Fisheries Service.

[FR Doc. 94-17514 Filed 7-18-94; 8:45 am]

BILLING CODE 3510-22-W

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50 CFR Part 650

[Docket No. 940798-4198; I.D. 061094A]

RIN 0648-AG83

Atlantic Sea Scallop Fishery

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement measures contained in Framework Adjustment 1 to the Atlantic Sea Scallop Fishery Management Plan (FMP). This framework adjustment temporarily adjusts the maximum crew limit, redesignates the fishing year for sea scallops to begin on March 1 each year, and refines existing gear requirements.

EFFECTIVE DATE: August 17, 1994.

ADDRESSES: Copies of Amendment 4, its regulatory impact review, initial regulatory flexibility analysis, the final supplemental environmental impact statement, and the supporting documents for Framework Adjustment 1 are available from Douglas Marshall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01906-1097, telephone 617-565-8937

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

SUPPLEMENTARY INFORMATION:

Background

The final rule for Amendment 4 to the FMP was published on January 19, 1994 (59 FR 2757), with implementation for most measures on March 1, 1994, including a call-in notification system for the days-at-sea (DAS) program. The amendment retained the FMP's objectives to: (1) Restore adult stock abundance and age distribution; (2) increase yield per recruit for each stock; (3) evaluate plan research, development and enforcement costs; and (4) minimize adverse environmental impacts on sea scallops.

Amendment 4 changed the primary management strategy from a meat count (size) control to effort control. The amendment controls total fishing effort through limited-access permits and a schedule of reductions in allowable DAS. Supplemental measures limit increases in vessel fishing power to control the amount of fishing pressure and to help control the size of scallops landed, gear restrictions, and limits on the number of crew members. Additionally, the amendment includes a framework procedure for adjusting the management measures in the FMP.

Framework Adjustment 1 temporarily adjusts the maximum crew limit, redesignates the fishing year to begin on March 1, and refines existing gear requirements.

NMFS is adjusting the regulations under the framework abbreviated rulemaking procedure established by Amendment 4 and contained in 50 CFR part 650 subpart C. This procedure requires the New England Fishery Management Council (Council), when considering specifically allowed adjustments to the FMP, to develop and analyze the actions over the span of at least two Council meetings. The Council must provide the public with advance notice of both the proposals and the analysis and with the opportunity to comment on them prior to and at the second Council meeting. Upon review of the analysis and public comment, the Council may recommend to the Director, Northeast Region, NMFS (Regional Director), that the measures be published as a final rule if certain conditions are met. The Regional Director may publish the measures as a

final rule, or as a proposed rule, if additional public comment is needed.

In accordance with the regulations, public comments on the framework adjustment were taken by the Council during its February 16, 1994 (59 FR 6949), and March 17, 1994 (59 FR 12265), meetings. Seven members of the industry commented at these meetings. The comments were generally in support of the recommended adjustment. Seven written responses were received, mostly offering negative commentary. The Council voted to approve Framework Adjustment 1 on March 17, 1994.

The Council also held a joint sea scallop industry advisor and Plan Development Team (PDT) meeting on March 21, 1994. The industry discussed wide-area closures to protect small scallops and, after listening to PDT members express concern over the ability to identify distinct areas of small scallops to close, decided not to recommend closures. The general consensus at the meeting was to let the new regulations go into effect, along with the seven-member crew limit proposed in Framework Adjustment 1.

Measure 1—Protection of Small Scallops

In response to very high levels of recruitment that have been documented in the Mid-Atlantic resource area (Regional Director's Status Report, January 1994), the Council recommended measures to reduce the maximum crew limit and to ensure the adequate escapement of small scallops from dredge gear.

The expected impact of the proposed seven-member crew limit was analyzed in Amendment 4. There are two possible ways for vessel operators to respond to reduced crew limits. They can try to fish for larger scallops, and if catches are sufficient, land as much weight of scallop meat as with a crew of nine; or they can continue catching and processing fewer small scallops; or a combination of both. Either response effectively reduces the number of scallops harvested by a vessel per day at sea. For example, in the analysis done for this framework adjustment, it is estimated that a crew of seven can shuck and process 900 lb (408.2 kg) (meat weight) of scallops per day at sea, at an average of 45 meats per lb (45 meats per 0.453 kg). A crew of nine, however, would be capable of shucking 1,500 lb (680.4 kg). Under ideal conditions, this impact would translate into a 40 percent reduction in fishing mortality.

Measure 2—Effort Reduction Schedule

Amendment 4 relies largely on annual incremental reductions in fishing effort to reduce fishing mortality. However, because Amendment 4 was based on a calendar year and was not implemented until March 1, 1994, the DAS allocations for 1994 would be allocated over a 10-month period instead of a 12-month period; therefore, there probably would have been no reduction in fishing effort for Atlantic sea scallops until 1995. Forestalling effort reduction in the first year may impose larger economic burdens on the fishing industry in later years if adjustments become necessary to make up these shortcomings.

This final rule will implement an adjustment to the effort-reduction program so that each allocation of DAS is done on a 365-day program year beginning with the first year of the plan. A given fishing year will begin March 1 and end on the last day of February of the following year.

Measure 3—Changes to the Gear Restriction Requirements

The Council has also included gear-restriction measures that: (1) Allow vessels to carry one spare dredge or net so that they would not be forced to return to port to make major dredge repairs, (2) define a legal scallop dredge to enhance the likelihood that ring-size restrictions will reduce harvest of smaller scallops, and (3) allow the use of triple links and broken links in the scallop dredge to accommodate practical considerations concerning the use of scallop dredges.

Comments and Responses

The Council received comments on Framework Adjustment 1 from two fishing industry associations and five individuals. Specific comments are discussed and responded to below.

The Council held a joint sea scallop industry advisor and PDT meeting on March 21, 1994. These comments are also summarized as follows.

Seven-Person Crew Limit

Comment: Limiting the crew to seven is unsafe, particularly in the winter. Some skippers will overwork their crews and the resulting fatigue will cause accidents.

Response: The analysis included in the Council's framework package suggests that, based on available Coast Guard data for the scallop fishery, there is no relationship between the size of the crew and accidents aboard scallop vessels. Fishermen have publicly stated that most New Bedford scallop boats carried less than seven crew members in the winter of 1993–1994 simply because scallop stocks were low. Fishermen also stated, and NMFS concurs, that there is nothing inherently dangerous about using a seven-person crew and that safety ultimately depends upon on-board safety practices rather than crew size. The seven-crew limit will be implemented only through December 1994, with the option of extending or modifying that limit through another frameworking action.

Comment: The Coast Guard will have trouble enforcing the seven-person crew limit.

Response: Enforcing a seven-member crew limit is no different than enforcing the nine-member crew limit considered and approved under Amendment 4. A Coast Guard representative informed the Scallop Committee that the Coast Guard is experienced in procedures for inspecting space used to conceal contraband goods aboard vessels and therefore will be able to detect attempts to hide crew.

Comment: No changes should be made until the provisions of Amendment 4 are allowed to work for a reasonable period.

Response: In its discussion before the final vote to submit Amendment 4, and by including the framework adjustment process, the Council explicitly recognized the possible need for immediate adjustments to protect small scallops once the meat count regulations were eliminated. Initial reports and data since approval of Amendment 4 indicate that small scallops are being taken in significant quantities. The reduction in the crew limit is the type of action the Council anticipated. NMFS approved the plan, contingent on the Council's intention to make such adjustments, if needed.

Comment: Freezing scallops at sea should be prohibited. It encourages the harvesting of small scallops because frozen scallops can be landed with counts ranging from 50 to 100.

Response: Amendment 4 does not include controls on the size of scallops landed, frozen or otherwise. Therefore, freezing at sea does not offer any advantage to vessel operations that would encourage the harvesting of small scallops. Frozen-at-sea scallops, if properly processed, provide some of the highest quality products made from Atlantic sea scallops.

Comment: NMFS should be looking to increase the number of jobs. As boats are retired from the fishery, those who have suffered because of the failed meat count plan should be able to increase the size of their crews when the resource improves.

Response: The proposed actions are part of a group of measures designed to

eliminate overfishing over the long term. A healthy scallop resource will provide the greatest overall opportunity for employment. Also, this action will implement the crew-limit reduction only through December 1994. The Council may recommend adjustments to the crew-limit measure as necessary under the framework procedures implemented under Amendment 4.

Comment: A crew limit of seven is not needed because both production and price fall off dramatically once vessels try to harvest scallops as small as 50-count.

Response: Scallop industry advisors have informed the Council that more protection for small scallops is needed and that carrying nine crew members would allow some vessels to exploit concentrations of small scallops to a greater extent than if they were limited to seven crew members. Reduction in crew size, working in tandem with market forces, can only expedite conservation of small scallops.

Comment: A closing of the fishery is warranted, for 3, 6, 9 months, or whatever it takes to allow juvenile scallops to reach the size needed for a sustainable resource.

Response: The Council cannot implement area closures under the framework adjustment process using abbreviated rulemaking at this time and, therefore, this type of measure would inherently take longer to implement. Scientists, moreover, have expressed concern over the ability to identify distinct areas of small scallops to close because most areas are dominated by small scallops. Also, the Council and NMFS have determined that the type of measures currently included in Amendment 4 have the potential to eliminate overfishing for scallops and should be given a chance to work before major changes are made.

Full-Year Implementation

Comment: The licensing process will not be synchronized with the calendar year permitting system.

Response: These administrative considerations are outweighed by the need to begin the effort-reduction program as soon as possible. The economic viability of the industry in the second year of the program depends, in part, on achieving improvements in yield-per-recruit through effort reductions in the first year. Such first year effort-reduction benefits would be dissipated if the reduction measures are not changed to a non-calendar year basis. Any need to make adjustments to the licensing system to address administrative problems can be made in the future. Having the permitting process on a different time schedule than the licensing process does not interfere in any significant way with the administration or objectives of Amendment 4.

Scallop Ring Linkage

Comment: Scallopers should be able to use triple linking in the bottom of the dredge to minimize the need for repairs and because there is little or no escapement through the bottom of the dredge.

Response: The measure to prohibit triple links in the dredge has been modified through this framework adjustment to allow triple linking in the bottom of the dredge.

Classification

This regulation is not subject to the requirements to prepare a proposed rule because adequate opportunity was provided for prior public comment when the action was proposed and discussed over the course of several Council meetings. Because no proposed rule was required, this action is exempt from the procedures of the Regulatory Flexibility Act.

This final rule is exempt from review under E.O. 12866.

The Assistant Administrator for Fisheries, NOAA finds there is good cause to waive prior notice under 5 U.S.C. 553(b)(B). Public meetings held by the Council to discuss the management measures implemented by this rule provided adequate opportunity for public comment to be considered. Thus, additional opportunity for public comment is unnecessary.

List of Subjects in 50 CFR Part 650

Fisheries, Reporting and recordkeeping requirements.

Dated: July 13, 1994.

Charles Karnella,

Acting Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 650 is amended as follows:

PART 650—ATLANTIC SEA SCALLOP FISHERY

1. The authority citation for part 650 continues to read as follows:

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

2. Section 650.2 is amended by adding definitions for "dredge bottom," "fishing year," and "link," in alphabetical order to read as follows:

§ 650.2 Definitions.

* * * * *

Dredge bottom means the rings and links found between the bail of the dredge and the club stick which, when fishing, would be in contact with the sea bed. This definition includes the triangular shaped portions of the ring bag commonly known as "diamonds."

* * * * *

Fishing year means the 12-month period beginning March 1 and extending through the end of February of the following year.

* * * * *

Link means the material, usually made of a 3/8-inch (10-mm) or 7/16-inch (11-mm) diameter metal rod, which joins two adjacent rings within the ring bag of a dredge.

* * * * *

3. Section 650.9 is amended by revising paragraphs (b)(8), (b)(11), (b)(14), (b)(15), (b)(16), (c)(2), (c)(5), and (c)(6) to read as follows:

§ 650.9 Prohibitions.

* * * * *

(b) * * *

(8) Possess more than 40 lb (18.14 kg) of shucked scallops or 5 U.S. bushels (176.2 L) of in-shell scallops while in possession of, or participate in the DAS allocation program with, trawl nets that have a maximum sweep exceeding 144 ft (43.9 m), as measured by the total length of the footrope that is directly attached to the webbing of the net, except as specified in § 650.21(a)(2)(iii).

* * * * *

(11) Possess more than 40 lb (18.14 kg) of shucked scallops or 5 U.S. bushels (176.2 L) of in-shell scallops while in possession of, or participate in the DAS allocation program with, dredge gear that has a maximum combined dredge width exceeding 31 feet (9.4 m), measured at the widest point in the bail of each dredge, except as specified in § 650.21(b)(1).

* * * * *

(14) Possess more than 40 lb (18.14 kg) of shucked scallops or 5 U.S. bushels (176.2 L) of in-shell scallops while in possession of, or participate in the DAS allocation program with, dredge gear that uses links between rings of the gear or ring configurations that do not conform to the specifications described in § 650.21(b)(4)(ii).

(15) Possess more than 40 lb (18.14 kg) of shucked scallops or 5 U.S. bushels (176.2 L) of in-shell scallops while in possession of, or participate in the DAS allocation program with, dredge gear that uses cookies or chafing gear, or other gear, means, or devices on the top half of a dredge that obstruct the openings in or between the rings, except as specified in § 650.21(b)(4).

(16) Participate in the DAS allocation program with more than the number of

persons specified in § 650.21(c), including the operator, on board when the vessel is not docked or moored in port, unless otherwise authorized by the Regional Director.

* * * * *

(c) * * *

(2) Possess more than 40 lb (18.14 kg) of shucked scallops or 5 U.S. bushels (176.2 L) of in-shell scallops while in possession of, or fish for scallops with, dredge gear that has a maximum combined dredge width exceeding 31 ft (9.4 m), measured at the widest point in the bail of each dredge, except as specified in § 650.21(b)(1).

* * * * *

(5) Possess more than 40 pounds (18.14 kg) of shucked scallops or 5 U.S. bushels (176.2 L) of in-shell scallops while in possession of, or fish for scallops with, dredge gear that uses links between rings of the gear or ring configurations that do not conform to the specifications described in § 650.21(b)(4)(ii).

(6) Possess more than 40 lb (18.14 kg) of shucked scallops or 5 U.S. bushels (176.2 L) of in-shell scallops while in possession of, or fish for scallops with, dredge gear that uses cookies or chafing gear, or other gear, means, or devices on the top half of a dredge that obstruct the openings in or between the rings, except as specified in § 650.21(b)(4).

* * * * *

4. Section 650.21 is amended by revising paragraphs (a)(1), (b)(1), (b)(4)(ii), (b)(4)(iii), and (c) to read as follows:

§ 650.21 Gear and crew restrictions.

(a) * * *

(1) *Maximum sweep.* The trawl sweep of nets in use by or available for immediate use, as specified in paragraph (a)(2)(iii) of this section, shall not exceed 144 ft (43.9 m) as measured by the total length of the footrope that is directly attached to the webbing of the net.

* * * * *

(b) * * *

(1) *Maximum dredge width.* The combined dredge width in use by or in possession on board such vessels shall not exceed 31 ft (9.4 m) measured at the widest point in the bail of the dredge, except as provided under paragraph (e) of this section. However, component parts may be onboard the vessel such that they do not conform with the definition of "dredge or dredge gear" in § 650.2, i.e., the metal ring bag and the mouth frame, or bail, of the dredge are not attached, and such that no more than one complete spare dredge could be made from these component parts.

* * * * *

(4) * * *

(ii) *Link restrictions.* No more than double links between rings shall be used in or on all parts of the dredge bag except the dredge bottom. No more than triple linking shall be used in or on the dredge bottom portion and the diamonds. Damaged links which are connected to only one ring, i.e., "hangers", are allowed unless they occur between two links that both couple the same two rings (see Figure 1 to part 650). Dredge rings may not be attached via links to more than four adjacent rings. Thus, dredge rings will be rigged in a configuration such that, when a series of adjacent rings are held horizontally, the neighboring rings form a pattern of horizontal rows and vertical columns (see Figure 1 to part 650).

(iii) *Dredge or net obstructions.* No material, device, net, dredge, ring, or link configuration or design shall be used if it results in obstructing the release of scallops that would have passed through a legal sized and configured net and dredge as, described in this part, that did not have in use any such material, device, net, dredge, ring link configuration or design.

* * * * *

(c) *Crew restrictions.* Limited-access vessels participating in or subject to the scallop DAS allocation program may have no more than seven people on board when not docked or moored in port through December 31, 1994, and nine people on board when not docked or moored in port thereafter, including the operator, unless participating in the small dredge program specified in paragraph (e) of this section, or otherwise authorized by the Regional Director.

* * * * *

5. Section 650.24 is amended by revising paragraph (c)(1) as follows:

§ 650.24 Days-at-sea (DAS) allocations.

* * * * *

(c) * * *

(1) *Annual DAS allocations.* The annual allocations of DAS for each category of vessel specified in paragraph (a) of this section shall be based on fishing years described as follows:

DAS category	1994–95	1995–96 and 1996–97	1997–98	1998–99 and 1999–2000	2000+
Full-time	204	182	164	142	120
Part-time	91	82	66	57	48
Occasional	18	16	14	12	10

Each fishing year shall begin on March 1 and extend 12 months through the last day of February of the following year.

* * * * *

6. Figure 1 is added to the end of part 650 as follows:

BILLING CODE 3510-22-P

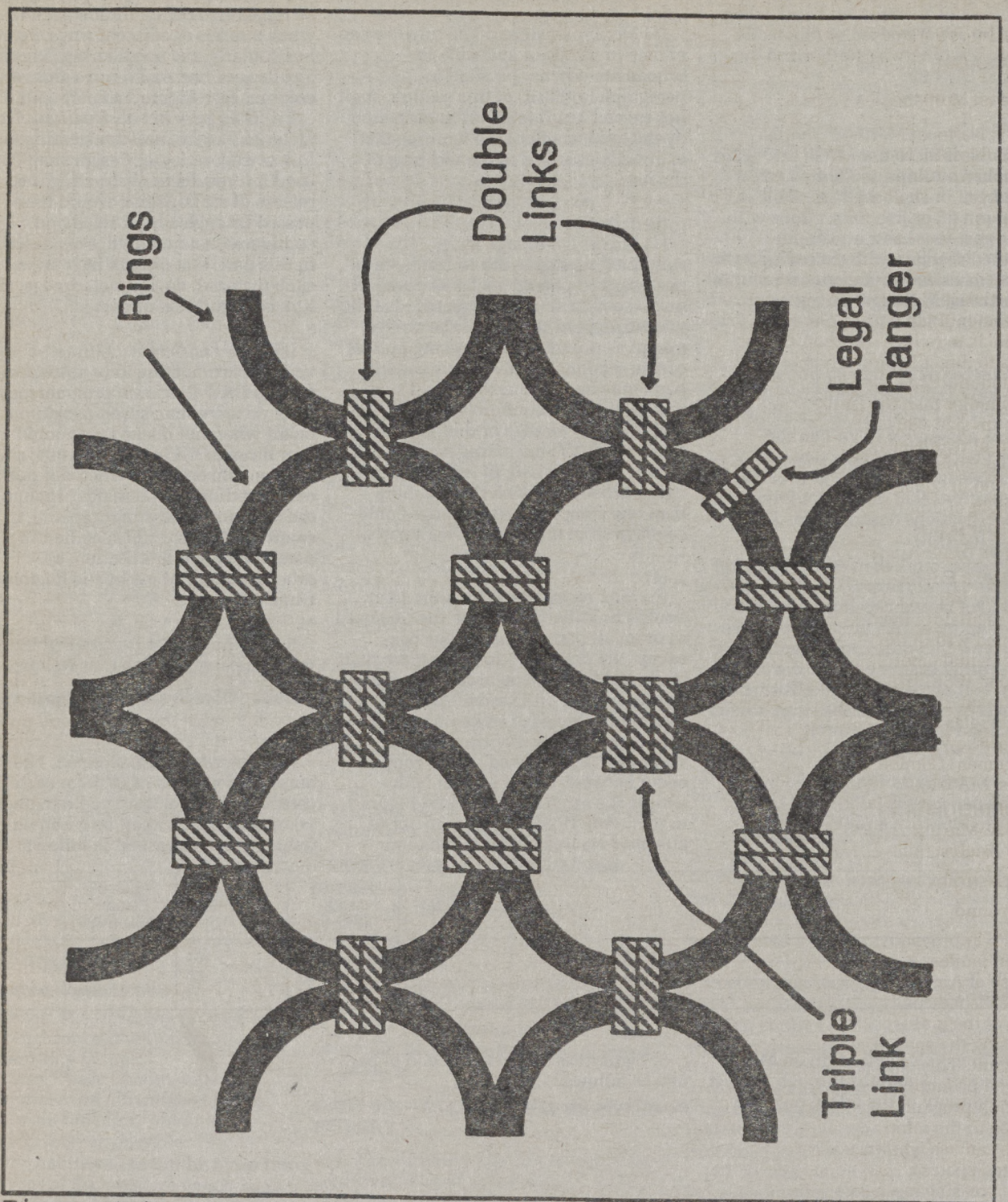

Figure 1 to Part 650-Schematic example of a legal dredge ring pattern. A triple link is shown that is legal only in the dredge bottom. A legal broken link (i.e. hanger) is also shown. Not drawn to scale.

[FR Doc. 94–17515 Filed 7–18–94; 8:45 am]
BILLING CODE 3510–22–C

50 CFR Part 651

[Docket No. 940796-4196; I.D. 061094B]

RIN 0648-AG84

Northeast Multispecies Fishery

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Framework Adjustment 3 to the Northeast Multispecies Fishery Management Plan (FMP). The intent of this rule is to reduce the potential for vessels to direct fishing effort on regulated multispecies finfish with mesh smaller than the regulated minimum size. This rule limits the amount of regulated species allowed on board vessels fishing with small mesh to either 500 lb (226.8 kg) or 10 percent of the weight of non-regulated species, whichever is less.

EFFECTIVE DATE: August 17, 1994.

ADDRESSES: Copies of Amendment 5, its regulatory impact review (RIR) and the initial regulatory flexibility analysis contained within the RIR, its final supplemental environmental impact statement (FSEIS), and Framework Adjustment 3 are available upon request from Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906-1097.

FOR FURTHER INFORMATION CONTACT: Susan A. Murphy, NMFS, Fishery Policy Analyst, 508-281-9252.

SUPPLEMENTARY INFORMATION:

Background

NMFS approved Amendment 5 to the FMP on January 3, 1994. The primary purpose of Amendment 5 is to eliminate the overfished condition of the primary stocks of the multispecies complex by increasing the spawning stock biomass per recruit. This objective is to be achieved primarily through an effort reduction program supplemented by an increase in the minimum mesh size that vessels can use while fishing for regulated species.

By increasing mesh size, fishing mortality rates on fully recruited ages would not have to be reduced as much to achieve the same increase in spawning stock biomass per recruit. Therefore, under Amendment 5, vessels fishing for non-regulated species and using nets with mesh smaller than the regulated minimum size were limited to 500 lb (226.8 kg) of regulated species. The intent of this limited allowance was to enable legitimate small-mesh fisheries to continue without compromising efforts to conserve regulated species through the mesh-size increase.

NMFS implemented minimum mesh size increases, regulated mesh areas, and the 500-lb (226.8-kg) possession limit of regulated species that applies to fishing vessels fishing with small mesh included in Amendment 5 on March 1, 1994 (59 FR 9872). The New England Fishery Management Council (Council) developed Framework Adjustment 3 in response to industry concerns that, under current stock conditions, the 500-lb (226.8-kg) possession limit is sufficient incentive for vessel operators to target regulated species with small-mesh nets. When the Council began development of Amendment 5, a 500-lb (226.8-kg) possession limit was considered too low to encourage targeting. Since then, the stocks have further deteriorated and, as a result, catch rates are reduced to the point where 500 lb (226.8 kg) is viewed as an opportunity to catch what many vessel operators now consider a reasonable day's catch in less time, using small mesh. Therefore, instead of directing their effort during times and in areas where small-mesh species are traditionally caught with a relatively small (less than 10 percent) bycatch of regulated species, these vessels could target areas where regulated species have historically been caught, with a potentially far greater impact on those stocks.

The Council's and NMFS' intent is to prevent vessels from targeting regulated species with small-mesh nets, consistent with the explicit objectives of Amendment 5. From the time Amendment 5 was approved in January 1994, fishermen and their association representatives have described to the Council how vessels are gearing up to target regulated species with small-mesh nets under the 500-lb (226.8-kg) possession limit. The purpose of this framework adjustment is to preserve the continuation of legitimate small mesh fisheries, with limited incidental catches of regulated species, while preventing a directed small-mesh fishery for regulated species under the 500-lb (226.8-kg) possession limit. Restricting the amount of regulated species a vessel may retain on board, or land per trip, while fishing with small mesh nets, unless the vessel is fishing under the net stowage exemption specified under § 651.20(c)(3)(i) or (d)(3)(ii), to 10 percent of the weight of non-regulated species, to a maximum of 500 lb (226.8 kg), will not impose any significant restrictions on existing small-mesh fisheries, but will create a disincentive for vessels to begin targeting regulated species with small mesh. Therefore, this framework action preserves the Council's intent by: (1) Discouraging this practice, (2) allowing a reasonable bycatch in legitimate small-mesh fisheries, and (3) allowing a 500-lb (226.8-kg) trip limit for vessels targeting regulated species using nets with the regulated minimum mesh size.

In this rule, NMFS is also adding language to the small-mesh provisions for the Mid-Atlantic area and the Southern New England area to clarify that small mesh may not be used to harvest more than the possession limit of regulated species.

NMFS is amending the multispecies regulations following the framework abbreviated rulemaking procedure established by Amendment 5 and codified at 50 CFR part 651, subpart C. The Council followed the procedure required in 50 CFR part 651 when making specifically allowed adjustments to the FMP, by developing and analyzing the actions over the span of a minimum of two Council meetings on March 17, and April 7, 1994. The Council provided the public with advance notice of both the proposal and the analysis, and an opportunity to comment on them prior to and at the second Council meeting on April 7. Upon review of the analysis and public comment, the Council recommended to the Director, Northeast Region, NMFS (Regional Director), that the measures contained in Framework 3 be published as a final rule. The Regional Director has further determined that the measures in Framework 3 are appropriate to publish as a final rule.

Since the Council undertook development of Amendment 5, the condition of several stocks of regulated species has deteriorated further. In fact, each new assessment of multispecies stocks underlines the urgency of implementing rigorous and effective management measures. The framework adjustment that this rule implements will enhance the conservation impact of the FMP without generating a significant economic or social impact.

Comments and Responses

During the period following the approval of Amendment 5 and preceding the Council's formal initiation of this framework adjustment, a number of industry members and interested members of the public commented on the problems with the current possession limit rule for regulated species. All comments were in support of the Council expeditiously making the adjustment contained in this

rule. During this pre-framework period, two individuals submitted written comments alerting the Council to the problem and urging it to take appropriate action.

During the comment period spanning the two required Council meetings, the Council received written comments from the West End Fishermen's Association and one individual. Oral comments were made to the Council by representatives of the Conservation Law Foundation, Mid-Atlantic Fisheries Management Council, Point Judith Fishermen's Co-operative Association, Offshore Mariner's Association, Gloucester Fisheries Commission, and two individuals.

After the Council submitted its recommendations to NMFS, NMFS received additional written comments from the New Hampshire Commercial Fishermen's Association and 37 individuals.

Comment: During the period in which the Council was developing the framework recommendation, four associations and one individual stated support for the proposed adjustment. After the Council submitted its recommendation, one association submitted comments to NMFS, also in support.

Response: The comments have been noted and the adjustment has been approved.

Comment: Two associations questioned whether the rule is a "possession limit," enforced at sea, or a "trip limit," enforced at the dock at the end of the trip.

Response: The 500-lb (226.8-kg) possession limit and the 10 percent limit of regulated species when using small mesh will be enforced at sea and at the dock. However, the Coast Guard acknowledged the difficulty in enforcing the percentage of the total catch at sea and indicated that discretion will have to be used by the boarding official when evaluating the catch for regulated versus non-regulated species.

Comment: During the period in which the Council was developing the framework recommendation, three individuals opposed adding the percentage aspect of the rule. After the Council submitted its recommendation, 37 individuals submitted comments to NMFS also opposing adding the percentage aspect of the rule. They maintained that a straight 500-lb (226.8-kg) limit would enable small vessels to survive economically and would not force these boats to search for and catch non-regulated species in order to keep the limit of regulated species, or to discard regulated species if the non-regulated species could not be caught or landed. It was stated that a directed fishery on regulated species with small mesh is only perceived as a problem and is not substantiated. Further, it was maintained that there has been sufficient time for public comment throughout the development of Amendment 5 and that the 500-lb (226.8-kg) provision should be given a chance to work.

Response: Based on Council findings and other public comments, the potential of a directed small-mesh fishery on regulated species is strong. This potential was not as evident at the time Amendment 5 was approved. In adopting the original possession limit in Amendment 5, the Council did not intend to allow directed small-mesh effort on regulated species. Given the severely depleted state of the primary regulated species, NMFS has determined that it must support the Council's framework recommendation as a necessary, risk averse measure. Nevertheless, the new possession limit measure will still allow vessels fishing with small mesh to continue with a minimum allowance for incidentally caught regulated species. Accordingly, there should be no negative impact on traditional small-mesh fisheries.

Classification

This regulation is not subject to the requirements to prepare a proposed rule because adequate opportunity was provided for prior public comment when the action was proposed and discussed over the course of two Council meetings. Because no proposed rule was required, this action is exempt from the procedures of the Regulatory Flexibility Act.

This final rule is exempt from review under E.O. 12866.

The Assistant Administrator for Fisheries, NOAA, finds there is good cause to waive prior notice under 5 U.S.C. 553(b)(B). Public meetings held by the Council to discuss the management measures implemented by this rule provided adequate opportunity for public comment to be considered. Thus, additional opportunity for public comment is unnecessary.

List of Subjects in 50 CFR Part 651

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 12, 1994.

Charles Karnella,

Acting Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 651 is amended as follows:

PART 651—NORTHEAST MULTISPECIES FISHERY

1. The authority citation for part 651 continues to read as follows:

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

2. Section 651.9 is amended by revising paragraphs (b)(1), (d), and (e)(2) introductory text to read as follows:

§ 651.9 Prohibitions.

* * * * *

(b) * * *

(1) Possess at any time during a trip, or land per trip, more than the possession limit of regulated species per trip as specified in § 651.27(a), after accruing the vessel's annual DAS allocation or when not participating under the DAS program pursuant to § 651.22.

* * * * *

(d) In addition to the prohibitions specified in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel issued a possession-limit-only permit under § 651.4(c) to possess at any time during a trip, or land per trip, more than the possession limit of regulated species as specified in § 651.27(a).

(e) * * *

(2) Possess at any time during a trip, or land per trip, more than the possession limit of regulated species as specified in § 651.27(a) unless:

* * * * *

3. Section 651.20 is amended by revising paragraphs (a)(3)(i), (a)(4)(i)(A), (c)(3)(i), (c)(3)(ii), (d)(3)(i), (d)(3)(ii), (e)(1)(iv), and (f)(4) to read as follows:

§ 651.20 Regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(a) * * *

(3) * * *

(i) *Possession limit exemption.* A vessel may not possess on board at any time during a trip, or land per trip, more than the possession limit of regulated species as specified in § 651.27(a).

* * * * *

(4) * * *

(i) * * *

(A) A bycatch limit not to exceed the possession limit of regulated species as specified in § 651.27(a).

* * * * *

(c) * * *

(3) * * *

(i) *Possession limit exemption.* Vessels in the Southern New England regulated mesh area may fish with nets of mesh size smaller than the minimum size specified in paragraph (c)(2) of this section, provided such vessels do not possess at any time during a trip, or

land per trip, more than the possession limit of regulated species as specified in § 651.27(a).

(ii) *Net stowage exemption.* Vessels may possess more than the possession limit of regulated species as specified in § 651.27(a) while in possession of nets with mesh less than the minimum size specified in paragraph (c)(2) of this section, provided that the nets are stowed and are not available for immediate use in accordance with paragraph (c)(4) of this section, and provided that more than the possession limit of regulated species were not harvested by nets of mesh size smaller than the minimum mesh size specified in paragraph (c)(2) of this section.

* * * * *

(d) * * *

(3) * * *

(i) *Possession limit exemption.* Vessels in the Mid-Atlantic regulated mesh area may fish with nets of mesh size smaller than the minimum size specified in paragraph (d)(2) of this section, provided such vessels do not possess or land per trip more than the possession limit of regulated species as specified in § 651.27(a).

(ii) *Net stowage exemption.* Vessels may possess more than the possession limit of regulated species as specified in § 651.27(a) while in possession of nets with mesh less than the minimum size specified in paragraph (d)(2) of this section, provided that the nets are stowed and are not available for immediate use in accordance with paragraph (c)(4) of this section, and provided that more than the possession limit of regulated species were not harvested by nets of mesh size smaller than the minimum mesh size specified in paragraph (d)(2) of this section.

(e) * * *

(1) * * *

(iv) The bycatch does not exceed the possession limit of regulated species as specified in § 651.27(a).

* * * * *

(f) * * *

(4) The bycatch of regulated species does not exceed the possession limit of regulated species as specified in § 651.27(a).

* * * * *

4. Section 651.22 is amended by revising paragraphs (c)(1)(i) heading, (c)(1)(i)(B), and (d)(2)(ii) to read as follows:

§ 651.22 Effort-control program for limited access vessels.

* * * * *

(c) * * *

(1) * * *

(i) *Days in which vessels may not possess more than the possession limit of regulated species as specified in § 651.27(a).*

* * * * *

(B) During each period of time declared, the applicable vessel may not possess more than the possession limit of regulated species as specified in § 651.27(a).

* * * * *

(d) * * *

(2) * * *

(ii) A sink gillnet vessel greater than 45 ft (13.7 m) in length that intends to fish for, possess or land, or does possess or land, more than the possession limit of regulated species as specified in § 651.27(a) with gear other than sink gillnet gear, or has other gear on board that is not stowed as described in § 651.20(c)(4), at any time during a calendar year may fish under and shall be subject to, the DAS effort reduction program of this part, except on trips that qualify for the exemption set forth in paragraph (d)(2)(i) of this section;

* * * * *

5. Section 651.27 is amended by revising paragraphs (a) heading, (a)(1), (a)(2), and (a)(4) to read as follows:

§ 651.27 Possession limits.

(a) *Regulated Species possession limit.*—(1)(i) *Vessels fishing with nets of mesh size as specified in § 651.20.* Vessels subject to the effort control programs specified in § 651.22 and issued a limited access permit under § 651.4(a) that are not fishing under the DAS program, or have declared out of the DAS program, vessels subject to effort control programs specified in § 651.22 that have used up their DAS allocations, vessels issued hook-gear-only permits that are fishing with gear other than hook gear, vessels fishing exclusively with a sink gillnet permit that are fishing with gear other than gillnet gear, and vessels issued a possession-limit-only permit under § 651.4(c) are prohibited from possessing on board at any time during a trip, or landing per trip, more than 500 lb (226.8 kg) of regulated species, provided that the regulated species were not harvested by nets of mesh size smaller than the minimum mesh size specified in § 651.20 (a)(2), (b)(2), (c)(2), and (d)(2).

(ii) *Vessels fishing with nets of mesh smaller than the minimum mesh size as specified in § 651.20.* (A) Any vessel fishing with or possessing on board nets of mesh smaller than the regulated minimum size as specified § 651.20(a) while fishing in the small-mesh exemption area as described under § 651.20(a)(3), or any vessel fishing with nets of mesh smaller than the regulated minimum size as specified in § 651.20 (c) and (d), is prohibited from possessing on board at any time during a trip, or landing per trip, regulated species in excess of 10 percent, by weight, of all other species on board, or 500 lb (226.8 kg), whichever is less.

(B) While fishing in areas as specified in § 651.20 (c) and (d), vessels may possess on board at any time during a trip, or land per trip, regulated species in excess of 10 percent, by weight, of all other species on board, up to a maximum of 500 lb (226.8 kg) while in possession of nets of mesh smaller than the minimum size if these nets are stowed and are not available for immediate use in accordance with § 651.20 (c)(4) and (d)(3)(i), provided that more than the possession limit of regulated species were not harvested by nets of mesh size smaller than the minimum mesh size specified in § 651.20 (c) and (d).

(2) Vessels subject to the regulated species possession limit shall have on board the vessel at least one standard box or one standard tote.

* * * * *

(4) The maximum possession limit of regulated species, as specified in paragraph (a)(1) of this section, is equal to 500 lb (226.8 kg) or its equivalent as measured by the volume of four standard boxes or five standard totes. The 10-percent requirement, specified under paragraph (a)(1)(ii) of this section, may be measured volumetrically.

* * * * *

[FR Doc. 94–17437 Filed 7–18–94; 8:45 am]

BILLING CODE 3510–22–W

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50 CFR Part 675

[Docket No. 931100–4043; I.D. 071394B]

Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for Pacific ocean perch in the Aleutian Islands subarea (AI) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the Pacific ocean perch total allowable catch (TAC) in the AI.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), July 14, 1994, until 12 midnight, A.l.t., December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

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

In accordance with § 675.20(a)(7)(ii), the Pacific ocean perch TAC for the AI was established by the final 1994 initial specifications of groundfish (59 FR 7656, February 16, 1994) and later augmented from the reserve (59 FR 21673, April 26, 1994) to a total of 10,900 metric tons (mt). The directed fishery for Pacific ocean perch was closed on April 4, 1994 (59 FR 16570, April 7, 1994). That prohibition was rescinded on July 4, 1994 (59 FR 33920, July 1, 1994), upon determination that the 1994 TAC for Pacific ocean perch in the AI had not been reached.

The Director, Alaska Region, NMFS (Regional Director), has determined, in accordance with § 675.20(a)(8), that the Pacific ocean perch TAC in the AI soon will be reached. Therefore, the Regional Director has established a directed fishing allowance of 10,700 mt, with consideration that 200 mt will be taken as incidental catch in directed fishing for other species in the AI. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the AI, effective from 12 noon, A.l.t., July 14, 1994, until 12 midnight, A.l.t., December 31, 1994.

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

Classification

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

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

Dated: July 13, 1994.

David S. Crestin,

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

[FR Doc. 94–17504 Filed 7–14–94; 2:16 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 59, No. 137
Tuesday, July 19, 1994

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

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 204

[INS No. 1659–94]

RIN 1115–AD70

Requests for Additional Evidence To Support Immigrant Visa Petitions

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend Immigration and Naturalization Service (Service) regulations by providing a petitioner in an immigrant visa petition proceeding with a period of 12 weeks to respond to the Service's request for additional information and/or documentation. This amendment is necessary to ensure that the time provided for response in certain immigration proceedings is consistent with the requirements contained elsewhere in Service regulations. If adopted, this rule would have a beneficial impact on all parties and will provide consistency among Service regulations relating to processing procedures for certain immigrants.

DATES: Written comments must be received on or before September 19, 1994.

ADDRESSES: Please submit written comments in triplicate to the Records Systems Division, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW., Room 5307, Washington, DC 20536. To ensure proper and timely handling, please reference INS Number 1659–94 on your correspondence.

FOR FURTHER INFORMATION CONTACT: Jack Tabaka, Senior Immigration Examiner, Office of Adjudications, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION: Occasionally, the Service receives an application or petition along with supporting documentation which meets the threshold evidentiary requirements for a particular immigration benefit. However, upon closer review, the Service may determine that the supporting documentation fails to properly or adequately establish eligibility for the immigration benefit requested, or raises questions that must be answered before the Service can adjudicate the case. In such an instance, the Service provides the applicant or petitioner with an opportunity to respond to its questions and/or to submit additional evidence, which may include original documentation, in support of the request for immigration benefits.

Regulations at 8 CFR 103.2 (b)(5) and (b)(8), which were added by a final rule published on January 11, 1994, at 59 FR 1455–1466, require that the petitioner or applicant submit the requested supporting documentation, answers, and/or, original documentation to the Service within 12 weeks. That final rule inadvertently conflicts with the existing regulation at 8 CFR 204.1(h), under which a petitioner in an immigrant visa petition proceeding must respond to the Service within 60 days, unless an extension is granted. This rule proposes to amend 8 CFR 204.1(h) to conform with the 12-week provision of 8 CFR 103.2 (b)(5) and (b)(i), thereby guaranteeing the petitioner or applicant more than 60 days in which to respond to a request for additional information.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that the rule will not have a significant economic impact on a substantial number of small entities for the following reason: the proposed rule is administrative in nature and is necessary in order to ensure that the time period for a petitioner to respond to the Service's request for additional information and/or documentation in immigrant visa proceedings is consistent with 8 CFR 103.2 (b)(5) and (b)(8).

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, § 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

The regulations proposed 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 rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12606

The Commissioner of the Immigration and Naturalization Service certifies that she has assessed this rule in light of the criteria in Executive Order 12606 and has determined that this regulation will have no adverse effect on family well-being. This regulation will provide consistency in Service regulations as they relate to processing procedures for certain immigrants.

List of Subjects in 8 CFR Part 204

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, part 204 of chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 204—IMMIGRANT PETITIONS

1. The authority citation for part 204 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1186a, 1255; 8 CFR part 2.

2. In § 204.1, paragraph (h) is revised to read as follows:

§ 204.1 General information about relative petitions.

* * * * *

(h) *Requests for additional evidence.* Unless otherwise provided in this chapter, requests by the Service for additional evidence shall be governed by the provisions of 8 CFR 103.2 (b)(5) and (b)(8).

Dated: June 13, 1994.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 94–17473 Filed 7–18–94; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. 26968; Notice No. 93–70]

Offshore Airspace Reconfiguration; Valparaiso, FL, Terminal Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM).

SUMMARY: On July 1, 1994, the FAA proposed to retain the Valparaiso, Florida Terminal Area and Special Air Traffic Rules in part 93 of the Federal Aviation Regulations (FAR); amend the Class D airspace areas for Eglin Air Force Base (AFB), Eglin AF Auxiliary No. 3 Duke Field, and Hurlburt Field; amend the Crestview Class E airspace area; and delete the Eglin Class D North-South corridor. Additionally, the FAA proposed to modify the established North-South and East-West corridors associated with the Valparaiso, Florida Terminal Area and Eglin AFB in part 93 of the FAR. The Notice of proposed rulemaking (NPRM), as published, incorrectly described the Class D airspace area for Eglin AFB; and inadvertently deleted the Hurlburt Field Class D airspace area and the Crestview Class E airspace area. The intended effect of this SNPRM is to correct the description of the Eglin AFB Class D airspace area, and to retain the Hurlburt Field Class D airspace area and the Crestview Class E airspace area.

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

ADDRESSES: Comments on this proposal may be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 26968, 800 Independence Avenue, SW., Washington, DC 20591; or delivered in triplicate to: Federal Aviation Administration, Rules Docket, Room 915–G, 800 Independence Avenue SW., Washington, DC. Comments delivered must be marked Docket No. 26968. The official docket may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph C. White, Air Traffic Rules and Procedures Branch, Airspace-Rules and Aeronautical Information Division, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. Comments relating to the overall regulatory, aeronautical, environmental, energy-related, federalism, or economic aspects of the proposals contained in this SNPRM are also invited. Comments should identify the regulatory docket number and notice number and be submitted in triplicate to the address listed above. All comments received on or before the specified closing date for comments will be considered by the Administrator before taking action on the proposed amendments. The proposals contained in this SNPRM may be changed in light of comments received. All comments received will be available for examination by interested persons in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comment submitted in response to this SNPM must include a pre-addresses, stamped postcard on which the following statement is made: "Comments to Docket No. 2698." The postcard will be date stamped and mailed to the commenter.

Background

On July 1, 1994 (59 FR 34192), the FAA proposed to retain the Valparaiso, Florida Terminal Area and Special Air Traffic Rules in part 93 of the Federal Aviation Regulations (FAR); amend the Class D airspace areas for Eglin AFB and Eglin AF Auxiliary No. 3 Duke Field, and Hurlburt Field; amend the Crestview Class E airspace area; and delete the Eglin Class D North-South corridor. Additionally, the FAA proposed to modify the established North-South and East-West corridors associated with the Valparaiso, Florida Terminal Area and the Eglin AFB in part of the FAR. The NPRM, as published, incorrectly described the Class D airspace area for Eglin AFB; and inadvertently deleted the Hurlburt Field Class D airspace area and the Crestview Class E airspace area. The intended effect of this SNPRM is to correct the description of the Eglin AFB Class D airspace area and to retain and revise the Hurlburt Field Class D airspace area and the Crestview, Florida Class E airspace area.

The coordinates for this airspace docket are based on North American Datum 83. Class D and Class E airspace area designations are published in paragraphs 5000 and 6002, respectively, of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class D and E airspace designations listed in this document would be published subsequently in order.

The Proposal

The FAA proposes to revise the description of the Class D airspace are for Eglin AFB, Florida; and retain and revise the Hurlburt Filed, Florida Class D airspace area, and the Crestview, Florida Class E airspace area.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. app. 1348(a), 1345(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR part 71.1, of the Federal Aviation Administration Order 74.00.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is revised to read as follows:

Paragraph 5000—Class D Airspace

* * * * *

ASO FL D Eglin AFB, FL [Revised]

Eglin AFB, FL
(Lat. 30°29′13″ N, long. 86°31′34″ W)
Destin-Fort Walton Beach Airport
(Lat. 30°24′01″ N, long. 86°28′18″ W)
Duke Field
(Lat. 30°39′07″ N, long. 86°31′23″ W)
Hurlburt Field
(Lat. 30°25′44″ N, long. 86°41′20″ W)

That airspace extending upward form the surface to and including 2,600 feet MSL within a 5.5-mile radius of Eglin AFB and within a 4-mile radius of Destin-Fort Walton Beach Airport; excluding the portion north of a line connecting the 2 points of intersection within a 5.2-mile radius circle centered on Duke Field; excluding the portion southwest of a line connecting the 2 points of intersection within a 5.3-mile radius of Hurlburt Field; excluding a portion east of a line beginning at lat. 30°30′43″ N, long. 86°26′21″ W, extending north to the 5.5-mile radius and north of a line beginning at lat. 30°30′43″ N, long. 86°26′21″ W, extending east to the 5.5-mile radius.

ASO FL D Eglin Hurlburt Field, FL [Revised]

Eglin, Hurlburt Field, FL
(Lat. 30°25′44″ N, long. 86°41′20″ W)
Eglin AFB
(Lat. 30°29′13″ N, long. 86°31′34″ W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 5.3-mile radius of Hurlburt Field; excluding the portion northeast of a line connecting the 2 points of intersection with a 5.5-mile radius circle centered on Eglin AFB.

* * * * *

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

* * * * *

ASO FL E2 Crestview, FL [Revised]

Crestview, Bob Sikes Airport, FL
(Lat. 30°46′44″ N, long. 86°31′20″ W)
Duke Field
(Lat. 30°39′07″ N, long. 86°31′23″ W)

Within a 4.2-mile radius of Bob Sikes Airport; excluding the portion south of a line connecting the 2 points of intersection with a 5.2-mile radius circle centered on Duke Field.

* * * * *

Nancy B. Kalinowski,
Assistant Manager, Airspace-Rules and Aeronautical Informaiton Division.

[FR Doc. 94–17544 Filed 7–14–94; 3:35 pm]
BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN39–1–6393B; FRL–5014–2]

Approval and Promulgation of Implementation Plan; Indiana

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) is proposing to approve Indiana's 1990 base year ozone precursor emissions inventory for Lake and Porter Counties as a revision to the Indiana ozone State Implementation Plan (SIP). The emissions inventory was submitted by the State of Indiana to satisfy a Federal requirement that States containing ozone nonattainment areas submit inventories of actual ozone precursor emissions. In the final rules section of this **Federal Register**, the USEPA is approving the State's SIP revision request without prior proposal because USEPA views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If USEPA receives adverse comments, the direct final rule will be withdrawn and the public comments received will be addressed in a subsequent final rule based on this proposed rule. A second comment period on this action will not be held. Parties interested in commenting on this notice should do so at this time.

DATES: Comments on this proposed rule must be received on or before August 18, 1994.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR18–J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal and USEPA's analysis of it are available for inspection at: Regulation Development Section, Regulation Development Branch (AR18–J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Edward Doty, Environmental Scientist, Regulation Development Section, Regulation Development Branch (AR18–J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6057.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: June 30, 1994.

Valdas V. Adamkus,
Regional Administrator.

[FR Doc. 94–17432 Filed 7–18–94; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 52

[OAQPS CA 22–9–6559; FRL–5016–7]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) that concern the control of emissions of volatile organic compounds (VOCs) from operations related to the loading of marine tank vessels. The intended effect of proposing approval of this rule is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this notice of proposed rulemaking (NPRM) will incorporate this rule into the federally approved SIP. EPA has evaluated Rule 1142 and is proposing to approve it under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: Comments must be received on or before August 18, 1994.

ADDRESSES: Comments may be mailed to: Daniel A. Meer, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rule revision and EPA's evaluation report of rule 1142 are

available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revision are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182.

FOR FURTHER INFORMATION CONTACT: Mae Wang, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105 Telephone: (415) 744–1200.

SUPPLEMENTARY INFORMATION:

Applicability

The rule being proposed for approval into the California SIP is South Coast Air Quality Management District (SCAQMD) Rule 1142, Marine Tank Vessel Operations. This rule was submitted by the California Air Resources Board (CARB) to EPA on January 28, 1992.

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 CAA or pre-amended Act), that included the Los Angeles-South Coast Air Basin. 43 CFR 8964, 40 CFR 81.305. Because this area was unable to meet the statutory attainment date of December 31, 1982, California requested under section 172(a)(2), and EPA approved, an extension of the attainment date to December 31, 1987. 40 CFR 52.238. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the pre-amended Act, that the above district's portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The Los Angeles-South Coast Air Basin is classified as extreme;[2] therefore, this area was subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules for incorporation into its SIP on January 28, 1992, including the rule being acted on in this document. This document addresses EPA's proposed action for SCAQMD Rule 1142, Marine Tank Vessel Operations. Rule 1142 was adopted by SCAQMD on July 19, 1991. This submitted rule was found to be complete on April 3, 1992, pursuant to EPA's completeness criteria that are set forth in 40 CFR Part 51 Appendix V[3] and is being proposed for approval into the SIP.

SCAQMD Rule 1142 requires all marine vessels to limit emissions of VOCs during loading, lightering, ballasting, and housekeeping events. VOCs contribute to the production of ground level ozone and smog. The rule was adopted as part of SCAQMD's efforts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for this rule.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA and 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). Rule 1142 controls emissions from a source category for which EPA has not issued a CTG. Accordingly, Rule 1142 was evaluated against the general RACT requirements of the CAA (section 110 and part D), 40 CFR Part 51, the Blue Book referenced in footnote 1 and other EPA policy. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

SCAQMD Rule 1142 is a new rule which was adopted to control VOC emissions from loading operations associated with marine vessels. Its major provisions include:

1. Operating standards and component leak thresholds.
2. Inspection and repair requirements, and submission of an operator management plan.
3. Recordkeeping requirements, test methods, and definitions.

EPA has evaluated the Rule 1142 and has determined that it is consistent with the CAA, EPA regulations, and EPA policy. Therefore, SCAQMD Rule 1142 is being proposed for approval under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and Part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

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[1] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] The Los Angeles-South Coast Air Basin retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991).

[3] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. Section 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and 301 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future notice will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

List of Subjects in 40 CFR Part 52

Environmental Protection Agency, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Dated: July 5, 1994.

Felicia Marcus,

Regional Administrator.

[FR Doc. 94–17553 Filed 7–18–94; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 57

RIN 0905–AE17

Grant for Construction of Teaching Facilities, et al.; Grants for the Establishment of Departments of Family Medicine

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed regulation would amend the existing regulations governing the program for Grants for the Establishment of Departments of Family Medicine authorized by section 747(b) of the Public Health Service Act (the Act), to bring the regulations into conformity with technical amendments made by the Health Professions Extension Amendments of 1992 and to include other changes for consistency with current grant program policies.

DATES: Comments must be received by August 18, 1994.

ADDRESSES: Written comments should be addressed to Fitzhugh Mullan, M.D., Director, Bureau of Health Professions (BHPr), Health Resources and Services Administration (HRSA), Room 8–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. All comments received will be available for public inspection and copying at the Office of Program Development, BHPr, Room 8A–55, Parklawn Building, at the above address weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Marc L. Rivo, M.D., Director, Division of Medicine, Bureau of Health Professions, HRSA, Room 4C–25, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; telephone (301) 443–6190.

SUPPLEMENTARY INFORMATION: This proposed rule amends the existing regulations for Grants for the Establishment of Departments of Family Medicine, authorized under section 747(b) of the Public Health Service Act (the Act) (42 U.S.C. 293k). The Health Professions Education Extension Amendments of 1992 (Pub. L. 102–408) amended and renumbered former section 780 of the Act (42 U.S.C. 295g) to section 747.

Section 747(b) of the Act, as amended, authorizes the Secretary to make grants to and enter into contracts with accredited schools of medicine or osteopathic medicine to meet the costs of projects to establish, maintain, or improve academic administrative units (which may be departments, divisions, or other units) to provide clinical instruction in family medicine. The primary purpose of the program is to assist family medicine academic administrative units to achieve comparability in status, faculty, and curriculum with those of other clinical units at the applying schools.

The proposed amendments made by Pub. L. 102–408 to section 747(b) are described below, according to the section numbers and the headings of the regulations they affect.

Section 57.1702 Definitions

The Department is proposing to revise or add the following terms to this section:

Academic administrative unit or *unit* means a department, division, or other formal academic unit of a school of medicine or osteopathic medicine or clinical campus of this school that provides clinical instruction in family medicine.

The phrase "or clinical campus of such schools" is being inserted to permit family medicine adminsitrative units at such clinical campuses to apply for support of their unit separately from the parent medical school. The medical school, however, as the accredited entity, would have general oversight of such support.

The Department encourages the movement of clinical training to areas that more closely resemble the future practice locations of the generalist physician. Increasing numbers of medical schools are initiating substantial training programs some distance from the school. In some instances, the external training site has taken the form of a new clinical campus with its own departmental structure. Typically these clinical campuses are responsible for providing most, if not all, of the clinical training for a cohort of medical students.

This specific wording change and the related changes that follow will assist these remote clinical training programs by permitting both the parent school and the clinical campus to receive Federal assistance under this program.

Clinical campus means a geographically separate educational entity of an accredited medical school

that has been given the responsibility to coordinate or provide all clinical training for at least 10 percent of the school's third-year students.

This new definition is being proposed to limit the expansion of an academic administrative unit to entities that have education as their principal purpose and have the capability and charge to provide the full range of experiences needed for clinical training of physicians.

Other major clinical units means formal academic units at the applicant school or its clinical campus that offer clinical instruction in internal medicine, obstetrics and gynecology, pediatrics, psychiatry, or surgery.

The phrase "or its clinical campus" is added to reflect the change to the definition of "academic administrative unit" cited above.

Section 57.1704 Program Requirements

The Department is proposing to revise paragraph (a) of this section. The phrase "in an administrative unit" is added to permit a program applicant to use a program director from the clinical campus rather than the parent medical school. In many instances the level of medical school involvement in the remote campus is not sufficient to exercise effective management of the grant funds at the clinical campus.

The Department is deleting a parenthetical phrase in paragraph (d) of this section, "(or in the case of a school of osteopathic medicine, have control over or be closely affiliated with)", to remove the redundancy within this paragraph. We are proposing to add a phrase "or clinical campus" to extend the requirement to control a residency program to the clinical campus program. Otherwise, a residency program controlled by the parent medical school department would not meet the residency requirement for an application for assistance for a clinical campus.

We are also proposing to add a parenthetical phrase in paragraph (e) of this section, "(or units in the case of schools with one or more decentralized units)", to clarify that the requirement to provide training to all medical students can be met by the combined efforts of the parent family medicine administrative unit and the clinical campus administrative unit.

The Department is adding the phrase "or clinical campus" in paragraph (f) of this section to clarify that in comparing numbers of clinical faculty, the clinical campus family medicine administrative unit should be compared to other clinical campus units.

In addition to the changes proposed above, a number of technical and ministerial changes are included to conform the existing regulations with amendments made by Pub. L. 102–408. These changes affecting the program for the Grants for the Establishment of Departments of Family Medicine are being made to the regulations to:

1. Revise the section number of the Act from "780" to "747" wherever it appears in subpart R, as renumbered, and the United States Code citation from "(42 U.S.C. 295g)" to "(42 U.S.C. 293k)", in accordance with Pub. L. 102–408.

2. Revise § 57.1702, entitled "*Definitions.*", to amend the section number of the Act in the definition of "School of medicine or school of osteopathic medicine" from "701(5)" to "799(1)(E)", in accordance with Pub. L. 102–408.

3. Revise § 57.1704, entitled "*Program requirements.*", to revise the section number "786(a)" in paragraph (h) to "747", in accordance with Pub. L. 102–408.

4. Revise § 57.1705, entitled "*How will applications be evaluated?*", to reflect current statutory language regarding the evaluation and recommendation process of awarding grant applications by removing the reference to the National Advisory Council on Health Professions Education and the section of the Act which established it. Pub. L. 102–408 repealed the Advisory Council effective October 1, 1992.

5. Revise § 57.1709, entitled "*What other audit and inspection requirements apply to grantees?*", to revise the section number "705" in the text to "798(e)", in accordance with Pub. L. 102–408.

Further, Public Law 103–227, enacted on March 31, 1994, prohibits smoking in certain facilities in which minors will be present. The Department of Health and Human Services is now preparing to implement the provision of that law. Until those implementation plans are in place, PHS continues to strongly encourage all grant recipients to provide a smoke free workplace and promote the nonuse of all tobacco products.

Economic Impact

This proposed rule governs a financial assistance training grant program in which participation is voluntary. Because this proposed rule makes minor changes in an existing grant program, it will have no consequential effect on the economy, small businesses, or small governments. Therefore, the Secretary certifies that this rule will not have a significant economic impact on small entities.

Paperwork Reduction Act of 1980

This proposed rule does not affect the recordkeeping or reporting requirements in the existing regulations for the Grants for the Establishment of Departments of Family Medicine.

List of Subjects

Denatal health, Educational facilities, Grant programs—education, Medicine and dental schools, Education of the disadvantaged, Education study programs, Grant programs—health, Student aid.

(*Catalog of Federal Domestic Assistance*, No. 93.984, Grants for the Establishment of Departments of Family Medicine)

Dated: April 12, 1994.

Philip R. Lee,

Assistant Secretary for Health.

Approved: July 7, 1994.

Donna E. Shalala,

Secretary.

Accordingly, 42 CFR part 57, subpart R is proposed to be amended as set forth below:

PART 57—GRANTS FOR CONSTRUCTION OF TEACHING FACILITIES, EDUCATIONAL IMPROVEMENTS, SCHOLARSHIPS, AND STUDENT LOANS

1. The authority citation for subpart R of part 57 is revised to read as follows:

Authority: 42 U.S.C. 216, 293k, 295g.

§ 57.1701 [Amended]

2. Section 57.1701 is amended by revising the number "780" to read "747" and the cite "(42 U.S.C. 295g)" to read "(42 U.S.C. 293k)".

3. Section 57.1702 is amended by revising the number "701(5)" in the definition of "School of medicine or osteopathic medicine" to read "799(1)(E)"; by revising the definitions of "Academic administrative unit" or "unit" and "Other major clinical units"; and by adding the term "Clinical campus" to read as follows:

§ 57.1702 Definitions.

Academic administrative unit or unit means a department, division, or other formal academic unit of a school of medicine or osteopathic medicine or clinical campuses of such schools that provides clinical instruction in family medicine.

* * * * *

Clinical campus means a geographically separate educational entity of an accredited medical school that has been given the responsibility to coordinate or provide all clinical

training for at least 10 percent of the school's third-year students.

* * * * *

Other major clinical units means formal academic units at the applicant school or its clinical campus that offer clinical instruction in internal medicine, obstetrics and gynecology, pediatrics, psychiatry, or surgery.

* * * * *

4. Section 57.1704 is amended by revising the number "786(a)" in paragraph (h) to read "747"; and by revising paragraphs (a), (d), (e), and (f) to read as follows:

§ 57.1704 Program requirements.

* * * * *

(a) Each project must have a project director, who works at the grantee institution in an administrative unit of the grantee institution on an appointment consistent with other major departments, heads or will head the unit, and has relevant training and experience in family medicine.

* * * * *

(d) The unit must have control over a residency training program. The program must have the capacity to enroll a total of at least 9 interns or residents annually. A unit whose applicant school or clinical campus does not have a residency program accredited under its direct authority will be considered as meeting this requirement if it has a written affiliation agreement with a hospital which conducts a residency program as described.

(e) The unit (or units in the case of schools with one or more decentralized unit) must have responsibility for providing instruction to each member of the student body who is engaged in an education program leading to a degree in doctor of medicine or doctor of osteopathic medicine. The amount of mandatory and elective curriculum must be comparable to the amount of mandatory and elective curriculum time required for other major clinical units at the school.

(f) The unit must have, in the judgment of the Secretary, a sufficient number of full-time faculty to conduct the instruction. The number of family medicine faculty in the unit must be comparable to that of full-time faculty responsible for conducting the instruction of one of the other major clinical units either at the school or at the clinical campus, whichever is the same as the unit receiving the grant funds.

5. The introductory text to § 57.1705 is revised to read as follows:

§ 57.1705 How will applications be evaluated?

The Secretary will award grants to applicants whose projects will best promote the purposes of section 747 of the Act and these regulations. The Secretary will consider, among other factors:

* * * * *

§ 57.1709 [Amended]

6. Section 57.1709 is amended by revising the number "705" to read "798(e)".

[FR Doc. 94–17223 Filed 7–18–94; 8:45 am]

BILLING CODE 4160–15–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94–78, RM–8472]

Radio Broadcasting Services; Cloverdale, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Pulaski Broadcasting, Inc. ("petitioner") seeking the allotment of FM Channel 254A to Cloverdale, Alabama, as that locality's first local aural transmission service. Petitioner is requested to provide additional information to establish Cloverdale's status as a community for allotment purposes. Coordinates used for this proposal are North Latitude 34–56–19 and West Longitude 87–46–17.

DATES: Comments must be filed on or before September 3, 1994, and reply comments on or before September 20, 1994.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner and its consultant, as follows: Hershel Lake, President, Pulaski Broadcasting, Inc., P.O. Box 738, Pulaski, Tennessee 38478; Kirk A. Tollett, Commsouth Media Associates, 4001 Highway 78 East, Jasper, AL 35501 (consultant).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 94–78, adopted June 29, 1994, and released July 13, 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 contractors, International Transcription Service, 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. 94–17486 Filed 7–18–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 94–76, RM–8477]

Radio Broadcasting Services; Chester, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by m. JAYNE sawyer, requesting the allotment of Channel 296A to Chester, California, as that community's second local FM service. Coordinates used for this proposal are North Latitude 40–20–34 and West Longitude 121–16–15.

DATES: Comments must be filed on or before Sept. 3, 1994, and reply comments on or before Sept. 20, 1994.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: m. JAYNE sawyer, P.O. Box 1074, Cico, CA 95927.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 94–76, adopted June 28, 1994, and released July 13, 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 contractors, International Transcription Service, 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. 94–17481 Filed 7–18–94; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 94–77, RM–8470]

Radio Broadcasting Services; Shasta Lake City, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Mark C. Allen, requesting the allotment of FM Channel 276A to Shasta Lake City, California, as that community's first local aural transmission service. Coordinates used for this proposal are North Latitude 40–43–58 and West Longitude 122–21–59.

DATES: Comments must be filed on or before September 7, 1994, and reply comments on or before September 22, 1994.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Mark C. Allen, 3745 McHale Way, Redding, CA 96001.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 94–77, adopted June 28, 1994, and released July 14, 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 contractors, International Transcription Service, 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. 94–17488 Filed 7–18–94; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 94–80, RM–8445]

Television Broadcasting Services, Menominee and Iron Mountain, MI; Wittenberg, WI; and Ely, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The document requests comments on a petition filed by Douglas A. Maszka, d/b/a Tri-Cities Television Company, requesting the substitution of Channel *25+ for vacant Channel *17+ at Iron Mountain, Michigan, allotment of channel 17– at Wittenberg, Wisconsin, and allotment of channel 31+ at Menominee, Michigan. Since alternate channels are available for Wittenberg and Menominee that do not require a substitution at Iron Mountain, we shall propose the allotment of Channel 25+ at Menominee, Michigan, with a site restriction 17.8 kilometers north at coordinates 45–16–00 and 87–36–48 and the allotment of channel 46 at Wittenberg, Wisconsin, with a site restriction 30.7 kilometers north at coordinates 45–05–53 and 89–07–31. In the alternative, we shall also propose, as requested by petitioner, the allotment of channel 31+ at Menominee, Michigan, at coordinates 45–16–00 and 87–36–48, the substitution of Channel *25+ for vacant Channel *17+ at Iron Mountain, Michigan, at coordinates 45–49–12 and 88–04–31, and the allotment of Channel 17– to Wittenberg, Wisconsin, at coordinates 45–05–00 and 89–10–06. We shall also change the offset for vacant Channel *17 at Ely, Minnesota, from minus to plus at coordinates 47–54–06 and 91–51–48 to accommodate Channel 17– at Wittenberg. Since Menominee, Wittenberg, Iron Mountain and Ely are located within 400 kilometers (250 miles) of the U.S.-Canadian border, concurrence of the Canadian government will be requested for these allotments.

DATES: Comments must be filed on or before September 6, 1994, and reply comments on or before September 21, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Douglas A. Maszka, d/b/a Tri-Cities Television Company, 600 Vroman Street, Green Bay, Wisconsin 54303.

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. 94–80, adopted June 30, 1994, and released July 13, 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. 94–17487 Filed 7–18–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB66

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on Proposed Threatened Status for the Goliath Frog

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of reopening of comment period.

SUMMARY: The Fish and Wildlife Service (Service) announces that additional information received during the comment period on the proposed rule to list the goliath frog (*Conraua goliath*) as threatened leaves questions as to whether the listing is warranted. The Service has therefore reopened the comment period through October 17, 1994, on the proposed action to list the goliath frog as threatened. Information received indicated that the species has a slightly wider distribution, occurs in a wider range of aquatic habitats, and may be more abundant than believed at the time that the proposed rule was issued. In addition, local utilization and international trade appears to be less of a threat to the species. Additional information on each of these considerations is sought. Furthermore, there remains the concern about the effect of the unquantified and undescribed effect of loss of rainforest habitat on goliath frog populations, and the projections for additional habitat loss. Information is also sought of these issues, as well as any population estimates or surveys.

DATES: The comment period, which originally closed on November 12, 1991, now closes October 17, 1994.

ADDRESSES: Comments, information, and questions should be sent to the Chief, Office of Scientific Authority; Mail Stop: Arlington Square, room 725; U.S. Fish and Wildlife Service; Washington, DC. 20240. (Fax number 703–358–2276). Express and messenger-delivered mail should be addressed to the Office of Scientific Authority, room 750, 4401 North Fairfax Drive, Arlington, Virginia 22203. Comments and other information received will be available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, at the Arlington, Virginia address.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief, Office of Scientific Authority, at the above address (phone 703–358–1708).

SUPPLEMENTARY INFORMATION:

Background

The goliath frog (*Conraua goliath*) of Central Africa, reaches a recorded weight of up to 7.2 pounds (3.3 kilograms), a head and body length of 12.6 inches (320 millimeters), and a total length, including the hind leg and foot of about 32 inches (813 millimeters); there have been reports of even larger individuals (Sabater-Pi 1985; Zahl 1967). However, this giant amphibian has a relatively small range. It occurs along major rivers in dense rainforest within an area of about 10,000 square miles (26,000 square kilometers) in Equatorial Guinea, Gabon, and southwestern Cameroon.

In a petition dated April 9, 1991, the Service was requested to add the goliath frog to the List of Endangered and Threatened Wildlife. The petition was submitted by Dr. Cristina M. Richards (Biology Department, Wayne State University, Detroit, Michigan 48202) and Dr. Victor H. Hutchison (Department of Zoology, University of Oklahoma, Norman, Oklahoma 73069). It was accompanied by data on the biology of the goliath frog, and pointed out such concerns as slow maturation, rarity, restricted distribution, habitat destruction, local hunting, international trade, high price for living specimens, and poor adaptation to captivity.

Section 4(b)(3) of the Endangered Species Act of 1973 as amended (Act) requires two findings with respect to a petition to list a species. To the maximum extent practical, within 90 days of receipt, a finding must be made on whether the petition presents substantial information indicating that the requested action may be warranted; and if it is determined that the petition presents such information, the Service usually announces this finding and initiates a status review seeking additional information on the status of the species, Then, within 12 months of receipt of the petition, the Service must make a finding as to whether the action is warranted, not warranted, or warranted but precluded by other listing activity.

The Service examined the data submitted by the petitioners and consulted other authorities. It also learned that the goliath frog is classified as vulnerable by the World Conservation Union (IUCN). This review led the Service to make both of the required findings, determining that the requested action was warranted. These findings were incorporated in a proposal to list the goliath frog as a threatened species, which was published in the **Federal Register** of September 12, 1991 (56 FR 46397).

Concurrently with the petition submitted under the Act, the Service received a request to propose the listing of the goliath frog in Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) in response to a February 7, 1991, **Federal Register** notice (56 FR 4965). The Service requested comments on this proposal in the July 24, 1991, **Federal Register** (56 FR 33894). After reviewing the information received, the Service submitted a proposal to include the species in Appendix II on October 4, 1991, in order to fully consider information that might become available before or at the Eighth Meeting of the Conference of the Parties to CITES, which was held March 2–13, 1992, in Kyoto, Japan. That proposal was withdrawn at the CITES meeting.

The information received in response to the request for comments contained in the proposed rule, as well as the comments received at the CITES meeting, left questions as to whether listing under the Act is warranted. Consequently, a final decision has yet to be announced.

Additional Information Received

The range of the goliath frog is at least somewhat larger than presented in the proposed rule. The original petitioners have indicated that the species does occur in a small part of Gabon. The species does not appear to be limited to areas of cascades and rapids, but

appears to be found in broad rivers and deep streams. However, there remains a question of whether these river/streams must be well oxygenated and whether the species also occurs in slightly brackish water. There is concern that the "frog's habitat is being destroyed to open land for cultivation and provide firewood" (Amiet, pers. comm.), but the loss of habitat has not been quantified and establishment of protected areas may have stabilized any population decline.

The species may not be as rare as was thought, and it appears that the species may be readily found in small numbers by knowledgeable persons. However, no population estimates or surveys are known. Local utilization may not be as much of a threat as was originally reported. Although the frog may be utilized for food when encountered in Cameroon, it is reported that Gabonese do not eat frogs in general or use them for traditional medical or religious reasons and that the goliath frog is not the object of much trade (Gabon's Director of Wildlife per 10/22/91 cable). Furthermore, relatively little is known about the reproductive biology of this species; the suggested slow maturation is based only on the large size of fully grown individuals. Without information on the reproductive biology and productivity, one cannot calculate sustainable utilization rates, although this might be inferred from other information.

The threat of international trade appears to be less than believed when the proposed rule was published. In response to the proposal by the United States to include the goliath frog in Appendix II, a report (Brautigam, 1992) cited two negative responses to the Service's proposal to list the goliath frog as threatened under the Act plus comments from one of the same respondents but addressing the CITES Appendix II proposal. This review also noted that the Government of Cameroon reportedly prohibits the export of the species for the pet trade. Based on the information presented in the U.S. proposal and the new information, the CITES Secretariat recommended rejection of the U.S. proposal stating that the species does not seem to be threatened by international trade. TRAFFIC International also recommended rejection of the proposal, but stated that such a listing could serve as a monitoring tool to gather trade data (Report on Recommendations on Proposals to Amend the CITES Appendices at the Eighth Meeting of the Conference of the Parties, TRAFFIC, March 1992).

The exact number of individuals exported is unknown but most reports suggest a figure in the hundreds during the 1980s. Most of the international trade was presumed to be to the United States. The reported ban on exportation from Cameroon apparently has not been fully successful. Service records indicate that at least 78 individuals were exported from Equatorial Guinea and Cameroon to the United States in 1992 and 1993, with only six of these being imported in 1993, one as recently as October 21, 1993. Recent information on other international trade is lacking.

A consensus among correspondents is that it is possible to successfully transport and maintain the goliath frog, and that some individuals have survived for months or years in captivity, but that such efforts involve considerable effort and diligence and that many have been lost. Furthermore, no one as reported successful breeding of this species in captivity. Advertisements submitted by the petitioners showed that the asking price in early 1990 was $599.00 for "small" specimens and $2,500.00 for individuals weighing 6–9 pounds. In July 1992, a zoo purchased six frogs from an importer at $1,200.00 each. After a recent inquiry it was suggested that the price might be between $1,500.00 and $1,800.00, but this was qualified by the statement that nobody was buying this species.

Public Comments Solicited

The Service intends that any final decision on the proposed rule will accurately reflect the status of the species and will be based on the best available scientific and commercial information. Therefore, comments and suggestions concerning any aspect of this proposed rule are hereby solicited from the public, concerned governmental agencies, the scientific community, industry, private interests, and other parties. Information is sought on the following listing criteria described in the Act:

(1) The present or threatened destruction, modification, or curtailment of this species' habitat or its range,

(2) Any overutilization for commercial, recreational, scientific, or education purposes;

(3) Disease factors or natural predation that may threaten this species;

(4) Any inadequacies of existing regulatory mechanisms; and

(5) Other natural or manmade factors affecting this species' continued existence.

The Service is particularly interested in the following information:

(1) Information on habitat requirements, distribution of that habitat, and threats to that habitat, as well as documentation of past or future habitat losses and threats to that habitat throughout the range of the goliath frog; and in particular quantification of the loss of rainforest in the species' range, and information on the displacement or extirpation of the species when rainforest along river habitat of the species is opened for cultivation.

(2) Information as to any known population estimates or surveys of this species;

(3) Further information on local utilization of this species;

(4) Any information on the reproductive biology of this species, especially as it may be related to its ability to sustain harvest;

(5) Information as to the extent of commercial trade in this species, especially information on international trade other than imports into the United States;

(6) Information as to current ability to transport and maintain this species in captivity; and

(7) Information as to current ability to reproduce this species in captivity

Literature Cited

Brautigam, A. 1992. Analyses of proposals to amend the CITES Appendices. Prepared by IUCN Species Survival Commission Trade Specialist Group, TRAFFIC, and World Conservation Monitoring Center. Submitted to the Eighth Meeting of the Conference of the Parties, Kyoto, Japan. IUCN—the World Conservation Union.

Sabater-Pi, J. 1985. Contribution to the biology of the giant frog (*Conraua goliath*, Boulenger). Amphibia-Reptilia 6:143–153.

Zahl, P.A. 1967. In quest of the world's largest frog. Natl. Geogr. 134: 446–452.

Authority: 16 U.S.C. 1531–1544.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: July 14, 1994.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 94–17545 Filed 7–15–94; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 59, No. 137
Tuesday, July 19, 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

Office of the Secretary

Secretary of Agriculture's Special Limited Global Import Quota Announcement

AGENCY: Office of the Secretary, USDA.
ACTION: Notice.

SUMMARY: A special limited global import quota for upland cotton equal to 183,694,813 kilograms (404,978,070 pounds) is established in accordance with section 103B(n) of the Agricultural Act of 1949, as amended (1949 Act). This quota is covered under Presidential Proclamation 6301 of June 7, 1991, and is referenced as the Secretary of Agriculture's Special Limited Global Import Quota Announcement, chapter 99, subchapter III, subheading 9903.52.00 of the Harmonized Tariff Schedule (HTS).

DATES: The quota is established for the 90-day period beginning on June 3 and ending on August 31.

FOR FURTHER INFORMATION CONTACT: Janise Zygmont, Fibers and Rice Analysis Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, Room 3756–S, PO Box 2415, Washington, DC 20013–2415 or call 202–720–6734.

SUPPLEMENTARY INFORMATION: The 1949 Act requires that a special limited global import quota for upland cotton, above the quota established under section 22 of the Agricultural Adjustment Act of 1933, as amended, be determined and announced immediately whenever the average price of the base quality of upland cotton in the designated spot markets for a month exceeds 130 percent of the average price of such quality of cotton in such markets for the preceding 36 months. The May 1994 spot market average for base quality cotton was 79.30 cents per pound, which is 134 percent of the 59.15 cents-per-pound average of the previous 36-month period from May 1991 through April 1994.

The quota amount is equivalent to 21 days of domestic mill consumption of upland cotton at the seasonally-adjusted average rate of the most recent 3 months for which data are available. The 183,694,813-kilogram (404,978,070-pound) quota is based on consumption data for the period February through April 1994. The quota is not divided by staple length or by country of origin. The quota does not affect existing tariff rates or phytosanitary regulations.

Authority: 7 U.S.C. 1444–2 (n) and U.S. Note 6(b), Subchapter III, Chapter 99 of the HTS.

Signed at Washington, DC, on July 12, 1994.

Mike Espy,
Secretary.

[FR Doc. 94–17518 Filed 7–18–94; 8:45 am]
BILLING CODE 3410–05–P

DEPARTMENT OF COMMERCE

Minority Business Development Agency

Business Development Center Applications: Boston, MA (Service Area)

AGENCY: Minority Business Development Agency, Commerce.
ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program. The total cost of performance for the first budget period (12 months) from December 1, 1994 to November 30, 1995 is estimated at $222,196. The total Federal Amount is $188,867 and is composed of $184,260 plus the Audit Fee Amount of $4,607. The application must include a minimum cost-share of 15% ($33,329) of the total project cost through non-Federal contributions. Cost-sharing contributions may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof. The MBDC will operate in the Boston, Massachusetts geographic service area.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state, and local governments, American Indian tribes and educational institutions.

The MBDC Program provides business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of management and technical assistance to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points).

An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal Awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist them in this effort, MBDCs may charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of $50 per hour, MBDCs will charge client fees at

20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

Quarterly reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

DATES: The closing date for applications is August 25, 1994. Applications must be postmarked on or before August 25, 1994.

The mailing address for submission is:

ADDRESSES: New York Regional Office, Minority Business Development Agency, Jacob K. Javits Federal Building, Room–3720, New York, New York 10278 (Area Code & Telephone Number): (212) 264–3262.

FOR FURTHER INFORMATION CONTACT: William R. Fuller, Acting Regional Director, New York Office at (212) 264–3262.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days, Executive order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address.

Pre-Award Costs—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs. Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Outstanding Account Receivable—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination—The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug Free Workplace—Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: July 12, 1994.

William R. Fuller,

(Acting Regional Director), New York (Regional Office).

[FR Doc. 94–17546 Filed 7–18–94; 8:45 am]

BILLING CODE 3510–21–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Limit for Certain Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Hong Kong

July 13, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

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).

A notice published in the **Federal Register** on June 1, 1994 (59 FR 28343) announced that the United States Government had requested consultations with the Government of Hong Kong on men's and boys' coats and jackets in Category 834.

Inasmuch as no agreement was reached in recent consultations between the Governments of the United States and Hong Kong, the Government of the United States, under paragraph 7(e)(I) of the U.S.-Hong Kong Bilateral Textile Agreement, has requested the Government of Hong Kong to limit exports to the United States of textile products in Category 834 to a level of 10,500 dozen for 1994.

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).

The United States remains committed to finding a solution concerning Category 834. Should such a solution be reached in further consultations with the Government of Hong Kong, notice will be published in the **Federal Register**.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–17384 Filed 7–18–94; 8:45 am]

BILLING CODE 3510–DR–F

Request for Public Comments on Bilateral Textile Consultations With the Government of Pakistan on Certain Man-Made Fiber Textile Products

July 13, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: July 20, 1994.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6714. For information on embargoes and quota re-openings, call (202) 482–3715. For information on categories on which consultations have been requested, call (202) 482–3740.

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).

On June 29, 1994, under the terms of the Bilateral Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated May 20, 1987 and June 11, 1987, as amended and extended, between the Governments of the United States and Pakistan, the United States Government requested consultations with the Government of Pakistan with respect to man-made twill and sateen staple/filament fabric in Category 628.

The purpose of this notice is to advise the public that, pending agreement on a mutually satisfactory solution concerning Category 628, the Government of the United States has decided to control imports during the ninety-day period which began on June 29, 1994 and extends through September 26, 1994 at a level of 1,079,634 square meters.

If no solution is agreed upon in consultations between the two governments, CITA, pursuant to the agreement, may later establish a specific limit for the entry and withdrawal from warehouse for consumption of textile products in Category 628, produced or manufactured in Pakistan and exported during the prorated period beginning on September 27, 1994 and extending through December 31, 1994, of not less than 973,572 square meters.

A summary market statement concerning Category 628 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 628, under the agreement with the Government of Pakistan, or to comment on domestic production or availability of products included in Category 628, is invited to submit 10 copies of such comments or information to Rita D. Hayes, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of Pakistan.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Category 628. Should such a solution be reached in consultations with the Government of Pakistan, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 59 FR 5756, published on February 8, 1994.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Market Statement—Pakistan

Category 628—Man-Made Fiber Twill/Sateen Staple/Filament Fabric

June 1994

Import Situation and Conclusion

U.S. imports of manmade fiber twill and sateen staple/filament fabric, Category 628, from Pakistan began in September 1993. During the eight month period September 1993 through April 1994, U.S. imports from Pakistan reached 3,191,471 square meters. In just eight months, Pakistan has become the number one supplier of manmade fiber twill and sateen staple/filament fabric to the U.S. market, accounting for 37 percent of total Category 628 imports in the year ending April 1994. In the first four months of 1994, imports from Pakistan reached 1,774,924 square meters, 67 percent of total U.S. imports of Category 628 during January-April 1994. There were no Category 628 imports from Pakistan in 1990, 1991, and 1992. Category 628 imports from Pakistan totaled 249,523 square meters in 1989.

The sharp and substantial increase of Category 628 imports from Pakistan is causing a real risk of disruption in the U.S. market for manmade fiber twill and sateen staple/filament fabric.

U.S. Production, Import Penetration and Market Share

U.S. production of manmade fiber twill and sateen staple/filament fabric, Category 628, declined from 98,766,000 square meters in 1989 to 83,441,000 square meters in 1993, a 16 percent decrease. U.S. production for the year ending March 1994 was 9 percent below the year ending March 1993 level.

In contrast, U.S. imports of Category 628 from all sources remained relatively stable during the years 1989-1992, averaging 4,655,000 square meters per year. In 1993, imports surged to 7,259,000 square meters, 56 percent above the 1989-1992 average. Imports continue to surge in 1994, reaching 2,660,000 square meters in the first four months, more than double the January-April 1993 level. Imports reached 8,728,000 square meters in the year-ending April 1994, 83 percent above the 4,772,000 square meters imported during the year ending April 1993.

The ratio of imports to domestic production remained relatively stable, averaging 5.1 percent during the years 1989-1992. The ratio of imports to production increased to 8.7 percent in 1993 and 10.5 percent in the year ending March 1994, double the 1989-1992 average percent.

Duty-Paid Value and U.S. Producers' Price

Approximately 70 percent of Category 628 imports from Pakistan during the year ending April 1994 entered the U.S. under HTSUSA 5407.81.0040—Woven satin or twill synthetic filament fabrics, less than 85% by weight synthetic, mixed primarily with cotton, whether or not bleached. These fabrics entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable fabrics.

Committee for the Implementation of Textile Agreements

July 13, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on February 1, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 1994 and extends through December 31, 1994.

Effective on July 20, 1994, you are directed to establish a limit for man-made fiber twill and sateen staple/filament fabric in Category 628 for the period beginning on June 29, 1994 and extending through September 26, 1994 at a level of 1,079,634 square meters [1].

Textile products in Category 628 which have been exported to the United States prior to June 29, 1994 shall not be subject to the limit established in this directive.

Textile products in Category 628 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1) prior to the effective date of this directive shall not be denied entry under this directive.

[1] The limit has not been adjusted to account for any imports exported after June 28, 1994.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–17383 Filed 7–18–94; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade: Proposed Amendments Modifying the Load-Out Requirements for Grain Delivered Into Barges at Burns Harbor, IN, Applicable to the Corn, Wheat, Oats, and Soybean Futures Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule change.

SUMMARY: The Chicago Board of Trade (CBT) has submitted proposed amendments to its corn, wheat, oats, and soybeans ("grain") futures contracts regarding the deliverer's options for loading grain into barges from regular delivery warehouses at Burns Harbor, Indiana. The proposed amendments will modify the delivery procedures so that deliverers in Burns Harbor no longer would be allowed to load-out futures-delivery grain into barges at regular warehouses operated by the deliverer in Chicago as an alternative to loading the delivery grain into barges at regular delivery warehouses in Burns Harbor.

In accordance with Section 5a(a)(12) of the Commodity Exchange Act and acting pursuant to the authority delegated by Commission Regulation 140.96, the Acting Director of the Division of Economic Analysis ("Division") of the Commodity Futures Trading Commission ("Commission") has determined, on behalf of the Commission, that the proposed amendments are of major economic significance. On behalf of the Commission, the Division is requesting public comment on the proposal.

DATES: Comments must be received on or before August 18, 1994.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the CBT's proposed changes in the barge load-out requirements for deliveries at Burns Harbor, Indiana, for the corn, wheat, oats, and soybeans futures contracts.

FOR FURTHER INFORMATION CONTACT: Frederick Linse, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, telephone (202) 254–7303.

SUPPLEMENTARY INFORMATION: Under the CBT's existing regulations, when futures delivery grain in store in regular delivery warehouses in Burns Harbor, Indiana is ordered out for shipment by barge, it is the obligation of the deliverer to protect the barge freight rate from the Chicago Switching District, if so requested by the receiver. The existing regulations further specify that the deliverer can protect the barge freight rate by either: (1) Making the grain available to load into a barge at one regular on-water delivery warehouse operated by the deliverer which is located in the Chicago Switching District; or (2) by paying the receiver an amount equal to all expenses for the movement of the barge from the Chicago Switching District to the Burns Harbor Switching District, and the return movement to the Chicago Switching District.

Under the proposed amendments, deliverers will no longer be able to exercise the first alternative above; *i.e.*, making futures delivery grain available for loading into barges at the warehouse operator's Chicago delivery warehouse. As amended, the CBT's regulations will continue to require that the deliverer protect the barge freight rate from the Chicago switching district by paying the receiver the expense of moving barges from Chicago to Burns Harbor and back to Chicago, as described above. In addition, the proposed amendments will make the requirement that the deliverer protect the barge freight rate from the Chicago switching district mandatory, rather than at the request of the party taking delivery.

The Exchange intends to make the changes effective for all existing and newly listed contract months following receipt of notice of approval from the Commission.

In support of the proposed amendments, the Exchange stated that:

The purpose of the proposed regulation changes is to ensure that the party taking delivery is not economically disadvantaged by the Burns Harbor warehouseman's exercise of the option to provide barge load-out in Chicago. For example, under the current regulation[,] the Burns Harbor warehouseman has the right to switch its barge load-out obligations to Chicago even if the load-out lineup at Chicago is longer than at Burns Harbor. Assuming a 3-day lineup for barge load-out exists at Burns Harbor and a 10-day lineup exists at the Chicago warehouse, the taker of delivery would incur

an additional 7 days costs for demurrage and storage if the warehouseman chooses to load-out the barge in Chicago * * * .

The proposed regulation change will ensure that takers of delivery at Burns Harbor who request barge load-out receive grain with the same value as takers of delivery at Chicago, and thus, will improve the fairness between makers and takers of delivery on the [CBT] grain contracts.

The Commission is requesting comments on the proposed amendments specifically in regard to: (1) the extent to which, if any, the proposed amendments will affect the level of deliverable supplies available for the CBT's corn, wheat, oats and soybeans futures contracts; and (2) the extent to which, if any, the application of the proposed amendments to all currently listed contract months will affect the value of existing positions in such months or impair the ability of futures deliverers and receivers to carryout their rights and obligations under these existing futures contracts.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, at the above address. Copies of the amended terms and conditions can be obtained through the Office of the Secretariat by mail at the same address or by telephone at (202) 254–6314.

The materials submitted by the CBT in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)). Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the above address in accordance with CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, at the above address by the specified date.

Issued in Washington, DC, on July 13, 1994.

John R. Mielke,

Acting Director Division of Economic Analysis.

[FR Doc. 94–17547 Filed 7–18–94; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Policy Revision Concerning Foreign Military Financing for Direct Commercial Contracts

AGENCY: Office of the Secretary, DOD.

ACTION: Notice.

SUMMARY: Section 572 of the FY94 Foreign Operations Appropriations Act (Public Law 103–87), required DOD to continue the use of Foreign Military Financing (FMF) for funding Direct Commercial Contracts (DCCs) until all parties affected by any such changes were consulted. Accordingly, DOD completed consultations with eligible countries, U.S. Industry, and Congress on the new policy and recommended that the Secretary of Defense continue FMF of DCCs on an exception basis. The Deputy Secretary of Defense accepted the recommendation and has approved the continued use of FMF of DCCs on an exception basis. This new policy is effective as on July 1, 1994, and will be phased-in with full implementation effective January 1, 1995.

Implementation of the new policy will require new Guidelines and Contractor's Certification which are expected to be published by the end of September 1994. The following are the major changes to be included:

—DCCs will not be permitted for standard DOD items. Exceptions may be granted on a case-by-case basis if DOD determines that the Foreign Military Sales (FMS) system cannot satisfy the requirement. The purchasing country must request exceptions for procurement of standard DOD items through the Defense Security Assistance Agency (DSAA) and provide written justification explaining why the requirement should be obtained through DCC.

—Proof of competition, to include offer prices, will be required on all competitive buys. If the lowest offeror is not selected, the country will be required to justify its choice.

—Cost analysis/price evaluations will be conducted by the Defense Logistics Agency (paid for by the foreign country) on all sole-source contracts of $500,000 or more.

—Contract administration services will be performed by the Defense Logistics Agency (paid for by the foreign country) on contracts over $500,000.

—The Defense Contract Audit Agency will continue to conduct audits of contracts.

—Commissions and agent's fees will not be permitted unless paid for from country national funds. Progress or milestone payments to the contractor will be limited to actual costs incurred.

DOD will continue to consider financing contracts or amendments signed by December 31, 1994, and submitted to the Defense Security Assistance Agency (DSAA) by March 30, 1995, under existing guidelines. All contracts or amendments regardless of signature date received after this cut-off date will be processed under the new policy procedures. For additional information contact the Defense Security Assistance Agency, Operations Management Division, (703) 604–6365 or FAX (703) 604–6541.

Dated: July 14, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–17511 Filed 7–18–94; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Army Science Board; Notice of Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 10–12 August 1994.

Time of Meeting: 0900–1700.

Place: MIT Lincoln Laboratory, Bedford, MA.

Agenda

The Army Science Board's Ad Hoc Study on "Aided Target Recognition" (ATR) will meet to receive briefings on military-funded programs in aided and automatic target recognition. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5 U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening all portions of the meeting. The ASB Administrative Officer Sally Warner, may be contacted for further information at (703) 695–0781.

Herbert J. Gallagher,

COL, GS Executive Secretary.

[FR Doc. 94–17415 Filed 7–18–94; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Notice of Public Hearing for the Draft Environmental Impact Statement for Base Realignment of Naval Air Station Lemoore, Lemoore, CA

Pursuant to Council on Environmental Quality regulations (40 CFR Parts 1500–1508) implementing procedural provisions of the National Environmental Policy Act, the Department of the Navy has prepared and filed with the U.S. Environmental Protection Agency the Draft Environmental Impact Statement (DEIS) for base realignment of Naval Air Station (NAS) Lemoore, Lemoore, California.

In response to the recommendations of the 1993 Defense Base Closure and Realignment Commission (BRAC–93) and to legislative requirements of the Defense Base Closure and Realignment Act of 1990 (Public Law 101–510), the U.S. Navy plans to relocate facilities and operations from NAS Miramar, San Diego, California, to NAS Lemoore, California. The relocation will consist of 56 F–14 aircraft, 16 E–2 aircraft, 12 F/A–18 aircraft, approximately 3993 military personnel, and 484 civilians. The proposed BRAC relocation to NAS Lemoore will result in the construction of approximately 98 projects. These projects have been placed into the following twelve military construction categories: hangar rehabilitation, airfield operational facilities, airfield operational pavement, industrial support facilities, instruction facilities, training facilities, personnel support facilities, utility upgrades, community support facilities/housing, storage facilities, administrative facilities, and weapons facilities. In addition, the Navy is proposing to establish the Lemoore Military Operating Area (MOA) and two Air Traffic Control Assigned Areas (ATCAAs). The Lemoore MOA and the ATCAAs will become designated airspace for military training over the Central San Joaquin Valley. This airspace is necessary to accommodate the increase in air operations resulting from the relocation of squadrons to the base.

The DEIS has been distributed to various federal, state, and local agencies, elected officials, special interest groups, and the media. A limited number of single copies are available at the address listed at the end of this notice for public review and comment. A public hearing to inform the public of the DEIS findings and to solicit comments will be held on August 4, 1994, beginning at 7:00 p.m. at the Lemoore High School, 101 East Bush Street, Lemoore, California.

The public hearing will be conducted by the Navy. Federal, state, local agencies, interested groups, and individuals are invited and encouraged to be present or represented at the hearing. Oral statements will be heard and transcribed by a stenographer; however, to assure accuracy of the record, all statements should be submitted in writing. All statements, both oral and written, will become part of the public record on this study. Equal weight will be given to both oral and written statements.

In the interest of available time, each speaker will be asked to limit their oral comments to five minutes. Longer statements should be summarized at the public hearing and submitted in writing either at the hearing or mailed to the address listed at the end of this announcement. All written statements must be postmarked by August 22, 1994, to become part of the official record.

Additional information concerning this notice may be obtained by contacting Mr. Surinder Sikand Code (Code 09F2SU), Western Division, Naval Facilities Engineering Command, 900 Commodore Drive, San Bruno, California 94066–2402, telephone (415) 244–3721.

Dated: July 14, 1994.

Lewis T. Booker, Jr.,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 94–17478 Filed 7–18–94; 8:45 am]

BILLING CODE 3810–AE–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

[CFDA No: 84.029]

Training Personnel for the Education of Individuals With Disabilities—Grants for Personnel Training and Parent Training and Information Centers

ACTION: Notice of withdrawal.

Purpose

On June 10, 1994 the Secretary published in the **Federal Register** (59 FR 30190) a combined application notice (CAN) inviting applications for new awards for fiscal year 1995 under a number of the Department's direct grant and fellowship programs. Included in the CAN were 10 competitions under Training Personnel for the Education of Individuals with Disabilities—Grants for Personnel Training and Parent Training and Information Centers. The purpose of this notice is to withdraw two of those competitions each of which addressed a separate absolute priority:

CFDA 84.029M (Absolute Priority-8)—Parent Training and Information Centers

CFDA 84.029P (Absolute Priority-9)—Experimental Parent Centers

These competitions will be incorporated into another initiative of the Department and announced at a later date.

For Applications or Information Contact

Cecelia Aldridge, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3072, Switzer Building, Washington, DC 20202–2651. Telephone: (202) 205–9058. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–9999.

Authority: 20 U.S.C. 1431.

Dated: July 13, 1994.

Howard R. Moses,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 94–17433 Filed 7–18–94; 8:45 am]

BILLING CODE 4000–01–P

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of Closed and Partially Closed Meetings.

SUMMARY: This notice sets forth the schedule and proposed agenda of forthcoming meetings of the National Assessment Governing Board and its committees. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the open portions of the meetings.

DATES: August 4–6, 1994.

TIMES: August 4, 1994—Subject Area Committee #2, 2:00 P.M.–8:00 P.M. (closed); Achievement Levels Committee, 4:15 P.M.–6:15 P.M. (open). August 5, 1994—Executive Committee, 7:00 A.M.–8:15 A.M. (open); 8:15 A.M.–8:30 A.M. (closed); Full Board, 8:45 A.M.–10:15 A.M. (open); Design and Analysis Committee, 10:15 A.M.–12:15 P.M. (open); Joint meeting, Subject Area Committee #1 and Reporting and Dissemination Committee, 10:15 A.M.–11:15 A.M. (open); Subject Area Committee #1, 11:15 A.M.–12:15 P.M.

(open); Reporting and Dissemination Committee, 11:15 A.M.–12:15 P.M. (open); Full Board, 12:15 P.M.–1:30 P.M. (closed); Full Board, 1:30 P.M.–3:45 P.M. (open). August 6, 1994–Nominations Committee, 8:00 A.M.–9:00 A.M. (closed); Full Board, 9:00 A.M. until adjournment at approximately 12:00 Noon (open).

LOCATION: The Brown Palace Hotel, 321 17th Street, Denver, Colorado.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, Suite 825, 800 North Capitol Street, N.W., Washington, D.C., 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under Section 406(i) of the General Education Provisions Act (GEPA) as amended by Section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), Title III–C of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297), (20 U.S.C. 1221e-1).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons.

On August 4, two committees will be in session. The Subject Area Committee #2 will meet in closed session from 2:00 P.M. to 8:00 P.M. to review secure field test exercises in science and mathematics. This meeting must be conducted in closed session because premature disclosure of the information presented for review would be likely to significantly frustrate implementation of a proposed agency action. Such matters are protected by exemption (9)(B) of Section 552b(c) of Title 5 U.S.C. The Achievement Levels Committee will meet in open session from 4:15 P.M. until 6:15 P.M. The Committee will be briefed on the progress of the 1994 level setting activities in geography and history and the plans for validating the 1992 achievement levels.

On August 5, the Executive Committee will meet in partially closed session. The agenda for the open session, from 7:00 A.M. until 8:15 A.M. includes a follow-up on NAEP inclusion issues, a summary of comments on "Principles to Govern Scheduling of NAEP Assessments," and a report from the Ad Hoc Committee studying Hierarchial Linear Modeling. The Committee will meet in closed session from 8:15 A.M. to 8:30 A.M. to discuss the qualifications of current Board members to serve as Chairman and Vice Chairman of NAGB. Based upon these discussions, the Board will elect a Vice Chairman and recommend a Chairman to the Secretary. This session will relate solely to the internal personnel rules and practices of an agency and will disclose information of a personal nature where disclosures would constitute a clearly unwarranted invasion of personal privacy and, as such, is protected by exemptions (2) and (6) of Section 552b(c) of Title 5 U.S.C.

Also on August 5, the full Board will convene in open session at 8:45 A.M. The morning session of the full Board meeting, to 10:15 A.M., includes approval of the agenda, a report on assessment in Colorado, and an overview of the activities of the Education Commission of the States (ECS). From 10:15 A.M. until 12:15 P.M., three of the Board's standing committees will meet in open session. The Design and Analysis Committee will meet during this time. From 10:15 A.M. until 11:15 A.M., Subject Area Committee #1 and the Reporting and Dissemination Committee will meet jointly on parent and other background questionnaires. From 11:15 A.M. until 12:15 P.M., Subject Area Committee #1 and the Reporting and Dissemination Committee will meet separately.

Beginning at 12:15 P.M., until 3:45 P.M., the full Board will meet in partially closed session. From 12:15 P.M., until 1:30 P.M., the meeting will be closed to the public. The Board will hear a report on the 1992 NAEP Writing Portfolio Study. This presentation will include references to specific items from the assessment. This portion of the meeting must be closed because reference may be made to data which may be misinterpreted, incorrect, or incomplete. Premature disclosure of these data would be likely to significantly frustrate implementation of a proposed agency action. Such matters are protected by exemption (9)(B) of Section 552b(c) of Title 5 U.S.C. From 1:30 P.M. until 3:45 P.M. the meeting will be open to the public to hear a report from the Ad Hoc Committee on Hierarchical Linear Modeling, a report on the Board on Testing and Assessment, and a presentation on issues related to reducing NAEP reporting time.

On August 6, the Nominations Committee will meet in closed session from 8:00 A.M. until 9:00 A.M. to review and discuss the personal qualifications and experience of potential nominees to the Board. The review and subsequent discussion of this information will touch upon matters that relate solely to the internal rules and practices of an agency and would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (2) and (6) of Section 552b(c) of Title 5 U.S.C.

At 9:00 A.M., the full Board will reconvene to receive a presentation on the policy interests of the Education Information Advisory Committee of the Council of Chief State School Officers, (EIAC) and an overview of the October 4–6 NCES/NAGB Joint Conference on Standard-Setting and to hear reports from Subject Area Committees #1 and #2 and the Reporting and Dissemination, Design and Analysis, Achievement Levels, Nominations, and Executive Committees. This meeting of the National Assessment Governing Board will be adjourned at approximately 12:00 Noon.

Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite 825, 800 North Capitol Street, N.W., Washington, D.C., from 8:30 A.M. to 5:00 P.M., Monday through Friday. A summary of the activities at each closed portion of these meetings, including related matters that are informative to the public, consistent with the policy of title 5 U.S.C. 552b(c), will be available to the public within fourteen days of the closed and partially closed meetings.

Dated: July 14, 1994.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 94–17541 Filed 7–18–94; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

[Docket No. EA–101]

Application for Authorization To Export Electricity; Washington Water Power Company

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Application.

SUMMARY: Washington Water Power Company has requested authorization to export electric energy to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests, or requests to intervene must be submitted on or before August 18, 1994.

ADDRESSES: Comments, protests, or requests to intervene should be addressed as follows: Office of Coal & Electricity (FE–52), Office of Fuels Programs, Office of Fossil Energy, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Warren E. Williams (Program Office) 202–586–9629 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country may not occur without authorization under section 202(e) of the Federal Power Act (FPA).

On May 24, 1994, the Washington Water Power Company (WWP) filed an application with the Office of Fossil Energy (FE) of the Department of Energy (DOE) for authorization to export electric energy to Canada pursuant to section 202(e) of the Federal Power Act. Specifically, WWP has applied for authorization to sell firm capacity and associated energy to West Kootenay Power, Limited (WKP), in the Provence of British Columbia, Canada. The electric energy proposed for export would be delivered to WKP over the existing Boundary/Waneta, 230,000-volt international transmission line which is owned and operated by the Bonneville Power Administration (BPA). The construction, connection, operation, and maintenance of this line was previously authorized by Presidential Permit PP–36.

WWP requested that the period of the export be from November 1, 1994, through February 28, 1995. During that period, WWP proposes to make available, and WKP proposes to purchase, firm capacity and associated energy in the following amounts:

November 1994	30 megawatts (MW).
December 1994	30 MW.
January 1995	40 MW.
February 1995	30 MW.

Upon request from WKP, WWP may, at its sole discretion, increase the amount of firm capacity made available during any month within the term of the agreement. However, in no event, would the amount of exported capacity exceed 100 MW.

The electric energy would be delivered to WKP utilizing the BPA transmission system and the appropriate transmission rate schedules in effect during the transaction period.

In an associated matter, on January 13, 1994, in FE Docket EA–86 (Order EA–86), the Office of Fossil Energy authorized WWP to export to West Kootenay Power 40 MW of firm capacity and associated energy during January 1994, and 30 MW of firm capacity and associated energy during February 1994.

It is noted that this is the second application filed by WWP within the year requesting similar authorizations. In the event WWP has intentions of re-applying for subsequent four-month export authorizations, the DOE will review this application for the appropriateness of issuing a multi-year authorization in this proceeding. The DOE feels that such an action, if warranted, may facilitate WWP's participation in future beneficial commercial arrangements and reduce regulatory burden.

Procedural Matters

Any person desiring to be heard or to protest this application should file a petition to intervene or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Rules of Practice and Procedure (18 CFR 385.211, 385.214).

Any such petitions and protests should be filed with the DOE on or before the date listed above. Additional copies of such petitions to intervene or protests also should be filed directly with: Charles M. Goligoski, Power Resource Analyst, Washington Water Power, East 1411 Mission, P.O. Box 3727, Spokane, Washington 99220–3727.

Pursuant to 18 CFR 385.211, protests and comments will be considered by the DOE in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene under 18 CFR 385.214. Section 385.214 requires that a petition to intervene must state, to the extent known, the position taken by the petitioner and the petitioner's interest in sufficient factual detail to demonstrate either that the petitioner has a right to participate because it is a State Commission; that it has or represents an interest which may be directly affected by the outcome of the proceeding, including any interest as a consumer, customer, competitor, or a security holder of a party to the proceeding; or that the petitioner's participation is in the public interest.

A final decision will be made on this application after a determination is made by the DOE on whether the proposed action would impair the sufficiency of electric supply within the United States or would impede or tend to impede the coordination in the public interest of facilities as required by Section 202(e) of the FPA.

Before an export authorization may be issued, the environmental impacts of the proposed DOE action (i.e., granting the export authorization, with any conditions and limitations, or denying it) must be evaluated pursuant to the National Environmental Policy Act of 1969.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, DC, July 13, 1994.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Fossil Energy.

[FR Doc. 94–17540 Filed 7–18–94; 8:45 am]

BILLING CODE 6450–01–P

Floodplain Statement of Findings K–705 Water Intake Structure Demolition at the Oak Ridge, TN K–25 Site

AGENCY: Department of Energy (DOE).

ACTION: Floodplain Statement of Findings.

SUMMARY: This is a Floodplain Statement of Findings K–705 Water Intake Structure Demolition at the Oak Ridge K–25 Site, prepared in accordance with 10 CFR Part 1022. DOE proposes to remove out-of-service equipment and materials and demolish the K–705 water intake structure, a part of the K–700 Powerhouse Area. DOE prepared a floodplain assessment describing the effects, alternatives, and measures designed to avoid or minimize potential harm to or within the affected floodplain. Portions of the K–705 structure are located within the 100-year floodplain of the Clinch River, located in Roane County, Tennessee. DOE will endeavor to allow 15 days of public review after publication of the statement of findings before implementing the proposed action.

FOR FURTHER INFORMATION CONTACT: Information on the proposed action, including maps of potentially disturbed floodplain area, is available from: Mr. Robert C. Sleeman, Director, Environmental Restoration Division, Oak Ridge Operations Office, U.S. Department of Energy, P.O. Box 2001, Oak Ridge, Tennessee 37831–8541, (615) 576–0715.

Further information on general DOE floodplain environmental review requirements is available from: Ms. Carol M. Borgstrom, Director, Office of NEPA Oversight, (EH–25), U.S. Department of Energy, 1000

Independence Avenue, SW., Washington, DC 20585, (202) 586–4600 or leave a message, at (800) 472–2756.

SUPPLEMENTARY INFORMATION: This is a Floodplain Statement of Findings for the K–705 Water Intake Structure Demolition at the Oak Ridge K–25 Site, prepared in accordance with 10 CFR Part 1022. A Notice of Floodplain/Wetlands Involvement for Environmental Restoration and Waste Management Activities at the DOE Oak Ridge Reservation was published in the **Federal Register** and a floodplain assessment was prepared; no wetlands [58 FR 51624 (October 4, 1993)] are involved in the proposed action.

DOE is proposing to characterize the facility, perform waste removal, and undertake demolition of the K–705 water intake structure. The K–705 water intake structure consists of the water intake filter wall, sidewalls, and a berm. The water intake filter wall is a metal filtration wall that extends approximately 100 feet into the main channel of the Clinch River and acts to screen water prior to intake. The sidewalls are constructed of solid sheet metal piles and are embedded into a berm. K–705 has been shutdown since the 1960s; it is not currently being used or maintained and has reached a state of significant deterioration. As a result, additional access control measures are required to ensure personnel safety around the structure.

The purpose of the proposed action is to remove the potential for adverse environmental, health, and safety impacts, including potential hazards to navigation, that may result from the deteriorated facility. The proposed action would involve facility characterization, removal of all accessory materials, and demolition to grade level using the most cost-effective method. Removal of K–705 would be conducted in accordance with the removal methods described in the U.S. Army Corps of Engineers Nationwide Wetlands Permit. Temporary disturbance of the Floodplain may occur during the removal of the steel sidewalls of the water intake filter wall from the river bank sediment if this specific activity proved necessary. The temporary disturbance would last approximately 2–3 weeks. If removal of the berm of the structure protruding into the water was necessary, dust/debris-control procedures would be applied during demolition. Best management practices would be implemented to ensure that minimal disturbance to the 100-year Floodplain would occur as a result of taking the proposed action.

The alternative to the proposed action is to take no action. The no action alternative would mean that DOE would be unable to remove this potentially adverse environmental, health, and safety impact.

On the basis of the Floodplain Assessment, DOE has determined that the proposed action would not alter the storage capacity of the Clinch River Floodplain or increase risks to individuals, property, or the environment. The Floodplain Assessment was performed to assess the potential hydrologic impacts of the proposed action. The Floodplain Assessment addresses (1) the potential for alteration of the Clinch River Floodplain as a result of the proposed action, (2) the increase in water surface elevations during flood events, and (3) the potential impacts of the proposed action on adjacent properties and the environment. Results of the Floodplain Assessment indicate inconsequential hydrologic impacts. Therefore, the proposed characterization, waste removal, and demolition of the K–705 structure would not affect the existing normal channel or 100-year Floodplain of the Clinch River. The proposed action conforms to applicable State Floodplain standards. DOE will endeavor to allow 15 days of public review after publication of the Statement of Findings prior to implementing the proposed action.

Kimberly A. Chaney,

Acting Director, Office of Eastern Area Programs, Office of Environmental Restoration.

[FR Doc. 94–17538 Filed 7–18–94; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award; Shimon Awerbuch, PhD.

AGENCY: Department of Energy.

ACTION: Notice of Non-competitive Financial Assistance Award.

SUMMARY: Pursuant to 10 CFR 600.7, and 600.202, the Department of Energy, Region 1 Office intends to award a cooperative agreement to Dr. Shimon Awerbuch. The cooperative agreement will provide funding in the amount of $14,000 to make it possible for Dr. Awerbuch to participate in various seminars and conferences in support of renewable energy for the purpose of educating professionals in the utility industry, state regulatory authorities and renewable industry investors in the valuation of renewables.

DOE knows of no other entity that is conducting or planning to conduct such an effort. This project is suitable for noncompetitive financial assistance and would not be eligible for financial assistance under a recent, current, or planned solicitation.

The initial budget period will be twelve (12) months from the date of the effective date of the award. The project is expected to run for five years. Possible funding in future years will be based on satisfactory completion of the initial term and upon availability of funds.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Region 1 Office, Attn: Richard C. Michaud, One Congress Street, Boston, MD, 02114–2021, 617–565–9713.

Issued in Golden, Colorado, on May 18, 1994.

Christine A. Phoebe,

Director, Administrative Division.

[FR Doc. 94–17537 Filed 7–18–94; 8:45 am]

BILLING CODE 6450–01–M

Savannah River Operations Office

Financial Assistance Award Intent To Award a Noncompetitive Grant

AGENCY: Savannah River Operations Office, DOE.

ACTION: Notice.

SUMMARY: The DOE announces that it plans to award a renewal grant to South Carolina Department of Health and Environmental Control (SCDHEC), 2600 Bull Street, Columbia, SC 29201. The grant, "Oversight and Implementation of the Federal Facility Agreement (FFA)," will be renewed for a five-year period at a projected funding level of $9,097,668. Funds of $1,390,911 are available for the first budget period, and subject to the availability of funds, the reminder will be awarded thereafter. Pursuant to Section 10 CFR Part 600.7(b)(2)(i)(C) of the DOE Assistance Regulations (10 CFR Part 600), DOE has determined that a noncompetitive award is appropriate since SCDHEC is the authorized regulatory agency qualified to perform the activities covered under the grant within the subject jurisdiction.

FOR FURTHER INFORMATION CONTACT: Elizabeth T. Martin, Prime Contracts and Financial Assistance Branch, U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29802, Telephone: (803) 725–2191.

SUPPLEMENTARY INFORMATION:

Procurement Request Number: 09–94SR18233.001.

Project Scope: The proposed renewal grant allows the State of South Carolina to continue implementing the Federal Facility Agreement (FFA) and maintain

a program to oversee the remediation activities at the Savannah River Site (SRS). The FFA (effective August 13, 1993) is a collaborative effort among the Department of Energy, the Environmental Protection Agency and the South Carolina Department of Health and Environmental Control to direct the comprehensive remediation of the SRS. The Agreement governs the corrective/remedial action process from site investigation through site remediation and describes procedures to set annual work priorities for that process. The Parties will coordinate the administrative and public participation processes prescribed by the various statutes (e.g., RCRA and CERCLA) governing the corrective/remedial action process at the SRS.

Based on documentation presented and appropriate evaluation, it is determined that this award to SCDHEC on a noncompetitive basis is appropriate and is in the best interest of DOE.

Issued in Aiken, South Carolina, on June 15, 1994.

Robert E. Lynch,

DOE Savannah River Operations Office, Head of Contracting Activity, Designee.

[FR Doc. 94–17536 Filed 7–18–94; 8:45 am]

BILLING CODE 6450–01–M

Noncompetitive Financial Assistance Award

AGENCY: Department of Energy (DOE) Albuquerque Operations Office (AL).

ACTION: Notice of Program Interest.

SUMMARY: Based upon a determination pursuant to 10 CFR part 600.14(e)(i), which authorizes a financial assistance award to be made on an unsolicited proposal if the activity to be funded is meritorious based on a general evaluation of the unsolicited proposal, AL gives notice of its plans to award a one-year grant to Princeton University for a proposal entitled "Asymmetric Whirl Combustion." The total estimated cost to DOE is $174,930. The distribution and availability of funds is subject to budget limitations. The public purpose to be served by this award is to characterize the asymmetric whirl combustion process. The novel burner design enables combustion to occur well beyond the flammability limits of natural gas and thereby produces very low NO_x emissions. DOE is sponsoring this project under the Office of Industrial Technologies.

DATES: This will be a one-year grant starting in 1994.

FOR FURTHER INFORMATION CONTACT:

Robert D. Lowther, U.S. Department of Energy, Albuquerque Operations Office, Contracts and Procurement Division, P.O. Box 5400, Albuquerque, NM 87185, Telephone: (505) 845–6839.

SUPPLEMENTARY INFORMATION: NA.

Issued in Albuquerque, New Mexico, June 8, 1994.

Richard A. Marquez,

Assistant Manager for Management and Administration.

[FR Doc. 94–17539 Filed 7–18–94; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project Nos. 11428–000, et al.]

Hydroelectric Applications; City of St. Louis, MI, et al.; Notice of Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1a. Type of Application: Minor License.

b. Project No.: 11428–000.

c. Date Filed: August 5, 1993.

d. Applicant: The City of St. Louis, Michigan.

e. Name of Project: Municipal Dam.

f. Location: On the Pine River, in the City of St. Louis, Gratiot County, Michigan.

g. Filed Pursuant to: Federal Power Act, §§ 791(a)–825(r).

h. Applicant Contact: Larry W. Burkhart, 108 West Saginaw Street, St. Louis, MI 48880, (517) 681–2137.

i. FERC Contact: Charles T. Raabe (tag), (202) 219–2811.

j. Deadline for Interventions and Protests: August 29, 1994.

k. Status of Environmental Analysis: This application has been accepted for filing but is not ready for environmental analysis at this time—see attached paragraph D8.

l. Description of Project: The existing project would consist of: (1) a 21-foot-high, 126-foot-long reinforced concrete dam surmounted by six 19-foot-wide, 8-foot-high radial gates; (2) a 60-foot-long left embankment, a 55-foot-long center embankment, and 250-foot-long right embankment; (3) a reservoir with a 205-acre surface area and a 1,575-acre-foot storage capacity at normal water surface elevation 719 feet MSL; (4) a gated 18-foot-wide, 12-foot-deep intake flume; (5) a powerhouse containing two generating units each rated at 225-kW for a total installed capacity of 450-kW; (6) a tailrace; (7) a short 2400-volt transmission line; and (8) appurtenant facilities.

m. This notice also consists of the following standard paragraphs: A2, A9, B1, and D8.

n. Available Locations of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the City of St. Louis, 108 West Saginaw Street, St. Louis, Michigan 48880, (517) 681–2137.

2a. Type of Application: Preliminary Permit.

b. Project No. 11468–000.

c. Date filed: April 1, 1994.

d. Applicant: North Side Canal Company, Ltd.

e. Name of Project: Crossroads Conduit Water Power Project.

f. Location: The U Canal & North Side Main Canal, near the town of Jerome, T7S., R16E., sections 23, 24, 25 and 26, Boise Meridian. The project would occupy lands administered by the Bureau of Land Management.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact:

Mr. Kip Runyan, Ida-West Energy Company, P.O. Box 7867, Boise, ID 83707, (208) 336–4254.

Mr. John Rosholt, Rosholt, Robertson & Tucker, P.O. Box 1906, Twin Falls, ID 83301, (208) 734–0700.

i. FERC Contact: Ms. Deborah Frazier-Stutely, (202) 219–2842.

j. Comment Date: September 3, 1994.

k. Description of Project: The proposed project would consist of: (1) The existing Main Canal intake structure at Milner Dam, which consists of four 8-feet by 12-feet steel radial gates; (2) approximately 20 miles of the existing Main Canal; (3) an existing regulating reservoir; (4) a diversion dam in the existing U Canal; (5) an intake structure; (6) 0.5 mile of open canal; (7) a powerhouse containing a generating unit with an installed capacity of 3,200 kilowatts; (8) a one-mile long tailrace; (9) a 4-mile-long, 12.5-kV transmission line tying into an existing Idaho Power Company line.

The project would generate approximately 11,000 MWh of energy annually.

The applicant estimates the cost of the studies to be conducted under the preliminary permit at $196,900. No new roads will be needed for the purpose of conducting these studies.

There are four exempted hydro projects located within the project

boundary, Project Nos. 9070, 10164, 10326, and 10454.

l. Project Boundary: The project boundary is located approximately ±100 feet from the center line of the canals. A detailed project boundary map may be obtained from the applicant.

m. Purpose of Project: Project power would be sold to a local utility.

n. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

3a. Type of Application: Preliminary Permit.

b. Project No. 11469–000.

c. Date filed: April 1, 1994.

d. Applicant: North Side Canal Company, Ltd.

e. Name of Project: Headworks Conduit Water Power Project.

f. Location: The North Side Main Canal and the U Canal in Jerome County, Idaho, near the town of Jerome, T8S., R18E., sec. 5, 6, 8; T7 S.,R18E., sec. 31; T7S., R17E., sect. 35, 36; T8S., R17E., sec. 1., Boise Meridian. The project would occupy Bureau of Land Management lands.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Applicant Contact:

Mr. Kip Runyan, Ida-West Energy Company, P.O. Box 7867, Boise, ID 83707, (208) 336–4254.

Mr. John Rosholt, Rosholt, Robertson & Tucker, P.O. Box 1906, Twin Falls, ID 83301, (208) 734–0700.

i. FERC Contact: Ms. Deborah Frazier-Stutely, (202) 219–2842.

j. Comment Date: September 30, 1994.

k. Description of Project: The proposed project would consist of: (1) an existing concrete intake structure at Milner Dam which consists of four 8-feet by 12-feet steel radial gates; (2) approximately 20 miles of the existing Main Canal; (3) an existing regulating reservoir; (4) a diversion dam and intake structure at the terminus of the Main Canal and beginning of the U canal, replacing the P, R, and M canals diversion structures; (5) .25-miles of open canal; (6) a powerhouse containing two generating units with a combined installed capacity of 4,500 kilowatts; (7) a 1.5-mile-long tailrace discharging project flows into the U canal; (8) a 3-mile-long, 46-kV transmission line tying into Idaho Power Company's Flat Top Substation.

The project would generate approximately 18,700 MWh of energy annually.

The applicant estimates the cost of the studies to be conducted under the preliminary permit at $207,600. No new roads will be needed for the purpose of conducting these studies.

There are four exempted hydro projects located within the project boundary, Project Nos. 9070, 10164, 10326, and 10454.

l. Project Boundary: The project boundary is located approximately ±100 feet from the center line of the canals. A detail project boundary map may be obtained from the applicant.

m. Purpose of Project: Project power would be sold to a local utility.

n. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

4a. Type of Application: Preliminary Permit.

b. Project No. 11470–000.

c. Date filed: April 1, 1994.

d. Applicant: North Side Canal Company, Ltd.

e. Name of Project: Jerome Conduit Water Power Project.

f. Location: The North Side Main Canal, U, J, and S canals in Jerome County, near the town of Jerome. T7S., R17E., sections 31, 32, 33 and 34; T8S., R17., sect. 6., Boise Meridian. The project would occupy Bureau of Land Management Lands.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Applicant Contact:

Mr. Kip Runyan, Ida-West Energy Company, P.O. Box 7867, Boise, ID 83707, (208) 336–4254.

Mr. John Rosholt, Rosholt, Robertson & Tucker, P.O. Box 1906, Twin Falls, ID 83301, (208) 734–0700.

i. FERC Contact: Ms. Deborah Frazier-Stutely (202) 219–2842.

j. Comment Date: September 3, 1994.

k. Description of Project: The proposed project would consist of two developments. The Upper Jerome Conduit Development would consist of: (1) an existing intake structure at the Milner Dam; (2) the existing main canal; (3) an existing regulating reservoir; (4) the existing U canal; (5) a diversion structure diverting flows into; (6) a 1.5-mile-long open channel canal; (7) a concrete intake at the end of the new canal structure; (8) a 13-foot-diameter, 1-mile-long penstock; (9) a powerhouse containing two generating units with a combined installed capacity of 9,900 kW; (10) a 2-mile-long tailrace, discharging project flows into the U canal; (11) a .5-mile-long, 34.5-kV transmission line tying into an existing line; (12) a bypass pipe and regulating gate adjacent to the powerhouse.

The Lower Jerome Conduit Development would consist of; (1) .5 miles of open canal, just below the Upper Jerome tailrace; (2) a concrete intake structure; (3) a 60-foot-long penstock; (3) a powerhouse containing two generating units with a combined installed capacity of 1,400 kW; (4) a tailrace channel discharging project flows into the S and J canals; (5) a .5-mile-long, 34.5-kV transmission line tying into an existing Idaho Power Company line; (6) a bypass pipe and regulating gate near powerhouse; and (7) access roads.

The project would generate approximately a total of 31,500 MWh of energy annually.

The applicant estimates the cost of the studies to be conducted under the preliminary permit at $390,200. No new roads will be needed for the purpose of conducting these studies.

There are four exempted hydro projects located within the project boundary, Project Nos. 9070, 10164, 10326, and 10454.

l. Project Boundary: The project boundary is located approximately ±100 feet from the center line of the canals. A detail project boundary map may be obtained from the applicant.

m. Purpose of Project: Project power would be sold to a local utility.

n. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

5a. Type of Application: Surrender of License.

b. Project No.: 8289–014.

c. Date filed: June 20, 1994.

d. Applicant: Rivers Electric Co., Inc.

e. Name of Project: Tuxedo Falls Hydroelectric Project.

f. Location: Ramapo River, Town of Tuxedo, Orange County, New York.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. §§ 791 (a)–825 (r).

h. Applicant contact: Charles R. Pepe, Rivers Electric Co., Inc., P.O. Box 707, Alpine, NJ 07620, (201)768–4040.

i. FERC contact: Etta Foster, (202) 219–2679.

j. Comment Date: August 22, 1994.

k. Description of Proposed Action: Rivers Electric Co., Inc. has determined that it would not be economically feasible to construct the Tuxedo Falls Project.

l. This notice also consists of the following standard paragraphs: B & C1 and D2.

6a. Type of Application: Subsequent License.

b. Project No.: 2523–007.

c. Date Filed: August 12, 1993.

d. Applicant: N.E.W. Hydro, Inc.

e. Name of Project: Oconto Falls Hydro Project.

f. Location: On the Oconto River in Oconto County, near Oconto Falls, Wisconsin.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Charles A. Alsberg, N.E.W. Hydro, Inc., P.O. Box

167, 116 State Street, Neshkoro, WI 54960, (414) 293–4628.

i. FERC Contact: Ed Lee (202) 219–2809.

j. Comment Date: September 6, 1994.

k. Status of Environmental Analysis: This application has been accepted for filing but is not ready for environmental analysis at this time—see attached standard paragraph E1.

l. Description of Project: The project consists of the following: (1) an existing reservoir with a surface area of 166.5 acres and a total storage volume of about 1,700 acre-feet at the normal maximum surface elevation of 729.7 feet (USGS); (2) an existing earth embankment, about 1,350 feet long with a crest width ranging from 15 feet to 60 feet, constructed of sand and gravel fill with reinforced concrete corewalls to bedrock; (3) an existing non overflow concrete gravity dam, 110 feet long and about 28 feet high; (4) an existing spillway, 65 feet long and about 16.6 feet high, constructed of reinforced concrete keyed into bedrock, consisting of three, 11 foot high by 20 foot wide, manually operated tainter gates and a fourth nonoperational gate, 11 feet high by 5 feet high; (5) an existing powerhouse with a substructure, constructed of reinforced concrete bedrock, about 86 feet long by 72 feet wide, and a superstructure, constructed of stone masonry with a steel frame roof; (6) existing powerhouse generating equipment consisting of (a) three horizontal shaft Francis turbines, Units 1 and 2 rated at 600 hp at 28.5 feet of head, each with a maximum hydraulic capacity of 254 cfs, and Unit 3 rated at 450 hp at 28.5 feet of head with a maximum hydraulic capacity of 250 cfs (providing a maximum plant hydraulic capacity of 758 cfs), and (b) three horizontal shaft generators, Unit 1 manufactured by Electric Machinery Company and rated at 480 kW, Unit 2 manufactured by Westinghouse and rated at 480 kW as well, and Unit No. 3 manufactured by Westinghouse and rated at 360 kW (providing a total plant capacity of 1,320 kW); (7) an existing earth embankment, about 175 feet long with a crest width ranging from 15 feet to 60 feet, constructed of sand and gravel fill with reinforced concrete corewalls to bedrock; and (8) appurtenant facilities. No changes are being proposed for this subseqent license. The applicant estimates the average annual generation for this project would be 7,495 MWh. The dam and existing project facilities are owned by Wisconsin Electric Power Company, 231 W. Michigan, P.O. Box 2046, Milwaukee, WI 53201.

m. Purpose of Project: Project power would be sold to Wisconsin Electric Power Company.

n. This notice also consists of the following standard paragraphs: B1 and E1.

o. Available Location of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, N.E., Room 3104, Washington, D.C., 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at N.E.W. Hydro, Inc., P.O. Box 167, 116 State Street, Neshkoro, WI 54960 or by calling (414) 293–4628.

7a. Type of Application: Declaration of Intention.

b. Docket No: DI94–3.

c. Date Filed: 06/17/94.

d. Applicant: Powerwheel Corporation.

e. Name of Project: Reading Public Museum Hydroelectric Project.

f. Location: Wyomissing Creek, tributary to Schuylkill River; Reading Public Museum in Berks County, Pennsylvania.

g. Filed Pursuant to: Section 23(b) of the Federal Power Act, 16 U.S.C. § 817(b).

Applicant Contact: Kenneth R. Broome, President, Powerwheel Corporation, 15 Fawn Drive, Reading, PA 19607, (215) 775–9399, (215) 775–5886—FAX.

i. FERC Contact: Diane M. Murray, (202) 219–2682.

j. Comment Date: August 19, 1994.

k. Description of Project: The proposed project will consist of: (1) a small reservoir; (2) a 10-foot-high dam; (3) a flume; (4) a 25-kilowatt induction generator; (5) a transmission line; (6) a tailrace; and (7) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. Purpose of Project: To operate new floodlights and new fountain pumps in the Reading Public Museum in Berks County, Pennsylvania.

m. This notice also consists of the following standard paragraphs: B, C1, and D2.

8a. Type of Application: Major License (Notice of Tendering).

b. Project No.: 10819–002.

c. Date filed: June 23, 1994.

d. Applicant: Idaho Water Resource Board.

e. Name of Project: Dworshak Small Hydro.

f. Location: On the existing water conveyance system providing water from Dworshak Dam to two fish hatcheries. North Fork Clearwater River, Clearwater County, Idaho. Section 34, Township 37 North, Range 1 East, Boise Meridian.

g. Filed Pursuant to: Federal Power Act, 16 USC §§ 791(a)–825(r)

h. Applicant Contact: Mr. Ralph Mellin, Idaho Department of Water Resources, 1301 North Orchard, Boise, ID 83706–2237, (208) 327–7991.

i. FERC Contact: James Hunter, (202) 219–2839

j. Brief Description of Project: The proposed project will consist of one 2-megawatt and one 0.5-megawatt generating unit connected to existing water lines at the system's distribution tank and a transmission line connecting to an existing Clearwater Power Company distribution line. The project would occupy lands of the United States under the jurisdiction of the Corps of Engineers and the Bureau of Land Management.

k. With this notice, we are initiating consultation with the State Historic Preservation Officer (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR at § 800.4.

l. In accordance with § 4.32 (b)(7) of the Commission's regulations, if any resource agency, SHPO, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate, factual basis for a complete analysis of this application on its merits, they must file a request for the study with the Commission, together with justification for such request, not later than 60 days from the filing date and serve a copy of the request on the Applicant.

9a. Type of Application: Surrender of Exemption for Small Conduit Hydroelectric Facility.

b. Project No: 3350–001.

c. Date Filed: 06/21/94.

d. Applicant: Turlock Irrigation District.

e. Name of Project: Drop No. 6.

f. Location: The District's Main Canal at the sixth control structure (Drop No. 6), downstream of Turlock Lake, the District's regulating reservoir, in Stanislaus County, CA.

g. Filed Pursuant to: Federal Power Act, 16 USC Section 791(a)–825(r).

h. Applicant Contact: Norman Boberg, Turlock Irrigation District, 333 East Canal Drive, P.O. Box 949, Turlock, CA 95381, (209) 883–8211.

i. FERC Contact: Diane Murray, (202) 219–2682

j. Comment Date: August 22, 1994

k. Description of Project: The existing project, for which the exemption is being surrendered, consists of a powerplant, at one end of and below an existing control structure, containing a turbine-generator unit that is a prototype design of the Schneider Hydrodynamic Power Generator with a rated capacity of 200 kilowatts.

The exemptee is requesting surrender of the exemption because the project failed during commissioning and subsequent studies indicated that it was not feasible to develop the project.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

10a. Type of Application: Preliminary Permit.

b. Project No.: 11481–000.

c. Date Filed: May 18, 1994.

d. Applicant: Cuffs Run Energy Partners.

e. Name of Project: Cuffs Run Pumped Storage.

f. Location: On Cuffs Run and the Susquehanna River in York and Lancaster Counties, Pennsylvania.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. Applicant Contact: Frank W. Frisk, Jr., Attorney, Suite 125, 1054 31st Street, N.W., Washington, DC 20007, (202) 333–8433.

i. FERC Contact: Charles T. Raabe (tag) (202) 219–2811.

j. Comment Date: September 12, 1994.

k. Competing Application: Project No. 11446–000.

Date Filed: November 2, 1993.

Due Date: May 19, 1994.

l. Description of Project: The proposed pumped storage project would consist of: (1) an upper reservoir having a 580-acre surface area and a 25,000-acre-foot storage capacity at water surface elevation 680 feet MSL, created by a 225-foot-high, 10,000-foot-long dam, a 95-foot-high, 700-foot-long dike, and a 35-foot-high, 1300-foot-long dike; (2) a submerged intake structure; (3) a 45-foot-diameter vertical shaft and a horizontal tunnel trifurcating into three 20-foot-diameter steel-lined conduits; (4) an underground powerhouse containing three reversible pump-turbine units rated at 300- MW each operated at a 450-foot head; (5) a 1,500-foot-long powerhouse access tunnel and a 20-foot-diameter vent and cable shaft; (6) three concrete-lined conduits leading to an outlet structure at the lower reservoir separate from the main body of Lake Clarke; (7) an above-ground switchyard; (8) a three-mile-long transmission line; and (9) appurtenant facilities. Lake Clarke, an existing reservoir formed by the Safe Harbor Dam (FERC Project No. 1025) would be utilized for the initial fill of the upper reservoir and for makeup water. Core boring of the foundation overburden and underlying rock formation would be required. Applicant estimates that the cost of the studies under the terms of the permit would be $3,000,000. Project energy would be purchased from and sold to local utilities. A portion of the proposed project boundary for Project No. 11481–000 lies within the approved project boundary for licensed project No. 1025. However, the proposed project facilities could be mutually compatible.

m. This notice also consists of the following standard paragraphs A8, A10, B, C, and D2.

11a. Type of Application: Surrender of License.

b. Project No.: P–5833–016.

c. Date Filed: June 29, 1994.

d. Applicant: Pennsylvania Hydroelectric Development Corporation.

e. Name of Project: Easton Raubsville Project.

f. Location: Located at the existing Easton Dam in Northhampton County, Pennsylvania, on the Lehigh River, which is a tributary of the Delaware River.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Larry Gleeson, P.O. Box 402, Belfast, ME 04915, (207) 338–2131, (207) 338–2507—FAX.

i. FERC Contact: Diane M. Murray, (202) 219–2682.

j. Comment Date: August 26, 1994.

k. Description of Project: The licensee states that the project is infeasible to construct at this time.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

Standard Paragraphs

A2. Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number

of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit will be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, Room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's must also be sent to the Applicant's representatives.

D8. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," or "COMPETING APPLICATION;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

E1. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Dated: July 13, 1994, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 94–17438 Filed 7–18–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. RP94–319–000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

July 13, 1994.

Take notice that on July 11, 1994, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets, with a proposed effective date of August 1, 1994:

Original Sheet No. 98E
Eleventh Revised Sheet No. 20A

Algonquin states that the purpose of this filing is to provide for the recovery of certain transition costs associated with upstream capacity retained by Algonquin. Specifically, Algonquin seeks to recover Account no. 858 stranded costs billed to Algonquin by Texas Eastern Transmission Corporation (Texas Eastern). Algonquin requests that the Commission waive Section 154.22 of the Commission's regulations to the extent that may be necessary to place these tariff sheets into effect as requested.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 20, 1994. Protests will be considered by the Commission in determining the appropriate 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–17469 Filed 7–18–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–258–001]

Canyon Creek Compression Co.; Compliance Filing

July 13, 1994.

Take notice that on July 8, 1994, Canyon Creek Compression Company (Canyon Creek) tendered for filing to be a part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute First Revised Sheet Nos. 147 and 148, and Substitute Original Sheet No. 148A, with a proposed effective date of June 23, 1994.

Canyon Creek states that the purpose of the filing is to comply with the Federal Energy Regulatory Commission's (Commission) "Order Accepting Certain Tariff Sheets, Subject to Conditions, and Rejecting Other Tariff Sheets" issued June 23, 1994 relating to the : (1) Definition of Short-Term Prearranged Releases, and (2) deadlines for submission of capacity release requests for first of the month service and the starting and ending times for open seasons.

Canyon Creek requests whatever waivers may be necessary to permit the proposed tariff sheets to become effective June 23, 1994.

Canyon Creek states that copies of its filing were served on all parties to this proceeding, jurisdictional transportation customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before July 20, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–17462 Filed 7–18–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–315–000]

Columbia Gas Transmission Corp.; Petition for Approval of Stipulation

July 13, 1994.

Take notice that on July 8, 1994, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207, Columbia Gas Transmission Corporation (Columbia) filed a petition requesting that the Commission issue an order approving a stipulation entered into by Columbia and Wyoming Interstate Company, LTD. (WIC) on April 26, 1994. Columbia states that the stipulation terminates Columbia's contractual obligations under its firm transportation contract between Columbia and WIC through the payment of a negotiated exit fee by Columbia to WIC in consideration for WIC's agreement to the termination and abandonment of WIC's services to Columbia pursuant to said contract.

The stipulation is contingent upon Bankruptcy Court and Commission approval, including Commission approval of Columbia's full recovery of the exit fee paid to WIC from Columbia's customers.

Comments on the settlement, as well as motions to intervene or protests should be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before August 2, 1994. Reply comments should be filed on or before August 12, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this petition are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–17464 Filed 7–18–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–316–000]

Columbia Gas Transmission Corp.; Petition for Approval of Stipulation

July 13, 1994.

Take notice that on July 8, 1994, pursuant to Rule 207 of the Commission's Rule of Practice and Procedure, 18 CFR 385.207, Columbia Gas Transmission Corporation (Columbia) filed a petition requesting that the Commission issue an order approving a stipulation entered into by Columbia and Trailblazer Pipeline Company (Trailblazer) on May 10, 1994 Columbia states that the stipulation terminates Columbia's contractual obligations under its firm transportation contracts between Columbia and Trailblazer through the payment of a negotiated exit fee by Columbia to Trailblazer in consideration for Trailblazer's agreement to the termination and abandonment of Trailblazer's services to Columbia pursuant to said contracts.

The stipulation is contingent upon Bankruptcy Court and Commission approval, including Commission approval of Columbia's full recovery from Columbia's customers of the exit fee paid to Trailblazer.

Comments on the settlement, as well as motions to intervene or protests should be filed with the Federal Energy Regulatory Commission, 825 North

Capitol Street, NE., Washington, DC 20426, on or before August 2, 1994. Reply comments should be filed on or before August 12, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this petition are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–17465 Filed 7–18–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–317–000]

Columbia Gas Transmission Corp.; Petition for Approval of Stipulation

July 13, 1994.

Take notice that on July 8, 1994, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207, Columbia Gas Transmission Corporation (Columbia) filed a petition requesting that the Commisssion issue an order approving a stipulation entered into by Columbia and Natural Gas Pipeline Company of America (NGPL) on May 26, 1994. Columbia states that the stipulation terminates Columbia's contractual obligations under its transportation, exchange, and assignment contracts between Columbia and NGPL through the payment of a negotiated exit fee by Columbia to NGPL in consideration for NGPL's agreement to the termination and abandonment of NGPL's services to Columbia under Contract No. 27864–GN (X–134).

The stipulation is contingent upon Bankruptcy Court and Commission approval, including Commission approval of Columbia's full recovery from Columbia's customers of the exit fee paid to NGPL.

Comments on the settlement, as well as motions to intervene or protests should be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before August 2, 1994. Reply comments should be filed on or before August 12, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this petition are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–17466 Filed 7–18–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–318–000]

Columbia Gas Transmission Corp.; Petition for Approval of Stipulation

July 13, 1994.

Take notice that on July 11, 1994, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207, Columbia Gas Transmission Corporation (Columbia) filed a petition requesting that the Commission issue an order approving a stipulation entered into by Columbia and Transcontinental Gas Pipe Line Corporation (Transco) on June 20, 1994. Columbia states that the stipulation terminates Columbia's contractual obligations under a firm transportation contract between Columbia and Transco through the payment of a negotiated exit fee by Columbia and Transco in consideration for Transco's agreement to the termination and abandonment of Transco's services to Columbia pursuant to said contract.

The stipulation is contingent upon bankruptcy Court and Commission approval, including Commission approval of Columbia's full recovery from Columbia's customers of the exit fee paid to Transco.

Comments on the settlement, as well as motions to intervene or protests should be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before August 2, 1994. Reply comments should be filed on or before August 12, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this petition are on file a motion to intervene. Copies of this petition are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–17467 Filed 7–18–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–255–001]

Natural Gas Pipeline Company of America; Compliance Filing

July 13, 1994.

Take notice that on July 8, 1994, Natural Gas Pipeline Company of America (Natural) tendered for filing to be a part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Substitute First Revised Sheet Nos. 297 and 298, with a proposed effective date of June 23, 1994.

Natural states that the purpose of the filing is to comply with the Federal Energy Regulatory Commission's (Commission) "Order Accepting Certain Tariff Sheets, Subject to Conditions, and Rejecting Other Tariff Sheets" issued June 23, 1994 relating to the: (1) Definition of Short-Term Prearranged Releases, and (2) deadlines for submission of capacity release requests for first of the month service and the starting and ending times for open seasons.

Natural requests whatever waivers may be necessary to permit the proposed tariff sheets to become effective June 23, 1994.

Natural states that copies of its filing were served on all parties to this proceeding, jurisdictional transportation customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before July 20, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–17459 Filed 7–18–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–313–001]

Natural Gas Pipeline Co. of America; Proposed Changes In FERC Gas Tariff

July 13, 1994.

Take notice that on July 8, 1994, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, First Revised Sheet No. 149A, to be effective August 4, 1994.

Natural states that the purpose of the filing is to add subsection (f) to Section 7.2 of Rate Schedule S–1 to provide Shippers the option to utilize confirmed nominated injections under Rate Schedule S–1 to balance volumes taken at delivery points in excess of confirmed nominated deliveries.

Natural requested whatever waivers may be necessary to permit the tariff sheet to become effective August 4, 1994.

Natural states that copies of the filing are being mailed to Natural's jurisdictional transportation customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before July 20, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–17463 Filed 7–18–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT94–8–000]

Sea Robin Pipeline Co.; Proposed Changes to FERC Gas Tariff

July 13, 1994.

Take notice that on July 11, 1994, Sea Robin Pipeline Company (Sea Robin) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective August 1, 1994:

Second Revised Sheet No. 1
First Revised Sheet Nos. 49–52
First Revised Sheet No. 55
First Revised Sheet No. 58
Second Revised Sheet No. 77
First Revised Sheet No. 193

Sea Robin states that the purpose of this filing is to revise its tariff to comply with the changes made to the marketing affiliate reporting requirements by the Commission's Order No. 566. Sea Robin has requested all waivers necessary to make these sheets effective August 1, 1994, the effective date of Order No. 566.

Sea Robin states that copies of the filing will be served upon its shippers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before July 20, 1994. Protests will not be considered by the Commission in determining the parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–17457 Filed 7–18–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT94–7–000]

South Georgia Natural Gas Company; Proposed Changes to FERC Gas Tariff

July 13, 1994.

Take notice that on July 11, 1994, South Georgia Natural Gas Company (South Georgia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to be effective August 1, 1994:

First Revised Sheet No. 1
First Revised Sheet Nos. 21–23
First Revised Sheet Nos. 39–40
First Revised Sheet No. 62
First Revised Sheet Nos. 77–78
First Revised Sheet Nos. 101–104
First Revised Sheet No. 106
First Revised Sheet No. 121

South Georgia states that the purpose of this filing is to revise its transportation tariff to comply with the changes made to the marketing affiliate reporting requirements by the Commission's Order No. 566. South Georgia has requested all waivers necessary to make these sheets effective August 1, 1994, the effective date of Order No. 566.

South Georgia states that copies of the filing will be served upon its shippers and interested state commissions.

Any person desiring to be heard or to protest said filing should filed 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 or the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before July 20, 1994. Protests will be considered by the Commission in determining the parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–17456 Filed 7–18–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT94–6–000]

Southern Natural Gas Company; Proposed Changes to FERC Gas Tariff

July 13, 1994.

Take notice that on July 11, 1994, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets to be effective August 1, 1994:

First Revised Sheet Nos. 99–101
First Revised Sheet Nos. 182–183
First Revised Sheet No. 191
First Revised Sheet Nos. 215–219
First Revised Sheet No. 223
First Revised Sheet Nos. 232–235
First Revised Sheet No. 260

Southern states that the purpose of this filing is to revise its transportation tariff to comply with the changes made to the marketing affiliate reporting requirements by the Commission's Order No. 566. Southern has requested all waivers necessary to make these sheets effective August 1, 1994, the effective date of Order No. 566.

Southern states that copies of the filing will be served upon its shippers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before July 20, 1994. Protests will not be considered by the Commission in determining the parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–17455 Filed 7–18–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–256–001]

Stingray Pipeline Co.; Compliance Filing

July 13, 1994.

Take notice that on July 8, 1994, Stingray Pipeline Company (Stingray) tendered for filing to be a part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute First Revised Sheet Nos. 156 and 157, and Substitute Original Sheet No. 157A, with a proposed effective date of June 23, 1994.

Stingray states that the purpose of the filing is to comply with the Federal Energy Regulatory Commission's (Commission) "Order Accepting Certain Tariff Sheets, Subject to Conditions, and Rejecting Other Tariff Sheets" issued June 23, 1994 relating to the: (1) Definition of Short-Term Prearranged Releases, and (2) deadlines for submission of capacity release requests for first of the month service and the starting and ending times for open seasons.

Stingray requests whatever waivers may be necessary to permit the proposed tariff sheets to become effective June 23, 1994.

Stingray states that copies of its filing were served on all parties to this proceeding, jurisdictional transportation customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before July 20, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–17460 Filed 7–18–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–320–000]

Trailblazer Pipeline Co.; Proposed Changes in FERC Gas Tariff

July 13, 1994.

Take notice that on July 11, 1994, Trailblazer Pipeline Company (Trailblazer) tendered for filing to be a part of its FERC Gas Tariff, Third Revised Volume No. 1, First Revised Sheet No. 124, with a proposed effective date of August 26, 1994.

Trailblazer states that the purpose of the filing is to modify the first-of-the-month deadline of its Tariff to permit nominations up until 10:00 a.m. on the last business day preceding the first day of the month.

Trailblazer requested whatever waivers may be necessary to permit the tariff sheet to become effective August 26, 1994.

Trailblazer states that a copy of the filing was mailed to Trailblazer's jurisdictional transportation customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before July 20, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–17468 Filed 7–18–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–257–001]

Trailblazer Pipeline Co.; Compliance Filing

July 13, 1994.

Take notice that on July 8, 1994, Trailblazer Pipeline Company (Trailblazer) tendered for filing to be a part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute First Revised Sheet Nos. 155 and 156, and Substitute Original Sheet No. 156A, with a proposed effective date of June 23, 1994.

Trailblazer states that the purpose of the filing is to comply with the Federal Energy Regulatory Commission's (Commission) "Order Accepting Certain Tariff Sheets, Subject to Conditions, and Rejecting Other Tariff Sheets" issued June 23, 1994 relating to the: (1) Definition of Short-Term Prearranged Releases, and (2) deadlines for submission of capacity release requests for first of the month service and the starting and ending times for open seasons.

Trailblazer requests whatever waivers may be necessary to permit the proposed tariff sheets to become effective June 23, 1994.

Trailblazer states that copies of its filing were served on all parties to this proceeding, jurisdictional transportation customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before July 20, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–17461 Filed 7–18–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ94–3–35–000]

West Texas Gas, Inc.; Notice of Filing

July 13, 1944.

Take notice that on July 8, 1994, West Texas Gas, Inc. (WTG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Eleventh Revised Sheet No. 4, proposed to be effective July 1, 1994.

WTG states that this tariff sheet and the accompanying explanatory schedules constitute WTG's quarterly PGA filing submitted in accordance with the Commission's purchased gas adjustments regulations. WTG's transmittal letter requests leave to file out-of-time this tariff sheet and further requests waiver of the Commission's regulations to the extent necessary to allow the proposed rates, which reflect a reduction from WTG's currently effective rates, to become effective on July 1, 1994.

WTG states that copies of the filing were served upon WTG's customers and interested state commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and

Procedure, 18 CFR 385.211 and 385.214. All such motions or protests should be filed on or before July 20, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party 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. 94–17458 Filed 7–18–94; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5015–2]

Proposed Administrative Cost Recovery Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), notice is hereby given of a proposed administrative cost recovery settlement under Section 122(h)(1) of CERCLA concerning the Middletown Airfield Site in Dauphin County, Pennsylvania, which was signed by the EPA Regional Administrator, Region III, on June 21, 1994. The settlement resolves an EPA claim under Section 107(a) of CERCLA against the U.S. Air Force. The settlement requires the settling party to pay $3,960,958.89 to the Hazardous Substance Superfund.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107.

DATES: Comments must be submitted on or before August 18, 1994.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at the U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107. A copy of the proposed settlement may be obtained from Suzanne Canning, Regional Docket Clerk (3RC00), U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107. Comments should reference the Middletown Airfield Site, Dauphin County, Pennsylvania and EPA Docket No. III–94–14–DC and should be forwarded to Suzanne Canning at the above address.

FOR FURTHER INFORMATION CONTACT: Laura M. Bulatao (3RC23), Assistant Regional Counsel, U.S. Environmental Protection Agency, 841 Chestnut Building, Philadelphia, PA 19107, (215) 597–8448.

Dated: June 21, 1994.

Peter H. Kostmayer,

Regional Administrator, U.S. Environmental Protection Agency, Region III.

[FR Doc. 94–17550 Filed 7–18–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5015–4]

Clean Water Act Class II: Proposed Administrative Penalty Assessment and Opportunity To Comment Regarding: Kansas City Power & Light Company, La Cygne, KS

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Notice of Proposed Administrative Penalty Assessment and Opportunity to Comment regarding Kansas City Power & Light Company, La Cygne, Kansas.

SUMMARY: EPA is providing notice of proposed administrative penalty assessment for alleged violations of the Federal Water Pollution Control Act, commonly referred to as the "Clean Water Act", 33 U.S.C. 1251. EPA is also providing notice of opportunity to comment on the proposed assessment.

Under Section 311 of the Clean Water Act, 33 U.S.C. 1321, EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after filing a Complaint commencing either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessment pursuant to 33 U.S.C. 1321(b)(6)(C).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation and Suspension of Permits, 40 CFR part 22. The procedures by which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding are set forth at 40 CFR 22.38. The deadline for submitting public comment on a proposed Class II order is thirty (30) days after issuance of public notice.

On March 29, 1994, EPA commenced the following Class II proceedings for the assessment of penalties by filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7630, the following Complaint:

In the Matter of Kansas City Power & Light Co., La Cygne, Kansas, EPCRA Docket No. VII–94E–033 and CWA Docket No. VII–94–W–0001.

The Complaint proposes a penalty of $10,000 for the discharge of a hazardous substance under the authority of Section 311 of the Clean Water Act, 33 U.S.C. 1321.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaints or other documents filed in this proceeding, comment upon the proposed penalty assessments, or otherwise participate in the proceedings should contact the Regional Hearing Clerk identified above.

The administrative records for the proceedings are located in the EPA Regional Office at the address stated above, and the files will be open for public inspection during normal business hours. All information submitted by the Kansas City Power and Light Company, La Cygne, Kansas is available as part of the administrative records, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final orders assessing penalties in these proceedings prior to thirty (30) days from the date of this notice.

Dated: June 29, 1994.

William Rice,

Acting Regional Administrator.

[FR Doc. 94–17557 Filed 7–18–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5015–6]

Clean Water Act Class II: Proposed Administrative Penalty Assessment and Opportunity To Comment Regarding: Texaco Trading and Transportation, Inc., El Dorado, KS

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Notice of Proposed Administrative Penalty Assessment and Opportunity to Comment regarding Texaco Trading and Transportation, Inc., El Dorado, Kansas.

SUMMARY: EPA is providing notice of proposed administrative penalty assessment for alleged violations of the Federal Water Pollution Control Act, commonly referred to as the "Clean Water Act", 33 U.S.C. 1251. EPA is also providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1321, EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after filing a Complaint commencing either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessment pursuant to 33 U.S.C. 1321(b)(6)(C).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation and Suspension of Permits, 40 CFR Part 22. The procedures by which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding are set forth at 40 CFR 22.38. The deadline for submitting public comment on a proposed Class II order is thirty (30) days after issuance of public notice.

On May 23, 1994, Environmental Protection Agency commenced the following Class II proceedings for the assessment of penalties by filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7630, the following Complaint:

In the Matter of Texaco Trading and Transportation, Inc., El Dorado, Kansas, Docket No. VII–93–W–0003.

The Complaint proposes a penalty of $120,000 for the discharge of oil under the authority of Section 311 of the Clean Water Act, 33 U.S.C. 1321.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaints or other documents filed in this proceeding, comment upon the proposed penalty assessments, or otherwise participate in the proceedings should contact the Regional Hearing Clerk identified above.

The administrative records for the proceedings are located in the EPA Regional Office at the address stated above, and the files will be open for public inspection during normal business hours. All information submitted by Texaco Trading and Transportation, Inc., El Dorado, Kansas is available as part of the administrative records, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final orders assessing penalties in these proceedings prior to thirty (30) days from the date of this notice.

Dated: June 29, 1994.

William Rice,

Acting Regional Administrator.

[FR Doc. 94–17558 Filed 7–18–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL 5015–5]

Clean Water Act Class II: Proposed Administrative Penalty Assessment and Opportunity To Comment Regarding: Kaw Pipe Line Company, Russell, KS

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Notice of Proposed Administrative Penalty Assessment and Opportunity to Comment regarding Kaw Pipe Line Company, Russell, Kansas.

SUMMARY: EPA is providing notice of proposed administrative penalty assessment for alleged violations of the Federal Water Pollution Control Act, commonly referred to as the "Clean Water Act", 33 U.S.C. 1251. EPA is also providing notice of opportunity to comment on the proposed assessment.

Under Section 311 of the Clean Water Act, 33 U.S.C. 1321, EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after filing a Complaint commencing either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessment pursuant to 33 U.S.C. 1321(b)(6)(C).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation and Suspension of Permits, 40 CFR Part 22. The procedures by which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding are set forth at 40 CFR 22.38. The deadline for submitting public comment on a proposed Class II order is thirty (30) days after issuance of public notice.

On May 25, 1994, EPA commenced the following Class II proceedings for the assessment of penalties by filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7630, the following Complaint:

In the Matter of Kaw Pipe Line Company, Russell, Kansas, Docket No. VII–94–W–0002.

The Complaint proposes a penalty of $125,000 for the discharge of oil under the authority of Section 311 of the Clean Water Act, 33 U.S.C. 1321.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaints or other documents filed in this proceeding, comment upon the proposed penalty assessments, or otherwise participate in the proceedings should contact the Regional Hearing Clerk identified above.

The administrative records for the proceedings are located in the EPA Regional Office at the address stated above, and the files will be open for public inspection during normal business hours. All information submitted by Kaw Pipe Line Company, Russell, Kansas is available as part of the administrative records, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final orders assessing penalties in these proceedings prior to thirty (30) days from the date of this notice.

Dated: June 29, 1994.

William Rice,

Acting Regional Administrator.

[FR Doc. 94–17560 Filed 7–18–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5016–4]

Massachusetts Marine Sanitation Device Standard; Petition

Notice is hereby given that a petition has been received from the State of Massachusetts requesting a determination by the Regional Administrator, Environmental Protection Agency, pursuant to Section 312(f)(3) of Pub. L. 92–500 as amended by Pub. L. 95–217 and Pub. L. 100–4, that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for Westport Harbor and the East and West Branches of the Westport

River that border the Town of Westport, within the State of Massachusetts to qualify as a "No Discharge Area".

The State of Massachusetts (MA) has certified that there are two pump-out facilities available to service vessels in the Westport Harbor and the Westport River.

One pump-out facility, which is mobile, is located at the Town Pier on the north side of the Westport Harbor. This facility has a holding capacity of 650 gallons and it is marked with a yellow and maroon U.S. EPA issued boat pump-out sign. The hours of operation will be upon request during the summer season from Memorial Day through Columbus Day seven days a week from 8:00 a.m. to 2:00 p.m. by calling the Harbormaster's office at (508) 636–1105 or by radio on Channel 9 VHF. The mobile boat pump-out has a draft requirement of 2 feet. Vessels located in waters with depths of less than 2 feet may need to move to deeper water to be pumped out. The cost is free and will be absorbed through boating licenses for the season.

A second pump-out facility will be established at Tripps Marina. The hours of operation during the summer season from Memorial Day through Columbus Day are seven days a week from 8:00 a.m. to 5:00 p.m. Monday through Friday, and from 9:00 a.m. to 5:00 p.m. Saturday and Sunday. There is no fee to use the pump-out facility. Tripps is the largest marina in Westport with 250 slips and 150 moorings. There are fuel facilities, on-shore toilet and shower facilities, and a waste oil receptacle available to boaters.

The Town operates and maintains a 1000 gallon above ground holding tank for septage with secondary containment on the south side of Westport Harbor. The tank is located adjacent to the State Boat Ramp and may be accessed from the water.

Septage is collected by Ocean Arks, Inc., a research facility located in Marion, MA. In the event that Ocean Arks, Inc. ceases to accept the boat septage, the Town of Westport has a renewable contract with New England Sanitation, a licensed septic hauler, located in Westport, MA. Septage that is removed by New England Sanitation will be treated at the Fall River Wastewater Treatment Facility in Fall River, MA.

Westport has both coastal and estuarine waters which support year-round commercial fishing and shellfishing activities. Additionally, recreational swimming and boating draws tens of thousands of daily visitors to the Town in the summer. Currently, there are a total of 1,250 acres closed to shellfishing, 550 acres open on a conditional basis, and 1489 acres permanently open. As a result of Westport's economy needing the recreational and commercial money derived from this resource, it is necessary to insure that the coastal and estuarine waters of the Town are pollution free. Programs are in place to help identify those areas that are most polluted and the sources of those pollutants. There are an estimated 350 moored boats in the East Branch of the Westport River, 100 moored boats in the West Branch, 770 moored boats in the Westport Harbor, and approximately 20 transient vessels which enter the harbor each day through the mouth of the harbor during the boating season. Westport is approximately 14 miles long, 5.2 miles wide, with a total area of 57 square miles.

Comments and views regarding this request for action may be filed on or before August 5, 1994. Such communications, or requests for information or a copy of the applicant's petition, should be addressed to Janet C. Labonte, U.S. Environmental Protection Agency—Region I, Marine and Estuarine Protection Section (WQE), JFK Federal Building, Boston, MA, 02203. Telephone: 617/565–3550.

Dated: July 5, 1994.

John P. DeVillars,

Regional Administrator.

[FR Doc. 94–17552 Filed 7–18–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Infomation Collection Requirements Submitted to Office of Management and Budget for Review

July 11, 1994.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on these information collections should contact Timothy Fain, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395–3561.

OMB Number: 3060–0340

Title: Section 73.51, Determining operating power

Action: Extension of a currently approved collection

Respondents: Businesses or other for-profit (including small businesses)

Frequency of Response: Recordkeeping requirement

Estimated Annual Burden: 4,975 recordkeepers; .25 hours average burden per recordkeeper; 1,244 hours total annual burden

Needs and Uses: When it is not possible to use the direct method of power determination due to technical reasons, the indirect method of determining antenna input power may be used on a temporary basis. Section 73.51(d) requires that a notation be made in the station log indicating the dates of commencement and termination of measurement using the indirect method of power determination. Section 73.51(e) requires that AM stations determining the antenna input power by the indirect method must determine the value F (efficiency factor) applicable to each mode of operation and must maintain a record thereof with a notation of its derivation. This recordkeeping requirement is used by FCC staff in field investigations to monitor licensees' compliance with the FCC's technical rules and to ensure that licensee is operating in accordance with its station authorization. The value F is used by station personnel in the event that measurement by the indirect method of power is necessary.

OMB Number: 3060–0427

Title: Section 73.3523, Dismissal of applications in renewal proceedings

Action: Extension of a currently approved collection

Respondents: Businesses or other for-profit (including small businesses)

Frequency of Response: On occasion reporting requirement

Estimated Annual Burden: 19 responses; 1.37 hours average burden per response; 26 hours total annual burden

Needs and Uses: Section 73.3523 requires an applicant for a construction permit to obtain approval from the FCC to dismiss or withdraw its application when that application is mutually exclusive with a renewal application. This request for approval must contain a copy of any written agreement and an affidavit, stating that is has not received any consideration (pre-Initial Decision) or is has not received any

consideration in excess of legitimate and prudent expenses (post-Initial Decision) for the dismissal/withdrawal of its application. In addition, within 5 days of the applicant's request for approval, each remaining competing applicant and the renewal applicant must submit an affidavit certifying that it has not paid any consideration (pre-Initial Decision), or that is has not paid consideration in excess of legitimate and prudent expenses (post-Initial Decision) for the dismissal/withdrawal of a competing application. The data is used by FCC staff to ensure that an application was filed under appropriate circumstances and not to extract payments prohibited by the Commission.

OMB Number: 3060–0213

Title: Section 73.3525, Agreements for removing application conflicts

Action: Extension of a currently approved collection

Respondents: Businesses or other for-profit (including small businesses)

Frequency of Response: On occasion reporting requirement

Estimated Annual Burden: 62 responses; 8 hours average burden per response; 496 hours total annual burden

Needs and Uses: Section 73.3525 requires applicants for a construction permit for a broadcast station to obtain approval from the FCC to withdraw, dismiss or amend its application when that application is in conflict with another application pending before the FCC. This request for approval to withdraw, dismiss or amend an application should contain a copy of the agreement and an affidavit of each party to the agreement. The data is used by FCC staff to assure that the agreement is in compliance with its rules and regulations and Section 311* of the Communications Act of 1934, as amended.

*Section 311(c) of the Communications Act of 1934, as amended, provides that it shall be unlawful for any applicant for broadcast facilities to effect by agreement the removal of any mutually exclusive applications without approval of the Commission and that the Commission shall approve such agreement only if it finds it to be consistent with the public interest, convenience and necessity.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–17386 Filed 7–18–94; 8:45 am]

BILLING CODE 6712–01–F

Cable Television System Regulatory Fees

The Federal Communications Commission issues this Public Notice in order to provide information concerning the payment of regulatory fees in 1994. If you are an operator of a cable television system or a licensee of a cable antenna relay service (CARS) or broadcast auxiliary service, you should carefully review this Public Notice.

Who Must Pay Regulatory Fees in 1994

Cable television systems operating on or before *December 31, 1993* must pay regulatory fees in 1994. Governments and nonprofit (exempt under Section 501 of the Internal Revenue Code) entities are exempt from paying regulatory fees and should not submit payment, but may be asked to submit a current IRS Determination Letter documenting its nonprofit status, or a certification of governmental authority. All cable television systems must pay regulatory fees of $0.37 per subscriber for each community unit in which it operates. Additionally, each system must pay a $220.00 fee for each CARS license held and, if applicable, a $25.00 fee for each Broadcast Auxiliary Service license held.

Why the Commission Must Collect New Fees

The new requirement to collect annual regulatory fees from cable television systems was contained in Public Law 103–66, "The Omnibus Budget Reconciliation Act of 1993." These new regulatory fees, which are likely to change each fiscal year, will be used to offset costs associated with the Commission's enforcement, public service, international and policy and rulemaking activities. The new fees are in addition to any application processing fees associated with obtaining a license or other authorization from the Commission.

When Fees Will Be Due

All cable systems must pay the following regulatory fees to the Commission by August 12, 1994, in order to avoid a 25% late penalty:

Type of fee	Regulatory fee payment	Fee code
Cable system subscriber fee.	$0.37 per subscriber.	TOCN
CARS license ...	$220 per license.	TQCN
Broadcast auxiliary services license.	$25 per license	MUBN

Please see "Special Instructions for Completing FCC Forms 159 & 159–C" for correct Payment Type Codes to use when making installment payments.

FCC Form 159

Regulatory fee payments *must* be accompanied by FCC Form 159 ("FCC Remittance Advice"). A copy of this form, with specific instructions, is attached to this Public Notice. Please see "Special Instructions for Completing FCC Forms 159 & 159–C" for detailed information on how to correctly complete these Forms.

Where To Send Regulatory Fee Payments

All regulatory fee payments must be sent to the following address: Federal Communications Commission, Regulatory Fees, P.O. Box 358835, Pittsburgh, PA 15251–5835.

Method of Payment

Regulatory fee payments may be made by check, money order, or by credit card (Visa or Mastercard only). When paying by credit card, please make sure you sign the appropriate block of Form 159. Payments may also be made electronically provided prior approval has been obtained from the Commission. Contact Thomas M. Holleran at (202) 418–1925 for prior approval.

Note: We encourage arrangements to consolidate regulatory fee payments for different entities into a single payment instrument by a single payee. We recognize the benefits to be gained by all the parties involved. Notwithstanding the scheduled payment due dates specified in this Public Notice, consolidation of 100 or more regulatory fees due from different entities by a single payee will be due on *September 2, 1994.* Entities participating in such consolidated payment arrangements that are eligible, and choose, to pay by installment should pay one-half of the regulatory fee eligible for installment payment by September 2, 1994. The second installment payment will then be due *September 30, 1994.* Multiple fee payments may be made with one check, money order, credit card or electronic payment. Payors who will be making a single payment for a significant number of entities and wish to submit automated data submissions in lieu of a large number of FCC Forms 159–C ("Advice Continuation Sheets") should contact Thomas M. Holleran at (202) 418–1925 at least four weeks prior to the payment due date.

Installment Payments

Cable television systems are permitted to make installment payments if their total subscriber fee (for all community units in which it is the franchisee *or* for all community units of a group of commonly-owned cable systems) *exceeds $18,500.* Fee payments for

CARS or Broadcast Auxiliary Service licenses cannot be counted toward the $18,500 installment threshold. Eligible systems choosing to make installment payments must pay one-half of their total system fee by *August 12, 1994*. The regulatory fees for CARS and Broadcast Auxiliary Service license fees cannot be paid by installment; these fees must be paid in full by August 12, 1994. The second installment payment for the subscriber fee is due no later than *September 9, 1994*. Entities participating in consolidated payment arrangements that are eligible, and elect, to pay by installment should note the different due dates for their installment payments (see "Method of Payment" above).

Compliance

Cable television systems are solely responsible for accurately accounting for all CARS and Broadcast Auxiliary Service licenses, as well as subscribers within each community unit, and for paying the proper regulatory fees. Any omission or payment deficiency can result in a 25% monetary penalty, dismissal of pending actions, and/or revocation of any authorization. Additionally, the Commission will invoke its authority under the Debt Collection Act against any cable television system failing to meet its regulatory fee payment obligations.

Waivers, Reductions, and Deferments of Regulatory Fees

The Commission will consider requests for waivers, reductions or deferments of regulatory fees, in extraordinary and compelling circumstances only, upon a showing that such action overrides the public interest in reimbursing the Commission for its regulatory costs. Timely submission of the appropriate regulatory fee must accompany requests for waivers or reductions. This will ensure efficient collection in situations where a waiver or reduction is not warranted and will allow the requestor to avoid a 25% late-payment penalty if its request is denied. The regulatory fee would be refunded if the request is granted. Only in exceptional or compelling instances (where payment of the regulatory fee along with the waiver or reduction request could result in the reduction of service to a community or other financial hardship to the regulatee or licensee) will the Commission accept a petition to defer payment along with a waiver or reduction request. All requests for deferments must be filed before *August 12, 1994*, in order to avoid the 25% late-payment penalty.

Additional Information

The Commission has prepared a number of informative Fee Filing Guides for information on *application* fees for cable services, and for information on *application* and *regulatory* fees for the common carrier, mass media, engineering and technology, field operations or private radio services. These Guides are available from the Commission's Public Service Division, from its various field office locations and can be downloaded from the Internet (ftp@fcc.gov). For additional information, please contact the Fees Hotline at (202) 632–FEES, or write to: Federal Communications Commission, ATTN: Public Service Division, 1919 M Street NW., Washington, DC 20554.

Filing Procedures for Cable Television Systems

Who Must Pay: Cable television systems operating on or before *December 31, 1993* must pay the regulatory fee. Governments and nonprofit (exempt under Section 501 of the Internal Revenue Code) entities are exempt from paying regulatory fees and should not submit payment, but may be asked to submit a current IRS Determination Letter documenting its nonprofit status, or a certification of governmental authority.

Fee Requirement: All cable television systems are subject to a fee of $0.37 per subscriber.[1] Systems may also be required to pay a $220.00 fee for each Cable Antenna Relay Service (CARS) license it holds and a $25.00 fee for each Broadcast Auxiliary Service license it holds.

A system's total subscriber fee can be determined by multiplying $0.37 times the number of subscribers within all community units in which it operates (as defined below and at page 2 of the Instructions for FCC Form 325 "Annual Report of Cable Television Systems"). Use the same number of subscribers as reported to the Commission during the 1993 Annual Report of Cable Television Systems—FCC Form 325 (see FCC News Release of April 13, 1994). You may pay for multiple community units with a single payment instrument as long as the community units are all part of the same cable system or are part of a group of commonly-owned cable systems. It this total subscriber fee is greater than $18,500, payment may be made in two installments (see "Installment Payments").

CARS and Broadcast Auxiliary Licenses

Cable systems holding CARS licenses must pay a regulatory fee of $220.00 for *each* CARS license and, if applicable, a regulatory fee of $25.00 for *each* Broadcast Auxiliary Service license held.

Note: One payment may be submitted for all regulatory fee obligations ("subscriber fees" and all Cable Antenna Relay Service and Broadcast Auxiliary Service licenses).

Payment Due Date: All regulatory fee payments for cable television systems must be *received* by the Commission by August 12, 1994 (except the second installment payment for the subscriber fee which must be received by September 9, 1994.

Special Instructions for Completing FCC Forms 159 & 159–C

FCC Form 159 ("FCC Remittance Advice") and, as necessary, FCC Form 159–C ("Advice Continuation Sheet") must accompany all regulatory fee payments. Form 159 allows payors to report information on one or two payment items (e.g., multiple community units, CARS licenses, Broadcast Auxiliary Service licenses, or a combination of any two). Use Form 159–C to report additional community units or licenses.

FCC Form 159 and 159–C have been attached to this Public Notice for you to complete and remit with your payment. You may make additional copies of the forms as required. In addition to the instructions for Form 159 (which are on the reverse side of the Form), the following information applies specifically to cable television payors:

Block (12)—"FCC CALL SIGN/OTHER ID"

- Enter your community unit identification number for reporting subscribers in *each community unit* within your system, or group of commonly-owned systems.
- Enter your call sign for CARS or Auxiliary Service licenses.

Block (14)—"Payment Type Code"

TOCN: Use this code when paying a subscriber fee ($0.37 per subscriber). Please note that subscriber information must be provided for *each community unit* of which the system is the operator.

TOC1: To be used ONLY for installment payments (an option when the total system subscriber fee exceeds

[1] Number of Subscribers In a Community Unit = Number of single family dwellings + Number of individual households in multiple dwelling units (e.g., apartments, condominiums, mobile home parks, etc.) paying at the basic subscriber rate + Number of bulk-rate customers + Number of courtesy and free service. (NOTE: Bulk-Rate Customers = total annual bulk rate charge + basic annual subscription rate for individual households). See also, FCC Form 325 Instructions (page 2).

$18,500). Use this code when making your *first* installment payment. Please note that subscriber information must be provided for *each community unit* of which the system is the operator.

TOC2: To be used ONLY for installment payments (see above). Use this code when making your *second* installment payment. Please note that subscriber information must be provided for *each community unit* of which the system is the operator.

TQCN: Use this code when making a regulatory fee payment for a CARS license ($220.00 per license).

MUBN: Use this code when making a regulatory fee payment for a Broadcast Auxiliary Services license ($25.00 per license).

Block (15)—"Quantity"

For subscriber fees (payment type codes TOCN, TOC1 or TOC2) enter the number of subscribers within each *community unit*. For CARS or Broadcast Auxiliary Service licenses, enter "1" in this block.

Block (16)—"Amount Due"

- For subscriber fees (payment type code TOCN), multiply the amount in Block 15 ("Quantity") by $0.37 and enter the result here.
- For subscriber fees with a payment type code of TOC1 or TOC2, multiply the figure in Block 15 ("Quantity") by $0.37 and then divide that amount by 2. Enter the result here.
- For CARS licenses (payment type code TQCN) enter $220.00.
- For Broadcast Auxiliary Service licenses (payment type code MUBN) enter $25.00.
- Round *down* to the nearest cent when applicable.

Block (17)—"FCC Code 1": Leave Blank

Block (18)—"FCC Code 2"

- For subscriber fees only (i.e., payment type codes TOCN, TOC1 or TOC2): Provide the *name* of the community unit.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–17387 Filed 7–18–94; 8:45 am]

BILLING CODE 6712–01–M

Applications For Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications, one for a new noncommercial educational ("NCE–FM") station serving Mojave, California, and one for a new NCE–FM serving Lancaster, California.

Applicant	City/state	File No.	MM docket No.
A. Santa Monica Community College District	Mojave, CA	BPED–920305ME	94–71
B. Living Way Ministries	Lancaster, CA	BPED–920511MC	94–71

2. Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing on a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding heading at 51 FR 19,347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue heading	Applicants
1. 307(b)—Noncommercial Education FM.	A, B
2. Contingent Comparative—Noncommercial Educational FM.	A, B
3. See Appendix	A
4. Ultimate	A, B

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036 (telephone 202–452–1422).

Linda Blair,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix

3. To determine whether there is a reasonable possibility that the tower heights and locations proposed by SMCCD and Living Way would constitute a hazard to air navigation.

[FR Doc. 94–17480 Filed 7–18–94; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Determination of Insufficiency of Assets To Satisfy All Claims of Certain Financial Institutions in Receivership

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice.

SUMMARY: In accordance with the authorities contained in 12 U.S.C. 1821(c), the Federal Deposit Insurance Corporation (FDIC) was duly appointed receiver for the financial institution specified in SUPPLEMENTARY INFORMATION. The FDIC has determined that the proceeds which can be realized from the liquidation of the assets of the below listed receivership estate are insufficient to wholly satisfy the priority claims of depositors against the receivership estate. Therefore, upon satisfaction of secured claims, depositor claims and claims which have priority over depositors under applicable law, no amount will remain or will be recovered sufficient to allow a dividend, distribution or payment to any creditor or lessor priority, including but not limited to, claims of general creditors. Any such claims are hereby determined to be worthless.

FOR FURTHER INFORMATION CONTACT: Tina A. Lamoreaux, Counsel, Legal Division, FDIC, 1717 H Street, NW., Washington, DC 20006. Telephone: (202) 736–3134.

SUPPLEMENTARY INFORMATION: Financial Institution in Receivership Determined to Have Insufficient Assets to Satisfy All Claims: Texas Bank and Trust Company, #2599, Lubbock, Texas.

Federal Deposit Insurance Corporation.

Patti C. Fox,

Acting Deputy Executive Secretary.

[FR Doc. 94–17485 Filed 7–18–94; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3114–EM]

Florida; Emergency Declaration and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Florida (FEMA–3114–EM), dated July 8, 1994, and related determinations.

EFFECTIVE DATE: July 8, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in an letter dated July 8, 1994, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Florida from severe storms and flooding resulting from Tropical Storm Alberto which began on July 2, 1994, and continuing, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such an emergency exists in the State of Florida.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Pursuant to this emergency declaration, you are authorized to provide technical and advisory assistance under Title V of the Stafford Act. You are also authorized to provide 75 percent reimbursement of reasonable eligible expenses incurred by the State and affected local governments in anticipation of and immediately preceding the predicted flooding.

The time period prescribed for the implementation of section 301(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Dave Skarosi of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State Florida to have been affected adversely by this declared emergency: Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Okaloosa, Santa Rosa, Walton and Washington for Technical and Advisory Assistance under Title V of the Stafford Act and reimbursement of reasonable eligible expenses incurred by the State and affected local governments in anticipation of and immediately preceding the predicted flooding.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 94–17509 Filed 7–18–94; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1035–DR]

Florida; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster of the State of Florida (FEMA–1035–DR), dated July 10, 1944, and related determinations.

EFFECTIVE DATE: July 10, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 10, 1994, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Florida, resulting from severe storms and flooding resulting from Tropical Storm Alberto on July 2, 1944, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Florida.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Dave Skarosi of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Florida to have been affected adversely by this declared major disaster: Calhoun, Holmes, Walton and Washington for Individual and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 94–17510 Filed 7–18–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1035–DR]

Florida; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida, (FMEA–1035–DR), dated July 10, 1994, and related determinations.

EFFECTIVE DATE: July 12, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Florida dated July 10, 1994, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 10, 1994:

Gulf and Jackson Counties for Individual and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 94–17507 Filed 7–18–94; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1033–DR]

Georgia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia, (FEMA–1033–DR), dated July 7, 1994, and related determinations.

EFFECTIVE DATE: July 12, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Georgia dated July 7, 1994, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 7, 1994:

Baker, Clay, Decatur, Miller, Mitchell, Pulaski, Seminole, Stewart and Wilcox Counties for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 94–17506 Filed 7–18–94; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1015–DR]

Pennsylvania; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Pennsylvania, (FEMA–1015–DR), dated March 10, 1994, and related determinations.

EFFECTIVE DATE: July 11, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Pennsylvania dated March 10, 1994, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 10, 1994:

Bedford, Clearfield, Lycoming, Mifflin, Perry, Somerset and Sullivan Counties for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 94–17508 Filed 7–18–94; 8:45 am]

BILLING CODE 6718–02–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 the Extension, with Revision, of the Following Report(s)

1. Report title: Government Securities Dealers Reports

Agency form number: FR 2004A, B, C, and WI

OMB Docket number: 7100–0003

Frequency: Weekly and on occasion

Reporters: Primary dealers in U.S. government securities

Annual reporting hours: 11,544

Estimated average hours per response: 1

Number of respondents: 39

Small businesses are not affected.

General description of report: This information collection is voluntary [12 U.S.C. §§ 248(a)(2), 353–359a, and 461] and is given confidential treatment [5 U.S.C. § 552(b)(4)].

This group of reports (the "FR 2004 series") is used to collect data on positions, transactions and financing activity from U.S. government securities dealers. Data needs with respect to the FR 2004 series have changed in light of the *Joint Report on the Government Securities Market* submitted to the Congress in January 1992 by the Federal Reserve, the U.S. Treasury Department, and the Securities and Exchange Commission. Based on that report, significant changes to the FR 2004 series of reports have been recommended. A summary of those changes follows.

For the Weekly Report of Dealer Positions (FR 2004A):

- Money market instruments and the addendum section are eliminated.
- Pass-through mortgage-backed securities and all other mortgage-backed securities are combined into one category.
- Federal agency securities are combined into one maturity category and two maturity categories of Treasury securities are eliminated.
- Option positions are reduced to long and short categories rather than purchased and sold calls, purchased and sold puts.
- Forward positions are reported with immediate positions under the title "outright positions".

For the Weekly Report of Cumulative Transactions (FR 2004B):

- The addendum section is eliminated and the Treasury, agency and mortgage-backed categories are abbreviated as on the proposed revised FR 2004A.
- "Buys" and "Sells" categories are combined.
- Primary Dealers are combined with "customers" (now called "with others") rather than brokers, and the "all other" category is eliminated.
- Forward transactions are reported with immediate positions under the title "outright transactions".

For the Weekly Report of Dealer Financing (FR 2004C):

- Customer categories are eliminated
- Term agreements are reduced to one category
- The categories "cash collateral" and "securities and LC's" are eliminated and replaced by securities received as pledge or pledged.
- Fails are condensed on the proposed report.

For the Daily Report of Dealer Positions in Treasury Financings (FR 2004WI):

- Gross long and short positions are replaced by purchases and sales.
- Net financing commitments are added.

For the new Report of Specific Issues (FR 2004SI):

- This is an entirely new report that is similar to the addendum sections of the current FR 2004A and B, except that it incorporates financing and fails. It is designed to collect information on

specific Treasury securities for market surveillance purposes. It will be collected weekly on a routine basis. Also, the Federal Reserve will have the authority to call for reporting of any issue daily, on an as-needed basis.

For the Report of Suggested Evidence of Accuracy (FR 2004B.1):

- Eliminated.

By order of the Board of Governors of the Federal Reserve System, July 13, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–17492 Filed 7–18–94; 8:45 am]

BILLING CODE 6210–01–P

Banc One Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 12, 1994.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Banc One Corporation, Columbus, Ohio and Banc One Illinois Corporation, Chicago, Illinois; to acquire 100 percent of the voting shares of American Holding Company, Glencoe, Illinois, and thereby indirectly acquire First Bank of Highland Park, Highland Park, Illinois.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Trustmark Corporation, Jackson, Mississippi; to merge with First National Financial Corporation, Vicksburg, Mississippi, and thereby indirectly acquire First National Bank of Vicksburg, Vicksburg, Mississippi.

C. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. F&M Bancorporation, Inc., Kaukauna, Wisconsin; to acquire 90 percent of the voting shares of Union State Bank, Wautoma, Wisconsin.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Boatmen's Bancshares, Inc., St. Louis, Missouri; to acquire 100 percent of the voting shares of Dalhart, Bancshares, Inc., Dalhart, Texas, and Dalhart Bancshares of Delaware, Wilmington, Delaware, amd thereby indirectly acquire Citizens State Bank of Dalhart, Dalhart, Texas.

2. Magna Group, Inc., St. Louis, Missouri; to acquire 100 percent of the voting shares of Goreville Bancorporation, Inc., and thereby indirectly acquire Goreville State Bank, Goreville, Illinois.

E. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Heights Delaware Financial Corporation, Dover, Delaware; to acquire 100 percent of the voting shares of Heights State Bank, Harker Heights, Texas.

2. Herring Bancorp, Inc., Vernon, Texas; to acquire 100 percent of the voting shares of First Bank & Trust of Clarendon, Clarendon, Texas.

3. Herring Bancorp, Inc., Wilmington, Delaware; to acquire 100 percent of the voting shares of First Bank & Trust of Clarendon, Clarendon, Texas.

4. Texas State Bancshares, Inc., Harker Heights, Texas; to acquire 100 percent of the voting shares of Heights Delaware Financial, Dover, Delaware, and thereby indirectly acquire Heights State Bank, Harker Heights, Texas.

Board of Governors of the Federal Reserve System, July 13, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-17484 Filed 7-18-94; 8:45 am]

BILLING CODE 6210-01-F

Johnson International, 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 12, 1994.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Johnson International, Inc., Racine, Wisconsin; to acquire Seaboard Savings Bank, F.S.B., Stuart, Florida, and thereby engage in nonbanking activities of operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; Norwest Financial Services, Inc., Des Moines, Iowa; and Norwest Financial, Inc., Des Moines, Iowa; to acquire Norwest Financial Guam, Inc., Guam, and thereby engage in making loans pursuant to § 225.25(b)(1) of the Board's Regulation Y and to engage in general insurance agency activities pursuant to § 225.25(b)(8)(vii) of the Board's Regulation Y. **Comments on this application must be received by August 2, 1994.**

Board of Governors of the Federal Reserve System, July 13, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-17494 Filed 7-18-94; 8:45 am]

BILLING CODE 6210-01-F

St. Francis Capital Corporation, et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) 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, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are 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 or the offices of the Board of Governors not later than August 12, 1994.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. St. Francis Capital Corporation, Milwaukee, Wisconsin; to acquire St. Francis Insurance Corporation, Milwaukee, Wisconsin, a wholly owned subsidiary of St. Francis Bank F.S.B., Milwaukee, Wisconsin, and thereby engage in insurance agency activities relating to tax deferred annuities pursuant to § 225.25(b)(8) of the Board's Regulation Y.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Talco, Inc., Menomonie, Wisconsin; to become a bank holding company by acquiring 57.94 percent of the voting shares of Menomonie Shares, Inc., Menomonie, Wisconsin, Clarence Talen Charitable Trust, Menomonie, Wisconsin; to become a bank holding company by acquiring 20.55 percent of the voting shares of Menomonie Shares, Inc.; and Menomonie Shares, Inc., Menomonie, Wisconsin; to acquire an additional 56.67 percent for a total of 81.64 percent of the voting shares of Menomonie Financial Services, Inc., Menomonie, Wisconsin, and thereby indirectly acquire First Bank & Trust, Menomonie, Wisconsin.

In connection with this application, Talco, Inc., The Clarence Talen Charitable Trust, and Menomonie Shares Inc., also have applied to acquire Electronic Strategies, Inc., and thereby engage in the nonbanking activities of providing data processing and data transmission services for the processing and transmission of financial, banking or economic data pursuant to § 225.25(b)(7) of the Board's Regulation Y, and providing management consulting services to non-affiliated bank and nonbank depository institutions pursuant to § 225.25(b)(11) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 13, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-17495 Filed 7-18-94; 8:45 am]

BILLING CODE 6210-01-F

Sharon E. and Howard C. Thompson, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 8, 1994.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Sharon E. and Howard C. Thompson, Pittsburg, Kansas; Sharon E. Thompson, Co-Trustee of the Jon A. Simoncic Trust, Pittsburg, Kansas, to acquire an additional 22.73 percent for a total of 44.7 percent of the voting shares; and Joyce L. and Barry D. Draper, Pittsburg, Kansas, Joyce L. Draper, Co-Trustee of the Jon A. Simoncic Trust, Pittsburg, Kansas, to acquire an additional 22.73 percent for a total of 44.7 percent of the voting shares of S.T.D. Investments, Inc., Mindenmines, Missouri, and thereby indirectly acquire Bank of Minden, Mindenmines, Missouri.

Board of Governors of the Federal Reserve System, July 13, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-17493 Filed 7-18-94; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health

[Announcement Number 497]

Implementing TB Training for Primary Care Physicians and Other Health-Care Workers

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1994 funds for cooperative agreements to conduct a training program for primary care physicians and allied health-care providers to avoid or reduce their exposure to tuberculosis (TB).

In April 1992, the National Multiple Drug Resistance-TB Task Force published a National Action Plan to Combat Multidrug Resistant Tuberculosis. This document elaborates upon the CDC's approach to eliminating TB through those action steps for which the CDC has lead responsibility.

Problem 27 of this plan states that nosocomial transmission of TB to health-care workers and patients is occurring. Such transmission is preventable if recommended infection control practices are implemented. The objective is to disseminate information on the prevention of TB transmission to individuals and facilities that provide services to persons with TB or to persons at high risk for TB.

Implementation Step 4 calls for the establishment of infection control programs. A list of Training and Education Materials is available and can be ordered. To order the National Action Plan to Combat Multiple Drug Resistant Tuberculosis, see the section, Where to Obtain Additional Information.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Health Promotion and Disease Prevention. (To order a copy of Healthy People 2000, see the section Where to Obtain Additional Information.)

Authority: This program is authorized under section 21(a) of the Occupational Safety and Health Act of 1970 [29 U.S.C. 670 (a)].

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

Applications may be submitted by public and private, non-profit and for-profit organizations and governments and their agencies. Thus, universities, colleges, research institutions, groups representing physicians and health-care workers, hospitals, other public and private organizations, State and local governments or their bona fide agents, federally recognized Indian tribal governments, Indian tribes or Indian tribal organizations, and small, minority- and/or women-owned businesses are eligible to apply.

Availability of Funds

Approximately $250,000 is available in FY 1994 to fund up to two awards. It is expected that the average award will be $125,000. It is expected that the awards will begin on or about September 30, 1994, and will be made for a 12-month budget period within a project period of 1 year. Funding estimates may vary and are subject to change. It is not anticipated that the funding period will be extended beyond 1 year.

Purpose

The purpose of this award is to assist in the implementation of a national training program for primary health-care providers to reduce their risk of exposure to tuberculosis.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting activities under A. (Recipient Activities), and CDC shall be responsible for conducting activities under B., (CDC/NIOSH/DTBE Activities).

A. Recipient Activities

1. Select appropriate curriculum or identify topics which meet the needs of the target populations as defined in the application. Develop sample agenda, initial training, refresher training, and updated skills training, and identify course materials. A list of existing CDC TB educational materials is available. (To order the National Action Plan to Combat Multiple Drug Resistant Tuberculosis, see the section "Where to Obtain Additional Information.")

2. Select appropriate participants who will serve as trainers and conduct training programs.

3. Conduct training programs within the designated region, as defined by the applicant, for the selected applicants.

4. Provide audiovisual support, space, facilities, and equipment to conduct the training.

5. Document and conduct an evaluation program to measure the impact and success of the training effort.

6. Develop a plan for a program announcing the availability of the training for all target audiences within the region or nationally.

B. CDC/NIOSH/DTBE Activities

1. Provide technical assistance and consultation, through site visits and correspondence, in areas of identifying needs, and program development and implementation.

2. Provide scientific and technical consultation in the modification of curriculum materials and their subsequent review.

3. Provide on-site technical consultation during the training programs with recommendations to assist the trainers.

4. Provide training materials, such as videotapes and printed documents, to the recipient, when appropriate and needed.

5. Provide technical assistance in the evaluation of the results and efficacy of the training conducted.

6. Assist in the dissemination of training information to appropriate organizations.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

1. Responsiveness to the objectives of the cooperative agreement as defined in the context of the applicant responsibilities including: (a) the applicant's understanding of the objectives of the proposed cooperative agreement, and (b) the relevance of the proposal to the objectives. (20%)

2. Feasibility of meeting the proposed goals of the cooperative agreement including: (a) the proposed schedule for initiating and accomplishing each of the activities of the cooperative agreement and, (b) the proposed method for evaluating the accomplishments. (20%)

3. Strengths and comprehensiveness of the training program plan which addresses the distinct characteristics and needs of the target audience and includes the essential program element for planning, conducting, and evaluating of training programs. (25%)

4. Training and experience of the Program Director and staff including: (a) Program Director with experience in managing cooperative agreements and grants and with technical expertise in primary prevention education and in the occupational safety and health field, (b) faculty with training and experience in the appropriate technical areas, and (c) staff with experience in developing curricula in infectious disease transmission, TB prevention, and control measures in the primary health-care occupational setting. (15%)

5. The capability of accessing, on a regional or national level, primary health-care providers who are presently involved in TB prevention programs to ensure consistency in delivering training programs, and to assure credibility with professional/worker organizations and health departments. (10%)

6. Experience in delivering health and safety programs for the target population, particularly in the primary health-care provider arena. (10%)

7. The budget will be evaluated to the extent it is reasonable, clearly justified, and consistent with the intended use for funds. (Not scored)

Executive Order 12372 Review

Applications submitted by State and local governments 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. Indian tribes are strongly encouraged to request tribal government review of the proposed application. State and local governments should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC for each affected State. A current list of SPOCs is included in the application kit. If SPOCs have any State process recommendations on applications submitted to CDC, they should send them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Atlanta, GA 30305, no later than 30 days after the application due date (a waiver for the 60 day requirement has been requested). The Program Announcement number and Program title should be referenced on the document. The granting agency does not guarantee to "accommodate or explain" State process recommendations it receives after that date.

All other applications are not subject to E.O. 12372 review.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assurance number for this program is 93.263.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 (Revised 7/92, OMB Control Number 0937–0189) must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE, Room 300, Mailstop E–13, Atlanta, GA 30305, on or before August 23, 1994.

1. Deadline: Applications shall be considered as meeting the deadline above 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 group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing).

2. Late Applications: Applications which do not meet the criteria in 1.(a) or 2.(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 technical assistance may be obtained from Oppie M. Byrd, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road NE, Room 300, Mailstop E–13, Atlanta, Georgia 30305, telephone (404) 842–6630.

Programmatic technical assistance may be obtained from N. Jack Berberich, Jr., Ph.D., Chief, Curriculum Development Branch, Division of Training and Manpower Development, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC), 4676 Columbia Parkway, Mailstop C–12, Cincinnati, Ohio 45226, telephone (513) 533–8231.

Please refer to Announcement Number 497 when requesting information and submitting an application.

Potential applicants may obtain a copy of the National Action Plan to Combat Multiple Drug Resistant Tuberculosis from Information Services, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE, Mailstop O–6, Atlanta, Georgia 30333, or by calling telephone (404) 639–1819.

Potential applicants may obtain a copy of Healthy People 2000, (Full Report, Stock Number 017–001–00474–0) or Healthy People 2000, (Summary Report, Stock Number 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: July 13, 1994.

Linda Rosenstock,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–17472 Filed 7–18–94; 8:45 am]

BILLING CODE 4163–19–P

Food and Drug Administration

Advisory Committee Meeting; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an amendment to the notice of a meeting of the Antiviral Drugs Advisory Committee. This meeting was announced in the **Federal Register** of June 24, 1994 (59 FR 32699 at 32700). The amendment is being made to reflect a change in the date of the meeting from a 1-day to a 2-day meeting and a change in the meeting room locations, and to announce a closed portion of the meeting, which is now scheduled for the second day. The open committee discussion remains the same, except for the date the discussions will be held. This amendment will be announced at the beginning of the open portion of the meeting.

FOR FURTHER INFORMATION CONTACT: Lee L. Zwanziger or Valerie Mealy, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville MD 20857 301–443–4695.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 24, 1994, FDA announced that a meeting of the Antiviral Drugs Advisory Committee would be held on June 29, 1994. On page 32700, in the first column, the *"Date, time, and place"* and *"Type of meeting and contact person"* portions of this meeting are amended, and because the committee will now have a closed portion on July 29, 1994, a *"Closed committee deliberations"* portion is added to read as follows:

Date, time, and place. July 28, 1994, 8 a.m., Parklawn Bldg., Conference rms. D and E, and July 29, 1994, 8:30 a.m., Parklawn Bldg., Conference rms. G, H, I, and J, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open committee discussion, July 28, 1994, 8 a.m. to 11 a.m.; open public hearing, 11 a.m. to 12 m., unless public participation does not last that long; open committee discussion, 12 m. to 5 p.m.; closed committee deliberations, July 29, 1994, 8:30 a.m. to 12 m.; Lee L. Zwanziger or Valerie Mealy, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

Closed committee deliberations. On July 29, 1994, the committee will discuss trade secret and/or confidential commercial information relevant to pending NDA's. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Dated: July 13, 1994.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 94–17475 Filed 7–18–94; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

Division of Research Grants; a Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meeting:

Name of SEP: Behavioral and Neurosciences.

Date: August 10, 1994.

Time: 2 p.m.

Place: NIH, Westwood Bldg., Room 304 (Telephone Conference).

Contact Person: Dr. Stephen Gobel, Scientific Review Admin., 5333 Westbard Ave., Room 304, Bethesda, MD 20892, (301) 594–7293.

Purpose/Agenda

To review individual grant applications.

The meeting will be closed in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS).

Dated: July 13, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–17441 Filed 7–18–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute of General Medical Sciences; Meeting of the National Advisory General Medical Sciences Council

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory General Medical Sciences Council, National Institute of General Medical Sciences, National Institutes of Health, on September 19 and 20, 1994, Building 31, Conference Room 10, Bethesda, Maryland.

This meeting will be open to the public on September 19, from 8:30 a.m. to 1 p.m. for opening remarks; the report of the Acting Director, NIGMS; and other business of the Council. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on September 19 from 1 p.m. to 5:30 p.m., and on September 20, from 8:30 a.m. until adjournment, for the review, discussion, and evaluation of individual grant applications. The discussions of these applications could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Ann Dieffenbach, Public Information Officer, National Institute of General Medical Sciences, National Institutes of Health, Building 31, Room 4A52, Bethesda, Maryland 20892, telephone: 301–496–7301, FAX 301–402–0224, will provide a summary of the meeting, and a roster of Council members. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mrs. Ann Dieffenbach in advance of the meeting. Dr. W. Sue Shafer, Executive Secretary, NAGMS Council, National Institutes of Health, Westwood Building, Room 938, Bethesda, Maryland 20892, telephone: 301–594–7751 will provide substantive program information upon request.

(Catalog of Federal Domestic Assistance Program Nos. 93.821, Biophysics and Physiological Sciences; 93.859, Pharmacological Sciences; 93.862, Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers [MARC]; and 93.375, Minority Biomedical Research Support [MBRS].)

Dated: July 13, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–17440 Filed 7–18–94; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; a Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Heart, Lung, and Blood Special Emphasis Panel (SEP) meeting:

Name of Sep: Child and Adolescent Trial for Cardiovascular Health—Phase III (CATCH).

Date: August 7–8, 1994.

Time: 7:30 p.m.

Place: Holiday Inn, Bethesda, Maryland.

Contact Person: Anthony M. Ceolho, Jr., Ph.D., 5333 Westbard Avenue, Room 648, Bethesda, Maryland 20892, (301) 594–7485.

Purpose/Agenda

To review and evaluate grant application(s).

The meeting will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular

Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Date: July 13, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–17442 Filed 7–18–94; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Amended Notice of Meeting

Notice is hereby given of a change in the special meeting of the Biomedical Library Review Committee, July 20–21, 1994, which was published in the **Federal Register** on June 27, 1994, Volume 59, No. 122.

This committee was to have convened at 8:30 a.m. on July 20 and 21, but the meeting has been changed to August 3–4, 1994, at 8:30 a.m., Board Room of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland.

The meeting will be closed to the public.

Dated: July 13, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–17443 Filed 7–18–94; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

National Toxicology Program; Fiscal Year 1993 Annual Report

The National Toxicology Program (NTP) announces the availability of the *NTP Annual Plan for Fiscal Year 1993,* solicits comments on it, and urges all interested persons to propose chemicals for possible toxicological evaluation. In the interest of accuracy due to the lateness of publication, the fifteenth edition has been titled the *NTP Annual Report,* and as such it primarily contains program accomplishments for FY 1992. Accomplishments for FY 1993 and program plans for FY 1994 are reported in the FY 1994 *Annual Plan* (in press).

Background

The National Toxicology Program (NTP) was established within the Public Health Service of the Department of Health and Human Services (DHHS) in November 1978. The continuing broad goals of the NTP are to coordinate and strengthen DHHS basic and applied toxicology research and methods development and validation, and to provide toxicological information for use by health research and regulatory agencies and others in protecting the public health. Overall objectives are to:

Broaden the spectrum of toxicological information obtained on selected chemicals;

Increase the numbers of chemicals studied, within funding limits;

Develop and validate assays and protocols responsive to regulatory needs;

Communicate Program plans and results to governmental agencies, the medical and scientific communities, and the public.

The NTP coordinates selected toxicology activities of the National Institute of Environmental Health Sciences, National Institutes of Health; the National Center for Toxicological Research, Food and Drug Administration; and the National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

Primary program oversight is provided by the NTP Executive Committee, which links DHHS health research institutes and centers with Federal health regulatory agencies to ensure that the basic and applied toxicology research and development activities are responsive to regulatory and public health needs. Agencies represented on the Executive Committee are:

Agency for Toxic Substances and Disease Registry
Consumer Product Safety Commission
Environmental Protection Agency
Food and Drug Administration
National Cancer Institute
National Institute for Occupational Safety and Health
National Institute of Environmental Health Sciences
National Institutes of Health
Occupational Safety and Health Administration

The NTP Board of Scientific Counselors provides scientific oversight, advising the NTP Director and the NTP Executive Committee on scientific content and evaluating the scientific merit and overall quality of NTP science. The members (listed in the 1993 *Annual Report*) are appointed by the Secretary, DHHS. For the purposes of the Program, the NTP Director reports to the Assistant Secretary for Health.

Scientific activities are divided into three major program areas: carcinogenesis; genetic toxicology; and toxicologic characterization. The latter area covers activities in cardiac, immunologic, neurobehavioral, respiratory and reproductive and developmental toxicologies, and includes efforts in chemical disposition. There are special programs in studying the toxicities of AIDS therapeutics and the toxicities of Superfund chemicals. Program and project leaders, along with addresses and telephone numbers, are identified in the 1993 *Annual Report.*

The chemical nomination and selection process is integral to the effective long-term operation and success of the NTP with respect to toxicological studies of chemicals using modern techniques and to the development and validation of new assay methods, as well as for use in evaluation of new concepts of mechanisms of toxicity. Thus, the NTP welcomes nominations of chemicals for study from everyone. Especially sought are nominations of chemicals for study of noncancer endpoints. At a minimum, the nominator should give the name of the chemical or substance, the rationale for the nomination, and recommend the type study(s) to be considered. In addition, it is desirable, but not essential, to supplement each nomination with the following information, if known:

I. Chemical and physical properties.
II. Production, use, occurrence, and analysis data.
III. Toxicology information.
IV. Chemical disposition and structure-activity relationships.
V. Planned or ongoing or recently completed toxicological and environmental studies.

To receive the *NTP Annual Report for Fiscal Year 1993,* please write or telephone the NTP Central Data Management, P.O. Box 12233, MD A0–01, Research Triangle Park, N.C. 27709, (telephone 919/541–3419).

Comments on the FY 1993 NTP *Annual Report* are requested and welcome. These should be addressed to Dr. Larry Hart, National Toxicology Program, P.O. Box 12233, Research Triangle Park, N.C. 27709, (telephone 919/541–3971).

Richard Griesemer,

Deputy Director, National Toxicology Program.

[FR Doc. 94–17439 Filed 7–18–94; 8:45 am]

BILLING CODE 4140–01–P

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Benzyl Acetate

The HHS' National Toxicology Program announces the availability of the MTP Technical Report on the toxicology and carcinogenesis studies of benzyl acetate, which is used as a flavoring agent in foods, as a fragrance in soaps and perfumes, as a solvent for cellulose acetate and nitrate, and as a

component of printing inks and varnish removers. The NTP previously studied the toxicology and carcinogenicity of this chemical in F344/N rats and B6C3F$_1$ mice using the gavage route of administration and corn oil as a vehicle. Benzyl acetate increased the incidences of pancreatic acinar cell adenomas in male rats and the incidences of hepatocellular adenomas and forestomach neoplasms in male and female mice. Because of the confounding effect of corn oil on the incidences of pancreatic neoplasms and because of controversy over the use of the gavage route of administration, the NTP decided to restudy benzyl acetate using the dosed feed route of administration.

Toxicology and carcinogenesis studies were conducted by feeding groups of 60 male and female F344/N rats diets containing 0, 3,000, 6,000, or 12,000 ppm benzyl acetate and groups of 60 male and female B6C3F$_1$ mice diets containing 0, 330, 1,000, or 3,000 ppm benzyl acetate for 2 years.

Under the conditions of these 2-year feed studies, there was no evidence of carcinogenic activity* of benzyl acetate in male or female F344/N rats receiving 3,000, 6,000, or 12,000 ppm; however, rats may have tolerated higher doses. There was no evidence of carcinogenic activity of benzyl acetate in male or female B6C3F$_1$ mice receiving 330, 1,000, or 3,000 ppm.

Nasal lesions associated with benzyl acetate exposure in male and female mice included nasal mucosa atrophy and degeneration (primarily of the olfactory epithelium), cystic hyperplasia of the nasal submucosal gland, and luminal exudate and pigmentation of the nasal mucosal epithelium.

In premius 2-year gavage studies, benyzl acetate increased the incidence of acinar cell adenomas of the exocrine pancreas in male F344/N rats; the gavage vehicle may have been a contributing factor. There was no evidence of carcinogenic activity in female F344/N rats receiving 250 or 550 mg/kg a day.

There was some evidence of carcinogenic activity in male and female B6C3F$_1$ mice, indicated by the increased incidences of hepatocellular adenomas and squamous cell neoplasms of the forestomach.

*The NTP uses five categories of evidence of carcinogenic activity observed in each animal study: two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effect ("no evidence"), and one category for studies that cannot be evaluated because of major flaws ("inadequate study").

Questions or comments about the Technical Report should be directed to Central Data Management at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–3419.

Copies of *Toxicology and Carcinogenesis Studies of Benzyl Acetate (CAS No. 140–11 1) in F344/N Rats and B6C3F$_1$ Mice (Feed Studies)* (TR–431) are available without charge from Central Data Management, NIEHS, MD A0–01, P.O. Box 12233, Research Triangle Park, NC 27709; telephone (919) 541–3419.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 94–17449 Filed 7–18–94; 8:45 am]

BILLING CODE 4140–01–M

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Manganese (II) Sulfate Monohydrate

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of manganese sulfate monohydrate. Manganese is the 12th most abundant element in the earth's crust. The base metal does not occur naturally, but is a component of more than 100 minerals, including sulfides, oxides, carbonates, silicates, phosphates, and borates. In addition to occurring in foods and drinking water, manganese occurs in the atmosphere from dust, volcanic activity, forest fires, and industrial emissions. Manganese (II) sulfate monohydrate was chosen for study because of its stability, solubility, and availability.

Toxicology and carcinogenicity studies were conducted by administering manganese (II) sulfate monohydrate (97% pure) in feed to groups of 70 male and 70 female F344/N rats and B6C3$_1$ mice at doses of 1, 1,500, 5,000, or 15,000 ppm for up to 2 years.

Under the conditions of these 2-year feed studies, there was no evidence of carcinogenic activity * of manganese (II) sulfate monohydrate in male or female F344/N rats receiving 1,500, 5,000, or 15,000 ppm. There was equivocal evidence of carcinogenic activity of manganese (II) sulfate monohydrate in male and female B6C3F$_1$ mice, based on the marginally increased incidences of thyroid gland follicular cell adenoma and the significantly increased incidences of follicular cell hyperplasia.

The ingestion of diets containing manganese (II) sulfate monohydrate was associated with an increased severity of nephropathy in male rats, focal squamous hyperplasia of the forestomach in male and female mice, and ulcers and inflammation of the forestomach in male mice. These studies were not designed to assess any neurotoxicity that might have been expected with chronic exposure to sufficiently high doses of manganese.

Questions or comments about the Technical Report should be directed to Central Data Management at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–3419.

Copies of *Toxicology and Carcinogenesis Studies of Manganese (II) Sulfate Monohydrate (CAS No. 10034–96–5) in F344/N Rats and B6C3F$_1$ Mice (Feed Studies)* (TR–428) are available without charge from Central Data Management, NIEHS, MD A0–01, P.O. Box 12233, Research Triangle Park, NC 27709; telephone (919) 541–3419.

Dated: July 13, 1994.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 94–17450 Filed 7–18–94; 8:45 am]

BILLING CODE 4140–01–M

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of p-Nitroaniline

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of p-nitroaniline, an intermediate in the preparation of several azo dyes used for coloring consumer products.

Two-year toxicology and carcinogenesis studies were conducted by administering to both sexes of B6C3F$_1$ mice doses of 0, 3, 30, or 100 mg p-nitroaniline per kg body weight in corn oil by gavage 5 days per week for up to 103 weeks.

Under the conditions of these 2-year gavage studies, there was equivocal evidence of carcinogenic activity * of p-

* The NTP uses five categories of evidence of carcinogenic activity observed in each animal study: two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effect ("no evidence"), and one category for studies that cannot be evaluated because of major flaws ("inadequate study").

* The NTP uses five categories of evidence of carcinogenic activity observed in each animal study: two categories for positive results ("clear evidence" and "some evidence"), one category for no observable effect ("no evidence"), and one category for uncertain findings ("equivocal evidence"), one category for studies that cannot be

Continued

nitroaniline in male B6C3F$_1$ mice based on the increased incidences of hemangiosarcoma of the liver and hemangioma or hemangiosarcoma (combined) at all sites. There was no evidence of carcinogenic activity of p-nitroaniline in female B6C3F$_1$ mice receiving doses of 3, 30, 0r 100 mg/kg.

Questions or comments about the Technical Report should be directed to Central Data Management at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–3419.

Copies of *Toxicology and Carcinogenesis Studies of p-Nitroaniline (CAS No. 100–01–6) in B6C3F$_1$ Mice (Gavage Studies)* (TR–418) are available without charge from Central Data Management, NIEHS, M.D. AO–01, P.O. Box 12233, Research Triangle Park, NC 27709; telephone (919) 541–3419.

Dated: July 12, 1994.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 94–17746 Filed 7–18–94; 8:45 am]

BILLING CODE 4140–01–M

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Polybrominated Biphenyls (Firemaster FF–1®)

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of Polybrominated biphenyls, synthetic chemicals used as flame retardants. The technical product used in these studies, Firemaster FF–1®, is a mixture of brominated biphenyls. Firemaster FF–1® is a known liver carcinogen in rats and mice and is one of three compounds chosen by the National Toxicology Program to investigate the potential value of perinatal exposures in assessing chemical carcinogenicity.

Chronic toxicity and carcinogenicity studies were performed by administering polybrominated biphenyls (Firemaster FF–1®) at concentrations of 0, 1, 3, 10, or 30 ppm in feed to groups of 50 F344/N rats and B6C3F$_1$ mice of each sex. The studies were designed to determine: a) the effects of polybrominated biphenyls in rats and mice receiving adult (F$_1$) exposure only (a typical carcinogenicity study), b) the toxic and carcinogenic effects of polybrominated biphenyls in rats and mice receiving perinatal (F$_0$) exposure only (dietary exposure of dams prior to breeding and throughout gestation and lactation), and c) the effects of combined perinatal and adult exposure to polybrominated biphenyls.

Adult-Only Exposure: Under the conditions of these 2-year, adult-only, dietary exposure studies, there was clear evidence of carcinogenic activity* for polybrominated biphenyls in male and female F344/N rats and male and female B6C3F$_1$ mice based on increased incidences of hepatocellular neoplasms.

Perinatal-Only Exposure: Perinatal exposure alone (through dietary administration of 10 ppm polybrominated biphenyls to the dams) had no effect on the incidences of neoplasms in female F344/N rats, but in male F344/N rats, perinatal exposure was associated with a marginally increased incidence of hepatocellular adenomas that may have been related to chemical administration. In male and female B6C3F$_1$ mice, perinatal exposure to 30 ppm polybrominated biphenyls resulted in significantly increased incidences of hepatocellular neoplasms. The incidences of a number of nonneoplastic lesions in the liver (cytomegaly, eosinophilic focus, and clear cell focus) were increased in male and female B6C3F$_1$ mice.

Combined Perinatal and Adult Exposure: Combined perinatal and adult dietary exposure to polybrominated biphenyls confirmed findings of the adult-only exposures for the increased incidences of hepatocellular neoplasms in F344/N rats and B6C3F$_1$ mice. In male F344/N rats, there were no enhancing effects of combined perinatal and adult exposure. However, perinatal exposure enhanced the susceptibility of female F344/N rats receiving adult exposure of 10 or 30 ppm to the induction of liver neoplasms.

For male and female F344/N rats, a combined analysis of the incidences of leukemia in the adult-only, perinatal-only, and combined perinatal and adult exposure groups revealed an apparent association between increasing incidences of mononuclear cell leukemia and exposure to polybrominated biphenyls.

In male and female B6C3F$_1$ mice, it was not possible to adequately assess the enhancing effects of combined perinatal and adult exposure on hepatocellular neoplasms, because adult-only exposure to 10 or 30 ppm polybrominated biphenyls resulted in high incidences (84% to 98%) of liver neoplasms. However, with increased perinatal exposure, there were increases in the numbers of B6C3F$_1$ mice with hepatocellular carcinomas and in the numbers of B6C3F$_1$ mice with multiple hepatocellular adenomas, which suggests an enhancement of polybrominated biphenyls-related hepatocellular carcinogenicity associated with perinatal exposure.

Questions or comments about the Technical Report should be directed to Central Data Management at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–3419.

Copies of *Toxicology and Carcinogenesis Studies of Polybrominated Biphenyls (Firemaster FF–1®) (CAS No. 67774–32–7) in F344/N Rats and B6C3F$_1$ Mice (Feed Studies)* (TR–398) are available without charge from Central Data Management, NIEHS, MD A0–01, P.O. Box 12233, Research Triangle Park, NC 27709; telephone (919) 541–3419.

Dated: July 12, 1994.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 94–17445 Filed 7–18–94; 8:45 am]

BILLING CODE 4140–01–M

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of 1,3-Butadiene

The HHS' National Toxicology Program announces the availability of the NIP Technical Report on the toxicology and carcinogenesis studies of 1,3-Butadiene, which is used in the manufacture of synthetic rubber and of thermoplastic resins.

To better characterize exposure-response relationships for neoplasms and nonneoplastic lesions, toxicology and carcinogenesis studies were conducted by exposing groups of male and female B6C3F$_1$ mice to air containing 1,3-butadiene (greater than 99% pure) for up to 2 years. An additional study in male B6C3F$_1$ mice, in which exposure to 1,3-butadiene was stopped after limited exposure periods (13, 26, 40, or 52 weeks), was performed to assess the effects of varying concentration and duration of exposure on the incidences of 1,3-butadiene-induced neoplasms.

Groups of 70 male and 70 female mice were exposed to air containing 0, 6.25, 20, 62.5, or 200 ppm 1,3-butadiene for 6 hours per day, 5 days per week for up to 2 years; groups of 90 male and 90 female mice were exposed to 625 ppm, 1,3-butadiene on the same schedule. Up to 10 animals from each group were

evaluated because of major flaws ("inadequate study").

* The NTP uses five categories of evidence of carcinogenic activity observed in each animal study: two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effect ("no evidence"), and one category for studies that cannot be evaluated because of major flaws ("inadequate study").

examined after 9 and 15 months of exposure.

The stop-exposure study consisted of groups of 50 male mice exposed to 1,3-butadiene at concentrations of 200 ppm for 40 weeks, 625 ppm for 13 weeks, 312 ppm for 52 weeks, or 625 ppm for 26 weeks. After the exposures were completed, these groups were placed in control chambers for the remainder of the 2-year study. The total exposure to 1,3-butadiene (concentration times duration of exposure) in the 13, and 40-week stop-exposure was approximately 8,000 ppm weeks, while that in the 26- and 52-week stop-exposure groups was approximately 16,000 ppm weeks.

Previous inhalation studies of 1,3-butadiene in male and female B6C3F$_1$ mice provided clear evidence of carcinogenicity at exposure concentrations of 625 or 1,250 ppm. The present inhalation studies—2-year exposures of 6.25, 20, 62.5, 200, or 625 ppm or shorter duration exposures of 200, 312, or 625 ppm—provide a better characterization of the concentration-dependent responses for 1,3-butadiene-induced neoplasms and nonneoplastic lesions. The present studies confirmed the clear evidence of carcinogenic activity * of 1,3-butadiene in male B6C3F$_1$ mice based on increased incidences of neoplasms in the hematopoietic system, heart, lung, forestomach, liver, harderian gland, preputial gland, brain, and kidney. There was clear evidence of carcinogenicity of 1,3-butadiene in female B6C3F$_1$ mice based on increased incidences of neoplasms in the hematopoietic system, heart, lung, forestomach, liver, harderian gland, ovary, and mammary gland.

Low incidences of intestinal carcinomas in male mice, Zymbal's gland carcinomas in male and female mice, and renal tubule adenomas and skin sarcomas in female mice may also have been related to administration of 1,3-butadiene.

Questions or comments about the Technical Report should be directed to Central Data Management at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–3419.

Copies of *Toxicology and Carcinogenesis Studies of 1,3-Butadiene (CAS No. 106–99–0) in B6C3F$_1$ Mice (Inhalation Studies)* (TR–434) are available without charge from Central Data Management, NIEHS, M.D. A0–01. P.O. Box 12233, Research Triangle Park, NC 27709; telephone (919) 541–3419.

Dated: July 12, 1994.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 94–17447 Filed 7–18–94; 8:45 am]

BILLING CODE 4140–01–M

* The NTP uses five categories of evidence of carcinogenic activity observed in each animal study: two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effect ("no evidence"), and one category for studies that cannot be evaluated because of major flaws ("inadequate study").

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of 1,2,3-Trichloropropane

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of 1,2,3-Trichloropropane, a colorless liquid used as a paint and varnish remover, solvent, and degreasing agent, and as a crosslinking agent in the synthesis of polysulfides and hexafluoropropylene. 1,2,3-Trichloropropane may be found as an impurity in certain nematocides and soil fumigants and as a contaminant of drinking and ground water.

Toxicology and carcinogenesis studies were performed by administering 1,2,3-trichloropropane in corn oil by gavage to groups of 60 F344/N rats of each sex at doses of 0, 3, 10, or 30 mg/kg body weight and to 60 B6C3F$_1$ mice of each sex at doses of 0, 6, 20, or 60 mg/kg body weight 5 days per week for up to 104 weeks.

Under the conditions of these 2-year gavage studies, there was clear evidence of carcinogenic activity* of 1,2,3,-trichloropropane in male F344/N rats based on increased incidences of squamous cell papillomas and carcinomas of the oral mucosa and forestomach, adenomas of the pancreas and kidney, adenomas or carcinomas of the preputial gland, and carcinomas of the Zymbal's gland. Adenomatous polyps and adenocarcinomas of the intestine may have been related to chemical administration. There was clear evidence of carcinogenic activity of 1,2,3-trichloropropane in female F344/N rats based on increased incidences of squamous cell papillomas and carcinomas of the oral mucosa and forestomach, adenomas or carcinomas of the clitoral gland, adenocarcinomas of the mammary gland, and carcinomas of the Zymbal's gland. Adenocarcinomas of the intestine may have been related to chemical administration.

There was clear evidence of carcinogenic activity of 1,2,3-trichloropropane in male B6C3F1 mice based on increased incidences of squamous cell papillomas and carcinomas of the forestomach, hepatocellular adenomas or carcinomas, and harderian gland adenomas. Squamous cell papillomas of the oral mucosa may have been related to chemical administration. There was clear evidence of carcinogenic activity of 1,2,3-trichloropropane in female B6C3F$_1$, mice based on increased incidences of squamous cell carcinomas of the oral mucosa, squamous cell papillomas and carcinomas of the forestomach, hepatocellular adenomas or carcinomas, harderian gland adenomas, and uterine adenomas, adenocarcinomas, and stromal polyps.

Nonneoplastic lesions associated with exposure to 1,2,3-trichloropropane included increased severity of nephropathy in male rats and increased incidences of basal cell and squamous hyperplasia of the forestomach, acinar hyperplasia of the pancreas, renal tubule hyperplasia, and preputial or clitoral gland hyperplasia in male and female rats. Increased incidences of squamous hyperplasia of the forestomach and eosinophilic foci in the liver in male and female mice were chemical related.

Questions or comments about the Technical Report should be directed to Central Data Management at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–3419.

Copies of *Toxicology and Carcinogenesis Studies of 1,2,3-Trichloropropane (CAS No. 96–18–4) in F344/N Rats and B6C3F$_1$ Mice (Gavage Studies)* (TR–384) are available without charge from Central Data Management, NIEHS, MD A0–01, P.O. Box 12233, Research Triangle Park, NC 27709; telephone (919) 541–3419.

Dated: July 14, 1994.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 94–17454 Filed 7–18–94; 8:45 am]

BILLING CODE 4140–01–M

* The NTP uses five categories of evidence of carcinogenic activity observed in each animal study: two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effect ("no evidence"), and one category for studies that cannot be evaluated because of major flaws ("inadequate study").

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Oxazepam

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of

oxazepam, which is one of a number of benzodiazepines used therapeutically as a sedative-hypnotic and antianxiety agent.

Toxicology and carcinogenesis studies were performed by administering oxazepam (greater than 99% pure) to groups of 60 male and 60 female Swiss-Webster and B6C3F$_1$ mice in feed at concentrations of 0, 2,5000, or 5,000 ppm for 57 weeks (Swiss-Webster), or 2 years (B6C3F$_1$). Additional groups of 60 male and 60 female B6C3F$_1$ mice received 125 ppm of oxazepam in feed to allow for concentrations similar to those achieved in humans taking a therapeutic dose.

Under the conditions of these feed studies, there was clear evidence of carcinogenic activity* of oxazepam in male and female Swiss-Webster mice based on increased incidences of hepatocellular adenoma and carcinoma. There was clear evidence of carcinogenic activity of oxazepam in male and female B6C3F$_1$ mice based on increased incidences of hepatoblastoma and hepatocellular adenoma and carcinoma. Increased incidences of hyperplasia of thyroid gland follicular cells in male and female B6C3F$_1$ mice and of follicular cell adenomas in female B6C3F$_1$ mice were also related to oxazepam exposure.

Administration of oxazepam to Swiss-Webster mice resulted in centrilobular hepatocellular hypertrophy and increased incidences and severity of systemic amyloidosis. Administration of oxyazepam to B6C3F$_1$ mice also resulted in centrilobular hepatocellular hypertrophy.

Questions or comments about the Technical Report should be directed to Central Data Management at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–3419.

Copies of *Toxicology and Carcinogenesis Studies of Oxazeham (CAS No. 604–75–1) in Swiss-Webster and B6C3F$_1$ Mice (Feed Studies)* (TR–443) are available without charge from Central Data Management, NIEHS, MD A0–01, P.O. Box 12233, Research Triangle Park, NC 27709; telephone (919) 541–3419.

*The NTP uses five categories of evidence of carcinogenic activity observed in each animal study: two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effect ("no evidence"), and one category for studies that cannot be evaluated because of major flaws ("inadequate study").

Dated: July 12, 1994.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 94–17448 Filed 7–18–94; 8:45 am]

BILLING CODE 4140–01–M

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of promethazine Hydrochloride

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of promethazine hydrochloride, a drug used for the management of allergic conditions, motion sickness and nausea, and as a sedative to treat psychiatric disorders.

Toxicology and carcinogenicity studies were conducted by administering promethazine hydrochloride (>99% pure) in distilled water by gavage to groups of 60 male and 60 female F344/N rats and B6C3F$_1$ mice once daily, 5 days per week for up to 103 weeks. Rats received doses of 0, 8.3, 16.6, and 33.3 mg/kg; male mice received doses of 0, 11.25, 22.5, and 45 mg/kg and female mice received 0, 3.75, 7.5, and 15 mg/kg.

Under the conditions of these 2-year gavage studies, there was no evidence of carcinogenic activity * of promethazine hydrochloride in male or female F344/N rates receiving 8.3, 16.6, or 33.3 mg/kg. There was no evidence of carcinogenic activity of promethazine hydrochloride in male B6C3F$_1$ mice receiving 11.25, 22.5 or 45 mg/kg. There was no evidence of carcinogenic activity of promethazine hydrochloride in female B6C3F$_1$ mice receiving 3.75, 7.5, or 15 mg/kg.

The decrease in the incidences of adrenal medullary pheochromocytoma in male rates was considered to be related to promethazine hydrochloride administration. The decrease in the incidences of pituitary gland adenoma in male rates and uterine stromal polyp in female rates may have been related to promethazine administration.

Questions or comments about the Technical Report should be directed to Central Data Management at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–3419.

* The NTP uses five categories of evidence of carcinogenic activity observed in each animal study: two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effect ("no evidence"), and one category for studies that cannot be evaluated because of major flaws ("inadequate study"),

Copies of *Toxicology and Carcinogenesis Studies of Promethazine Hydrochloride (CAS No. 58–33–3) in F344/N Rates and B6C3F$_1$ Mice (Gavage Studies)* (TR–425) are available without charge from Central Data Management, NIEHS, MD A0–01, P.O. Box 12233, Research Triangle Park, NC 27709; telephone (919) 541–3419.

Dated: July 13, 1994.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 94–17453 Filed 7–18–94; 8:45 am]

BILLING CODE 4140–01–M

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Triamterene

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of triamterene, a potassium-sparing diuretic used in the treatment of edema associated with congestive heart failure, cirrhosis of the liver, and other diseases in which edema may occur.

Toxicity and carcinogenicity studies were conducted by administering triamterene (greater than 99% pure) in feed to groups of 50 male and female F344/N rats at doses of 0, 150, 300, or 600 ppm and to 50 male and female B6C3F$_1$ mice at doses of 0, 100, 200, or 400 ppm for 2 years. Because of a dosing error involving the high-dose mice at week 40, a second study was conducted with groups of 50 male and female mice fed diets containing 0 or 400 ppm triamterene. Additional animals were included for interim evaluations at 3 and 15 months.

Under the conditions of these 2-year feed studies, there was equivocal evidence of carcinogenic activity* of triamterene in male F344/N rats based on a marginal increase in the incidence of hepatocellular adenoma. There was no evidence of carcinogenic activity of triamterene in female F344/N rats administered 150, 300, or 600 ppm. There was some evidence of carcinogenic activity of triamterene in male B6C3F$_1$ mice based on a marginal increase in the incidence of hepatocellular carcinoma in the first study and a significantly increased

*The NTP uses five categories of evidence of carcinogenic activity observed in each animal study: two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effect ("no evidence"), and one category for studies that cannot be evaluated because of major flaws ("inadequate study").

incidence of hepatocellular adenoma in the second study. There was some evidence of carcinogenic activity of triamterene in female B6C3F$_1$ mice based on significantly increased incidences of hepatocellular adenoma and of adenoma and carcinoma (combined).

Exposure to triamterene was associated with an increased incidence of hepatocellular foci, primarily mixed cell type, and an increase in the severity of nephropathy in female rats. In mice, exposure to triamterene was associated with an increased incidence of hepatocellular foci in females and an increased incidence of thyroid gland follicular cell hyperplasia in males and females.

Questions or comments about the Technical Report should be directed to Central Data Management at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–3419.

Copies of *Toxicology and Carcinogenesis Studies of Triamterene (CAS No. 396–01–0) in F344/N Rats and B6C3F$_1$ Mice (Feed Studies)* (TR–420) are available without charge from Central Data Management, NIEHS, MD A0–01, P.O. Box 12233, Research Triangle Park, NC 27709; telephone (919) 541–3419.

Dated: July 13, 1994.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 94–17452 Filed 7–18–94; 8:45 am]

BILLING CODE 4140–01–M

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Turmeric Oleoresin

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of turmeric oleoresin, the organic extract of turmeric, a ground powder from the root of the Curcuma plant, which is added to food items as a spice and coloring agent.

Toxicity and carcinogenicity studies were conducted by administering turmeric oleoresin in feed containing 0, 2,000, 10,000, or 50,000 ppm to groups of 60 F344/N rats and B6C3F$_1$ mice of each sex for 2 years.

Under the conditions of these 2-year feed studies, there was no evidence of carcinogenic activity* of turmeric oleoresin in male F344/N rats administered 0, 2,000, 10,000, or 50,000 ppm. There was equivocal evidence of carcinogenic activity of turmeric oleoresin in female F344/N rats based on increased incidences of clitoral gland adenomas in the exposed groups. There was equivocal evidence of carcinogenic activity of turmeric oleoresin in male B6C3F$_1$ mice based on a marginally increased incidence of hepatocellular adenoma at the 10,000 ppm level, and the occurrence of carcinomas of the small intestine in the 2,000 and 10,000 ppm groups. There was equivocal evidence of carcinogenic activity of turmeric oleoresin in female B6C3F$_1$ mice based on an increased incidence of hepatocellular adenomas in the 10,000 ppm group.

Turmeric oleoresin ingestion was also associated with increased incidences of ulcers, hyperplasia, and inflammation of the forestomach, cecum, and colon in male rats and of the cecum in female rats. In female mice, ingestion of diets containing turmeric oleoresin was also associated with an increased incidence of thyroid gland follicular cell hyperplasia.

Questions or comments about the Technical Report should be directed to Central Data Management at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–3419.

Copies of the *Toxicology and Carcinogenesis Studies of Turmeric Oleoresin (CAS No. 8024–37–1) (Major Component 79%–85% Curcumin, CAS No. 458–37–7) In F344/N Rats and B6C3F$_1$ Mice (Feed Studies)* (TR–427) are available without charge from Central Data Management, NIEHS, MD A0–01, P.O. Box 12233, Research Triangle Park, NC 27709; telephone (919) 541–3419.

Dated: July 12, 1994.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 94–17444 Filed 7–18–94; 8:45 am]

BILLING CODE 4140–01–M

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of 2,3-Dibromo-1-Propanol

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of 2,3-Dibromo-1-propanol, a colorless liquid that has been used as a flame retardant, as an intermediate in the preparation of the flame retardant tris(2,3-dibromopropyl) phosphate, and as an intermediate in the manufacture of pesticides and pharmaceutical preparations.

Toxicology and carcinogenicity studies were conducted by applying 2,3-dibromo-1-propanol (approximately 98% pure) in ethanol to the subscapular area of the skin to groups of 50 F344/N rats and 50 B6C3F$_1$ mice 5 days per week for 48 to 51 weeks (male rats), 52 to 55 weeks (female rats), 36 to 39 weeks (male mice), or 39 to 42 weeks (female mice). Rats received dermal applications of 0, 188, or 375 mg/kg 2,3-dibromo-1-propanol; mice received dermal applications of 0, 88, or 177 mg/kg.

Originally planned to last for 2 years, the chronic study in rats was terminated early because of reduced survival in the high-dose groups related to chemical induced neoplasms. The chronic study in mice was also terminated early because of the detection of antibodies to lymphocytic choriomeningitis virus in sentinel mice.

Under the conditions of these long-term dermal studies, there was clear evidence of carcinogenic activity* of 2,3-dibromo-1-propanol in the male F344/N rats based on increased incidences of neoplasms of the skin, nose, oral mucosa, esophagus, forestomach, small and large intestine, Zymbal's gland, liver, kidney, tunica vaginalis, and spleen. There was clear evidence of carcinogenic activity of 2,3-dibromo-1-propanol in female F344/N rats based on increased incidences of neoplasms of the skin, noses, oral mucosa, esophagus, forestomach, small and large intestine, Zymbal's gland, liver, kidney, clitoral gland, and mammary gland. There was clear evidence of carcinogenic activity of 2,3-dibromo-1-propanol in female B6C3F$_1$ mice based on increased incidences of neoplasms of the skin and the forestomach. The increased incidences of alveolar/bronchiolar adenomas in female mice may have been related to chemical administration.

In rats, 2,3-dibromo-1-propanol caused increased incidences of hyperkeratosis in the skin, forestomach, and esophagus, epithelial dysplasia in the nose, pleomorphism and basophilic and clear cell changes in the liver, and nuclear enlargement in the kidney. There was also chemical-related

*The NTP uses five categories of evidence of carcinogenic activity observed in each animal study: two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effect ("no evidence"), and one category for studies that cannot be evaluated because of major flaws ("inadequate study").

*The NTP uses five categories of evidence of carcinogenic activity observed in each animal study: two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effect ("no evidence"), and one category for studies that cannot be evaluated because of major flaws ("inadequate study").

increases in the incidences of forestomach ulcers and acanthosis, angiectasis in the liver, and renal hyperplasia in male rats and epithelial dysplasia of the forestomach and bile duct hyperplasia in the liver in famale rats. Chemical-related increases occurred in the incidences of hyperplasia in the skin, epithelial dysplasia of the forestomach, bronchiolar epithelial pleomorphism and hyperplasia in male and female mice and in the incidence of eosinophilic cytoplasmic change in the liver in males.

Questions or comments about the Technical Report should be directed to Central Data Management at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–3419.

Copies of *Toxicology and Carcinogenesis Studies of 2,3-Dibromo-1-Propanol (CAS No. 96–13–9) in F344/N Rats and B6C3F$_1$ Mice (Dermal Studies)* (TR–400) are available without charge from Central Data Management, NIEHS, MD A0–01, P.O. Box 12233, Research Triangle Park, NC 27709; telephone (919) 541–3419.

Dated: July 13, 1994.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 94–17451 Filed 7–18–94; 8:45 am]

BILLING CODE 4140–01–M

Office of the Assistant Secretary for Health; Privacy Act of 1974; New System of Records

AGENCY: Public Health Service, HHS.

ACTION: Notification of a new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act, the Public Health Service (PHS) is publishing a notice of a new system of records, 09–37–0021. "Public Health Service Records Related to Inquiries and Investigations of Science Misconduct, HHS/OASH/ORI." We are also proposing twelve routine uses for this new system. As set forth in 45 CFR 5b.11(b)(2)(vii), this system is exempted from certain provisions of the Privacy Act, 5 U.S.C. 552a, pursuant to subsections (k)(2) and (k)(5) of the Privacy Act, which apply to investigatory materials compiled for law enforcement purposes and to protection of confidential sources of information.

DATES: PHS invites interested parties to submit comments on the proposed routine uses on or before August 29, 1994. PHS has sent a Report of a New System to the Congress and to the Office of Management and Budget (OMB) on June 29, 1994. The routine uses will be effective 40 days after submission of the Report to OMB unless PHS receives comments which would result in a contrary determination. In no event shall this system be effective prior to the effective date of the amendment to 5 CFR 5b.11 which exempt this system under subsections (k)(2) and (k)(5) of the Privacy Act.

ADDRESSES: Please submit comments to: PHS Privacy Act Officer, room 17–45, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–2055 (This is not a toll-free number.) Comments received will be available for inspection at this same address from 8:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Barbara Bullman, Esq., Division of Policy and Education, Office of Research Integrity, Rockwall II, suite 700, 5515 Security Lane, Rockville, Maryland 20852, (301) 443–5300 (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Office of the Assistant Secretary for Health (OASH), Office of Research Integrity (ORI), proposes to establish a new system of records: 09–37–0021, "Public Health Service Records Related to Inquiries and Investigations of Scientific Misconduct, HHS/OASH/ORI." This system will consist of records related to current allegations, inquiries or investigations of scientific misconduct and/or to actions that PHS has taken in connection with such allegations, inquiries, investigations or findings. Records in this system will be maintained according to the name of the individual who is the subject of the inquiry or investigation with which they are associated.

The records in the system will be maintained in a secure manner compatible with the content, sensitivity and use of the data. Access will be given only to ORI staff and to other appropriate HHS personnel whose official duties require the use of the records. Individually identifiable records in the ORI will be kept in locked files in a room locked during non-working hours. Access to the room is limited to specific personnel, and the room is protected by access and intrusion alarms. The records in this system which are maintained in the appropriate PHS Agency Research Integrity Liaison Office (ARILO), the PHS Agency Intramural Research Integrity Offices, the PHS Agency Extramural Research Integrity Office and applicable NIH Misconduct Program offices will be kept in locked files in locked offices.

Computerized records will be maintained in accordance with the HHS Automated Information Systems Security Handbook.

We are proposing twelve routine uses. Any disclosure pursuant to these routine uses will be limited to the minimum necessary to accomplish the purpose of the disclosure and will be made so as to protect the identities of confidential sources of information. The first routine use proposed for this system allows disclosure to the Department of Justice or the courts or other tribunals (including administrative law proceedings) in the event of litigation. The second routine use is proposed to allow experts to review the records in order to provide the government with an opinion relevant to the inquiry and investigation. The third routine use allows disclosures to current employers and to responsible officials of the awardee institution in connection with an inquiry and or investigation of scientific misconduct by an individual sponsored by the institution. The fourth routine use allows PHS to disclose information to other Federal Agencies which also are providing support or are considering providing support to the awardee institution or which have utilized or relied on the relevant research. The records only will be disclosed when necessary to enable the agencies to effectively perform their responsibilities. The fifth routine use allows PHS to disclose information to other Federal, State and local agencies and to other individuals and entities assisting the PHS in the investigation and to person(s) making the allegations who have knowledge concerning the factual basis of the allegation(s). The sixth routine use allows disclosure to State licensing boards or certifying bodies to aid in their review of the individual in order to effectively protect the health and welfare of the population within their jurisdictions and the integrity of the profession. The seventh routine use allows disclosure of information to journal editors, publishers, professional societies or others in order to correct inaccurate or misleading research results or to notify the public of invalid studies. The eighth routine use allows disclosure to appropriate agencies in cases of investigations or prosecutions under a statute, rule, regulation or order. The ninth routine use allows disclosure to HHS contractors for the purpose of collating, aggregating, analyzing or otherwise refining or processing records in this system. The contractor is required to maintain the Privacy Act

safeguards with respect to these records. The tenth routine use allows the ORI to disclose information where there has been a finding of misconduct or the inquiry or investigation has become a public dispute, to communications and news media, scientific journals and publications, and to the public. Providing this information to the media, journals, publications and public will serve an educational purpose and as a deterrent and will assist institutional officials in making informed decisions affecting their institutions and organizations. The eleventh routine use allows disclosure of necessary records that were filed with or generated by the Departmental Appeals Board. These records concern a specific case of scientific misconduct where a hearing has been requested before the Research Integrity Adjudication Panel (RIAP) of the DAB. The RIAP conducts the hearings on the ORI findings and proposed administrative actions at the request of the respondent. The twelfth routine use allows disclosure of information to the General Services Administration (GSA) after there is a final agency action to debar. The GSA publishes and makes available this information to the scientific community.

We have obtained an exemption for these records as provided by the Privacy Act to maintain the integrity of the investigative process. Therefore, at the discretion of the system manager, the system is exempt from the notification, access, correction and amendment provisions of the Privacy Act.

This system notice is written in the present rather than the future tense in order to avoid the unnecessary expenditure of public funds to republish the notice should it become final.

Dated: July 1, 1994.

Wilford J. Forbush,

Director, Office of Management.

09–37–0021

SYSTEM NAME:

Public Health Service Records Related to Inquiries and Investigations of Scientific Misconduct, HHS/OASH/ORI.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION(S):

For Intramural and Extramural Research Programs: Office of Research Integrity, Rockwall II, suite 700, 5515 Security Lane, Rockville, Maryland 20852; and at offices for (1) each of the Agency Extramural Research Integrity Officers (AERIOs), (2) each of the Agency Research Integrity Liaison Officers (ARILOs), (3) each of the Agency Intramural Research Integrity Officers for those agencies covered by this notice; and (4) each of the NIH Misconduct Program Offices and (5) the Federal Records Centers for inactive records.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are the subject of allegation(s) of scientific misconduct or related matters. These categories include: (1) Researchers currently or formerly employed by the Federal Government, (2) guest researchers, (3) Advisory Committee members, and (4) investigators or applicants for research grants, research training grants, fellowships, cooperative agreements or contracts. Investigators may include principal investigators, co-investigators, program directors, trainees, recipients of career awards or fellowships, or other individuals who conduct or are responsible for research or research training funded by the PHS or who are the subject of applications for PHS funding.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records related to allegations, inquiries, investigations or findings of misconduct in science and/or to actions that PHS has taken in connection with such allegations, inquiries, investigations or findings. Scientific misconduct is defined as fabrication, falsification, plagiarism or other practices that seriously deviate from those that are commonly accepted within the scientific community for proposing, conducting or reporting research. It does not include honest error or honest differences in interpretation or judgment of data.

This system consists of records concerning or collateral to pending, ongoing or completed inquiries and investigations of alleged scientific misconduct. It includes information about the individuals under investigation or under an inquiry; the other PHS agencies or other federal agencies involved; the organization responsible for conducting the inquiry or investigation; the funding mechanism identification number(s) involved; names of individual involved; names of witnesses; general nature of the allegation; and the documentation used in the inquiry or investigation, including relevant research data and reagents, proposals, publications, copies of relevant publications by persons under investigation, qualification statements and curriculum vitae of expert consultants, correspondence, memoranda of telephone calls, summaries of interviews, social security numbers, interim and final reports prepared by the institution, Office of Research Integrity (ORI), Department Appeals Board (DAB) and other related data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The authorities for maintaining the system are Sections 215(b), 301 and 493 of the Public Health Service Act; 42 U.S.C. 216(b), 241, and 289b; 5 U.S.C. 301, and 44 U.S.C. 3101, 42 CFR Part 50, subpart A; 45 CFR part 76.

PURPOSE(S):

The purposes of this system are (1) to enable PHS agencies to discharge effectively their responsibilities in managing PHS intramural and extramural research programs and in the application, award, and administration of research and training awards, cooperative agreements and contracts while protecting the rights and privacy of the individuals under investigation as well as confidential sources of information; (2) to determine whether there has been scientific misconduct in research relevant to funding; (3) to assure the institutions applying for or receiving PHS funds have appropriate mechanisms for detailing with allegations of scientific misconduct and the protection of whistleblowers; (4) to determine whether results of PHS-related research may be inaccurate so that PHS can notify the scientific community or others who may rely on the results; (5) to serve as a working file and enable the ORI to inform PHS agency officials of the status and results of inquiries and investigations so that they may take actions appropriate to each case; (6) to investigate allegations of misconduct and take appropriate remedial and corrective actions with respect to individuals who are found to have committed misconduct; and (7) to ensure that inquiries and investigations are timely, thorough, complete and objective in accordance with applicable federal regulations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Disclosure may be made for the routine uses as indicated below: 1. To the Department of Justice, or to a court or other tribunal, when (a) the Department of Health and Human Services (HHS), or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or

any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tirbunal is relevant and necessary to the litigation and would help in the effective representation of the government party, provided, however, that in each case HHS determines that such disclosure is compatible with the purpose for which the records were collected.

2. To qualified expert(s) for the purpose of obtaining the expert's assistance on matters pertinent to the inquiry, investigation, or related legal proceeding.

3. To responsible officials of the awardee institutions or organizations, when in connection with an inquiry, investigation or finding of misconduct by an individual previously or currently employed by or affiliated with the institution or organization, a PHS agency makes a finding or takes an action potentially affecting research and research training awards to the institution or organization.

4. To other Federal Agencies who have supported, are supporting or are considering support of a research grant, fellowship, cooperative agreement or contract with an affected individual or institution or which have utilized or relied on the relevant research to the extent that the record is relevant and necessary to the Agency's decision on the matter.

5. To the relevant PHS-supported or other institution(s), Federal, State and local agencies, the persons(s) making the allegations and other entities or individuals who may have knowledge concerning the factual basis of the allegation or otherwise be able to assist in an inquiry, investigation or related proceeding, provided however, that in each case HHS determines that such disclosure is desirable or necessary in order to conduct a thorough and fair investigation into allegations of scientific misconduct.

6. To a State licensing board or certifying body conducting a review of the individual to aid the board or body in meeting its responsibility to protect the health of the population in its jurisdiction or the integrity of the profession.

7. To journal editors, publishers, professional societies or others in order to correct inaccurate or misleading research results or to notify the public of invalid studies.

8. To the appropriate agency, whether Federal, State or local, charged with the responsibility of investigation or enforcing a statute, or rule, regulation, or order issued pursuant thereto where such responsibility rests outside of HHS when there exists a violation or potential violation of law whether civil, criminal or regulatory in nature and whether arising by general statute or particular program statute or by regulation, rule or order.

9. To HHS contractors for the purpose of collating, analyzing, aggregating or otherwise refining or processing records in this system. The contractor shall be required to maintain Privacy Act safeguards with respect to the records.

10. To professional journals, news media, other publications and to the public after there is a final agency finding of scientific misconduct or where the inquiry or investigation has become a public dispute.

11. To persons who request records filed with or generated by the Departmental Appeals Board regarding a specific case of alleged scientific misconduct where a hearing was requested.

12. To the General Services Administration (GSA), after there is a final agency action to debar, for the purpose of distributing and publishing that decision to debar.

POLICIES AND PRACTICES FOR STORING RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders and on computer discs.

RETRIEVABILITY:

Records are retrieved by name of the individual who is the subject of an allegation, inquiry or investigation.

SAFEGUARDS:

1. *Authorized users.* Extramural and Intramural records in ORI are available to the system manager, to the Director of ORI, and to other appropriate ORI staff. Records specifically related to the Intramural Research Program are available to the system manager, to the Deputy Director for Intramural Research, and to other appropriate HHS officials, including the Agency Research Integrity Liaison Officer (ARILOs), the Agency Intramural Research Integrity Officer, and the Misconduct Program Officers (MPOs) located in the Bureaus, Centers, and Divisions of the NIH that are associated with the allegation, inquiry or investigation.

2. *Procedural safeguards.* For records located in the ORI, access is strictly controlled by the system manager and the ORI, Director. For records located at the other sites, access is strictly controlled by the PHS Agency Heads, Deputy Director for Intramural Research, the AIRLOs, and MPOs and other appropriate PHS officials. HHS employees who receive disclosures from this system are informed that the information is confidential. All questions and inquiries from any party should be addressed to the system manager.

3. *Physical safeguards.* ORI records are kept in locked file cabinets in a room that is locked during non-working hours. Access to this room is restricted to specific personnel. The ORI office is protected by access and intrusion alarms at the front and emergency entrances. Access to computer files are protected through access permissions and user-invisible encryption. Special measures commensurate with the sensitivity of the record are taken to prevent unauthorized copying or disclosure of the records. Records at other locations are protected from unauthorized access by the AERIO's, ARILOs, MPOs, or AIRIOs.

RETENTION AND DISPOSAL:

Allegation, inquiry and investigative files are retained and disposed of in accordance with the OASH Record Control Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Research Investigations, Office of Research Integrity, Rockwell II, suite 700, 5515 Security Lane, Rockville, Maryland 20852.

NOTIFICATION PROCEDURES:

This system is exempt from access; however, consideration will be given to requests addressed to the system manager. For general inquiries, state your name, the name of the institution, and the date of the award.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requestors should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURES:

Exempt. However, consideration will be given requests addressed to the system manager. Requests for corrections should reasonably identify the record and specify the information to be contested, the corrective action sought and the reasons for the corrections with supporting justification.

RECORD SOURCE CATEGORIES:

Information in this system is obtained: (1) Directly from the individual, (2) derived from materials

supplied by the individual, (3) from information supplied by the institutions, informants, witnesses, and others and (4) from existing government files.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempted under subsections (k)(2) and (k)(5) of the Privacy Act from access, notification, correction, and amendment provisions of the Privacy Act [5 U.S.C. 552a (c)(3), (d) (1)–(4), (e)(4)(G)–(H), and (f)], to the extent that it includes (1) investigatory materials compiled for law enforcement purposes, including criminal law enforcement, where access would be likely to prejudice the conduct of the investigation, and (2) material, whose disclosure would reveal the identity of a source who furnished information to the Government under an express promise of confidentiality.

[FR Doc. 94–17483 Filed 7–18–94; 845 am]

BILLING CODE 4160–17

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N–94–3796; FR–3745–N–01]

Mortgage and Loan Insurance Programs Under the National Housing Act—Debenture Interest Rates

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, (HUD).

ACTION: Notice of change in debenture interest rates.

SUMMARY: This notice announces changes in the interest rates to be paid on debentures issued with respect to a loan or mortgage insured by the Federal Housing Commissioner under the provisions of the National Housing Act (the "Act"). The interest rate for debentures issued under section 221(g)(4) of the Act during the six-month period beginning July 1, 1994, is 7¼ percent. The interest rate for debentures issued under any other provision of the Act is the rate in effect on the date that the commitment to insure the loan or mortgage was issued, or the date that the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. The interest rate for debentures issued under these other provisions with respect to a loan or mortgage committed or endorsed during the six-month period beginning July 1, 1994, is 7¾ percent.

FOR FURTHER INFORMATION CONTACT:

Fred E. McLaughlin, Financial Services Division, Department of Housing and Urban Development, 470 L'Enfant Plaza East, room 3119, Washington, DC 20026. Telephone (202) 755–7450 ext. 127, or TDD (202) 708–4594 for hearing- or speech-impaired callers. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Section 224 of the National Housing Act (24 U.S.C. 1715o) provides that debentures issued under the Act with respect to an insured loan or mortgage (except for debentures issued pursuant to Section 221(g)(4) of the Act) will bear interest at the rate in effect on the date the commitment to insure the loan or mortgage was issued, or the date the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rates higher. This provision is implemented in HUD's regulations at 24 CFR 203.405, 203,479, 207,259(e)(6), and 220.830. Each of these regulatory provisions states that the applicable rates of interest will be published twice each year as a notice in the **Federal Register**.

Section 224 further provides that the interest rate on these debentures will be set from time to time by the Secretary of HUD, with the approval of the Secretary of the Treasury, in an amount not in excess of the interest rate determined by the Secretary of the Treasury pursuant to a formula set out in the statute.

The Secretary of the Treasury (1) has determined, in accordance with the provisions of Section 224, that the statutory maximum interest rate for the period beginning July 1, 1994, is 7¾ percent and (2) has approved establishment of the debenture interest rate by the Secretary of HUD at 7¾ percent for the six-month period beginning July 1, 1994. The interest rate will be the rate borne by debentures issued with respect to any insured loan or mortgage (except for debentures issued pursuant to Section 221(g)(4)) with an insurance commitment or endorsement date (as applicable) within the last six months of 1994.

For convenience of reference, HUD is publishing the following chart of debenture interest rates applicable to mortgages committed or endorsed since January 1, 1980:

Effective interest rate	On or after	Prior to
9½	Jan. 1, 1980	July 1, 1980
9⅞	July 1, 1980	Jan. 1, 1981
11¾	Jan. 1, 1981	July 1, 1981
12⅞	July 1, 1981	Jan. 1, 1982
12¾	Jan. 1, 1982	Jan. 1, 1983
10¼	Jan. 1, 1983	July 1, 1983
10⅜	July 1, 1983	Jan. 1, 1984
11½	Jan. 1, 1984	July 1, 1984
13⅜	July 1, 1984	Jan. 1, 1985
11⅝	Jan. 1, 1985	July 1, 1985
11⅛	July 1, 1985	Jan. 1, 1986
10¼	Jan. 1, 1986	July 1, 1986
8¼	July 1, 1986	Jan. 1, 1987
8	Jan. 1, 1987	July 1, 1987
9	July 1, 1987	Jan. 1, 1988
9⅛	Jan. 1, 1988	July 1, 1988
9⅜	July 1, 1988	Jan. 1, 1989
9¼	Jan. 1, 1989	July 1, 1989
9	July 1, 1989	Jan. 1, 1990
8⅛	Jan. 1, 1990	July 1, 1990
9	July 1, 1990	Jan. 1, 1991
8¾	Jan. 1, 1991	July 1, 1991
8½	July 1, 1991	Jan. 1, 1992
8	Jan. 1, 1992	July 1, 1992
8	July 1, 1992	Jan. 1, 1993
7¾	Jan. 1, 1993	July 1, 1993
7	July 1, 1993	Jan. 1, 1994
6⅝	Jan. 1, 1994	July 1, 1994
7¼	July 1, 1994	

Section 221(g)(4) of the Act provides that debentures issued pursuant to that paragraph (with respect to the assignment of an insured mortgage to the Secretary) will bear interest at the "going Federal rate" in effect at the time the debentures are issued. The term "going Federal rate", as used in that paragraph, is defined to mean the interest rate that the Secretary of the Treasury determines, pursuant to a formula set out in the statute, for the six-month periods of January through June and July through December of each year.

Section 221(g)(4) is implemented in the HUD regulations at 24 CFR 221.790.

The Secretary of the Treasury has determined that the interest rate to be borne by debentures issued pursuant to Section 221(g)(4) during the six-month period beginning July 1, 1994, is 7¼ percent.

HUD expects to publish its next notice of change in debenture interest rates in January 1995.

The subject matter of this notice falls within the categorical exclusion from HUD's environmental clearance procedures set forth in 24 CFR 50.20(1). For that reason, no environmental finding has been prepared for this notice.

(Secs. 211, 221, 224, National Housing Act, 12 U.S.C. 1715b, 1715l, 1715o; sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d)).

Dated: July 6, 1994.

James E. Schoenberger,

Associate General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 94–17405 Filed 7–18–94; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–020–406A–02; IDI–28350]

Realty Action, Recreation and Public Purpose (R&PP) Act Classification, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The following public lands in Cassia County, Idaho, have been examined and found suitable for classification for lease to the State of Idaho, Department of Parks and Recreation under the provisions of the Recreation and Public Purpose Act, as amended (43 U.S.C. 869 et seq.). The Idaho Department of Parks and Recreation proposes to use the land as an administrative site for the City of Rocks National Reserve.

T. 15 S., R 24 E., Boise Meridian

section 27: SW¼SE¼
section 34: NW¼NE¼, NE¼NW¼

The area described contains 120 acres, more or less, in Cassia County.

A visitor center/administrative office, parking lot, operations buildings and yard complex, and an employee housing area is proposed to be constructed on the above described public land.

The above described lands are not needed for Federal purposes. The lease of these lands is consistent with the Cassia Resource Management Plan and would be in the public interest.

The lease, when issued, will be subject to the following terms, conditions, and reservations: 1. Provisions of the Recreation and Public Purposes Act and to all applicable regulation of the Secretary of the Interior.

2. Those rights for powerline purposes granted to Raft River Electric by right-of-way I–30027.

3. Those rights for road use purposes reserved to the United States by right-of-way reservation I–30770.

4. A right-of-way for ditches and canals construction by the authority of the United States.

5. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

6. The BLM will review and approve the building design, construction, materials, and landscaping plans to assure that the facilities blend with the existing landscape character of the adjoining lands. The BLM will also review and approve the design plans for other facilities such as cattle guards and fences to assure that they meet BLM specifications.

7. Sixty days prior to an abandonment of the City of Rocks Administrative Site, the lessee shall contact the authorized officer to arrange a joint inspection of the lease area. The inspection will be held to agree to an acceptable termination (and rehabilitation) plan. This plan shall include, but is not limited to, removal of facilities, drainage structures, or surface material, recontouring, topsoiling, or seeding. The authorized officer must approve the plan in writing prior to the holder's commencement of any termination activities.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Burley District, 200 South 15 East, Burely, Idaho,

Upon publication of this notice in the **Federal Register,** the lands will be segregated from all other forms of appropriation under the public lands laws, including the general mining laws, except for lease under the Recreation and Public Act and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register,** interested persons may submit comments regarding the proposed classification or lease of the lands to District Manager, Burely District Office, Route 3, Box 1, Burley, Idaho 83318.

Classification Comments

Interested parties may submit comments involving the suitability of the land for an administrative facility for the City of Rocks National Reserve. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments.

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for an administrative facility.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register.**

Dated: July 6, 1994.

Marvin R. Bagley,

Associate District Manager.

[FR Doc. 94–17406 Filed 7–18–94; 8:45 am]

BILLING CODE 4310–GG–P

[ID–943–4070–02; IDI–1682, et al.]

Proposed Continuation of Withdrawals; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes that the withdrawals of 5049.95 acres for Public Water Reserve No. 107 be continued for an additional 20 years. The lands and waters involved would remain withdrawn and the lands would remain closed to surface entry and nonmetalliferous mining.

DATES: Comments should be received by October 17, 1994.

ADDRESSES: Comments should be sent to State Director, BLM Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706–2500.

FOR FURTHER INFORMATION CONTACT: Robert Hale, BLM Idaho State Office, 208–384–3165.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management proposes that the existing land withdrawals made by Executive Order 1926, and further designated by Secretarial Orders of Interpretation No. 38 dated February 9, 1927; No. 51 dated January 17, 1928; No. 83 dated February 16, 1929; No. 106 dated August 29, 1929; No. 123 dated March 13, 1930; No. 125 dated March 15, 1930; No. 142 dated January 17, 1931; No. 145 dated April 15, 1931; No. 156 dated February 3, 1932; No. 160 dated April 8, 1932; No. 171 dated September 27, 1932; No. 177 dated February 15, 1933; No. 205 dated August 30, 1934; No. 214 dated March 28, 1935; No. 220 dated September 11, 1935; No. 228 dated February 26, 1937; No. 251 dated March 8, 1939; and No. 169 dated August 4, 1932; Bureau Orders of Interpretation dated July 8, 1959; August 1, 1967; January 26, 1968; September 23, 1968; October 19, 1970; and September 11, 1974; and Government Land Office Order of

Interpretation dated march 24, 1942, be continued for a period of 20 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988). The lands are described as follows:

Boise Meridian

IDI–1682 (BLM O 8/1/1967)

T. 5 S., R. 40 E.,
Sec. 6.
T. 6 S., R. 35 E.,
Sec. 34.
T. 6 S., R. 43 E.,
Sec. 30.
T. 10 S., R. 37 E.,
Sec. 2.
T. 12 S., R. 18 E.,
Sec. 6.
T. 12 S., R. 37 E.,
Sec. 11.

IDI–2125 (BLM O 1/26/1968)

T. 12 S., R. 21 E.,
Sec. 28.

IDI–2499 (BLM O 9/23/1968)

T. 7 S., R. 25 E.,
Sec. 10.

IDI–3788 (BLM O 10/19/1970)

T. 14 N., R. 20 E.,
secs. 29, 30, and 32.

IDI–8964 (BLM O 9/11/1974)

T. 21 N., R. 1 E.,
Sec. 11.
T. 22 N., R. 1 E.,
Sec. 9.

IDI–14534 (SO 205 8/30/1934)

T. 9 S., R. 1 W.,
Sec. 31.

IDI–15352 (SO 228 2/26/1937)

T. 5 N., R. 1 W.,
Sec. 26.

IDI–15353 (SO 145 4/15/1931)

T. 3 S., R. 29 E.,
secs. 3, 9, 10 and 11.
T. 9 S., R. 5 W.,
secs. 9, 14, 15, 22, 23, 27, and 28.
T. 13 N., R. 27 E.,
secs. 24 and 34.

IDI–15354 (SO 169 8/4/1932)

T. 13 N., R. 27 E.,
secs. 4, 5, and 9.

IDI–15355 (BLM O 7/8/1959)

T. 12 N., R. 24 E.,
secs. 4 and 17.

IDI–15356 (SO 160 4/8/1932)

T. 8 S., R. 38 E.,
secs. 24 and 35.
T. 11 N., R. 24 E.,
Sec. 4.
T. 12 N., R. 24 E.,
Sec. 34.

IDI–15357 (SO 125 3/15/1930)

T. 2 N., R. 24 W.,
Sec. 28.
T. 14 S., R. 14 E.,
Sec. 33.
T. 15 S., R. 14 E.,
secs. 19 and 33.

IDI–15359 (SO 83 2/16/1929)

T. 12 N., R. 19 E.,
Sec. 13.
T. 12 N., R. 20 E.,
Sec. 18.

IDI–15360 (SO 177 2/15/1933)

T. 6 S., R. 4 W.,
Sec. 13.
T. 10 S., R. 1 E.,
secs. 11 and 14.
T. 13 N., R. 19 E.,
Sec. 7.

IDI–15362 (SO 142 1/17/1931)

T. 2 S., R. 13 E.,
Sec. 26.

IDI–15363 (SO 251 3/8/1939)

T. 4 S., R. 6 W.,
Sec. 13.
T. 34 N., R. 3 E.,
Sec. 28.

IDI–15365 (SO 214 3/28/1935)

T. 4 S., R. 9 E.,
Sec. 19.

IDI–15367 (SO 156 2/3/1932)

T. 9 S., R. 3 W.,
Sec. 11.

IDI–15368 (SO 123 3/13/1930)

T. 4 S., R. 5 W.,
Sec. 19.

IDI–15369 (SO 171 9/27/1932)

T. 5 S., R. 10 E.,
Sec. 27.

IDI–15372 (SO 51 1/17/1928)

T. 1 S., R. 24 E.,
secs. 13 and 14.
T. 2 S., R. 24 E.,
secs. 10, 21, and 28.
T. 3 S., R. 24 E.,
secs. 7, 8, 9, 10, and 26.
T. 2 S., R. 25 E.,
Sec. 19.
T. 3 S., R. 25 E.,
Sec. 17.

IDI–15373 (SO 106 8/29/1929)

T. 1 S., R. 29 E.,
Sec. 1.

IDI–15374 (SO 220 9/11/1935)

T. 2 S., R. 31 E.,
Sec. 10.

IDI–15378 (GLO O 3/24/1942)

T. 3 S., R. 20 E.,
Sec. 31.

IDI–17193 (SO 38 2/9/1927)

T. 10 S., R. 29 E.,
Secs. 34 and 35.

The areas described aggregate 5049.95 acres in Ada, Bannock, Bingham, Blaine, Butte, Camas, Caribou, Cassia, Custer, Elmore, Lemhi, Lewis, Lincoln, Minidoka, Owyhee, and Twin Falls Counties.

The purpose of the withdrawals is to protect the water sources located on the lands for livestock and wildlife uses. The withdrawals segregate the lands and water from settlement, sale, location, and entry, including mining for nonmetalliferous minerals but not location and entry under the mining laws for metalliferous minerals or the mineral leasing laws.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuations may present their views in writing to the Chief, Branch of Land Operations, in the Idaho State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued and if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Dated: July 7, 1994.

Jimmie A. Buxton,

Chief, Branch of Land Operations.

[FR Doc. 94–17407 Filed 7–18–94; 8:45 am]

BILLING CODE 4310–66–M

[ID–943–4070–02; IDI–14533, et al]

Proposed Continuation of Withdrawals; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes that the withdrawals of 7167.96 acres for Public Water Reserve Nos. 28, 30, 47, 66, 76, 82, 83, 91, 106, 157, and 160 be continued for an additional 20 years. The lands and waters involved would remain withdrawn and the lands would remain closed to surface entry and nonmetalliferous mining.

DATES: Comments should be received by October 17, 1994.

ADDRESSES: Comments should be sent to State Director, BLM Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706–2500.

FOR FURTHER INFORMATION CONTACT: Robert Hale, BLM Idaho State Office, 208–384–3165.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management proposes

that the existing land withdrawals made by Executive Orders dated May 31, 1915; February 15, 1916; April 7, 1917; August 15, 1919; January 4, 1921; April 4, 1922; April 15, 1922; June 13, 1925; April 7, 1926; October 5, 1934; and November 18, 1938; and Secretarial Order of Interpretation No. 22 dated January 12, 1926, be continued for a period of 20 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988). The lands are described as follows:

Boise Meridian

IDI–14533 (EO 4/4/1922)

T. 11 S., R. 2 W.,
Sec. 19.
T. 11 S., R. 3 W.,
Sec. 24.

IDI–14544 (EO 5/31/1915)

T. 4 S., R. 5 W.,
Sec. 29.
T. 6 S., R. 35 E.,
Sec. 33.
T. 15 S., R. 13 E.,
Secs. 22, 23, and 26.
T. 16 S., R. 12 E.,
Secs. 12, 13, 24, and 25.
T. 16 S., R. 13 E.,
Secs. 5, 8, 11, 14, 21, and 28.

IDI–14546 (EO 4/7/1926)

T. 9 S., R. 4 W.,
Secs. 20, 29, 31, and 32.

IDI–15322 (EO 6/13/1925)

T. 6 S., R. 8 E.,
Secs. 1 and 12.

IDI–15324 (EO 4/15/1922)

T. 11 S., R. 3 E.,
Sec. 24.
T. 11 S., R. 4 E.,
Sec. 30.

IDI–15325 (EO 4/7/1917)

T. 16 S., R. 12 E.,
Secs. 21, 27, 33, and 34.
T. 12 N., R. 22 E.,
Sec. 24.
T. 12 N., R. 23 E.,
Sec. 31.
T. 13 N., R. 23 E.,
Sec. 30.

IDI–15327 (EO 1/4/1921)

T. 10 S., R. 2 E.,
Secs. 20 and 32.
T. 12 S., R. 4 E.,
Secs. 10 and 15.
T. 20 N., R. 24 E.,
Sec. 4.
T. 10 S., R. 29 E.,
Sec. 35.

IDI–15328 (EO 2/15/1916)

T. 11 N., R. 20 E.,
Secs. 1 and 12.
T. 11 N., R. 21 E.,
Secs. 4, 24, 25, and 35.
T. 11 N., R. 22 E.,
Sec. 30.

IDI–15593 (EO 8/15/1919 and SO 1/12/1926)

T. 1 N., R. 5 E.,
Sec. 4.
T. 10 N., R. 22 E.,
Secs. 17 and 18.

IDI–17094 (EO 6867 10/5/1934)

T. 13 S., R. 29 E.,
Sec. 3.

IDI–17774 (EO 8009 11/18/1938)

T. 31 N., R. 3 W.,
Secs. 26 and 27.

These areas described aggregate 7167.96 acres in Bannock, Cassia, Custer, Lemhi, Owyhee, and Twin Falls Counties.

The purpose of the withdrawals is to protect the water sources located on the lands for livestock and wildlife uses. The withdrawals segregate the lands and water from settlement, sale, location, and entry, including mining for nonmetalliferous minerals but not location and entry under the mining laws for metalliferous minerals or the mineral leasing laws.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuations may present their views in writing to the Chief, Branch of Land Operations, in the Idaho State Office. The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued and if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Dated: July 7, 1994.

Jimmie A. Buxton,

Chief, Branch of Land Operations.

[FR Doc. 94–17408 Filed 7–18–94; 8:45 am]

BILLING CODE 4310–GG–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Overseas Private Investment Corporation

Agency Report Form Under OMB Review

AGENCY: Overseas Private Investment Corporation, IDCA.

ACTION: Request for Comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit information collection requests to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the Agency has made such a submission. The proposed form under review is summarized below.

DATES: Comments must be received within 14 calendar days of this notice. If you anticipate commenting on the form but find that the time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Submitting Officer of your intent as early as possible.

ADDRESSES: Copies of the subject form and the request for review submitted to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the Agency Submitting Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer: Lena Paulsen, Manager, Information Center, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527; 202/336–8565.

OMB Reviewer: Jeff Hill, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 3201, Washington, DC 20503; 202/395–7340.

Summary of Form Under Review

Type of Request: New form.

Title: OPIC Expedited Screening Questionnaire—Downstream Investments.

Form Number: OPIC 168.

Frequency of Use: Once per project submission.

Type of Respondents: OPIC fund managers.

Standard Industrial Classification Codes: All.

Description of Affected Public: OPIC fund managers.

Reporting Hours: One hour per form.

Number of Responses: 150 per year.

Federal Cost: $913.50 per year.

Authority for Information Collection: Section 231 (a–1) of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): This application will be sent to OPIC's fund managers. The fund managers will complete the information for companies in which the Fund proposes to invest. The information collected will be reviewed to determine the expected

effects of the projects on the U.S. economy and employment, as well as on the environment, economic development, and worker rights abroad.

Dated: July 8, 1994.

James R. Offutt,

Assistant General Counsel Department of Legal Affairs.

[FR Doc. 94–17410 Filed 7–18–94; 8:45 am]

BILLING CODE 3210–01–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32525]

Wheeling & Lake Erie Railway Company—Trackage Rights Exemption—Norfolk and Western Railway

Norfolk and Western Railway (N&W) has agreed to grant overhead trackage rights to Wheeling & Lake Erie Railway Company (W&LE) on N&W's line of railroad between approximately milepost B242 at Bellevue, OH and approximately milepost B229 at Berlin Heights, OH, a distance of approximately 13.0 miles, and between approximately milepost B232 at Shinrock, OH (on the Bellevue-Berlin Heights segment) and approximately milepost HU12.2 at the Huron Dock connection in Huron, OH, a distance of approximately 4.06 miles.[1] The total distance of the trackage rights to be acquired is approximately 17.06 miles. The proposed trackage rights will connect with W&LE's rail lines at Huron and Bellevue, OH, and are restricted to the overhead movement of certain iron ore traffic by W&LE. The trackage rights were to become effective July 4, 1994.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: William C. Sippel, Oppenheimer Wolff & Donnelly, Two Prudential Plaza, 45th Floor, 180 N. Stetson Ave., Chicago, IL 60601.

As a condition to use of this exemption, any employees adversely affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN.* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: July 11, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–17513 Filed 7–18–94; 8:45 am]

BILLING CODE 7035–01–P

[1] The numbering of milepost HU12.2 reflects distances on another, now-abandoned N&W line which extended south from Huron. The actual distance between Huron and Shinrock on N&W's existing line is 4.06 miles.

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Archer Daniels Midland Company*, Civil Action No. 4–94–CV–10436, was lodged on July 6, 1994 with the United States District Court for the Southern District of Iowa.

The proposed Consent Decree is a settlement resolving violations of the Clean Air Act's new source performance standards ("NSPS"), conditions of specific Prevention of Significant Deterioration ("PSD") Permits, and conditions of specific New Source Review Permits at Archer Daniels Midland's processing plants located in Des Moines and Cedar Rapids, Iowa.

Under the terms of the proposed Consent Decree, Archer Daniels Midland Co. has agreed to conduct a complete environmental management audit of the practices and procedures of its company relative to ensuring compliance with all applicable federal, state and local environmental laws and regulations. Archer Daniels Midland has also agreed to pay a civil penalty of $700,000 to the United States.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Archer Daniels Midland Company*, DOJ Ref. No. 90–5–2–1–1535.

The proposed Consent Decree may be examined at the office of the United States Attorney, 115 U.S. Courthouse, East 1st and Walnut Streets, Des Moines, Iowa 50309; the Region VII Office of the Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $4.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section Environment and Natural Resources Division.

[FR Doc. 94–17412 Filed 7–18–94; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act and the Resource Conservation and Recovery Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Solvents Recovery Service of New England, Inc., et al.*, Civil Actions Nos. –79–704 & H–90–598 (JAC) was lodged on July 1, 1994, with the Untied States District Court for the District of Connecticut. The complaint in this action (1) seeks to recover, pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601 *et seq.*, response costs incurred and to be incurred by EPA at the Solvents Recovery Service Superfund Site located in Southington Township, Connecticut ("Site"), and (2) seeks injunctive relief and civil penalties under the Resource Conservation and Recovery Act ("RCRA"), 42 U.S. C. 6901, *et seq.*

The proposed Consent Decree embodies an agreement by Solvents Recovery Service of New England Inc., SRS, Inc. and Carleton Boll ("Settling Defendants"): (1) To reimburse EPA and the State of Connecticut Department of Environmental Protection for a portion of their past and future response costs at the Site; (2) to pay partial damages to the Department of the Interior ("DOI") for injury to, destruction of, or loss of natural resources at the Site under the trusteeship of DOI; (3) to provide EPA, and any person acting pursuant to a consent order or administrative order regarding the performance of response actions at the Site, with access to property owned by SRSNE for purposes of performing all response actions at the Site; and (4) upon the completion of the remedy, to sell their presently contaminated property and pay the proceeds to EPA. The Consent Decree also provides the Settling Defendants

with a release for civil liability for both EPA's past and future CERCLA response costs and natural resource damages at the Site for resources under the trusteeship of the Department of the Interior ("DOI") and the National Oceanic and Atmospheric Administration ("NOAA").

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Solvents Recovery Service of New England, Inc., et al.*, DOJ Ref. No. 90–7–1–23A.

The proposed consent decree may be examined at the Office of the United States Attorney, 141 Church Street, New Haven, Connecticut 06508; the Region I Office of the Environmental Protection Agency, Region I Records Center, 90 Canal Street, First Floor, Boston, MA 02203; and at the Consent Decree Library, 1120 G Street, NW., Fourth Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G STreet, Fourth Floor, NW., Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $28.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–17413 Filed 7–18–94; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree United States v. Straits Steel & Wire Company, et al.

Notice is hereby given that a Consent Decree in *United States* v. *Straits Steel & Wire Company, et al.*, Civil Action No. 1:91 CV 383 (W.D. Mich.), was lodged with the United States District Court for the Western District of Michigan on June 30, 1994. This action was brought under Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9607. The Consent Decree provides that defendants will pay $1,350,000 of the past response costs, operation and maintenance costs and oversight costs incurred by the U.S. Environmental Protection Agency in connection with the Mason County Landfill Superfund Site in Ludington, Michigan.

For thirty (30) days from the date of publication of this notice, the Department of Justice will receive written comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States* v. *Straits Steel & Wire Company, et al.*, D.O.J. Ref. No. 90–11–3–282.

The Consent Decree may be examined at the Office of the United States Attorney, Western District of Michigan, 399 Federal Building, 110 Michigan St. NW., Grand Rapids, Michigan 49503 and at the Region 5 office of the U.S. Environmental Protection Agency, 77 W. Jackson Boulevard, Chicago, Illinois 60604.

A copy of the Consent Decree also may be examined at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, telephone number (202) 624–0892. A copy of the Consent Decree may be obtained in person or by mail from the Consent Decree Library. The proposed Consent Decree package consists of a 56 page Consent Decree. A request for a copy of the proposed Consent Decree should be accompanied by a check in the amount of $14.00 (25 cents per page reproduction charge) payable to "Consent Decree Library."

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–17411 Filed 7–18–94; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Controlled Substances: Established Revised 1994 Aggregate Production Quotas

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Interim rule establishing 1994 aggregate production quotas and request for comments.

SUMMARY: This interim rule establishes revised 1994 aggregate production quotas for some controlled substances in Schedules I and II, as required under the Controlled Substances Act of 1970.

DATES: This is effective on July 19, 1994. Comments must be submitted on or before August 18, 1994.

ADDRESSES: Send comments or objections to the Administrator, Drug Enforcement Administration, Washington, DC 20537, Attn: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act, (21 U.S.C. 826), requires the Attorney General to establish aggregate production quotas for controlled substances in Schedules I and II each year. This responsibility has been delegated to the Administrator of the Drug Enforcement Administration pursuant to Section 0.100 of Title 28 of the Code of Federal Regulations. The Administrator, in turn, has redelegated this function to the Deputy Administrator pursuant to 59 FR 23637 (May 6, 1994).

On October 8, 1993 and January 3, 1994, DEA published notices establishing initial 1994 aggregate production quotas for controlled substances in Schedules I and II in the **Federal Register** (58 FR 52508 and 59 FR 96 respectively). In accordance with Title 21, Code of Federal Regulations, section 1303.13, the Deputy Administrator, after consideration of all relevant factors, may adjust aggregate production quotas if needed.

On April 13, 1994, DEA published a notice proposing revised 1994 aggregate production quotas for some controlled substances in Schedules I and II in the **Federal Register** (59 FR 17568). All interested persons were invited to comment on or object to those proposed aggregate production quotas on or before May 13, 1994. Since publication of the proposed revised 1994 aggregate production quotas, information has been submitted which necessitates increases for other controlled substances. Because these increases are immediately required to meet the 1994 year-end medical needs of the United States, an interim rule is being established.

Based on a review of 1993 year-end inventories, 1994 manufacturing quotas, actual and projected 1994 sales, export requirements and other information available to the DEA, the Deputy Administrator of the DEA, under the authority vested in the Attorney General by section 306 of the CSA of 1970 (21 U.S.C. 826), delegated to the Administrator by section 0.100 of Title 28 of the Code of Federal Regulations, and redelegated to the Deputy Administrator pursuant to 59 FR 23637 (May 6, 1994), hereby establishes the following revised 1994 aggregate production quotas for the listed

controlled substances, expressed in grams of anhydrous base:

Basic class	Established revised 1994 quotas
Schedule I:	
Cathinone	4
3,4-Methylenedioxy methamphetamine	14
Schedule II:	
Dextropropoxyphene	123,398,000
Hydrocodone	8,344,000
Hydromorphone	407,000
Noroxymorphone (for conversion)	1,781,000
Phenylacetone (for conversion)	3,352,000

All interested persons are invited to submit their comments in writing regarding this interim rule. A person may comment on any of the above mentioned substances without filing comments regarding the others.

The Office of Management and Budget has determined that notices of aggregate production quotas are not subject to centralized review under Executive Order 12866. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this matter does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Deputy Administrator hereby certifies that this action will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international treaty obligations. While aggregate production quotas are of primary importance to large manufacturers, their impact upon small entities is neither negative nor beneficial. Accordingly, the Deputy Administrator has determined that this action does not require a regulatory flexibility analysis.

Dated: July 13, 1994.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 94–17418 Filed 7–18–94; 8:45 am]

BILLING CODE 4410–09–M

Proposed 1994 Aggregate Production Quota for a Schedule I Controlled Substance

AGENCY: Drug Enforcement Administration.

ACTION: Notice of a proposed 1994 aggregate production quota.

SUMMARY: This notice proposed a 1994 aggregate production quota for 3,4-methylenedioxy-N-ethylamphetamine (MDEA), a controlled substance in Schedule I of the Controlled Substances Act (CSA).

DATES: Comments or objections must be received on or before August 18, 1994.

ADDRESSES: Send comments or objections to the Administrator, Drug Enforcement Administration, Washington, DC 20537, Attn: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug & Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act (CSA) (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for controlled substances in Schedules I and II each year. This responsibility has been delegated to the Administrator of the DEA pursuant to § 0.100 of Title 28 of the Code of Federal Regulations. The Administrator, in turn, has redelegated this function to the Deputy Administrator pursuant to 59 FR 23637 (May 6, 1994).

A company submitted an application for a manufacturing quota for 3,4-methylenedioxy-N-ethylamphetamine, a Schedule I controlled substance. Based on the review of this application and other information available to the DEA, the Deputy Administrator of the DEA, under the authority vested in the Attorney General by Section 306 of the Controlled Substances Act of 1970 (21 U.S.C. 826), delegated to the Administrator by § 0.100 of Title 28 of the Code of Federal Regulations, and redelegated to the Deputy Administrator pursuant to 59 FR 23637 (May 6, 1994), hereby proposes the 1994 aggregate production quota for the following controlled substance, expressed in grams of anhydrous base, be established as follows:

Basic class	Proposed 1994 aggregate production quota (grams)
3,4-Methylenedioxy-N-ethylamphetamine	5

All interested persons are invited to submit comments or objections, in writing, regarding this proposal. If a person believes that one or more of these issues warrant a hearing, the individual should so state and summarize the reasons for this belief.

In the event that comments or objections to this proposal raise one or more issues which the Administrator finds warrant a hearing, the Administrator shall order a public hearing by notice in the Federal Register, summarizing the issues to be heard and setting the time for the hearing.

The Office of Management and Budget has determined that notices of aggregate production quotas are not subject to centralized review under Executive Order 12866.

This action has been analyzed in accordance with the principles and criteria contained in the Executive Order 12612 and it has been determined that this matter does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Deputy Administrator hereby certifies that this action will have no significant impact upon small entities within the meaning of and intent of the Regulatory Flexibility Act, 5 U.S.C., 601, *et seq.* The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international treaty obligations. While aggregate production quotas are of primary importance to large manufacturers, their impact upon small entities is neither negative nor beneficial. Accordingly, the Deputy Administrator has determined that this action does not require a regulatory flexibility analysis.

Dated: July 13, 1994.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 94–17419 Filed 7–18–94; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on June 24, 1994, Abbott Laboratories, 14th Street & Sheridan Road, Attn: Customer Service D–345, North Chicago, Illinois 60064, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule II controlled substance Dextropropoxyphene, bulk (non-dosage forms) (9273).

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21

CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than August 18, 1994.

Dated: July 11, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94–17525 Filed 7–18–94; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on May 13, 1994, Applied Science Labs, Division of Alltech Associates, Inc., 2701 Carolean Industrial Drive, P.O. Box 440, State College, Pennsylvania 16801, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
N,N-Dimethylamphetamine (1480)	I
4-Methylaminorex (cis isomer) (1590).	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
3,4-Methylenedioxyamphetamine (7400).	I
N-Hydroxy-3,4-methylenedioxy-amphetamine (7402).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxy-methamphetamine (7405).	I
Psilocybin (7437)	I
Psilocyn (7438)	I
N-Ethyl-1-phenylcyclohexylamine (7455).	I
1-(1-Phenylcyclohexyl)pyrrolidine (7458).	I
1-[1-(2-Thienyl)cyclo-hexyl]piperidine (7470)	I
Dihydromorphine (9145)	I
Heroin (9200)	I
Normorphine (9313)	I
Amphetamine (1100)	II
Methamphetamine (11050	II
1-Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
1-Piperidinocyclohexane-carbonitrile (8603).	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Benzoylecgonine (9180)	II
Morphine (9300)	II
Oxymorphone (9652)	II
Alfentanil (9737)	II

The firm plans to manufacture small quantities of these controlled substances for reference standards.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than August 18, 1994.

Dated: July 11, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control Drug Enforcement Administration.

[FR Doc. 94–17526 Filed 7–18–94; 8:45 am]

BILLING CODE 4410–09–M

Importation Of Controlled Substances; Notice Of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on May 27, 1994, Arenol Chemical Corporation, 189 Meister Avenue, Somerville, New Jersey 08876, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Methamphetamine (1105)	II
Phenylacetone (8501)	II

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than August 18, 1994.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: July 11, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94–17527 Filed 7–18–94; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 92–70]

Jay Wheeler Cranston, M.D.; Revocation of Registration

On July 10, 1992, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Jay Wheeler Cranston, M.D. (Respondent), of Kent, Ohio, proposing to revoke Respondent's DEA Certificate of Registration, AC0808076, and to deny any pending applications for registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that Respondent's continued registration is inconsistent

with the public interest, as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

Respondent timely filed a request for a hearing on the issues raised in the Order to Show Cause and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, a hearing was held, beginning on February 24, 1993, in Cleveland, Ohio.

On December 21, 1993, Judge Bittner issued her opinion and recommended ruling, findings of fact, conclusions of law and decision, recommending that Respondent's DEA Certificate of Registration be revoked and that any pending applications for renewal be denied. Respondent filed exceptions pursuant to 21 CFR 1316.66. Shortly thereafter, Judge Bittner transmitted the entire record to the then-Acting Administrator, including Respondent's exceptions. The Government moved to reopen the proceedings and file a response to Respondent's exceptions because the Government was given inadequate time to respond. This request was granted and the Government filed a response to Respondent's exceptions. Respondent filed a reply to the Government's response which was received by DEA on February 28, 1994. The Government then filed a motion to strike this pleading based upon the grounds that it was not authorized under 21 CFR 1316.66. The Deputy Administrator agrees with the Government's contention and has not considered this pleading.

The Deputy Administrator has carefully considered the record and adopts the opinion and recommended decision of the administrative law judge. Pursuant to 21 CFR 1316.67, the Deputy Administrator hereby issues his final order in this matter.

The Deputy Administrator finds that Respondent was employed as a physician in 1972 at the Kent State University (KSU) Health Center, located in Kent, Ohio. For most of the time period in issue, Respondent was the physician-in-charge of the KSU Health Center.

An investigation was initiated in 1989, when the KSU Police Department obtained information that a student was boasting that he was able to obtain drugs from Respondent by deception at the KSU Health Center. The KSU Police Department interviewed the KSU Health Center pharmacist who alerted the campus police to other illegal activity, relating to controlled substances, taking place at KSU. The KSU Police then contacted the State of Ohio Pharmacy Board (Pharmacy Board) and DEA. This joint investigation led to the discovery of a diverse number of controlled substance violations committed within the University, and for the most part, involving Respondent.

Various Schedule II, III and IV narcotic and non-narcotic controlled substances were stored at the KSU athletic department's two training rooms for some period of time prior to the 1989 investigation. Respondent wrote "prescriptions" for these controlled substances in the name of the head trainer or the athletic department. Based upon these "prescriptions" the controlled substances were then transferred from the KSU Health Center to the athletic training rooms. Although the KSU Health Center had a DEA registration, the training room facilities, which were located quite a distance from the health center, did not have DEA registrations. When Respondent was interviewed about this arrangement he indicated that he thought the training rooms were an extension of the health facility, but he later admitted that the practice "was not entirely proper." The athletic trainer, testifying on behalf of Respondent, noted that he had on many occasions questioned Respondent about the practice, but Respondent ignored the inquiries.

Respondent also issued standing orders to the athletic trainers to administer controlled substances to injured athletes even though a physician could not be contacted until after the drug was given to the athlete. When Respondent was interviewed about this practice by a KSU policeman, he initially explained that trainers were instructed to administer controlled substances to athletes only in the presence of a physician. When Respondent was told that the police had received other information from the head athletic trainer, Respondent admitted that trainers were authorized to provide medication to athletes in situations where a physician could not be contacted.

The head athletic trainer did keep an informal record of the receipt and dispensing of controlled substances from the training rooms. No such records were kept at the KSU Health Facility itself nor did Respondent attempt to reconcile the records kept by the head athletic trainer. Although athletes were required to submit to random urine tests during this period, the tests did not screen for certain controlled substances that were stored at the athletic training rooms.

Between 1986 and 1989, Respondent wrote a number of "prescriptions" for controlled substances, including cocaine, morphine and Seconal. These "prescriptions" were issued to students who obtained the drugs from the KSU Health Center pharmacy and then used the controlled substances for both animal and human research. The KSU psychology department had its own separate DEA registration and the department supervised the students' controlled substance research. The "prescriptions" issued by Respondent did not indicate a DEA number nor an address; most did not indicate the reason for issuing the "prescription"; and many of these prescriptions did not have the student's name but were simply written for "Taylor Research". (Dr. Taylor was a KSU psychology professor.) One of the psychology professors did discuss with Respondent the possibility of using DEA official order forms to transfer the Schedule II controlled substances from the KSU Health Center to the psychology department, but Respondent dismissed this suggestion.

DEA conducted an audit of the KSU psychology department in 1989 which revealed a 60 milliliter overage of morphine. There were no records to verify where this morphine was procured. DEA discovered that the discrepancy was based upon the morphine "prescriptions" that Respondent issued for the research experiments. The investigation of the psychology department uncovered that the students disposed of unused controlled substances by pouring any excess down a drain. There were, however, no records of such disposal and no way to verify if all excess substances were destroyed in this manner. In addition, Respondent authorized three prescriptions for Schedule II controlled substances with the notation "outdated". These controlled substance prescriptions were also issued to the psychology department for the purpose of conducting research experiments.

While Respondent was in charge of operating the KSU Health Center, he allowed three physician assistants to diagnose and write prescriptions for various medications, including controlled substances. The physician assistants were given initial training and supervision by a physician. After such training was deemed complete by Respondent, the physician assistants could issue Schedule III, IV and V controlled substances to treat students without supervision by a physician.

Respondent expressed misgivings about this system when he was questioned by the KSU police in 1989. He admitted that prescriptions signed by physician assistants could not be honored in a pharmacy other than the KSU Health Center Pharmacy. In fact

the health center pharmacy's records showed that such prescriptions were issued by a physician rather than a physician assistant. The KSU Health Center pharmacist questioned Respondent about this arrangement, but Respondent convinced him that the system should continue.

As early as 1985, Respondent was instructed by the Dean of Student Affairs to have physicians supervise the physician assistants instead of allowing the assistants to issue prescriptions independently. After some initial hesitation, Respondent complied by countersigning such prescriptions. Such countersigning, however, was accomplished well after the prescription was issued to the student/patient. In any event, after this particular dean left the university, Respondent stopped countersigning the physician assistants' prescriptions and continued this practice until 1989 when he was confronted by the KSU Police Department and the DEA.

Respondent treated a student in 1986. Sometime later, this student was being treated by an off-campus psychiatrist. Respondent occasionally issued controlled substance prescriptions to this student at the request of the treating psychiatrist. In January 1989, Respondent received a handwritten list of drugs on the treating psychiatrist's letterhead which was unsigned. The list of drugs included methylphenidate (spelled "methyilfenidayt") and Librium, Schedules II and IV controlled substances, respectively. Based upon this person's representation that it was a valid prescription by his psychiatrist, Respondent issued this ex-student a prescription for these controlled substances. Only after Respondent was confronted with a report from a dormitory resident director that he heard this person boasting that he was able to obtain drugs from Respondent by deception, did Respondent contact the psychiatrist who informed Respondent that the "prescription" was, indeed, not authentic.

Another person, who was a student at KSU from 1967 to 1976, was treated by Respondent from about 1975 to 1986 or 1987. Respondent indicated that he treated this person for chronic anxiety. Respondent prescribed Valium for this person on a consistent basis, despite being warned by a pharmacist in 1983 that this person "bugged" physicians to obtain controlled substances he desired and despite Respondent's own admission in 1985 that he was prescribing too much Valium to this person. He often issued these prescriptions based only on telephone conversations with this individual, who lived fifty miles from the KSU campus.

In 1990, Respondent was interviewed by a DEA investigator about the Valium prescriptions he issued to this ex-student and if Respondent suspected this individual was addicted. Respondent replied that he had no reason to suspect such a problem because the individual had reassured Respondent that he was not addicted and that Respondent believed there was a difference between abuse and addiction.

In December of 1987, Respondent asked another KSU Health Center physician to issue Respondent a prescription (which was undated) for forty dosage units of Percodan, a Schedule II controlled substance, in anticipation of surgery. Respondent altered this prescription by changing it to fifty dosage units of Demerol, another Schedule II controlled substance. During a subsequent Pharmacy Board hearing, the physician who signed the prescription believed, but was not absolutely certain, that he signed the prescription before it was altered. In any event, Respondent admitted that he was the one who altered the prescription.

Respondent wrote two prescriptions, for Percodan and Demerol, both Schedule II controlled substances, in his own name in 1988. The purpose of these prescriptions was to supply his own medical bag. In December of 1990, Respondent issued as prescription for Ritalin, a Schedule II controlled substance and authorized two refills. Schedule II prescriptions are not allowed to be refilled. Respondent testified at the hearing that he had no explanation for issuing the prescription with two refills other than it was simply a mistake.

Although no criminal or administrative action by any state or Federal agency was initiated against Respondent prior to these proceedings, DEA and the Pharmacy Board did take action against other participants involved in the controlled substance violations occurring throughout the university. In October 1989, the Pharmacy Board filed an accusation against the KSU Health Center pharmacy and its pharmacist alleging violations, including: filling and maintaining prescriptions known to have been written by physician assistants; filling and maintaining an altered prescription for a Schedule II controlled substance; providing controlled substances to the athletic department pursuant to prescriptions; and providing controlled substances to the psychology department pursuant to prescriptions. Following a hearing in May of 1990, the Pharmacy Board found that these violations occurred and that the university pharmacy and pharmacist were responsible for such violations. The pharmacist was fined $500.00 and placed on probation for five years. The pharmacy also was placed on probation for the same period of time.

In August of 1990, DEA entered into a memorandum of understanding with the KSU Psychology Department, in which the department agreed to use DEA official order forms to obtain Schedule I and II controlled substances; maintain proper records for receipt and disposition of controlled substances; and generally comply with the Controlled Substances Act and its attendant regulations.

Also, in August of 1990, DEA entered into a memorandum of understanding with the KSU Health Service, in which the service agreed to terminate the practice of distributing controlled substances to the athletic facilities; to fill only those prescriptions signed by physicians who were properly registered with DEA to issue them; to not dispense controlled substances for research activities via prescriptions or documents purporting to be prescriptions; to not distribute controlled substances for physicians' medical bags; and to maintain valid prescription and other records required by the Controlled Substances Act and its attendant regulations.

In evaluating whether Respondent's continued registration by the Drug Enforcement Administration would be inconsistent with the public interest, as that term is used in 21 U.S.C. 824(a)4), the Deputy Administrator considers the factors enumerated in 21 U.S.C. 823(f). They are as follows:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

In determining whether a registrant's continued registration is inconsistent with the public interest, the Deputy Administrator is not required to make findings with respect to each of the factors listed above. Instead, the Deputy Administrator has the discretion to give each factor the weight he deems appropriate, depending upon the facts

and circumstances of each case. *See David E. Trawick, D.D.S.*, Docket No. 88-69, 53 FR 5326 (1988).

The Deputy Administrator concurs with the opinion and recommended decision of the administrative law judge and finds that factors two, four and five apply. Respondent, by writing unauthorized prescriptions in order to distribute controlled substances to an unregistered location, violated 21 CFR 1306.04(b). Respondent allowed athletic trainers to dispense Schedule III and IV controlled substances to athletes without any supervision by a physician in violation of 21 U.S.C. 829(b). The prescriptions written by Respondent for the psychology department for purposes of conducting research on animals and humans violated 21 CFR 1306.04 (a) and (b). Such "prescriptions" were not for individual patients, were not in the course of Respondent's practice and were not for the purpose of dispensing to an ultimate user as defined under 21 CFR 1306.02(f). Respondent authorized physician assistants to issue and sign controlled substance prescriptions to patients without direct supervision of a physician in violation of 21 CFR 1306.03 and 1306.05(a).

By issuing a prescription to a student based upon an unsigned document on which one of the controlled substances was misspelled, Respondent again dispensed controlled substances in violation of 21 U.S.C. 829 (a) and (b). Respondent also issued Valium prescriptions to an ex-student over a long period of time well after Respondent was aware that this person was abusing this controlled substance. Although Respondent's initial treatment with Valium of this person may have been justified, the continued prescribing of Valium was not proper under 21 CFR 1306.04(a). Respondent authorized unregistered athletic training room facilities to store and dispense controlled substances in violation of 21 CFR 1301.12. Respondent also violated applicable Federal law when he wrote several Schedule II controlled substance prescriptions in 1988 for the purpose of supplying his medical bag. 21 CFR 1306.04(b).

By allowing physician assistants to prescribe controlled substances, Respondent's actions violated applicable state law, Ohio Administrative Code 4731-4-03(C) and 4731-4-01(A). Allowing the psychology department to use controlled substances which were outdated also violated applicable state law, Ohio Administrative Code, 4729-9-01)B) and Ohio Revised Code 3715.52 (A) and (C).

The Deputy Administrator finds that Respondent committed these long standing systemic violations despite warnings and, in one case, despite an order to desist from the unlawful behavior. Respondent often rationalized and tried to justify these violations to investigators as well as during the hearing. Respondent, for example, made an unsupported assertion that other universities employed similar systems with regard to storing and dispensing controlled substances from their athletic training rooms.

The administrative law judge in her opinion and recommended ruling, findings of fact, conclusions of law and decision recommended that Respondent's DEA registration be revoked. In his exceptions to the administrative law judge's ruling, Respondent argues that such action is not appropriate due to the fact that the state medical board took no action against Respondent nor were any criminal changes filed against Respondent based upon these acts. Revocation of a registration based upon the public interest is intended to allow DEA to take action when other law enforcement or regulatory agencies have not taken action. The Deputy Administrator notes that action has been taken against other registrants involved in these activities even though Respondent was a key player, if not the initiator, in all of these illegal practices.

Respondent also argues that his actions did not result in diversion. Respondent's conduct, however, resulted in controlled substances being stored, dispensed and utilized outside of the closed system created by DEA registration. Under these circumstances, the potential for diversion of controlled substances is increased. It is not a valid defense to violate controlled substance laws and then, in hindsight, claim that such violations are of no matter because no illicit use of controlled substances actually resulted. If no actual abuse of the controlled substances occurred, it was in spite of, and not because of, Respondent's illegal actions. Moreover, Respondent's actions of prescribing controlled substances based upon an obviously forged document and the continual prescribing of Valium to an ex-student when Respondent knew this person was abusing Valium, can certainly be characterized as diversion.

Respondent additionally argues that DEA has not alleged, much less proven, any violations since 1989 (with the exception of the December 1990 Schedule II prescription which authorized two refills) and therefore revocation is not justified. This argument fails to account for the fact that Respondent continually ignored warnings and even directives that his conduct was unlawful. It was not until various agencies initiated investigations that the university made any substantial changes to comply with applicable controlled substance laws. Moreover, Respondent's continual rationalizations and disingenuous statements both at the hearing and to investigators, gives DEA no assurance that he will not resume his cavalier behavior regarding controlled substances.

Under these circumstances, the Deputy Administrator cannot be assured that the public interest will be protected if Respondent is allowed to retain his registration at this time. The Deputy Administrator concurs with the administrative law judge's recommendation and also orders that a new application for registration shall be considered no earlier than one year after the effective date of this final order and only after a convincing showing by Respondent of his rehabilitation.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104 (59 FR 23637), hereby orders that DEA Certificate of Registration, AC0808076, previously issued to Jay Wheeler Cranston, M.D., be, and it hereby is, revoked, and any pending applications for the renewal of such registration, be, and they hereby are, denied. Furthermore, no new application will be considered until at least one year from the effective date of this final order. This order is effective August 18, 1994.

Dated: July 13, 1994.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 94-17417 Filed 7-18-94; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on June 27, 1994, Radian Corporation, 8501 Mopac Blvd., P.O. Box 201088, Austin, Texas 78720, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule I controlled substance N-Ethylamphetamine (1475).

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than August 18, 1994.

Dated: July 11, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94–17528 Filed 7–18–94; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Application Withdrawal for Sigma Chemical Company

By letter dated April 18, 1994, Sigma Chemical Company, 3500 Dekalb Street, St. Louis, Missouri 63178, withdrew their request to be registered as a bulk manufacturer of Amphetamine (1100) and Methamphetamine (1105).

Therefore, the notice dated May 4, 1994, in the Federal Register (FR Doc. 94–10679), Vol. 59, No. 85 at page 23083 is hereby withdrawn.

Dated: July 11, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94–17529 Filed 7–18–94; 8:45 am]

BILLING CODE 4410–09–M

Importer of Controlled Substances; Registration

By Notice dated May 13, 1994, and published in the Federal Register on May 25, 1994, (59 FR 27034), Stanford Seed Company, 340 South Muddy Creek Road, Denver, Pennsylvania 17517, made application to the Drug Enforcement Administration to be registered as an importer of Marihuana (7360), a basis class of controlled substance listed in Schedule I.

No comments or objections have been received. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21 Code of Federal Regulations 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: July 11, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94–17530 Filed 7–18–94; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Glass Ceiling Commission; Open Meeting; Notice of Partially Closed Meeting

SUMMARY: Pursuant to Title II of the Civil Rights Act of 1991 (Pub. L. 102–166) and section 9 of the Federal Advisory Committee Act (FACA) (Pub. L. 92–462, 5 U.S.C. app. II) a Notice of establishment of the Glass Ceiling Commission was published in the **Federal Register** on March 30, 1992 (57 FR 10776). Pursuant to section 10(a) of FACA, this is to announce a meeting of the Commission which is to take place on Thursday, August 4, 1994. The purpose of the Commission is to, among other things, focus greater attention on the importance of eliminating artificial barriers to the advancement of minorities and women to management and decisionmaking positions in business. The Commission has the practical task of: (a) conducting basic research into practices, policies, and manner in which management and decisionmaking positions in business are filled; (b) conducting comparative research of businesses and industries in which minorities and women are promoted or are not promoted; and (c) recommending measures to enhance opportunities for and the elimination of artificial barriers to the advancement of minorities and women to management and decisionmaking positions.

TIME AND PLACE: The meeting will be held on Thursday August 4, 1994. There will be a closed portion of the meeting from 1 p.m. to 2 p.m. The public meeting will be from 2 p.m. to 5 p.m. at the U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, in room S2508.

The Commission will meet in closed session in order to discuss internal personnel issues. The closing of this portion of the meeting is authorized by section 10(d) of the Federal Advisory Committee Act and Section (c)(6) of the Government in the Sunshine Act. This closing allows the Commission to discuss matters which if disclosed in an open meeting could constitute a clearly unwarranted invasion of personal privacy.

AGENDA: The agenda for the meeting is as follows:

Opening Remarks
Review of Work Plan
Discussion of Budget
Discussion of Final Report
Status of Research
New York Hearing
Perkins/Dole Award

PUBLIC PARTICIPATION: The meeting from 2 to 5 p.m. will be open to the public. Seating will be available on a first-come, first-served basis. Seats will be reserved for the media. Disabled individuals should contact the Commission no later than Monday July 25, 1994, if special accommodations are needed.

FOR FURTHER INFORMATION CONTACT: Ms. René Redwood, Executive Director, Glass Ceiling Commission, U.S. Department of Labor, 200 Constitution Avenue NW., room C–2313, Washington, DC 20210, (202) 219–7342.

Signed at Washington, DC this 14th day of July 1994.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 94–17549 Filed 7–18–94; 8:45 am]

BILLING CODE 4510–23–M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than July 29, 1994.

Interested persons are invited to submit written comments regarding the

subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 29, 1994.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, D.C. this 27th day of June, 1994.

Violet Thompson,

Deputy Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers/firm—	Location	Date received	Date of petition	Petition No.	Articles produced
Elf Atochem North America, Inc(Co) ..	Tacoma, WA	06/27/94	06/09/94	30,037	Industrial chemicals.
NEC America, Inc(Wkrs)	Hillsboro, OR	06/27/94	04/19/94	30,038	Car mount cellular phones and bag phones.
Clinton Swan Clothers, Inc(Wkrs)	Carlstadt, NJ	06/27/94	06/13/94	30,039	Shipping and distribution of clothes.
Panhandle Equipment Co(Co)	Pampa, TX	06/27/94	06/15/94	30,040	Gas compressors and component parts.
Norris/O'Bannon(Co)	Tulsa, OK	06/27/94	06/16/94	30,041	Parts for oilwells and oil well pumps.
Air Products & Chemicals, Inc(IAM) ...	Wilkes-Barre, PA	06/27/94	06/15/94	30,042	Cryogenic air separators.
Parson Industrial Diamond(Wkrs)	W. Hartford, CT	06/27/94	06/08/94	30,043	Electro plating and compounding.
Con Agra(Wkrs)	Edgar, WI	06/27/94	06/06/94	30,044	Beef packing.
Williams Southwest Drilling Co(Wkrs)	Corpus Christi, TX .	06/27/94	06/09/94	30,045	Oil and gas drilling.
Thomas & Betts Corp(Co)	Inman, SC	06/27/94	06/03/94	30,046	Electronic connectors.
Reynolds & Reynolds(UAW)	Chambersburg, PA	06/27/94	06/06/94	30,047	Computer paper.
Robinson Manufacturing(Wkrs)	Oxford, ME	06/27/94	06/14/94	30,048	Woolen and wool blend fabrics.
Hartz Mountain Corp(Wkrs)	Harrison, NJ	06/27/94	06/16/94	30,049	pet food and pet accessories.
Hilton Clothes, Inc(Co)	Linden, NJ	06/27/94	06/09/94	30,050	Men's suits, sportscoats and trousers.
Ford New Holland, Inc(Wkrs)	Dallas, TX	06/27/94	06/19/94	30,051	Parts distribution.
American Exploration Co(Wkrs)	Houston, TX	06/27/94	06/09/94	30,052	Oil and gas exploration.
Laidlaw Corp(Wkrs)	Stockton, CA	06/27/94	04/25/94	30,053	Coat hangers.
Kezar Falls Wolen(Wkrs)	Kezar Falls, ME	06/27/94	06/14/94	30,054	Woolen and wool blend fabrics.
Portac, Inc(Wkrs)	Tacoma, WA	06/27/94	05/17/94	30,055	Dimension softwood lumber.

[FR Doc. 94–17395 Filed 7–18–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,450]

Gandalf Systems Corp., Cherry Hill, NJ; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

Operating in the Following States

TA–W–29,450A—Connecticut
TA–W–29,450B—Georgia
TA–W–29,450C—Illinois
TA–W–29,450D—Maryland
TA–W–29,450E—Massachusetts
TA–W–29,450F—Minnesota
TA–W–29,450G—North Carolina
TA–W–29,450H—Ohio
TA–W–29,450I—Pennsylvania
TA–W–29,450J—Michigan
TA–W–29,450K—Missouri

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 19, 1994, applicable to all workers of the subject firm. The notice was published in the **Federal Register** on June 1, 1994 (59 FR 28429).

At the request of the State Agency, the Department reviewed its certification for the workers of Gandalf Systems Corporation. The findings show that Gandalf Systems had several field worker separations occurring in Connecticut, Georgia, Illinois, Maryland, Massachusetts, Minnesota, North Carolina, Ohio, Pennsylvania, Michigan and Missouri.

The intent of the Department's certification is to include all workers who were adversely affected by increased imports. Accordingly, the Department is amending its certification to include worker separations in the below cited States.

Also, on further review the Department found a typographical error in the impact date. The new impact date is changed to January 11, 1993 from January 11, 1994.

The amended notice applicable to TA–W–29,450 is hereby issued as follows:

All workers of Gandalf Systems Corporation, Cherry Hill, New Jersey engaged in employment related to the production of mechanical and circuit board assemblies and all field workers of Gandalf Systems Corporation engaged in employment related to the production of mechanical and circuit board assemblies in Connecticut, Georgia, Illinois, Maryland, Massachusetts, Minnesota, North Carolina, Ohio, Pennsylvania, Michigan, and Missouri who became totally or partially separated from employment on or after January 11, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

This certification does not apply to workers engaged in regional sales.

Signed in Washington, DC, this 30th day of June, 1994.

Violet L. Thompson,

Deputy Director, Office of Trade Adjustment Assistance.

[FR Doc. 94–17399 Filed 7–18–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,757, TA–W–29,758, TA–W–29,759, TA–W–29,760]

The Greif Companies Allentown/Lehigh Valley, PA, et al.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued Certifications of Eligibility to Apply for Worker Adjustment Assistance on June 15, 1994, applicable to all workers of the subject firm. The certification notices were published in the **Federal Register** on June 30, 1994 (59 FR 33787).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The Department is changing the April 5, 1993 impact date to May 22, 1994 for workers at Shippensburg and Allentown, Pennsylvania and Verona, Virginia because they were already covered for certification under petitions TA–W–27,070, TA–W–27,220, and TA–W–27,219, respectively, which expired on May 22, 1994.

Accordingly, the Department is amending the subject certifications by deleting the old impact date of April 5, 1993 and inserting a new impact date of May 22, 1994.

The amended notice applicable to TA–W–29,757 (Allentown, Pennsylvania) TA–W–29,758 (Shippensburg, Pennsylvania) and TA–W–29,759 (Verona, Virginia) are hereby issued as follows:

All workers of The Greif Companies, Allentown/Lehigh Valley, Pennsylvania (TA–W–29,757), Shippensburg, Pennsylvania (TA–W–29,758), Verona, Virginia (TA–W–29,759) engaged in employment related to the production of men's suits, pants, sportcoats and vests and provided management, office, sales, marketing, warehousing and distribution services who became totally or partially separated from employment on or after May 22, 1994 through two years from the date of the initial certifications (TA–W–29,757–TA–W–29,759) are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Also, all workers of the Greif Companies, New York, New York engaged in employment related to the production of men's suits, pants, sportcoats and vests and provided management, office, sales, marketing, warehousing and distribution services who became totally or partially separated from employment on or after April 5, 1993 through two years from the date of the initial certification (TA–W–29,760) are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 7th day of July 1994.

Violet L. Thompson,

Deputy Director, Office of Trade Adjustment Assistance.

[FR Doc. 94–17398 Filed 7–18–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,857]

The Harwood Companies, Incorporated, Marion, VA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 24, 1994, applicable to all workers of the subject firm. The certification will soon be published in the **Federal Register**.

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The Department is changing the April 15, 1993 impact date to February 20, 1994 for workers at the Marion, Virginia facility of The Harwood Companies, Inc., because they were already covered for certification under petition TA–W–26,753 which expired on February 20, 1994.

Accordingly, the Department is amending the subject certification by deleting the old impact date of April 15, 1993 and inserting a new impact date of February 20, 1994.

The amended notice applicable to TA–W–29,857 is hereby issued as follows:

All workers of The Harwood Companies, Incorporated, Marion, Virginia engaged in employment related to the production of activewear, underwear, robes and sleepwear who became totally or partially separated from employment on or after February 20, 1994 through two years from the date of the initial certification (TA–W–29,857) are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 7th day of July 1994.

Violet L. Thompson,

Deputy Director, Office of Trade Adjustment Assistance.

[FR Doc. 94–17397 Filed 7–18–94; 8:45 am]

BILLING CODE 4510–30–M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of June, 1994.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–29,797; Lyons Falls Pulp & Paper, Inc., Lyons Falls, NY

TA–W–29,756; UCAR Carbon Co., Inc., Robinson, IL

TA–W–29,742; Sunnyside Coal Co., Sunnyside, UT

TA–W–29,697; Columbia Tanning Corp., Brockton, MA

TA–W–29,720; Sola Optical USA, Inc., Muskogee, OK

TA–W–29,704; Power Piping Co., Donora, PA

TA–W–29,839; Asten Forming Fabrics, Greenville, SC

TA–W–29,795; Freeport Sulphur, New Orleans, LA

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–29,637; The Eureka Pipe Line Co., Vienna, WV (Formerly Located in Parkersburg, WV)

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–29,885; Peerless-Winsmith, Inc., Warren, OH

The investigation revealed that production of electric motors increased in 1993 compared with 1992 and in the first quarter of 1994 compared with the same period in 1993.

TA–W–29,834; Amerada Hess Corp., Tulsa, OK

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–29,874, & TA–W–20,875; Alcoa Recycling Co., Inc., Knoxville, TN and Maryville, TN

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–29,952; Westinghouse Electric Corp., Pittsburgh District Sales Office, Pittsburgh, PA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–29,835; Alta Energy Corp., Accounting Office, Midland, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–29,858; Wetterau/Supervalu, Bloomington, IN

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–29,865; Prudential Insurance & Financial Services, Group Operations Bldg., Minneapolis, MN

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–29,713; Woodward Governor Co., (North 2nd St.), Rockford, IL

TA–W–29,714; Woodward Governor Co., (35th Street), Rockford, IL

TA–W–29,714A; Woodward Governor Co., Service Center, Rockford, IL

U.S. imports of both military and civilian aircraft parts declined during the period under investigation.

TA–W–29,636; Concurrent Computer Corp., Oceanport, MJ

The investigation revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

Affirmative Determinations For Worker Adjustment Assistance

TA–W–29,746; Micro Link Alaska, Inc., Anchorage, AK

A certification was issued covering all workers separated on or after April 5, 1993.

TA–W–29,884; Jockey International, Inc., Belzoni, MS

A certification was issued covering all workers separated on or after May 11, 1993.

TA–W–29,848; Waynesboro Apparel, Inc., Waynesboro, GA

A certification was issued covering all workers separated on or after April 27, 1993.

TA–W–29,610; Mary Nell Industries, Mayfield, KY

A certification was issued covering all workers separated on or after February 21, 1993.

TA–W–29,691; 502 Corp., Bethlehem, PA

A certification was issued covering all workers separated on or after March 21, 1993.

TA–W–29,857; The Harwood Companies, Inc., Marion, VA

A certification was issued covering all workers separated on or after April 15, 1993.

TA–W–29,753; C & R Cedar, Forks, WA

A certification was issued covering all workers separated on or after April 5, 1993.

TA–W–29,806; Miller Redwood, Crescent City, OK

A certification was issued covering all workers separated on or after April 12, 1993.

TA–W–29,661; Michigan California Lumber Co., Camino, CA

A certification was issued covering all workers separated on or after March 14, 1993.

TA–W–29,762; Kirschner Medical Corp., Marlow, OK

A certification was issued covering all workers separated on or after April 4, 1993.

TA–W–29,836; Hy-Test Shoe Co., West Plains, MO

A certification was issued covering all workers separated on or after April 1, 1993.

TA–W–29,796; Kinston Shirt Co., Kinston, NC

A certification was issued covering all workers separated on or after April 13, 1993.

TA–W–29,642; Reynolds Metals Co., McCook, IL

A certification was issued covering all workers separated on or after March 3, 1993.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of June, 1994.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(A) that sales or production, or both, of such firm or subdivision have decreased absolutely,

(B) that imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased.

(C) that the increase in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(2) that there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

NAFTA–TAA–000114; Portac, Inc., Tacoma, WA

The investigation revealed that criteria (3) & criteria (4) were not met. Production has not been shifted from the workers' firm to Canada or Mexico, and the sales declines at the subject firm were due to a loss of export sales.

NAFTA–TAA–00123; Safeway, Inc., Oakland, CA

The investigation revealed that workers of the subject firm did not produce an article within the meaning of the Act. The Department of Labor has consistently determined that the performance of services does not constitute production of an article as required by the Trade Act of 1974.

NAFTA–TAA–00084; Laidlaw Corp., Stockton, CA

The investigation revealed that criteria (3) & criterion (4) were not met. There was no shift of production from the workers' firm to Mexico or Canada during the relevant period. Production at the Stockton, CA plant has ceased by March 1994 and has been transferred to another company facility in Kingman, AZ. Employment remained constant throughout the fourth quarter of 1993. Monthly employment declines in the first quarter of 1994 were offset by increasing employment at the Kingman plant.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–00126; Xentek, Inc., San Marcos, CA

A certification was issued covering all workers of Xentek, Inc., San Marcos, CA separated on or after December 8, 1993.

NAFTA–TAA–00117; Lennon Foods, Inc., Seattle, WA

A certification was issued covering all workers of Lennon Foods, Inc., Seattle, WA separated on or after December 8, 1993.

I hereby certify that the aforementioned determinations were issued during the month of June, 1994. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: June 30, 1994.

Violet L. Thompson,

Deputy Director, Office of Trade Adjustment Assistance.

[FR Doc. 94–17394 Filed 7–18–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–28,158]

Northrop Corporation, Norwood, MA; Revised Determination on Reconsideration

On April 21, 1994, the United States Court of International Trade (USCIT) in *John C. Dennis* v. *United States Secretary of Labor,* (USCIT 93–07–00405) granted the Secretary of Labor's motion for a voluntary remand for further investigation.

The Department's initial denial of certification for all workers of Northrop Corporation, Norwood, Massachusetts was based on the fact that the contributed importantly test of the Group Eligibility Requirements of the Trade Act was not met. This test is generally demonstrated through a survey of the workers' firm's customers. The Department's survey of the subject firm's major declining customers showed that none increased their imports of gyroscopes while decreasing their purchases of gyroscopes from the subject firm.

The plaintiffs raised the question of the adequacy of the Department's investigation which focused on the production of gyroscopes, The petition dated December 3, 1992 was for workers in the Electromagnetic Assembly Department (Department #4817) who produce components for gyroscopes.

As a result of the investigation pursuant to the remand, the Department found that the major products produced in Department 4817, Electromagnetic Assembly, were the G5 and G6 microsyns and pickoff coils. The workers were not separately identifiable by product.

Further, the Department obtained information from Northrop which showed decreased production of G5 and G6 microsyns in Department 4817 at Norwood in 1992 compared to 1991 and in 1993 compared to 1992. Other findings show that G5 microsyn production accounted for the major portion of production in Department 4817.

Other findings show increased purchases of G5 microsyns from a domestic supplier in 1992 compared to 1991. The purchased G5 microsyns were predominately made in Mexico when measured in production hours or standard cost in dollars.

Other findings show that pickoff coils last produced at Norwood in 1991 have been replaced in 1992 and in 1993 by purchased coils which are almost totally made in Mexico when measured in production hours or standard cost.

Conclusion

After careful consideration of the new facts obtained during the remand, it is concluded that workers in the Electromagnetic Assembly Department (Department #4817) were adversely affected by increased imports of articles that are like or directly competitive with those produced in Department #4817 of Northrop Corporation in Norwood, Massachusetts. In accordance with the provisions of the Act, I make the following revised determination for workers of Department #4817 of Northrop Corporation, Norwood, Massachusetts.

All workers of the Electromagnetic Assembly Department (Department #4817) of Northrop Corporation in Norwood, Massachusetts who became totally or partially separated from employment on or after December 3, 1991 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

The Department's negative determination for all other workers at Northrop Corporation, Norwood, Massachusetts remains in effect.

Signed at Washington, D.C., this 1st day of July, 1994.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 94–17396 Filed 7–18–94; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certification of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (P.L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under Section 250(a) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Director of the Office of Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes actions pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment after December 8, 1993 (date of enactment of P.L. 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of OTAA at the U.S. Department of Labor (DOL) in Washington, DC, provided such request is filed in writing with the Director of OTAA not later than July 29, 1994.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director of OTAA at the address shown below not later than July 29, 1994.

Petitions filed with the Governors are available for inspection at the Office of the Director, OTAA, ETA, DOL, Room C–4318, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 5th day of July, 1994.

Violet Thompson,

Deputy Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received at Governor's office	Petition No.	Articles produced
Philips Electronics, North American; Philips Lighting Company (Teamsters).	Washington, PA	06/24/94	NAFTA–00160.	Incandescent electric lamps.
Magne Tek Inc.; Ballast or Lighting Div. (Wkrs).	Huntington, IN	06/21/94	NAFTA–00161.	Electronic flourescent ballast.
Technology Marketing Group (Wkrs)	Longwood, FL	06/23/94	NAFTA–00162.	Wholesale of PC parts and assembly.
Sola Optical USA, Inc. (Wkrs)	Colonial Heights, VA.	06/27/94	NAFTA–00163.	Plastic ophthalmalic lenses, plastic gaskets.
Lipe-Rollway Corporation; Rollway Bearing Division (UAW).	Liverpool, NY	06/28/94	NAFTA–00164.	Precision cylindrical roller bearings.
Dana Corporation; Perfect Circle Division (Co.).	Pueblo, CO	06/29/94	NAFTA–00165.	Aluminum automotive pistons.
Lockheed; Ft. Worth Division (IAM)	Ft. Worth, TX	06/29/94	NAFTA–00166.	I.T.L. units.
Sara Lee; Sara Lee Knit Products (Co.)	Midway, GA	07/01/94	NAFTA–00167.	Fleece garments.
Sara Lee; Sara Lee Knit Products—Textile (Co.).	Martinsville, VA	06/29/94	NAFTA–00168.	Fleece garments.

[FR Doc. 94–17400 Filed 7–18–94; 8:45 am]
BILLING CODE 4510–30–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Museum Advisory Panel; Meetings

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel (Utilization of Museum Resources: Panel A Section) to the National Council on the Arts will be held on August 9–10, 1994 from 9:00 a.m. to 5:30 p.m. in Room 716, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

A portion of this meeting will be open to the public from 9:00 a.m. to 9:30 a.m. on August 9 for opening remarks and a policy discussion.

The remaining portions of this meeting from 9:30 a.m. to 5:30 p.m. on August 9 and from 9:00 a.m. to 5:30 p.m. on August 10 are for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington D.C. 20506, 202/682–5532, TYY 202/682–5496, at lease seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202/682–5439.

Dated: July 13, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–17477 Filed 7–18–94; 8:45 am]
BILLING CODE 7537–01–M

Presenting and Commissioning Advisory Panel; Meetings

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Presenting and Commissioning Advisory Panel (Music Presenters Panel B Section) to the National Council on the Arts will be held on August 9–12, 1994. The panel will meet from 9:00 a.m. to 5:30 p.m. on August 9 and from 8:30 a.m. to 5:30 p.m. on August 10–12. This meeting will be held in Room 730, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public on August 10–12, from 8:30 a.m. to 9:00 a.m. for guideline discussion and from 4:00 p.m. to 5:30 p.m. on August 12, for a guideline review and policy discussion.

The remaining portions of this meeting, from 9:00 a.m. to 5:30 p.m. on August 9–11 and from 9:00 a.m. to 4:00 p.m. on August 12, are for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and 9(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management

Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: July 13, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–17476 Filed 7–18–94; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

AGENCY: National Science Foundation.

ACTION: Notice of permit application received under the Antarctic Conservation Act and request for comments.

SUMMARY: Notice is hereby given that the National Science Foundation (NSF) has received a waste management permit application for the United States Antarctic Program (USAP), submitted to NSF pursuant to regulations issued under the Antarctic Conservation Act of 1978.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application on or before August 13, 1994. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia, 22230.

FOR FURTHER INFORMATION CONTACT: Robert S. Cunningham or Peter R. Karasik at the above address or at (703) 306–1031.

SUPPLEMENTARY INFORMATION: Antarctic Waste Regulations in 45 CFR Part 671 require U.S. citizens, corporations, or other entities to obtain a permit for the use or release of a designated pollutant in Antarctica and for the release of any waste in Antarctic. NSF has received a permit application under this regulation for USAP activities in Antarctica. The permit applicants are:

Co-Applicants

U.S. Naval Support Force, Antarctica, Building 836, Construction Battalion Center, 651 Lyon Street, Port Hueneme, CA 93043–43455

Antarctic Support Associates, 61 Inverness Drive East, Suite 300, Englewood, CO 80112.

The permit application applies to USAP activities at all of its facilities and operations in Antarctica. The proposed duration of the permit is from October 1, 1994 through September 30, 1999.

The Naval Support Force, Antarctica (NSFA) and Antarctic Support Associates (ASA) provide broad-based logistical and technical support services to USAP. NSFA duties include procurement and transport of personnel and materials to and from Antarctica. This includes the transport of both hazardous and nonhazardous waste from Antarctica to the United States.

ASA operations include procuring, transporting to Antarctica, and tracking materials containing designated pollutants that are required for USAP operations, and for NSF and NSF grantees. ASA is also responsible for fuel operations including fuel storage, distribution, and resupply; and recordkeeping of fuel use. ASA collects, stores, and ships both hazardous and nonhazardous waste materials and is responsible for the final disposition of these materials once they are returned to the United States. ASA also provides training and technical guidance to enhance the safety of U.S. waste management practices in Antarctica.

Dated: July 12, 1994.

Robert S. Cunningham,

NEPA Compliance Manager, Office of Polar Programs, National Science Foundation.

[FR Doc. 94–17414 Filed 7–18–94; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Planning and Procedures; Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on August 3, 1994, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and matters the release of which would represent a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows: *Wednesday, August 3, 1994—2:00 p.m. until the conclusion of business.*

The Subcommittee will discuss proposed ACRS activities and related matters. Also, it will discuss qualifications of candidates nominated for appointment to the ACRS. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as practicable so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contracting the cognizant ACRS staff person, Dr. John T. Larkins, (telephone 301/415–7000) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual five days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: July 12, 1994.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 94–17516 Filed 7–18–94; 8:45 am]

BILLING CODE 7590–01–M

Two-Year Trial Program for Conducting Open Enforcement Conferences; Continuation of Trial Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Supplement to Policy Statement; Continuation of Trial Program.

SUMMARY: The Nuclear Regulatory Commission (NRC) is issuing a supplement to its two-year trial program for conducting open enforcement conferences. The purpose of this supplement is to inform the public of the NRC's continuation of the trail program until the commission acts upon the NRC staff's recommendations regarding open enforcement conferences.

FOR FURTHER INFORMATION CONTACT: James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (301–504–2741).

SUPPLEMENTARY INFORMATION: The Commission published a policy statement on the implementation of a two-year trial program to allow selected enforcement conferences to be open to public observation on July 10, 1992 (57 FR 30762). The purpose of the trial program was to determine whether to maintain the current policy stated in Section V of the "General Statement of Policy and Procedure for Enforcement Action," (Enforcement Policy) 10 CFR Part 2, Appendix C that, "enforcement conferences will not normally be open to the public," or to adopt a new policy that would allow most enforcement conferences to be open to attendance by all members of the public. Comments were required to be provided to the Commission on or before the completion date of the trial program. A correction to the original notice was issued on July 17, 1992 (57 FR 31754) to correctly identify the scheduled completion of the trial program as July 11, 1994.

On May 13, 1994, the Executive Director for Operations directed a reexamination of the NRC enforcement program by a Review Team of senior NRC staff. As part of this comprehensive review of the Enforcement Policy, the NRC intends to consider the issue of whether the Commission should establish open enforcement conferences as the normal practice. In the interim, the NRC is continuing the open enforcement conference trial program pending the outcome of the Enforcement Policy Review. The Review Team intends to complete its review of the Enforcement Policy in early 1995.

As part of its review of the Enforcement Policy, the NRC intends to issue a Federal Register notice soliciting public comments to assist the Review Team. This notice will include soliciting comments on the issue of open enforcement conferences.

Dated at Rockville, MD, this 13th day of July 1994.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 94–17500 Filed 7–18–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket Number 40–8948]

Shieldalloy Metallurgical Corporation, Establishment of Local Public Document Room

The Nuclear Regulatory Commission (NRC) has established a local public document room (LPDR) for Shieldalloy Metallurgical Corporation's (Shieldalloy) Cambridge, Ohio, site.

Members of the public may now inspect and copy documents related to the Shieldalloy Cambridge, Ohio, site at the Guernsey County District Public Library, 800 Steubenville Avenue, Cambridge, Ohio 43725–2385. The library is open on the following schedule: Monday through Friday 9:00 a.m. to 8:00 p.m.; Saturday 9:00 a.m. to 5:00 p.m.; and Sunday 1:00 p.m. to 5:00 p.m. Current summer hours are: Monday, Tuesday, Wednesday 9:00 a.m. to 8:00 p.m.; Thursday and Friday 9:00 a.m. to 5:30 p.m.; Saturday 9:00 a.m. to 1:00 p.m.; and Sunday closed.

For Further Information: Interested parties in the Guernsey County area may contact the LPDR directly through Ms. Sally Ondrejko, Reference Librarian, telephone number (614) 432–5946. Parties outside the service area of the LPDR may address their requests for records to the NRC's Public Document Room, Washington, DC 20555, telephone number (202) 634–3273.

Questions concerning the NRC's local public document room program or the availability of documents should be addressed to Ms. Jona Souder, LPDR Program Manager, Freedom of Information/Local Public Document Room Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone number (301) 415–7170 or toll-free 1–800–638–8081.

Dated at Rockville, Maryland, this 13th day of July, 1994.

For the Nuclear Regulatory Commission.

Walter E. Oliu,

Acting Director, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 94–17499 Filed 7–18–94; 8:45 am]

BILLING CODE 7590–01–M

Release of Site for Unrestricted Use and Removal From the Site Decommissioning Management Plan, Pawling Site, NY

July 8, 1994.

AGENCY: Nuclear Regulatory Commission.

This notice is to inform the public that the U.S. Nuclear Regulatory Commission (NRC) is releasing the formerly licensed Gulf Nuclear Fuel Corporation (GNFC) site (currently owned by the National Park Service) near Pawling, New York, for unrestricted use. General Atomics Company was the last licensee for the activities carried out at this GNFC site. Following a series of corporation changes, Chevron Corporation is the corporate successor to General Atomics. Remedial action has been completed at the site because residual radioactive material had been present in excess of NRC's current unrestricted use criteria. The Pawling site was listed in the NRC's Site Decommissioning Management Plan, but has now been removed.

Results of the radiological surveys and analyses performed indicate that, after the remedial actions, residual radioactive material on building surfaces and in soils at the site is less than the criteria found in the NRC's "Guidelines for Decontamination of Facilities and Equipment Prior to Release for Unrestricted Use or Termination of Licenses for Byproduct, Source, or Special Nuclear Material," August 1987. After reviewing Chevron Corporation's reports and radiological surveys of this facility, and Oak Ridge Institute for Science and Education's confirmatory radiological survey, NRC staff concludes that further remedial action is not required, and that the site is suitable for unrestricted use.

As noted in the Action Plan (57 FR 13389), this is the final action of the NRC on the Pawling site. NRC will not require any additional decommissioning in response to future NRC criteria or standards, except in the event that additional contamination, or noncompliance with the decommissioning plans approved by NRC in December 1992 and July 1993, is found, indicating a significant threat to public health and safety. Noncompliance would occur if the licensee had not complied with an approved decommissioning plan, or had provided false information.

Dated: at Rockville, MD, this 8th day of July 1994.

For the Nuclear Regulatory Commission.

John H. Austin,

Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 94–17501 Filed 7–18–94; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34358; File No. SR–Amex–93–42]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Disciplinary Jurisdiction and Settlement of Disciplinary Actions

July 12, 1994.

I. Introduction

On December 23, 1993, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its disciplinary rules relating to the retention of disciplinary jurisdiction and the settlement of disciplinary actions. On May 11, 1994, the Exchange notified the Commission that the Constitutional changes had been approved by the Exchange membership, and that no further Exchange action was required for the Commission to proceed with the proposed rule change.[3]

The proposed rule change was published for comment in Securities Exchange Act Release No. 33501 (January 21, 1994), 59 FR 4126 (January 28, 1994). No comments were received on the proposal.

II. Description

Under current Exchange Rule 341.09 member firms must file a termination notice with the Exchange whenever a registered employee leaves their employ.[4] Member firms also are required to file amended termination notices, subsequent to the registered employee's departure, if they become aware of customer complaints or other possible wrongdoing by the employee.[5] Currently, Article V, Section 6 of the Exchange's Constitution and Rule 341.08 permit the Exchange to retain disciplinary jurisdiction even after the termination of a person's or an entity's status as a member, member organization, or registered employee, provided that the Exchange gives them written notice that it is retaining jurisdiction within one year immediately following its receipt of the written notice of termination by member firms.

In an appeal to the Commission last year, a respondent in an Amex disciplinary proceeding asserted that the Exchange lacked jurisdiction over him because it failed to notify him within one year from the time his former firm filed the termination notice reporting his voluntary resignation.[6] The Commission's decision agreed with the respondent, stating that the Amex Rule required it to retain jurisdiction within one year of its receipt of the original termination notice. However, the Commission indicated that it was sensitive to the Exchange's position that the one year time period should begin to run only after the Exchange is notified by the member firm of possible violative conduct in the amended termination notice, and suggested that the Amex amend its rules to strengthen its jurisdictional position.

The proposed rule change provides that the Exchange must assert disciplinary jurisdiction over a person or entity within one year of the filing of a termination notice or within one year of any amendment to such notice. By amending the applicable Constitutional and Rule provisions, the Exchange will be able to retain jurisdiction for one year after it is notified by the member firm of possible violative conduct by the registered employee in an amended termination notice.[7]

The Exchange also is amending its Rules regarding settlement of disciplinary matters. Article V, Section 1(b)(4) of the Amex's Constitution and Amex Rule 345 currently require that the Exchange issue formal charges against persons or entities it believes have committed serious infractions of the Exchange's Rules or the federal securities laws. The issuance of formal charges begins a lengthy process which includes the filing of an answer to the charges, the exchange of documents, and the scheduling of a disciplinary hearing.

The Amex's present disciplinary procedures do not provide for the settlement of charges before formal charges are issued. In some circumstances, however, persons who are the subject of Exchange investigations may wish to avoid the time and expense of a hearing and settle the matter by stipulating to certain facts and consenting to a penalty. The rule change would allow such parties to settle claims without undergoing the process for formal charges by allowing the party to proceed directly to the procedures that are currently contained in Article V, Section 2 of the Amex's Constitution and in Amex Rule 345 for "Stipulation of Facts and Consent to Penalty."

The procedures contained in the above provisions provide for a hearing before a Disciplinary Panel to determine whether the party is guilty of having committed an offense on the basis of a written stipulation of facts and consent to a specified penalty entered into between the party and an officer of the Exchange. The Disciplinary Panel may fix and impose the penalty agreed to in the stipulation and consent, or any lesser penalty. If the Disciplinary Panel rejects the stipulation and consent to a specified penalty, the matter will proceed as if the stipulation and consent had not been entered into, and the stipulation and consent will be disregarded in any subsequent proceeding.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with the requirements of Sections 6(b) (5) and (6) of the Act.[8] Specifically, Section 6(b)(5) of the Act requires that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public. Section 6(b)(6) of the Act requires that the rules of an exchange provide that its members, and

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1993).

[3] The original 19b–4 filing was filed with the Commission in December 1993 and noted that the membership had not yet voted on the proposed rule change to the Amex's Constitution. The Constitutional change was approved by the Exchange membership at a special meeting of the regular members held on April 12, 1994. *See* letter from Geraldine Brindisi, Corporate Secretary, Amex, to Diana Luka-Hopson, Branch Chief, SEC, dated May 10, 1994.

[4] Amex Rule 341.09 requires that immediate notification to the Exchange of any termination of employment of a registered employee or officer be submitted on Form U–5.

[5] Instruction 5 to Form U–5 states that reporting firms have a continuing obligation to amend and update Form U–5 as it pertains to disciplinary action against the person or entity and complaints of possible wrongdoing. This obligation includes reportable matters which occur or become known after initial submission of Form U–5.

[6] *In re* Leavitt, Securities Exchange Act Release No. 32441, 1993 SEC LEXIS 1427 (June 10, 1993) (Admin. Proc. File No. 3–7836).

[7] As the Commission noted in the *Leavitt* opinion, the NASD Rules provide for retention of disciplinary jurisdiction after an amended notice. Specifically, Article IV, Section 4 of the NASD By-Laws provides that the NASD may retain disciplinary jurisdiction within two years after the effective date of termination, provided, however, that any amendment to a notice of termination that is filed within two years of the original notice which discloses that such person may have engaged in conduct actionable under any applicable statute, rule or regulation, shall operate to recommence the running of the two-year period.

[8] 15 U.S.C. § 78f(b) (5) and (6) (1988).

persons associated with its members, be appropriately disciplined for violation of the rules of the exchange.

The Commission believes that the rule change to provide the Exchange with disciplinary jurisdiction over persons or entities suspected of wrongdoing for one year after any amendment to the termination of employment notice is made will ensure that the Exchange will retain jurisdiction over persons for a year after it is notified of possible offenses, and accordingly is consistent with the Exchange's regulatory responsibilities under Section 6(b)(6) of the Act. The rule change will enable the Exchange to investigate and conduct disciplinary hearings pursuant to its established rules and procedures to determine if a person or entity has committed violations of Exchange rules or the federal securities laws, and to impose appropriate sanctions thereon. The rule change also is consistent with Section 6(b)(5) of the Act in that it serves to protect investors and the public interest by enabling the Exchange to discipline persons who violate Exchange Rules or the federal securities laws within a reasonable time after learning of possible wrongdoing.

The Commission further believes that the rule change to allow parties to settle claims against them without undergoing a lengthy formal charging process is consistent with Section 6(b) (5) and (6) of the Act. The Commission believes that the rule change will save substantial time and expense for the Exchange and its members, and give the Exchange more flexibility in negotiating the resolution of enforcement actions. The rule also will continue to ensure that all settlements will be reviewed by the Amex's Disciplinary Panel and continues to give to the panel the ability to reject any settlement as is appropriate. Accordingly, we believe the change should make the Amex's enforcement proceedings more efficient without reducing the effectiveness of its procedures. Furthermore, the Commission finds that the proposed procedures for settling disciplinary actions are similar to those of other national securities exchanges.[9]

IV. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–Amex–93–42) is approved.

[9] *See, e.g.*, New York Stock Exchange Rule 476(g); Chicago Board Options Exchange Rule 17.8.

[10] 15 U.S.C. 78s(b)(2) (1988).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17429 Filed 7–18–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34359; File No. SR–Amex–91–35]

Self-Regulatory Organizations; Order Approving and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to a Proposed Rule Change by the American Stock Exchange, Inc., Relating to the Development of Stock Indexes for Index Option Trading.

July 12, 1994.

On December 26, 1991, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to provide the Exchange with greater flexibility in developing stock indexes for index option trading. Notice of the proposal appeared in the **Federal Register** on February 14, 1992.[3] No comment letters were received on the proposed rule change.[4] The Amex subsequently filed Amendment No. 1 to the proposed rule change on May 20, 1994.[5] This order approves the Exchange's proposal, as amended.

When exchange-traded stock index options were developed, there was a concern with allowing options to trade on indexes composed of a relatively small number of stocks where a substantial portion of those stocks were traded on the same exchange. As a result, the Exchange has rules restricting the number of Amex-traded stocks that can be included in a stock index upon which options are also traded on the Amex. Specifically, no components of an index may be traded on the Amex if the index is composed of less than 25 stocks; less than 10% of the market value of the index may be accounted for by stocks traded on the Amex if the index is composed of 25 or more stocks but less than 50 stocks; and 10% or more of the market value of the index may be accounted for by stocks traded on the Amex if the index is composed of 50 or more components.[6]

Further, the first indexes on which options were traded were valued either on the price of the components of the index (price-weighted) or on the market capitalizations of the components of the index (capitalization-weighted). Accordingly, Exchange Rule 900C defines the term "stock index group" as a group of stocks each of whose inclusion and relative representation in the group is determined by the inclusion and relative representation of their current market values or market prices in a widely disseminated stock index.

As a result of significant changes in the options industry, the Exchange believes that the restrictions on the inclusion of Amex-traded stocks in indexes on which options are traded on the Exchange are no longer appropriate. Similarly, the Exchange believes that the definition of stock index group is now too restrictive because of the creation of new and different methods of calculating and determining the relative representation of the stocks underlying an index (*e.g.* equal dollar-weighting).[7] The Exchange is, therefore, proposing to revise Exchange Rule 901C to provide for greater flexibility in the design and development of new stock

[11] 17 CFR 200.30–3(a)(12) (1993).

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1992).

[3] *See* Securities Exchange Act Release No. 30356 (February 10, 1992), 57 FR 30356 (February 14, 1992).

[4] The Commission, however, did receive a letter from Congressman Edward Markey requesting additional information regarding the subject matter of the proposed rule change and seeking assurances that the proposal would not result in any enhanced opportunities for market manipulation or other improper trading activities. *See* Letter from Rep. Edward Markey, Chairman, Committee on Energy and Commerce, U.S. House of Representatives, to Richard Breeden, Chairman, Commission, dated March 5, 1992. For the reasons discussed below, the Commission believes that the proposal is structured to minimize any potential for market manipulation and other improper trading activity.

[5] In Amendment No. 1, the Amex represents that: (1) members will be prohibited from using hand signals for purposes of communicating between the Exchange's main equity trading floor ("Equity Floor") and the mezzanine trading level ("Mezzanine") when index options on indexes where Amex-listed stocks comprise more than 10% of the index value, by weight, are being traded in the Mezzanine; (2) members will be notified by the Exchange of the prohibition on the use of hand signal communications; and (3) no trading of index options on indexes containing Amex-listed stocks will be allowed on the Mezzanine in areas visible from the Equity Floor. *See* Letter from Claire McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, to Michael Walinskas, Branch Chief, Office of Market Supervision, Division of Market Regulation, Commission, dated May 20, 1994 ("Amendment No. 1").

[6] *See* Amex Rule 901C(a).

[7] An equal dollar-weighted index is based on the number of shares of each component that could be purchased spending the same dollar amount on each. The value of the index equals the sum of the current market value of the assigned number of shares of each of the stocks in the index portfolio divided by the current index divisor. *See, e.g.*, Securities Exchange Act Release No. 33720 (March 7, 1994), 59 FR 11630 (March 11, 1994).

index option products which can be listed and traded on the Exchange, and to revise Rule 900C to reflect the changes in the methods of valuing indexes. With regard to Rule 900C, the Exchange proposes to eliminate references to market value and market price as the methods of determining the relative representation of a stock within an index. This will clarify that an index need not be based on a strictly proportional representation of the prices or market values of its component stocks. The Exchange believes this is necessary because the Exchange either currently trades or has had approved for trading, index options on several indexes which are neither capitalization-weighted or price-weighted (*e.g.*, the Morgan Stanley Consumer and Cyclical Indexes, the Biotechnology Index, and the Natural Gas Index).

The Exchange also proposes to revise Rule 901C to remove the limitation on the number of Amex-listed stocks that can be included in an index on which stock index options trade on the Exchange. The proposed revision would allow indexes composed of less than 50 securities to have Amex-listed stocks account for more than 10% of the index's value, by weight, and it would allow Amex-listed stocks to be included in indexes that are composed of less than 25 stocks. The Exchange believes that concerns that certain market participants would have an informational advantage when trading an option on an index that is composed of stocks that also trade on the same exchange have lessened considerably since index options were first developed, due in large part to the real-time electronic quotation and transaction information dissemination systems that now link today's securities markets. The Exchange also believes that there is less concern that an index value can be influenced by any one stock, given the preference for insuring that no one security represents a large portion of the value of an index.

In order to further minimize these concerns, however, the Exchange is proposing certain restrictions on the trading of such index options. First, index option trading areas shall not be located on the Exchange's Equity Floor.[8] Secondly, for index options traded on the Mezzanine where Amex-listed stocks comprise more than 10% of the value of the index, by weight, (1) those options shall not be traded in the portion of the Mezzanine that is visible from the Equity Floor, and (2) members will be prohibited from using hand signals to communicate between the Mezzanine and the Equity Floor.[9]

Finally, if greater than 10% of the value of a narrow-based index is represented by Amex-traded stocks, the index options and each Amex-listed component of the index must be treated as a "paired security."[10] Treating the stocks and the narrow-based index options as paired securities invokes several additional safeguards designed to prevent the misuse of market information and market manipulation by Amex members. First, as discussed earlier, trading of the index option and the underlying securities must take place in physically separated trading rooms. Secondly, a registered options trader ("ROT") who is also a registered equity trader or a registered equity market maker would be prohibited from executing a proprietary transaction in the index option if, during the preceding 60 minutes, he or she had been on the Equity Floor. Third, an Amex equity specialist in any of the stocks contained in the narrow-based index would be prohibited from acting as a specialist or ROT in the index options. Finally, odd-lot dealers in the Amex-traded stocks would be prohibited from being ROTs in the index option. These restrictions are an extension of the restrictions currently in place regarding paired securities of Amex-listed options on Amex-listed stocks.[11]

The Commission believes that the Amex proposal is consistent with the requirements of Section 6 of the Act, in general, and Section 6(b)(5)[12] in particular, in that it should help to remove impediments to and perfect the mechanism of a free and open market, promote just and equitable principles of trade and protect investors and the public interest. Specifically, the proposal will provide the Exchange with greater flexibility to construct new indexes which may offer additional means to investors of hedging exposure to market risk. The Commission believes that the proposal will allow this flexibility while at the same time minimizing the potential for abuse by ensuring that Amex traders will not be able to obtain unfair informational advantages as a result of increasing the representation of Amex-listed stocks as components of indexes on which index options trade on the Exchange. The Commission agrees with the Exchange that the real-time electronic dissemination of quotation and transaction information dissemination has improved in recent years in both stock and options markets. The Commission, however, still believes that floor traders and market makers, by virtue of their close proximity to the trading crowds and access to market information, may have a time and place advantage over other market participants.[13] For the reasons stated below, however, the Commission believes that the restrictions contained in the Amex proposal adequately minimize any potential for misuse of information or market manipulation.

First, regardless of how an index is weighted or constructed, the Exchange is still required to submit all index option proposals to the Commission for approval.[14] During this review process, the Commission will examine, among other things, whether the proposal is consistent with the protection of investors and the maintenance of fair and orderly markets. In reviewing Amex narrow-based index option proposals, the Commission will examine the number of Amex-listed stocks comprising each particular index. The Commission will only approve those indexes found not to be readily susceptible to manipulation.

Secondly, where Amex-listed stocks comprise more than 10% of the value of a particular index,[15] (1) options on that

[8] Currently, all index options traded on the Exchange are physically traded on the Mezzanine, which abuts and overlooks the Exchange's equity trading floor. *See* Amendment No. 1, *supra* note 5.

[9] *Id.*

[10] Telephone conversation between Claire McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, and Brad Ritter, Attorney, Office of Market Supervision, Division of Market Regulation, Commission, on May 31, 1994. A paired security is defined as a security which is the subject of securities trading on the Amex as well as options trading. *See* Amex Rule 900(b) (38).

[11] *See* Securities Exchange Act Release No. 26147 (October 3, 1988), 53 FR 39556 (October 7, 1988).

[12] 15 U.S.C. § 78f(b)(5) (1988).

[13] Specifically, floor traders in the crowd may be able to gain an insight into the future direction of a market on the basis of, among other things, the other traders in the crowd and their bidding/offering patterns. Likewise, market makers have an informational advantage about order flow and quote changes.

[14] Pursuant to the recently-approved generic standards for options on narrow-based indexes, the Exchange may submit proposals to list and trade options on indexes, which become effective upon filing. The Exchange, however, cannot begin trading options on the index until 30 days after the filing date. During this time period, the Commission will be able to review the index and consider any comments received on the proposal. If the Commission determines that an Amex proposal submitted pursuant to the generic standards is susceptible to manipulation because, for example, of the number of Amex-listed components in the Index, the Commission will have 60 days from the filing date in which to abrogate the rule change. *See* Securities Exchange Act Release No. 34157 (June 3, 1994), 59 FR 30062 (June 10, 1994).

[15] For indexes where Amex-listed stocks comprise less than 10% of the value of the index, changes in the prices of the Amex-listed stocks should not have a significant impact on the value of the index. As a result, the Commission believes that any

index must be traded in a room physically separated from the Equity Floor, (2) if index options are traded on the Mezzanine, the trading area must be located so as to avoid direct sight lines with the Equity Floor, and (3) communication by means of hand signals between the mezzanine and the Equity Floor will be prohibited.[16] The Commission believes that each of these restrictions will further serve to minimize the informational advantages that can be gained by Amex equity and options floor traders as a result of permitting the Amex to trade index options with Amex-listed stock components.

Finally, the Commission believes that treating a narrow-based index and each Amex-listed component in the index as paired securities in those cases where the Amex-listed components comprise more than 10% of the index value, further minimizes any potential for manipulation. This requirement would establish the same restrictions that are currently in place regarding the trading of equity options on Amex-listed securities, to narrow-based index options with Amex-listed components representing over 10% of the value of the index. For example, a ROT who is also a registered equity trader would be prohibited from executing a proprietary trade in such an index option for 60 minutes after he or she had been on the Equity Floor.[17] The Commission believes that these restrictions severely restrict the potential for the abuse of informational advantages by Amex traders thereby ensuring that any narrow-based index option constructed pursuant to the proposed rule change will, as with narrow-based index options currently traded on the Exchange, not be readily susceptible to manipulation. Accordingly, the Commission believes it is appropriate to extend these restrictions to Amex-listed stocks and options on narrow-based indexes containing those stocks in cases where the Amex-listed stocks account for more than 10% of the index.

The Commission also believes that the proposed change to the definition of "stock index group" is appropriate in light of changes in the securities market since that definition was adopted. Specifically, the Amex currently is trading, or has had approved for trading, options on equal dollar-weighted indexes, which do not fit within the current definition. The Commission believes the proposed change more accurately reflects the current index option products approved for trading and is sufficiently broad enough to allow further innovations in the methods for calculating and determining index values.[18] Accordingly, the Commission believes the proposed rule change to Rule 900C is consistent with the Act.

Based on the foregoing, the Commission believes that the proposal will provide the Exchange with flexibility to construct new hedging vehicles for use by investors while sufficiently protecting investors by minimizing the susceptibility of these securities to manipulation. Accordingly, the Commission believes the proposed rule change, as amended, is consistent with the Act.

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, Amendment No. 1 proposes certain restrictions on the trading of index options on narrow-based indexes comprised of Amex-listed stocks accounting for more than 10% of the value of the index, by weight. For the reasons discussed above, the Commission believes these restrictions adequately minimize any potential for misuse of information or market manipulation. Accordingly, the Commission believes it is consistent with Section 6(b)(5) of the Act to approve Amendment No. 1 to the Amex's proposal on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–Amex–91–35 and should be submitted by August 9, 1994.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (SR–Amex–91–35), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

[FR Doc. 94–17524 Filed 7–18–94; 8:45 am]

BILLING CODE 8010–01–M

informational advantage that might exist in these circumstances as a result of an Amex member being present on the Exchange floor will be deminimis. Nevertheless, the Amex will apply its existing surveillance procedures to all index options, which should deter as well as detect any potential manipulation.

[16] The Amex shall deliver written notice to its membership informing them of the prohibition against the use of hand signal communications.

[17] *See supra* notes 10 and 11, and accompanying text.

[18] The Commission, however, will continue to examine any new weighting methods when reviewing new index option proposals pursuant to Section 19(b) of the Act.

[19] 15 U.S.C. 78s(b)(2) (1988).

[20] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 34–34367; File No. SR–BSE–94–4]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1 and 2 to Proposed Rule Change Relating to Listing Requirements for Common Stock.

July 13, 1994.

On February 25, 1994, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its listing requirements for securities listed on the Exchange. On June 7, 1994, the BSE submitted to the Commission Amendment No. 1 to the proposed rule change.[3] On June 9, 1994, the BSE submitted to the Commission Amendment No. 2 to the proposed rule change.[4]

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] *See* letter from Neal E. Sullivan, Vice President, Listings and Government Relations, BSE, to Louis A. Randazzo, Attorney, Office of Derivative and Exchange Oversight, SEC, dated June 2, 1994. Amendment No. 1 proposed that the number of required beneficial holders be changed from 500 to 600, instead of to 750 as originally requested.

[4] *See* letter from Neal E. Sullivan, Vice President, Listings and Government Relations, BSE, to Louis A. Randazzo, Attorney, Office of Derivative and Exchange Oversight, SEC, dated June 8, 1994. Amendment No. 2 changed the proposal to state that the Exchange shall file and application for delisting should the company fail to meet certain

Continued

The proposed rule change was published for comment in Securities Exchange Act Release No. 33827 (March 28, 1994), 59 FR 15754 (April 4, 1994). No comments were received on the proposal. This order approves the proposed rule change, and grants accelerated approval to Amendment Nos. 1 and 2.

I. Description of the Proposal

The Exchange is amending Chapter XXVII, Section 1 of the BSE Rules to revise the listing requirements for initial listing of securities on the Exchange. The Exchange will impose more stringent listing criteria by increasing mandatory minimum requirements, modernizing the language of the rule, and responding to the Commission's concerns regarding certain issuers and promoters seeking listing on regional exchanges solely as a means to avoid the requirements of Rule 15c2–6 under the Act.[5]

Specifically, the BSE is amending the listing requirements for common stock relating to tangible assets, public float, beneficial stockholders, and minimum bid prices.

The Exchange is increasing the portion of the required total assets ($3,000,000) that must constitute tangible assets. The amount of required tangible assets has been increased from $1,500,000 to $2,000,000. The Exchange defines tangible assets as assets less any intangible assets. Intangible assets currently include, but are not limited to, goodwill, patents, licenses, and trademarks. This definition is being amended to include other assets as the Exchange shall deem intangible.[6] Additionally, the BSE is increasing the amount of required public float from 500,000 shares to 750,000 shares, exclusive of shares held by directors, officers or other concentrated holdings of five percent or more (currently 10% or more).

The BSE is also amending the requirement relating to the minimum number of beneficial stockholders.[7] Specifically, the Exchange is increasing the number of required beneficial stockholders from 500 to 600, exclusive of the holdings of directors, officers or other concentrated holdings of five percent or more (currently 10% or more). In addition, the BSE is adding a delisting provision to the minimum stockholder requirement. Currently, with respect to a company which seeks to list a common stock issue following an initial public offering, the Exchange must receive assurances from the company or its representatives that the minimum beneficial stockholder requirement will be met following the distribution of the shares. If not met within six months of listing, the Exchange will take action to suspend dealings in the specific issue until the stockholder requirement is met. The BSE is adopting a provision that limits the period in which a company, listed following an initial public offering, can remain below the beneficial stockholder requirement once dealings in the issue have been suspended. Specifically, if a company fails to meet the beneficial stockholder requirement within 30 days of the suspension of dealings in the issue, the Exchange shall file an application for delisting with the Commission.[8]

Furthermore, the BSE is amending the minimum bid price required for listing. For a company involved in an initial public offering, the BSE is increasing the minimum bid price from $1.00 per share to $2.00 per share at the time of listing. The new standards require a company not involved in an initial public offering to maintain a bid price of $2.00 per share for 45 days prior to listing up from $1.00 per share for 30 days prior to listing.

Finally, the BSE is amending the listing requirement relating to net tangible assets and net income. The common stock listing criteria relating to net tangible assets and net income currently requires that the company have either net income of $100,000 in two of the past three years, or net tangible assets in the amount of $500,000. The BSE is increasing this criteria to require either net income of $100,000 in two of the past three years, or in the alternative, $2,000,000 in net tangible assets.[9]

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) under the Act in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to perfect the mechanism of a free and open market system, and, in general, to protect investors and the public interest.

II. Discussion

The development and enforcement of adequate standards governing the listing of securities on an exchange is an activity of critical importance to exchange markets and to the investing public. Listing standards serve as a means for the self-regulatory organizations to screen issuers and to provide listed status only to *bona fide* companies with substantial float, investor base, and adequate financial stability to ensure sufficient liquidity for fair and orderly markets.

The Commission believes that the Exchange's rule change is consistent with the requirements of the Act and the rules and regulations thereunder and, in particular, the requirements of Section 6(b)(5) of the Act.[10] Section 6(b)(5) of the requires, among other things, that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest.

The Commission believes that the amendments to Chapter XXVII, Section 1, which increase certain BSE requirements for listing common stock, should benefit investors trading these securities at the Exchange. The Commission believes that the revised listing requirements should help to ensure that only legitimate companies with substantial public float, investor base, and demonstrated financial stability would be listed on the BSE. The new requirements also should enable the Exchange to assure that a fair and orderly market can be maintained in BSE listed securities. In particular, increasing the required minimum

requirements within 30 days of suspension, rather than 90 days as originally proposed.

[5] Rule 15c2–6 provides, in part, that as a means reasonably designed to prevent fraudulent, deceptive, or manipulative acts or practices, it is unlawful for a broker or dealer to sell a designated security to, or to effect the purchase of a designated security unless certain conditions are fulfilled, such as, approving a person's account for transactions in designated securities by, among other things, obtaining information concerning the person's financial situation, investment experience, and investment objectives. *See* 17 CFR 240.15c2–6 (1994). The Commission enacted this rule to address the concern with regard to the widespread incidence of misconduct by some broker-dealers in connection with transactions in low-priced stocks, commonly referred to as "penny stocks," that are traded predominantly in the over-the-counter market. Because exchange-listed securities are exempt from the rule, stringent quantitative listing and maintenance standards for exchange-listed securities should help ensure that certain issuers do not circumvent the rule's requirements by seeking to list their securities on regional exchanges.

[6] *See* BSE Chapter XXVII, Paragraph 2260, Section 1.

[7] The Exchange defines a "beneficial holder" as the ultimate owner of the stock even though the stock may be kept in street name. *See* BSE Chapter XXVII, Section 1(C).

[8] A security registered with a national securities exchange may be stricken from listing and registration pursuant to Section 12(d) of the Act, and rule 12d2–2 thereunder. SEC Rule 12d2–2 contains the Commission's procedures for delisting a security from an exchange, including, but not limited to, a requirement to file an application for delisting with the Commission. *See* 15 U.S.C. § 781(d) (1988); 17 CFR 240.12d2–2 (1994).

[9] The Exchange defines "net tangible assets" as stockholders' equity less any intangible assets as described in Paragraph A of Section 1, Chapter XXVII of the BSE Rules. *See also, supra* note 6 and accompanying text.

[10] 15 U.S.C. § 78f(b)(5) (1988).

number of beneficial stockholders to 600 and the number of outstanding public float to 750,000 shares should help to ensure a wide public distribution of an issuer's stock, and a minimum initial level of liquidity in BSE listed securities. A wider public distribution of shares resulting from a larger number of holders will decrease the opportunities for manipulation, and will help create a more liquid market for trading.

Moreover, the Commission believes that the more stringent requirements to be met will prevent the continuous listing of a company that fails to meet the minimum listing standards. Because the BSE will file a delisting application upon a company's failure to meet the minimum beneficial shareholder (600) requirement within 30 days of suspension of dealings in the issue,[11] the liquidity of the marketplace will be preserved and investors will be protected.

In addition, the increased requirements would enable the BSE to verify the financial health of the company by requiring upon listing a higher minimum bid price per share, and a higher amount of tangible assets. For example, the amendment increases the proportion of total assets required ($3 million) to qualify as tangible assets from $1,500,000 to $2,000,000.[12] It also requires that a listed company have either net income of $100,000 in two of the past three years, or net tangible assets in the amount of $2,000,000. Additionally, with respect to an initial public offering, the amendment increases the minimum bid price at the time of listing from $1 to $2 per share. With respect to a company not involved in an initial public offering, a minimum bid price of $2 per share must be maintained for 45 days prior to listing. The Commission believes that these increased listing standards should help ensure that only companies with sufficient financial resources to meet their financial obligations continue to be listed on the Exchange.

Finally, the Commission believes that the proposed rule change will increase the effectiveness of Rule 15c2–6 under the Act.[13] The Commission adopted Rule 15c2–6 to address a growing concern with the widespread incidence of misconduct by some broker-dealers in connection with transactions in low-priced stocks, commonly referred to as "penny stocks." These stocks are traded predominantly in the over-the-counter market and quoted in the "pink sheets." Rule 15c2–6, which became effective on January 1, 1990, imposes various sales practice requirements on broker-dealers who recommend purchases of certain low-priced securities to persons who are not established customers. Because exchange-listed securities or securities authorized for quotation on the National Association of Securities Dealers, Inc.'s Automated Quotation ("NASDAQ") system are exempt from Rule 15c6–6,[14] stringent quantitative listing and maintenance standards for exchange-listed securities should help ensure that certain issuers do not circumvent the requirements of this rule by seeking to list their securities on regional exchanges. As the Commission noted in the release adopting Rule 15c2–6, it expects the exchanges to join it in closely monitoring for fraudulent sales practices in exchange-listed securities in order to prevent the transfer of such activities from the pink sheet market to the exchange market.[15] The new, more stringent listing requirements of the BSE will help prevent low-priced securities of companies without substantial float, assets, and shareholders from evading the application of Rule 15c2–6 by listing on the BSE.

The Commission finds good cause for accelerated approval of Amendment Nos. 1 and 2 to the rule change prior to the thirtieth day after publication of notice of filing thereof. The BSE's proposed listing requirements were published in the **Federal Register** for the full statutory period and no comments were received.[16] Amendment Nos. 1 and 2 modify the rule filing to make certain adjustments to the rule change that are not substantially more burdensome and that leave its overall structure unchanged. The Commission finds that accelerated approval of Amendment Nos. 1 and 2 is necessary in order for the BSE to be able to effectuate its new listing standards in a timely manner upon approval.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 1 and 2. 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 at the Commission's Public Reference Room. Copies of Amendment Nos. 1 and 2 will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR–BSE–94–4 and should be submitted by August 9, 1994.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (SR–BSE–94–4), including Amendment Nos. 1 and 2 on an accelerated basis, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17523 Filed 7–18–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Chicago Stock Exchange, Incorporated; Application for Unlisted Trading Privileges in an Over-the-Counter Issue and To Withdraw Unlisted Privileges in an Over-the-Counter Issue

July 13, 1994.

On July 7, 1994, the Chicago Stock Exchange, Inc. ("CHX"), submitted an application for unlisted trading privileges ("UTP") pursuant to Section 12(f)(1)(C) of the Securities Exchange Act of 1934 ("Act") in the following over-the-counter ("OTC") security, *i.e.*, a security not registered under Section 12(b) of the Act.

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[11] As stated above, currently, with respect to a company which seeks to list on the BSE following an initial public offering, the Exchange must receive assurances from the company or its representatives that the minimum beneficial stockholder requirement will be met following the distribution of the shares. If not met within six months of listing, the Exchange shall take action to suspend dealings until the stockholder requirement is met.

[12] The Exchange is not changing the listing standard relating to the amount of total assets. Current listing standards require a company to have at least $3,000,000 in total assets.

[13] 17 CFR 240.15c2–6 (1994).

[14] Rule 15c2–6 exempts from its requirements securities that are registered on a national securities exchange that makes transaction reports available pursuant to Rule 11Aa3–1 under the Act or approved for quotation in the NASDAQ system. 17 CFR 240.15c2–6(c) (1994). *See surpa* note 5.

[15] *See* Securities Exchange Act Release No. 27160 (August 22, 1989), 54 FR 35468 (August 28, 1989).

[16] *See* Securities Exchange Act Release No. 33827 (March 28, 1994), 59 FR 15754 (April 4, 1994).

[17] 15 U.S.C. § 78s(b)(2) (1988).

[18] 17 CFR 200.30–3(a)(12) (1994).

File No.	Symbol	Issuer
7–12628	IDTI . ..	Integrated Device Technologies, Common Stock, $.01 par value.

The above-referenced issue is being applied for as a replacement for the following security, which forms a portion of the Exchange's program in which OTC securities are being traded pursuant to the granting of UTP.

The CHX also applied to withdraw UTP pursuant to Section 12(f)(4) of the Act for the following issue:

File No.	Symbol	Issuer
7–12629	CYTO ..	Cytogen Corp., Common Stock, $.001 par value.

A replacement issue is being requested due to lack of trading activity.

Comments

Interested persons are invited to submit, on or before August 3, 1994, written comments, data, views and arguments concerning this application. Persons desiring to make written comments should file three copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

Commentators are asked to address whether they believe the requested grant of UTP as well as the withdrawal of UTP would be consistent with Section 12(f)(2), which requires that, in considering an application for extension or withdrawal of UTP in an OTC security, the Commission consider, among other matters, the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such security, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17425 Filed 7–18–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Chicago Stock Exchange, Incorporated; Application for Unlisted Trading Privileges in Three Over-the-Counter Issues and To Withdraw Unlisted Privileges in Three Over-the-Counter Issues

July 13, 1994.

On July 12, 1994, the Chicago Stock Exchange, Inc. ("CHX"), submitted an application for unlisted trading privileges ("UTP") pursuant to Section 12(f)(1)(C) of the Securities Exchange Act of 1934 ("Act") in the following over-the-counter ("OTC") securities, *i.e.*, securities not registered under section 12(b) of the Act.

File No.	Symbol	Issuer
7–12630	ATML ...	Atmel Corporation, Common Stock, No par value.
7–12631	CGNE ..	Calgene Incorporated, Common Stock, $.001 par value.
7–12632	CYRX ..	Cyrix Corporation, Common Stock, $.004 par value.

The above-referenced issues are being applied for as replacements for the following securities, which form a portion of the Exchange's program in which OTC securities are being traded pursuant to the granting of UTP.

The CHX also applied to withdraw UTP pursuant to section 12(f)(4) of the Act for the following issues:

File No.	Symbol	Issuer
7–12633	CHKR ..	Checkers Drive-In, Restaurants Inc., Common Stock, $.001 par value.
7–12634	CMAG .	Casino Magic Corporation, Common Stock, $.014 par value.
7–12635	PCTL ...	Picturetel Corporation, Common Stock, $.014 par value.

Replacement issues are being requested due to lack of trading activity.

Comments

Interested persons are invited to submit, on or before August 3, 1994, written comments, data, views and arguments concerning this application. Persons desiring to make written comments should file three copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

Commentators are asked to address whether they believe the requested grant to UTP as well as the withdrawal of UTP would be consistent with Section 12(f)(2), which requires that, in considering an application for extension or withdrawal of UTP in an OTC security, the Commission consider, among other matters, the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such security, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17424 Filed 7–18–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34370; International Series Release No. 685; File No. SR–CBOE–93–55]

Self-Regulatory Organizations; Order Approving and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 3 and 4 to a Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Listing of Options and Long-Term Options on the CBOE Israeli Index and Long-Term Options on a Reduced-Value CBOE Israeli Index

July 13, 1994.

I. Introduction

On December 8, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to provide for the listing and trading of index options on the CBOE Israeli Index ("Israeli Index" or "Index"). The Exchange filed Amendment No. 1 to the proposed rule change on April 29, 1994, and Amendment No. 2 on May 12, 1994.[3]

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1992).

[3] Amendment No. 2, which supersedes Amendment No. 1, proposes to: (1) reduce the number of components of the proposed Israeli Index ("Index") from 20 to 15; (2) require that the Index be maintained such that at least 85% of the Index, by weight, and at least 80% of the number of components of the Index are eligible for standardized options trading pursuant to CBOE Rule 5.3; (3) classify the Index as a narrow-based index for purposes of CBOE's rules; (4) provide position and exercise limits of 7,500 contracts on the same side of the market for Index options pursuant to CBOE Rule 24.4A; and (5) provide that the Exchange shall submit a proposed rule change

Notice of the proposal appeared in the **Federal Register** on June 6, 1994.[4] No comment letters were received on the proposed rule change. The Exchange subsequently filed Amendment No. 3 to the proposed rule change on June 27, 1994,[5] and Amendment No. 4 to the proposed rule change on July 11, 1994.[6] This order approves the Exchange's proposal, as amended.

II. Description of Proposal

A. General

The CBOE proposes to list for trading options on the CBOE Israeli Index, a new securities index developed by the CBOE and based on Israeli stocks and ADRs[7] that are traded on the American Stock Exchange ("Amex"), the New York Stock Exchange ("NYSE"), or are National Market ("NM") securities traded through the facilities of the National Association of Securities Dealers Automated Quotation system ("NASDAQ"). The CBOE also proposes to list either long-term options on the full-value Index or long-term options on a reduced-value Index that will be computed at one-tenth of the value of the Israeli Index ("Israeli LEAPS" or "Index LEAPS").[8] Israeli LEAPS will trade independent of and in addition to regular Israeli Index options traded on the Exchange,[9] however, as discussed below, position and exercise limits of Index LEAPS and regular Index options will be aggregated.

B. Composition of the Index

The Index was designed by the Exchange and is presently based on securities representing fifteen Israeli companies that the Exchange believes are representative of the Israeli economy, all of which trade in the U.S. as either stocks or ADRs. Fourteen of these securities currently trade through NASDAQ as NM securities, and one trades on the NYSE. The Index is price-weighted and will be calculated on a real-time basis using last sale prices.

As of the close of trading on June 28, 1994, the Index was valued at 100.37. As of March 31, 1994, the market capitalizations of the individual securities in the Index ranged from a high of $2.08 billion to a low of $124.11 million, with the mean and median being $566.83 million and $324.83 million, respectively. The market capitalization of all the securities in the Index was $8.50 billion. The total number of shares outstanding for the stocks and ADRs in the Index ranged from a high of 76.07 million shares to a low of 10.38 million shares. The average price per share in the U.S. of the securities in the Index, for the six-month period between October 1, 1993, and March 31, 1994, ranged from a high of $39.75 to a low of $5.34. In addition, the average daily trading volume in the U.S. of the stocks and ADRs in the Index, for the same six-month period, ranged from a high of 750,492 shares per day to a low of 28,444 shares per day. Lastly, no one component accounted for more than 13.12% of the Index's total value and the percentage weighting of the five largest issues in the Index accounted for 51.25% of the Index's value. The percentage weighting of the lowest weighted component was 1.92% of the Index and the percentage weighting of the five smallest issues in the Index accounted for 19.03% of the Index's value.

C. Maintenance

The Index will be maintained by the CBOE. The CBOE may change the composition of the Index at any time, subject to compliance with the maintenance criteria discussed herein, to reflect the conditions in the market for Israeli securities. If it becomes necessary to replace a security in the Index, the Exchange represents that it will only add new Israeli stocks and/or ADRs that are traded in the U.S. securities markets[10] and will take into account a security's capitalization, liquidity, volatility, and name recognition of the proposed replacement. Further, securities may be replaced in the event of certain corporate events, such as takeovers or mergers, that change the nature of the security. If, however, the Exchange determines to increase the number of Index component securities to greater than twenty or reduce the number of Index component securities to fewer than ten, the proposal provides that the CBOE will submit a rule filing with the Commission pursuant to Section 19(b) of the Act. In addition, in choosing replacement securities for the Index, the CBOE will be required to ensure that at least 85% of the weight of the Index and at least 80% of the number of components continues to be made up of stocks and ADRs that are eligible for standardized options trading.[11] Finally, the CBOE will be required to ensure that each component of the Index is subject

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pursuant to Section 19 of the Act and Rule 19b–4 thereunder prior to increasing the number of components of the Index to greater than 20 or fewer than 10. *See* Letter from Eileen Smith, Director, Product Development, Research Department, CBOE, to Brad Ritter, Attorney, Office of Market Supervision ("Office"), Division of Market Regulation ("Division"), Commission, dated May 12, 1994.

[4] *See* Securities Exchange Act Release No. 34132 (May 31, 1994), 59 FR 29314 (June 6, 1994).

[5] In Amendment No. 3, the Exchange provides that: (1) any time that a replacement security is chosen for the Index, the security will be traded either on a U.S. securities exchange or as a National Market security traded through the facilities of NASDAQ (as defined herein); and (2) all components of the Index shall be "reported securities" under Rule 11Aa3–1 of the Act. *See* Letter from Eileen Smith, Director, Product Development, Research Department, CBOE, to Brad Ritter, Attorney, Office, Division, Commission, dated June 27, 1994 ("Amendment No. 3").

[6] In Amendment No. 4, the CBOE proposed to alter the composition of the Index by removing Elbit Ltd. and Elron Electronic Industries as components of the Index, and replacing them with (1) Ampal-American Israel, and (2) Electronics for Imaging. *See* Letter from Eileen Smith, Director, Product Development, Research Department, CBOE, to Brad Ritter, Attorney, Office Division, Commission, dated July 11, 1994.

[7] An ADR is a negotiable receipt which is issued by a depositary, generally a bank, representing shares of a foreign issuer that have been deposited and are held, on behalf of holders of the ADRs, at a custodian bank in the foreign issuer's home country. *See* discussion of standards for ADR components, *infra* notes 11 and 29.

[8] LEAPS is an acronym for Long-Term Equity Anticipation Securities. LEAPS are long-term index option series that expire from twelve to thirty-six months from their date of issuance. *See* CBOE Rule 24.9(b)(1).

[9] According to the CBOE, the Israeli Index represents a segment of the U.S. equity market that is not currently represented in the derivative markets and, as much, the CBOE concludes, should offer investors a low-cost means of achieving diversification of their portfolios toward or away from Israeli securities. The CBOE believes the Index will provide retail and institutional investors with a means of benefitting from their forecasts of the performance of Israeli securities. Options on the Index also can be utilized by portfolio managers and investors as a means of hedging the risks of investing in Israeli securities.

[10] *See* Amendment No. 3, *supra* note 5.

[11] The CBOE's options listing standards, which are uniform among the options exchanges, provides that a security underlying an option must, among other things, meet the following requirements: (1) the public float must be at least 7,000,000 shares; (2) there must be a minimum of 2,000 stockholders; (3) trading volume in the U.S. must have been at least 2.4 million over the preceding twelve months; and (4) the U.S. market price must have been at least $7.50 for a majority of the business days during the preceding three calendar months. *See* CBOE Rule 5.3. With respect to ADRs, in addition to the above standards: (1) the Exchange must have in place a comprehensive surveillance agreement with the primary exchange in the home country where the security underlying the ADR is traded; or (2) the trading volume for the three month period preceding the date of listing in the U.S. markets for ADRs overlying any class of the foreign issuer's common stock (on a share-equivalent basis) is at least 50% of the sum of the (i) combined world-wide trading volume for all classes of the foreign issuer's common stock, and (ii) combined trading volume for all ADRs overlying any of these classes of stock; or (3) the SEC must otherwise authorize the listing. In addition, the percentage of the world-wide trading volume for the security underlying an ADR that occurs in the U.S. ADR market must meet a maintenance standard of 30% or more in order for options on that particular ADR to continue to be traded on the CBOE. *See* Securities Exchange Act Release No. 33554 (January 31, 1994), 59 FR 5622 (February 7, 1994).

to last sale reporting pursuant to Rule 11Aa3–1 of the Act.[12]

D. Applicability of CBOE Rules Regarding Index Options

Except as modified by this order, the rules in Chapter XXIV of the CBOE Rules will be applicable to Israeli Index options and full-value and reduced-value Index LEAPS. Those rules address, among other things, the applicable position and exercise limits, policies regarding trading halts and suspensions, and margin treatment for narrow-based index options.

E. Calculation of the Index

The CBOE Israeli Index is a price-weighted index and reflects changes in the prices of the Index component securities relative to the Index's base date of January 2, 1992. Specifically, the Index value is calculated by adding the prices of the component stocks and ADRs and then dividing this summation by a divisor that is equal to the number of the components of the Index to get the average price. To maintain the continuity of the Index, the divisor will be adjusted to reflect non-market changes in the prices of the component securities as well as changes in the composition of the Index. Changes that may result in divisor adjustments include, but are not limited to, stock splits and dividends, spin-offs, certain rights issuances, and mergers and acquisitions.

The Index will be calculated continuously and will be disseminated to the Options Price Reporting Authority ("OPRA") every fifteen seconds by the CBOE, based on the last-sale prices of the component stocks and ADRs.[13] OPRA, in turn, will disseminate the Index value to other financial vendors such as Reuters, Telerate, and Quotron.

The Index value for purposes of settling outstanding regular Index options and Index LEAPS contracts upon expiration will be calculated based upon the regular way opening sale prices for each of the Index's component securities in their primary market on the last trading day prior to expiration. In the case of securities traded on and through NASDAQ, the first reported sale price will be used. Once all of the component stocks and ADRs have opened, the value of the Index will be determined and that value will be used as the final settlement value for expiring Index options contracts. If any of the component stocks or ADRs do not open for trading on the last trading day before expiration, then the prior trading day's (*i.e.*, normally Thursday's) last sale price will be used in the Index calculation. In this regard, before deciding to use Thursday's closing value of a component security for purposes of determining the settlement value of the Index, the CBOE will wait until the end of the trading pay on expiration Friday.

F. Contract Specifications

The proposed options on the Index will be cash-settled, European-style options.[14] Standard options trading hours (8:30 a.m. to 3:15 p.m. Central Standard time) will apply to the contracts. The Index multiplier will be 100. The strike price interval will be $5.00 for full-value Index options with a duration of one year or less to expiration.[15] In addition, pursuant to CBOE Rule 24.9, there may be up to six expiration months outstanding at any given time. Specifically, there may be up to three expiration months from the March, June, September, and December cycle plus up to three additional near-term months so that the two nearest term months will always be available. As described in more detail below, the Exchange also intends to list several Index LEAPS series that expire from twelve to thirty-six months from the date of issuance.

Lastly, the options on the Index will expire on the Saturday following the third Friday of the expiration month ("Expiration Friday"). Accordingly, since options on the Index will settle based upon opening prices of the component securities on the last trading day before expiration (normally a Friday), the last trading day for an expiring Index option series will normally be the second to the last business day before expiration (normally a Thursday).

G. Listing of Long-Term Options on the Full-Value or Reduced-Value Israeli Index

The proposal provides that the Exchange may list long-term Index options that expire from 12 to 36 months from listing based on the full-value Israeli Index or a reduced-value Israeli Index that will be computed at one-tenth the value of the full-value Index. Existing Exchange requirements applicable to full-value and reduced-value LEAPS will apply to full-value and reduced-value Index LEAPS.[16] The current and closing Index value for reduced-value Israeli LEAPS will be computed by dividing the value of the full-value Index by 10 and rounding the resulting figure to the nearest one-hundredth. For example, an Index value of 100.76 would be 10.08 for the Index LEAPS and 100.74 would become 10.07. The reduced-value Index LEAPS will have a European-style exercise and will be subject to the same rules that govern the trading of all the Exchange's index options, including sales practice rules, margin requirements and floor trading procedures. Pursuant to CBOE Rule 24.9, the strike price interval for the reduced-value Index LEAPS will be no less than $2.50 instead of $5.00

H. Position and Exercise Limits, Margin Requirements, and Trading Halts

Because the Index is classified as an "industry index" under CBOE rules,[17] Exchange rules that are applicable to the trading of options on narrow-based indexes will apply to the trading of Israeli Index options and Israeli Index LEAPS. Specifically, Exchange rules governing margin requirements,[18] position and exercise limits,[19] and trading halt procedures[20] that are applicable to the trading of narrow-based index options will apply to options traded on the Index. The proposal further provides that, for purposes of determining whether a given position in reduced-value Index LEAPS complies with applicable position and exercise limits, positions in reduced-value Index LEAPS will be aggregated with positions in the full-value Index options. For these purposes, ten reduced-value contracts will equal one full-value contract.

I. Surveillance

Surveillance procedures currently used to monitor trading in each of the

[12] *See* Amendment No. 3, *supra* note 5.

[13] For purposes of the daily dissemination of the Index value, if a stock included in the Index has not opened for trading, the CBOE will use the closing value of that stock on the prior trading day when calculating the value of the Index, until the stock opens for trading.

[14] A European-style option can be exercised only during a specified period before the option expires.

[15] For a description of the strike price intervals for reduced-value Index options and long-term Index options, *See infra*, Section II.G.

[16] *See* CBOE Rule 24.9(b).

[17] *See* CBOE Rule 24.1(i).

[18] Pursuant to CBOE Rule 24.11, the margin requirements for the Index options will be: (1) for short options positions, 100% of the current market value of the options contract plus 20% of the underlying aggregate Index value, less any out-of-the-money amount, with a minimum requirement of the options premium plus 10% of the underlying Index value; and (2) for long options positions, 100% of the options premium paid.

[19] Pursuant to CBOE Rules 24.4A and 24.5, respectively, the position and exercise limits for the Index options will be 7,500 contracts, unless the Exchange determines, pursuant to Rules 24.4A and 24.5 that a lower limit is warranted.

[20] Pursuant to CBOE Rule 24.7, the trading on the CBOE of Index options may be halted or suspended whenever trading in underlying securities whose weighted value represents more than 20% of the Index value are halted or suspended

Exchange's other index options will also be used to monitor trading in regular Index options and in full-value and reduced-value Index LEAPS. These procedures include complete access to trading activity in the underlying securities. Further, the Intermarket Surveillance Group Agreement, dated July 14, 1983, as amended on January 29, 1990, will be applicable to the trading of options on the Index.[21]

III. Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[22] Specifically, the Commission finds that the trading of Israeli Index options, including full-value and reduced-value Index LEAPS, will serve to promote the public interest and help to remove impediments to a free and open securities market by providing investors with a means of hedging exposure to market risk associated with Israeli securities.[23]

The trading of options on the Israeli Index, including full-value and reduced-value Index LEAPS, however, raises several concerns, namely issues related to index design, customer protection, surveillance, and market impact. The Commission believes, for the reasons discussed below, that the CBOE adequately has addressed these concerns.

A. Index-Design and Structure

The Commission finds that the Israeli Index is a narrow-based index. The Israeli Index is composed of only fifteen securities, all of which represent Israeli companies.[24] Accordingly, in light of the limited number of stocks in the Index, the Commission believes it is proper to classify the Israeli Index as narrow-based and apply CBOE's rules governing narrow-based index options to trading in the Index options.[25]

The Commission also finds that the large capitalizations, liquid markets, and relative weightings of the Index's component securities significantly minimize the potential for manipulation of the Index. First, the overwhelming majority of the components that comprise the Index are actively traded, with an average daily trading volume for the period from October 1, 1993 through March 31, 1994, ranging from a high of 750,492 shares per day to a low of 28,444 shares per day. Second, the market capitalizations of the securities in the Index are very large, ranging from a high of $2.08 billion to a low of $124.11 million as of March 31, 1994, with the mean and median being $566.83 million and $324.83 million, respectively. Third, although the Index is only comprised of fifteen component securities, no one particular security or group of securities dominates the Index. Specifically, no one stock or ADR comprises more than 13.12% of the Index's total value and the percentage weighting of the five largest issues in the Index account for 51.25% of the Index's value.[26] Fourth, at least 85% of the securities in the Index, by weight, and at least 80% of the number of components of the Index, must be eligible for standardized options trading. This proposed maintenance requirement will ensure that the Index is substantially comprised of options eligible securities. Fifth, if the CBOE increases the number of component securities to more than twenty or decreases that number to less than ten, the CBOE will be required to seek Commission approval pursuant to Section 19(b)(2) of the Act before listing new strike price or expiration month series of Israeli Index options and Index LEAPS. This will help protect against material changes in the composition and design of the Index that might adversely affect the CBOE's obligations to protect investors and to maintain fair and orderly markets in Israeli Index options and Index LEAPS. Sixth, the CBOE will be required to ensure that each component of the Index is subject to last sale reporting pursuant to Rule 11Aa3–1 of the Act.[27] This will further reduce the potential for manipulation of the value of the Index. Finally, the Commission believes that the expense of attempting to manipulate the value of the Israeli Index in any significant way through trading in component stocks, ADRs, or securities underlying ADRs (options on those securities) coupled with, as discussed below, existing mechanisms to monitor trading activity in those securities, will help deter such illegal activity.

B. Customer Protection

The Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as Israeli Index options (including full-value and reduced-value Israeli LEAPS), can commence on a national securities exchange. The Commission notes that the trading of standardized exchange-traded options occurs in an environment that is designed to ensure, among other things, that: (1) The special risks of options are disclosed to public customers; (2) only investors capable of evaluating and bearing the risks of options trading are engaged in such trading; and (3) special compliance procedures are applicable to options accounts. Accordingly, because the Index options and Index LEAPS will be subject to the same regulatory regime as the other standardized options currently

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[21] The Intermarket Surveillance Group ("ISG") was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. *See* Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. *See* Second Amendment to the Intermarket Surveillance Group Agreement, January 29, 1990. The members of the ISG are: the Amex; the Boston Stock Exchange, Inc.; the CBOE; the Chicago Stock Exchange, Inc.; the National Association of Securities Dealers, Inc. ("NASD"); the NYSE; the Pacific Stock Exchange, Inc.; and the Philadelphia Stock Exchange, Inc. Because of potential opportunities for trading abuses involving stock index futures, stock options, and the underlying stock and the need for greater sharing of surveillance information for these potential intermarket trading abuses, the major stock index futures exchanges (*e.g.*, the Chicago Mercantile Exchange and the Chicago Board of Trade) joined the ISG as affiliate members in 1990.

[22] 15 U.S.C. 78f(b)(5)(1988).

[23] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new option proposal upon a finding that the introduction of such new derivative instrument is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. In this regard, the trading of listed Index options and full-value Index LEAPS will provide investors with a hedging vehicle that should reflect the overall movement of Israeli stocks and ADRs in the U.S. securities markets. The Commission also believes that these Index options will provide investors with a means by which to make investment decisions regarding Israeli securities traded in the U.S. securities markets, allowing them to establish positions or increase existing positions in such markets in a cost effective manner. Moreover, the Commission believes that the reduced-value Index LEAPS, which will be traded on an index computed at one-tenth the value of the Israel Index, will serve the needs of retail investors by providing them with the opportunity to use a long-term option to hedge their portfolios from long-term market moves at a reduced cost.

[24] The reduced-value Israeli Index, which is imposed of the same component securities as the Index and calculated by dividing the Index value by ten, is identical to the Israeli Index.

[25] *See supra* notes 17 through 20, and accompanying text.

[26] For an index with a significantly greater number of securities than fifteen components, the Commission might come to a different conclusion if only a few securities accounted for a significant portion of the index's weighting. Further, if an index contained only a few stocks, the Commission might question whether it can be traded as an index product.

[27] *See* Amendment No. 3, *supra* note 5.

traded on the CBOE, the Commission believes that adequate safeguards are in place to ensure the protection of investors in Israeli Index options and full-value and reduced-value Israeli Index LEAPS.

C. Surveillance

The Commission believes that a surveillance sharing agreement between an exchange proposing to list a security index derivative product and the exchange(s) trading the securities underlying the derivative product is an important measure for surveillance of the derivative and underlying securities markets. Such agreements ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the security index product less readily susceptible to manipulation.[28] In this regard, the CBOE, NYSE, Amex, and NASD are all members of the ISG, which provides for the exchange of all necessary surveillance information.[29] Further, as to present and future ADR components of the Index,[30] either the Exchange will have comprehensive surveillance sharing agreements with the primary foreign markets for the securities underlying the ADRs or the U.S. will be the relevant market for surveillance purposes.[31]

D. Market Impact

The Commission believes that the listing and trading of Israeli Index options, including full-value and reduced-value Index LEAPS, on the CBOE will not adversely impact the underlying securities markets.[32] First, as described above, for the most part, no one security or group of securities dominates the Index. Second, because at least 85% of the numerical value of the Index and at least 80% of the components of the Index must be accounted for by securities that meet the Exchange's options listing standards, and because each of the component securities must be subject to last sale reporting pursuant to Rule 11Aa3–1 of the Act,[33] the component securities generally will be actively-traded, highly-capitalized securities. Third, the 7,500 contract position and exercise limits applicable to Index options and Index LEAPS will serve to minimize potential manipulation and market impact concerns.

Lastly, the Commission believes that settling expiring Israeli Index options (including full-value and reduced-value Index LEAPS) based on the opening prices of component securities is consistent with the Act. As noted in other contexts, valuing options for exercise settlement on expiration based on opening prices rather than closing prices may help reduce adverse effects on markets for securities underlying options on the Index.[34]

The Commission finds good cause for approving Amendment Nos. 3 and 4 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, Amendment No. 3 provides that only securities that are subject to last sale reporting pursuant to Rule 11Aa3–1 of the Act and that are traded in the U.S. either on an exchange or through NASDAQ as NM securities may be added to the Index. The Commission believes that these requirements strengthen the customer protection and surveillance aspects of the proposal by ensuring that the value of the Index that is disseminated is based on the most current component pricing information and that surveillance will be facilitated through the ISG.[35] Amendment No. 4 merely substitutes two of the originally proposed components of the Index with two new components that satisfy the eligibility and maintenance criteria discussed above. As a result, the Commission believes that good cause exists for approving Amendment Nos. 3 and 4 on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 3 and 4. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the File Number SR–CBOE–93–55 and should be submitted by [insert date 21 days after the date of this publication].

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[36] that the proposed rule change (SR–CBOE–93–55), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17520 Filed 7–18–94; 8:45 am]

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[28] Securities Exchange Act Release No. 31243 (September 28, 1992), 57 FR 45849 (October 5, 1992).

[29] *See* note 21, *supra*. If the prices of the ADR components, or the composition of the Index, should change so that greater than 20% of the weight of the Index would be represented by ADRs whose underlying securities were not the subject of a comprehensive surveillance sharing agreement with the CBOE, then it would be difficult for the Commission to reach the conclusions reached in this order and the Commission would have to determine whether it would be suitable for the Exchange to continue to trade options on this Index. The CBOE should, accordingly, notify the Commission immediately if more than 20% of the numerical value of the Index is represented by ADRs whose underlying securities are not subject to a comprehensive surveillance sharing agreement. Such a change in the current relative weights of the Index or in the composition of the Index may warrant the submission of a rule filing pursuant to Section 19 of the Act. In determining whether a particular ADR is subject to a comprehensive surveillance sharing agreement *see, e.g.*, Securities Exchange Act Release Nos. 31531 (November 27, 1992), 57 FR 57250 (December 3, 1992); and 33554 (January 31, 1994), 59 FR 5622 (February 7, 1994).

[30] Presently, Teva Pharmaceuticals is the only ADR component of the Index.

[31] *See* Securities Exchange Act Release Nos. 31531 (November 27, 1992), 57 FR 57250 (December 3, 1992); and 33554 (January 31, 1994), 59 FR 5622 (February 7, 1994).

[32] In addition, the CBOE has represented that the CBOE and the OPRA have the necessary systems capacity to support those new series of index options that would result from the introduction of Index options and Index LEAPS. *See* Memorandum from Joe Corrigan, Executive Director, OPRA, to Eileen Smith, Director, Product Development, Research Department, CBOE, dated February 14, 1994.

[33] *See* Amendment No. 3, *supra* note 5.

[34] *See* Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992).

[35] *See supra* note 21.

[36] 15 U.S.C. 78s(b)(2) (1988).

[37] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 34–34363; File No. SR–NYSE 93–40]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposing Rule Change To Amend Exchange Rule 95 to Add New Intra-Day Trading Provisions

July 13, 1994.

I. Introduction

On October 28, 1993, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or

"Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rule 95 ("Discretionary Transactions") to add new intra-day trading provisions.

The proposed rule change was published for comment in Securities Exchange Act Release No. 33372 (December 23, 1993), 58 FR 69430 (December 30, 1993). Two comment letters were received on the proposal.[3] This order approves the proposed rule change.

II. Description of the Proposal

Under Exchange Rule 95, and NYSE Floor broker cannot effect a transaction if that broker has discretion regarding the choice of security to be bought or sold; the total amount of the security to be bought or sold; or whether the transaction shall be a purchase or a sale. Currently, there are no provisions, in Rule 95 or otherwise, specifically governing the practice of intra-day trading. The term "intra-day trading" refers to the practice whereby a market participant places orders on both sides of the market and attempts to garner the spread by buying at the bid and selling at the offer.

The NYSE proposes to amend Rule 95 to add new intra-day trading provisions. These provisions, as discussed below, will apply only when a Floor broker simultaneously represents, for the same account,[4] market or limit orders on both sides (*i.e.*, a buy order and a sell order) of a minimum variation market.[5]

Under the NYSE proposal, if a Floor broker acquires a position on behalf of an intra-day trader's account, Rule 95(c) will place certain restrictions on how the broker can liquidate or cover that position during the same trading session. Specifically, the broker will be required to obtain a new liquidating order (*i.e.*, one entered subsequent to the acquisition of the contra-side position) from his or her customer.[6] Thereafter, proposed Rule 95(d) will require that the Floor broker must execute the liquidating order entered pursuant to Rule 95(c) *before* he or she can execute any other order for the same account on the same side of the market as that liquidating order.[7] Neither provision of Rule 95, however, will apply to the execution of an order to liquidate or cover a position carried over from a previous trading session; a position assumed as part of a strategy relating to bona fide arbitrage; or a position assumed in reliance on the exemption for block positioners.[8]

Finally, the Exchange proposes to clarify its existing rule prohibiting members from handling discretionary transactions.[9] In particular, Paragraph 95.30 provides examples of what types of orders a broker can handle simultaneously, without violating Rule 95's prohibition against a broker choosing whether a transaction will be a purchase or a sale.

The NYSE states that the amendments to Rule 95 are intended to address trading situations where a Floor broker may be perceived as having an advantage over other market participants in that he or she may be able to trade for the same customer without leaving the Crowd. According to the NYSE, by requiring the entry of a new liquidating order, these amendments can be expected to minimize any such perceived advantage. The Exchange states that the basis under the Act for the proposed rule change is the requirement under Section 6(b)(5) that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and, in general, to protect investors and the public interest.

III. Comments Received and NYSE Response

The Commission received two comment letters on the proposed rule change, one from a public customer who trades stocks on the NYSE and another from an anonymous NYSE employee.[10] These letters raise various issues and concerns with respect to the NYSE proposal.

In his letter, Mr. Barry, the public customer, recommends that the proposed rule change be disapproved and argues that the amendments to Rule 95 are anti-competitive. The commenter provides two examples in support of his position. In the first scenario, an individual investor places buy and sell orders at the minimum variation with a "two-dollar broker;" there are no orders on the specialist's limit order book at the best bid or offer. The Barry comment letter asserts that, under the NYSE proposal, the specialist could freely buy and sell at the minimum variation for his own account, but the individual investor could not do so. According to the commenter, this is equivalent to allowing the specialist to trade ahead of public orders on the book.

In the second scenario, the commenter begins from the premise that NYSE limit order books (particularly for bond funds, which he contends are the focus of the proposed amendments to Rule 95) are dominated by large orders of other specialists. His letter states that, as a result, the public must wait behind the professionals or use two-dollar brokers. From the commenter's perspective, the NYSE proposal will allow those market participants with the most resources to continue to engage in minimum variation trading, but will force two-dollar brokers and their retail customers out of the "game" through regulation.

The Barry comment letter also argues that, if there is a problem with minimum variation trading, the practice

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] *See* letter from Daniel P. Barry to Diana Luka-Hopson, Branch Chief, Division of Market Regulation, SEC, dated November 10, 1993 ("Barry comment letter"); and anonymous letter to Diana Luka-Hopson, Branch Chief, Division of Market Regulation, SEC, received on November 18, 1993 ("anonymous comment letter").

[4] For purposes of Rule 95, the NYSE will define the term "account" to include any account in which the same person or persons is directly or indirectly interested. The NYSE has indicated that the Rule 95 amendments will not apply to a Floor broker who simultaneously represents an agency order on one side of a minimum variation market and a principal order (or an agency order for a different "account," as defined above) on the other side of the market. Telephone conversation between Donald Siemer, Director, Market Surveillance, NYSE, and Beth Stekler, Attorney, Division of Market Regulation, SEC, on March 9, 1994.

[5] NYSE Rule 62 sets forth the minimum variation permitted for securities traded on the Exchange.

[6] To obtain a new order, the Floor broker must leave the trading Crowd. The new liquidating order must be time-recorded upstairs (if initially received there) and upon receipt on the trading Floor. Telephone conversation between Donald Seimer, Director, Market Surveillance, NYSE, and Beth Stekler, Attorney, Division of Market Regulation, SEC, on March 9, 1994. The new order must be marked "BC" for a buy order to cover a short position, or "SLQ" for a sell order to liquidate a long position.

[7] Paragraph 95.20 contains the following example:

In a minimum variation market, a Floor broker simultaneously represents a 5,000 share buy order and a 5,000 share sell short order for the same account. If the broker sells 2,000 shares short, he or she must obtain a 2,000 share "BC" order to cover that position that day. Until the "BC" order has been executed, and the short position has been unwound, the broker cannot execute any part of the original 5,000 share buy order.

For discussion of exceptions to the above requirements, *see infra*, note 8 and accompanying text.

[8] Under the circumstances described above, *see supra* note 7, the broker has carried a 2,000 share short position over from a previous trading session. If the broker sells 3,000 shares short, he or she still must obtain a 3,000 share "BC" order to cover that position that day. However, in this case, 2,000 shares of the original 5,000 share buy order may be executed to cover the carry-over position. Thereafter, the "BC" order must be executed, and the short position unwound, before the broker can execute the balance of the original buy order.

[9] Telephone conversation between Brian McNamara, Managing Director, Market Surveillance, NYSE, and Beth Stekler, Attorney, Division of Market Regulation, SEC, on November 19, 1993.

[10] *See supra*, note 3.

should be restricted not only for the NYSE, but also for the third market (*i.e.*, over-the-counter trading of listed stocks) and broker-dealers who internalize their order flow. Above all, the commenter recommends that whatever restriction is imposed not single out small public investors.

Finally, the commenter questions whether the NYSE has the authority to prohibit him from entering buy and sell orders at the minimum variation, or to dictate that such orders can be placed on the specialist's book but not given to a two-dollar broker. In his opinion, the NYSE's actions create the impression that the Exchange has been influenced by political pressure from the specialist community. The commenter predicts that approval of the proposed rule change will grant specialists a monopoly on commission dollars from trades in their specialty stocks, and will allow them to dominate the limit order book in their non-specialty stocks.

The second commenter, an anonymous NYSE employee, states that the purpose of his letter is to inform the Commission of the "real story" leading up to the proposed amendments to Rule 95. According to the commenter, this story casts doubt on the effectiveness of self-regulation and Commission oversight of the self-regulatory organizations. In brief, the letter alleges that certain Exchange constituencies (*e.g.*, specialists) pressured NYSE staff and a committee of the Exchange's Board of Directors ("Board") to find a way to stop intra-day trading. The commenter suggests, among other things, that this practice has become so controversial because the specialist community is losing trading opportunities to public customers who participate when there is a market disparity, and losing commission dollars to the two-dollar brokers who execute their orders.

The anonymous comment letter notes that the Exchange staff initially drafted rules similar to the proposal before the Commission which, in the commenter's opinion, would have eliminated the two-dollar broker's (and thus the small public customer's) ability to engage in minimum variation trading, allegedly to protect the specialists' business. According to the anonymous comment letter, membership outrage forced the Exchange to withdraw its initial proposal; thereafter, NYSE staff drafted these amendments to Rule 95 and submitted them to the Commission without seeking comment from the Floor.

The NYSE responded to the issues raised by the two comment letters.[11] First, in response to Mr. Barry's concerns about the proposal's effect on public customers, the NYSE contends that the amendments to Rule 95 are not intended to preclude individual investors, or anyone else, from engaging in the practice of minimum variation trading. In this regard, the NYSE notes that no distinction is made between orders entered by individuals and those entered by so-called professionals.

According to the NYSE response letter, the proposed amendments are intended to address the perception that a Floor broker, who simultaneously represents buy and sell orders at the minimum variation for the same customer, may have an advantage over other market participants, such as individual investors, because that broker can trade on both sides of the market without leaving the Crowd. The NYSE argues that, by requiring the broker to obtain a new liquidating order, the proposed rule change should minimize any such possible advantage from the intra-day trading strategy, and thus should enhance investors' confidence in the fairness and orderliness of the Exchange market.

The NYSE letter also responds to the anonymous commentator's concerns about its internal rule development process. The NYSE states that the amendments to Rule 95 were developed by an advisory committee to the Exchange Board that included representatives from all major constituent groups. That panel's recommendations were reviewed by the Floor trading community and the appropriate constituent committees, before being approved by the Board and authorized for filing with the Commission. In the NYSE's opinion, all major constituent groups had the opportunity to contribute to the rule development process, and the proposal that was submitted to the Commission reflects a consensus among their views.

IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[12] In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.

The Commission previously has recognized that it is not inconsistent with the Act for a self-regulatory organization ("SRO") to limit certain types of trading activity in order to minimize interference with the execution of public customer orders and preserve the quality of its market.[13] The NYSE believes that intra-day trading constitutes activity that can interfere with public customer orders and present the perception of an unfairness trading advantage to larger market participants. Under current NYSE rules, orders for the account of intra-day traders can compete, often on equal footing, with orders for the account of retail investors.[14] To the extent that the public may have to share incoming order flow with intra-day traders, customer orders may, on the whole, be allotted fewer shares than they otherwise would receive.

The Commission believes that it is not unreasonable for the NYSE to be concerned about the impact of such trading on public participation in its market. Intra-day traders place orders on both sides of the market; by executing one order immediately after the other, their floor broker can garner the spread for them without ever leaving the trading crowd. The NYSE argues, and

[11] *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Sandra Sciole, Special Counsel, Division of Market Regulation, SEC, dated March 16, 1994 ("NYSE response letter").

[12] 15 U.S.C. § 78f(b) (1988).

[13] *See, e.g.*, Securities Exchange Act Releases Nos. 33678 (February 24, 1994), 59 FR 10192 (March 3, 1994) (File No. SR–NYSE–92–13) (approving NYSE proposal to identify and preclude the use of certain odd-lot trading practices, including intra-day trading, that the NYSE believes are inconsistent with the purpose of its odd-lot order execution system); and 25842 (June 23, 1988), 53 FR 24539 (June 29, 1988) (File No. SR–NYSE–87–18) (approving NYSE telephone policy which, among other things, prohibits members from using portable telephones on the Exchange floor, on the grounds that such a large time and place advantage for relatively few large investors could create a perception of unfairness or inequality).

[14] NYSE Rule 72 provides for the manner in which bids and offers at the same price will be sequenced for execution. A member who makes the first bid or offer at a particular price has "priority" at that price, which means that the member is the first one in the market entitled to receive an execution at that price. If no member can claim priority, all members who are bidding or offering at a particular price are deemed to be on "parity" with each other, or equivalent in status. When members are on parity, a member whose bid or offer is larger than other bids or offers may claim "precedence based on size" and thereby be entitled to the next execution at that price.

Accordingly, if size precedence is not invoked, orders for the account of intra-day traders (except for those orders required to yield pursuant to Section 11(a)(1)(G) of the Act and the rules thereunder) may be on parity with public customer orders.

the Commission agrees, that such "instantaneous representation" may create a perception that intra-day traders have a time and place advantage over other market participants. Such a time and place advantage has, in the past, led the Commission to place restrictions on members' floor trading.[15]

After careful review, the Commission has concluded that the NYSE proposal could minimize intra-day traders' perceived time and place advantage, thereby enhancing investors' confidence in the fairness and orderliness of the Exchange market. Under the proposed amendments to Rule 95, market participants whose conduct reasonably suggests that they are engaged in intra-day trading activity will be subject to certain new requirements. Specifically, a floor broker who acquires a position for an account, while simultaneously representing orders at the minimum variation for that same account, will be required to obtain a new order to liquidate or cover that position during that trading session. This, in effect, forces the broker to leave the trading Crowd and re-establish contact with the customer, thus ending the broker's continuous representation of orders at the trading post. This extra responsibility will dampen the ability of floor brokers to represent two-sided orders of intra-day traders.

The Commission agrees with the NYSE that this restriction will lessen the perception that professionals or institutional participants have a large time and place advantage over small public customers. Intra-day trading in a strategy employed by professionals or sophisticared traders. Intra-day orders can crowd-out small customer limit orders and delay or prevent their execution. This provides the perception that public customer orders are being disadvantaged by the time and place advantage of intra-day traders. By lessening this advantage, the NYSE proposal should increase public confidence in the market.

The Commission also notes that the NYSE proposal is very limited in scope. It does not prohibit any market participant from engaging in minimum variation trading. Rather, the amendments to Rule 95 are narrowly drafted to ensure that market participants are not receiving an undue advantage from the method in which they engage in such trading activity.

Moreover, in the Commission's opinion, the NYSE proposal contains sufficient safeguards to ensure that the new requirements will not impinge upon bona fide short-term trading strategies. In this regard, the Commission notes that these provisions of Rule 95 will not apply in certain situation where orders have been placed on both sides of a minimum variation market for purposes unrelated to intra-day trading.[16]

Similarly, the Commission believes that Paragraph 95.30, by providing specific examples of the types of orders a Floor broker may, and may not, represent simultaneously, will clarify the NYSE's policy regarding discretionary transactions. In the Commission's opinion, this should facilitate the Exchange's efforts to detect and deter violations of Rule 95.

Finally, the Commission does not agree with the commenters' arguments in opposition to the proposed rule change. As part of its review of the NYSE proposal, the Commission specifically evaluated the possible effects on small public customer orders. The Commission is not persuaded that the amendments to Rule 95 were intended to disadvantage public customers. In fact, the opposite is the case. As a practical matter, public customers will be a main beneficiary if the Rule 95 amendments successfully enhances the perception of fairness of the Exchange market and the ability of public customer limit orders to be executed.

In regard to the comment letters' allegations about the influence certain Exchange constituencies may have exerted on the rule development process, the Commission is satisfied with the NYSE's response.[17] In light of the Exchange's representations and all available facts, the Commission has no basis to conclude that the NYSE did not follow proper procedures in the development, approval and submission of the proposed rule change.

In sum, although the Commission recognizes that there may be a variety of approaches to address the concerns raised by intraday trading, the Commission believes that the proposed rule change adequately balances the needs of market participants to effectuate their trading strategies unhampered, with concerns about the potential for certain market participants to have unfair time and place advantages by using Floor brokers to garner the spread in minimum variation markets. For these reasons, as discussed more fully above, the Commission finds that the new intra-day trading provisions of Rule 95 are consistent with the Act in that they will further the protection of investors and the public interest and will remove impediments to and perfect the mechanism of a free and open market.

V. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change (SR–NYSE–93–40) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34–34351; International Series Release No. 680; File No. SR–OCC–94–05]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Inverse Foreign Currency Options and Inverse Cross-rate Foreign Currency Options

July 12, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 13, 1994, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to accommodate within OCC's existing By-Laws and Rules the clearance and settlement of inverse foreign currency options and inverse cross-rate foreign currency options.

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[15] *See, e.g.*, SEC Rule 11a1–1(T).

[16] *See, e.g.*, note 8 and accompanying test.

[17] In particular, the Commission has not been persuaded by the commenters' allegations regarding the NYSE's motives for allowing specialists to continue to garner the bid-ask spread. Specialists differ from intra-day traders in two respects. First, specialists are under a continuous obligation to maintain fair and orderly markets and are subject to affirmative and negative market making responsibilities. Their ability to quote a two-sided market is integral to their market making function. Second, they are required to yield to public customer orders in all circumstances.

[18] 15 U.S.C. 78s(b)(2) (1988).

[19] 17 CFR 200.30–3(a)(12) (1991).

[1] 15 U.S.C. 78s (1988).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to accommodate within OCC's existing By-Laws and Rules the clearance and settlement of inverse foreign currency and cross-rate foreign currency options proposed for trading by the Philadelphia Stock Exchange ("PHLX").[2] Trading in these inverse foreign currency and cross-rate foreign currency options will be offered through the PHLX's customized option facility.

As explained in the PHLX proposal, existing foreign currency option contracts are quoted in U.S. dollars ("USDs"), premium is paid in USDs, and the foreign currency is delivered upon exercise. The proposed inverse foreign currency option contracts will be quoted in the foreign currency, premium will be paid in the foreign currency, and U.S. dollars will be delivered upon exercise. For instance, the existing French franc ("FF")/USD foreign currency option contract is quoted in USD, premium is paid in USD, and FF are delivered upon exercise. Whereas the inverse USD/FF contract will be quoted in FF, the premium will be paid in FF, and USD will be delivered upon exercise.

The proposed inverse cross-rate foreign currency option contract will be the inverse of existing cross-rate foreign currency option contracts. For instance, the existing Deutsche mark ("DM")/Japanese Yen ("JY") contract is quoted in JY, premium is paid in JY, and DM are delivered upon exercise. Whereas the inverse contract, the JY/DM contract, will be quoted in DM, premium will be paid in DM, and JY will be the deliverable currency. The other inverse cross-rate foreign currency contracts will be the DM/British pound ("BP") and the JY/BP contracts.

From a clearance and settlement perspective, inverse foreign currency and cross-rate foreign currency options will be processed and margined like existing foreign currency and cross-rate foreign currency option contracts and in accordance with existing banking arrangements. Accordingly, only a few of OCC's By-Laws and Rules need to be adjusted to accommodate inverse foreign currency options and inverse cross-rate foreign currency options. A description of those proposed changes follows.

A definition of currency is being added to Article I, Section 1 ("Definitions") of OCC's By-Laws. The proposed definition of currency will include any standard unit of the official medium of exchange of a sovereign government including the European Currency Unit ("ECU"). The addition of the term currency is necessary in order to clarify that with the addition of inverse contracts the price quote, the premium to be paid, and the deliverable or underlying currency for a foreign currency option contract will in some cases be in terms of USDs and in other cases will be in terms of a foreign currency. For example, existing foreign currency options are quoted in USDs, premium is paid in USDs, and a foreign currency is the deliverable or underlying currency. Whereas in the case of inverse foreign currency options, the price will be quoted in a foreign currency, premium will be paid in a foreign currency, and USDs will be the underlying or deliverable currency. Accordingly, where appropriate, references to foreign currency in OCC's By-Laws and Rules as the deliverable or the underlying currency for a foreign currency option contract and references to USDs as the trading currency for a foreign currency option contract are in many cases being changed to the more general term currency. Other references to foreign currency or to USDs are being changed, where appropriate, to the more generic terms trading currency, underlying currency, price, or settlement amount.

The term trading currency in Article I, Section 1 of OCC's By-Laws is being amended. The amended definition of trading currency will be the currency (*i.e.*, rather than the foreign currency) in which premium and/or exercise prices are denominated for a class of foreign currency options or cross-rate foreign currency options. The proposed changes will clarify that the two components of the trading currency, the premium and the exercise price, may be either a foreign currency or USDs. Because PHLX is proposing to offer percentage quoting for all customized foreign currency options, the premium and the exercise price will not longer always be in the same currency. In addition, the term trading currency is being deleted from Article XX ("Cross-Rate Foreign Currency Options"), Section 1 of OCC's By-Laws because that term will be defined in Article I, Section 1. A definition of underlying currency also is being added to Article I, Section 1, and is being deleted from the Definition Sections of Article XV ("Foreign Currency Options") and Article XX.

A definition of settlement time is being added to the Definition Section of Article XV. In order to accommodate inverse foreign currency options, such definition will distinguish between the settlement time for foreign currency options settling in the United States and foreign currency options settling outside the United States. Specifically, foreign currency options setting in the United States will settle at 9:00 A.M. Central Time (10:00 A.M. Eastern Time) on the first business day immediately following the day on which OCC receives a report of a matched trade with respect to such transaction from the exchange on which such transaction was effected. Foreign currency options settling outside the United States will settle at 11:00 A.M. local time in the country of origin of the trading currency or at such other time as OCC may specify on the first foreign business day in that country immediately following the day on which OCC receives a report of a matched trade with respect to such transaction from the exchange on which such transaction was effected. Because of this difference in settlement times, the definition of settlement time in Article I, Section 1 is being amended to clarify that such time does not apply to foreign currency option settling outside the United States.

The definition of the term class of options in the Definitions Sections of Article XV and Article XXII ("Cash-Settled Foreign Currency Options") is being amended to provide that with respect to foreign currency and cash-settled foreign currency options, a class of options means all option contracts of the same type and style covering the same underlying currency and having the same unit of trading and the same trading currency. Under this amended definition, existing foreign currency contracts covering the same underlying foreign currency will be in one class, and the inverse contracts, which will have a different trading currency, will be in another class. For example, all USD/FF contracts will be in one class of options, and all FF/USD contracts will be in another class.

[2] For a description of the PHLX proposed rule change, refer to Securities Exchange Act Release No. 34308 (July 5, 1994), 59 FR 35551, [File No. SR-PHLX-94-18] (notice of filing of proposed rule change).

Language respecting the netting scheme for foreign currency option settlement obligations in Rule 1605 ("Allocation of Exercise Settlement Obligations With Respect to Foreign Currency Options") is being amended to accommodate inverse foreign currency options. Specifically, the proposed changes to Rule 1605(a)(2) will clarify that netting will first occur within the same class of options (as is currently done). However, in accordance with the proposed modifications to the definition of class of options in order to be in the same class the options must have the same trading currency in addition to being of the same type and covering the same unit of trading of the same currency. The proposed changes to Rule 1605(a)(3) will clarify that following the netting of settlement obligations within a class, netting will occur across classes (as is currently done) of foreign currency and inverse foreign currency options.

The Introduction to Chapter XVI, which governs foreign currency options, is being amended to clarify that with the introduction of inverse foreign currency options, the rules of that chapter will be applicable only to option contracts where either the trading currency or the underlying security is a foreign currency and the other side of the contract is USDs. Likewise, the Introduction to Chapter XXIII, which governs cash-settled foreign currency options, is being amended to clarify that with the introduction of inverse options, the rules of that chapter will be applicable only to cash-settled option contracts where either the trading currency or the underlying security is a foreign currency. Finally, the Introduction to Chapter XXI, which governs cross-rate foreign currency options, is being amended to clarify that with the commencement of percentage quoting, premium and exercise prices of cross-rate foreign currency options will not always be in the same currency.

The proposed rule change is consistent with the purposes and the requirements of Section 17A of the Securities Exchange Act of 1934, as amended, because it will provide for the prompt and accurate settlement of transactions in inverse foreign currency and cross-rate foreign currency options and will provide for the safeguarding of related securities and funds. The proposed rule change meets such requirements by establishing a framework in which existing, reliable OCC systems, rules, and procedures will be extended to the processing of such inverse options.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approved the proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization.

All submissions should refer to File No. SR–OCC–94–05 and should be submitted by August 9, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34–34364; File No. SR–PSE–93–13]

Self-Regulatory Organizations; Order Approving and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 2 and 3 to a Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to Flexible Exchange Options ("FLEX Options") on the Wilshire Small Cap Index and the PSE Technology Index

July 13, 1994.

I. Introduction

On June 21, 1993, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposal to list and trade large-size, customized index options, referred to as Flexible Exchange Options ("FLEX Options") based on the Wilshire Small Cap Index ("Wilshire Index") and the PSE Technology Index ("Technology Index"). On October 1, 1993, the PSE filed Amendment No. 1 to the proposed rule change.[3] Notice of the proposed rule change and Amendment No. 1 were published for comment in the **Federal Register** on November 1, 1993.[4] On February 7, 1994, the PSE filed Amendment No. 2 to the proposed rule change.[5] On May 26, 1994, the PSE filed

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1991).

[3] In Amendment No. 1, the PSE proposes: (1) to reduce the proposed position limits for FLEX Options to 200,000 contracts on the same side of the market; (2) that the proposal be approved as a three-year pilot program; (3) to submit a monitoring report to the Commission after the first year of trading FLEX Options on the Exchange; (4) provide that the Exchange will use its best efforts to assure that bids and offers will be in compliance with Section 11(a) of the Act; (5) establish the trading hours for FLEX Options; (6) specify the permissible averaging methods for calculating exercise settlement values; and (7) establish the range for Request Response Times between 10 and 30 minutes. *See* Letter from Michael Pierson, Senior Attorney, PSE, to Jeffrey Burns, Attorney, Office of Market Supervision ("OMS"), Division of Market Regulation ("Division"), Commission, dated September 28, 1993 ("Amendment No. 1").

[4] *See* Securities Exchange Act Release No. 33100 (October 25, 1993), 58 FR 56368 (November 1, 1993).

[5] Amendment No. 2 adds Rule 7.50(a)(1), which specifies the indexes on which FLEX Options have

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Amendment No. 3 to the proposed rule change.[6] This order approves the proposal, as amended.

II. Background

The purpose of the PSE's FLEX Option proposal is to provide a framework for the Exchange to list and trade index options that give investors the ability, within specified limits, to designate certain of the terms of the options. The PSE is currently proposing to trade FLEX Options only on the Wilshire and Technology Indexes. In recent years, an over-the-counter ("OTC") market in customized index options has developed which permits participants to designate the basic terms of the options, including size, term to expiration, exercise style, exercise price, and exercise settlement value, in order to meet their individual investment needs. Participants in this OTC market are typically institutional investors, who buy and sell options in large-size transactions[7] through a relatively small number of securities dealers. The Exchange believes FLEX Options will help it compete with this growing OTC market in customized index options. In particular, the PSE's proposal will allow FLEX Option market participants to designate the following FLEX Option contract terms: (1) exercise price; (2) exercise style (*i.e.*, American,[8] European,[9] or capped);[10] (3) expiration date;[11] (4) option type (*i.e.*, put, call, or spread); and (5) form of settlement (*i.e.*, a.m.-settlement v. p.m.-settlement).

The PSE believes that market participants will benefit from the trading of FLEX Options in several ways, including, but not limited to: (1) enhanced efficiency in initiating and closing out positions; (2) increased market transparency; and (3) heightened contra-party creditworthiness due to the role of the Options Clearing Corporation ("OCC") as issuer and guarantor of FLEX Options.[12]

III. Description of the Proposal

Transactions in FLEX Options traded on the PSE generally will be subject to the same rules that presently apply to the trading of PSE index options.[13] In order, however, to provide investors with the flexibility to designate certain of the terms of the options and to accommodate other special features of FLEX Options and the way in which they are traded, the PSE has proposed several new rules.

The princpal rules proposed by the PSE that are uniquely applicable to the FLEX Option market include a rule containing new definitions (Rule 7.50(b)), a rule regarding hours of trading FLEX Options (Rule 7.51(a)), a special rule regarding trading rotations (Rule 7.51(b)), rules setting forth the special terms of FLEX Option contracts and certain special pieces of information that must be included in FLEX Option Requests for Quotes and Responsive Quotes (Rule 7.52), rules prescribing the mechanics of initiating a FLEX Option Request for Quotes and bidding and offering in response thereto, rules setting forth the principles applicable to the formation of binding FLEX Option contracts, rules defining the applicable priority principles (Rules 7.53(e)), special position limit and exercise limit rules (Rues 7.55 and 7.56), special FLEX Option market maker appointment rules (Rule 7.57), and special market maker and floor broker capital and letter of guarantee rules (Rules 7.59(a), (b), and (c)). Discussion of each of these rules follows.

Proposed Rule 7.50(b) adopts nomenclature uniquely tailored to fit the special characteristics of FLEX Options and the FLEX Option market. For example, the term "Request Response Time" refers to the time interval, set by the submitting member in its Request for Quotes, during which responsive bidding and offering is to take place.[14] Similarly, the term "FLEX Quote" has both its usual connotation—market maker bids and offers—and a new connotation—floor brokers' orders to purchase and orders to sell—that is necessary in view of the unique mechanics of the FLEX Option exchange auction.

Proposed Rule 7.51(a) provides that FLEX Option trading will commence at 7 a.m. Pacific Time, one-half hour later than the opening time currently set for the trading of regular index options, and, will conclude at 1:15 p.m. Pacific Time, the existing close of trading at the Exchange for regular index options. The Exchange may, from time to time, determine to amend the trading hours set for FLEX Options.[15] As a complementary rule uniquely applicable to FLEX Options, Proposed Rule 7.51(b) specifies that there will be no trading rotations in FLEX Options, either at the opening or at the close of trading.

Proposed Rule 7.52 specifies the term elements and other informational ingredients that must be included in Requests for Quotes, FLEX Quotes submitted in response to such requests,

been approved for trading by the Exchange. *See* Letter from Michael Pierson, Senior Attorney, PSE, to Sharon Lawson, Assistant Director, OMS, Division, Commission, dated February 7, 1994.

[6] In Amendment No. 3, the PSE proposes to: (1) define the term "Market Maker" to include lead market makers; (2) provide that the automatic executive system shall not be available for transactions in FLEX Options; (3) provide that PSE Rules 6.76 (Priority on Split Price Transactions) and 6.80 (Accommodation Transactions) shall not apply to transactions in FLEX Options; (4) state in the language of the rule that all transactions must be in compliance with Section 11(a) of the Act; (5) provide, in certain circumstances, for aggregation of p.m.-settled FLEX Options with positions in quarterly index expiration options on the same index; (6) clarify that the position limits for FLEX Options are limited to 200,000 contracts on the same side of the market; (7) provide minimum financial requirements for floor brokers of at least $100,000 in net liquidating equity in order to effect transactions in FLEX Options; and (8) provide that floor brokers effecting transactions in FLEX Options must be issued one or more Letters of Authorization by a clearing member accepting responsibility for the clearance of FLEX Options transactions of the floor broker. *See* Letter from Michael Pierson, Senior Attorney, PSE, to Brad Ritter, Attorney, OMS, Division, Commission, dated May 26, 1994 ("Amendment No. 3").

[7] Large size in this context is intended to mean options having an underlying contract value equal to or greater than $1 million.

[8] An American-style index option is one that may be exercised at any time on or before the expiration date.

[9] A European-style index option is one that may be exercised only during a limited period of time prior to expiration of the option.

[10] A capped-style index option is one of that is exercised automatically prior to expiration when the cap price is less than or equal to the closing index value for calls or when the cap price is greater than or equal to the closing index value for puts.

[11] The FLEX Options proposal, however, requires that the expiration dates for FLEX Options be at least three business days away from the expiration dates for existing listed options in order to protect against possible market disruptions that may otherwise result from the concurrent expiration of existing listed non-FLEX index options and FLEX Options.

[12] The Commission has designated FLEX Options as standardized options for purposes of the options disclosure framework established under Rule 9b–1 of the Act. *See* Securities Exchange Act Release No. 31919 (February 24, 1993), 58 FR 12286 (March 3, 1993) ("9b–1 Order"). As described in note 33 *infra*, and for the same reasons stated in the 9b–1 Order, Wilshire and Technology Index FLEX Options are deemed "standardized options" for purposes of the Rule 9b–1 options disclosure framework.

[13] *See PSE Rule 7.*

[14] The "Request Response Time" is intended by the Exchange to initially be set at a minimum of 10 minutes and a maximum of 30 minutes. *See* Amendment No. 1, *supra* note 3.

[15] Specifically, the PSE proposes to implement the hours of trading for FLEX Options as follows: (1) initial hours of FLEX trading will be 7 a.m.—1:15 p.m. (Pacific Time); (2) FLEX trading hours may be altered at the discretion of the Exchange by 15 minutes or less so long as the change does not extend trading beyond the normal PSE business hours of 6:30 a.m.—1:15 p.m. (Pacific Time); (3) FLEX trading hours that are altered by more than 15 minutes but remain within normal business hours must be submitted by the Exchange to the Commission in a Section 19(b)(3)(A) filing; (4) FLEX trading hours extended beyond the PSE's normal business hours must be submitted to the Commission for approval pursuant to Section 19(b)(2); and (5) the Exchange will provide adequate advance notification to its members and member organizations of such changes in FLEX trading hours. *id.*

and, ultimately, FLEX Option contracts that are the product of FLEX Option trading. As paragraph (b) of this proposed rule indicates, the content of certain terms of each FLEX Option contract is to be determined by the parties of the contract. Other terms, such as the level of the index multiplier and the nature of the rights and obligations of FLEX Option purchasers and sellers, are the same for FLEX Options as for regular index options.

More specifically, Paragraph (b) of Proposed Rule 7.52 specifies the term elements that a submitting member must include in its Request for Quotes and indicates the alternatives available for each term. Under this paragraph, a submitting member must designate, among other terms, the day, month, and year of the FLEX Option's expiration, subject to certain limitations designed to avoid the overlap of FLEX Option expirations with expirations of regular index options.[16] To further ensure against any adverse market impact, expirations for FLEX Options may not fall within 3 business days (before or after) of conventional options expirations (generally, the third Friday of the month). Similarly, a submitting member must identify the exercise price[17] and the exercise settlement value[18] of the FLEX Option, and those variable FLEX Option terms must fit within stated parameters.

Paragraph (c) of this proposed rule lists certain additional categories of information that must be addressed by the submitting member in its Request for Quotes. In particular, under this paragraph a submitting member must indicate the type and form of quote sought, the length of the Request Response Time (*i.e.*, the time interval during which FLEX Option-participating members may enter quotes responsive to the request), and the submitting member's intention, if any, to cross a customer order or act as principal with respect to any part of the FLEX Option trade.

Finally, paragraph (d) of this proposed rule specifies the maximum term and the minimum value size of any FLEX Option contract and provides that the term and size may be set, within the stated limits, at the discretion of the submitting member or the quoting party, as applicable. Under this paragraph, the maximum FLEX Option term is five years; the minimum value size (*i.e.*, the aggregate underlying dollar value that is the subject of the option) for a FLEX Request for Quotes is $10 million in an opening transaction in a new FLEX Option series and $1 million in an opening or closing transaction in any currently-opened FLEX Option series (or less in a closing transaction where the remaining underlying value is less than $1 million); and the minimum value size for quotes of market makers in response to a Request for Quotes is $1 million or any lesser amount reflected in a Request for Quotes (except that market makers appointed to FLEX Options on the underlying index that is the subject of the Request for Quotes must be prepared to respond to a Request for Quotes in a size of at least $10 million underlying value or the dollar amount indicated in the Request for Quote, whichever is less).

These provisions, collectively, provide investors and FLEX Option-participating members with significant latitude in structuring the terms of FLEX Options contracts. The Exchange believes that such latitude is both important and necessary to the Exchange's effort to create a product and a market that provides members and investors interested in FLEX Options with an improved but comparable alternative to the OTC options market. To enable the efficient, centralized clearance and active secondary trading of opened FLEX Options, however, the extent of variability in structuring FLEX Options is necessarily limited. Only certain terms are subject to flexible structuring by the parties to FLEX Option transactions, and most of such terms have a specified number of alternative configurations. In addition to the specified term alternatives indicated above, FLEX Options will be limited to transactions on the Wilshire and Technology Indexes (Rule 750(a)(1)) and shall be denominated for settlement in cash in U.S. dollars only (Rule 7.52(e)).

Proposed Rule 7.53 prescribes in some detail the mechanics of submitting Requests for Quotes and entering responsive bids and offers. These mechanics, described below, are designed to create a modified auction that takes into account the relatively small number of transactions that are lively to occur in this institutional, large-size market, while at the same time providing the FLEX Option market with the price improvement and transparency benefits of competitive Exchange floor bidding and offering, as compared with the OTC market.[19] Proposed Rule 7.53 establishes time and price priority principles and contains special rules respecting the bidding and offering process and the method of allocating trades in instances in which the submitting member expresses an intention to cross or act as principal on a Request for Quotes. These proposed rules are designed to promote active bidding and offering that will generate the best price available, while also providing incentives to market makers appointed to FLEX Options, floor brokers, other floor participants, and upstairs firms alike to participate in the FLEX Option market.

In particular, paragraphs (a) and (b) of proposed Rule 7.53 indicate that the FLEX Option bidding and offering process is initiated once a submitting member has supplied a Request for Quotes in proper form and the terms and specifications of the Request for Quotes are disseminated at the post and over FLEX Option communications facilities. Thereafter, FLEX Quotes in proper form may be entered, modified, or withdrawn (subject to special limitations imposed on appointed market makers) by public outcry at any time during the Request Response Time. The length of the Request Response Time, which must fall within time parameters to be set by the Exchange, is to be specified in the Request for Quotes. At the expiration of the Request Response Time, the FLEX Post Official will determine the best bid and/or offer ("BBO").

Proposed paragraph (c) of Rule 7.53 provides that the BBO will be displayed at the post and over communication facilities and, at that point, or after further bidding and offering that occurs in certain specified circumstances the submitting member will have the opportunity to accept or reject the BBO. The submitting member, however, has no obligation to accept the BBO. Thus, whenever the BBO is rejected the Request for Quotes expires, although FLEX Option-participating members other than the submitting member may accept the unfilled balance of the BBO. Similarly, whenever the BBO is accepted, the transaction (or transactions) will be executed in accordance with the crossing principles

[16] *See* Securities Exchange Act Release No. 33700 (March 2, 1994), 59 FR 11342 (March 10, 1994) (order approving quarterly index expiration options on Wilshire Index).

[17] Specifically, exercise prices can be determined in reference to (a) a specific index value number, (b) a method for fixing such a number at the time a FLEX Quote is accepted, (c) a percentage of index value calculated as of the open or close of trading on the Exchange on the trade date, or (d) the cap interval in the case of capped-style options.

[18] The Exchange proposes that the averaging parameters will be limited to three alternatives: the average of the opening and closing index values; the average of the intra-day high and low index values; values; and the average of the opening, closing, and intra-day high and low index values. *See* Amendment No. 1, *supra* note 3.

[19] All FLEX Option transactions must be in compliance with Section 11(a) of the At and the rules thereunder. *See* Amendment No. 3, *supra* note 6.

and priority principles set forth in paragraph (e) of proposed Rule 7.53, although, again, FLEX Option-participating members may accept any unfilled balance of the BBO.

Proposed Rule 7.55 states position limits that will be unique to FLEX Options.[20] Specifically, the PSE is proposing that FLEX Options will be subject to a maximum limit of 200,000 contracts on the same side of the market on a given underlying index, without aggregation for other contracts on the same index with one exception. Under the proposal members must, at the close of business two days prior to the last day of trading of the calendar quarter, aggregate positions in p.m.-settled FLEX Options on the Wilshire Index with quarterly expiration index options ("QIXs") with the same expiration date and those positions may not exceed the QIX limits specified in Rule 7.6(d)(2) (*i.e.*, 37,500 contracts on the same side of the market in the case of QIX options on the Wilshire Index).[21] In this case, the applicable hedge exemptions under Rule 7.6 may be applied to the aggregate positions.[22]

Proposed Rule 7.57 provides for separate appointments of market makers to FLEX Options, although the appointment process will be essentially the same as appointments to other options. This rule further provides that appointed market makers will have an affirmative obligation to quote in a size of at least $10 million in response to every Request for Quotes on a FLEX Option on an index to which the market maker is appointed. Such quotes must be firm, unless modified or withdrawn prior to the end of the Request Response Time, for the duration of the Request Response Time and, if applicable, the BBO Improvement Interval. As noted earlier, market makers have no obligation to maintain continuous quotes or to quote a minimum spread, and quotes expire at the end of each FLEX Option bidding and offering period.

Proposed Rules 7.59(a)–(c) set minimum financial requirements for market makers trading or appointed to FLEX Options. The financial minimums stated in proposed Rules 7.59(a) and (b) are unique to FLEX Options.

Specifically, proposed Rule 7.59(a) requires every market maker approved to effect transactions in FLEX Options to maintain at least $100,000 in net liquidating equity in any FLEX Option trading account with each given clearing member. Similarly, proposed Rule 7.59(b)(2) requires every floor broker eligible to effect FLEX Option transactions to maintain at least $100,000 in net liquidating equity in any FLEX Option trading account with each given clearing member. The Exchange believes that these stated minimums provide an adequate and suitable financial floor for FLEX Options trading activity without unduly restricting access to these markets.

Proposed Rule 7.59(b) requires FLEX Option-appointed market makers to maintain at least $1 million in net liquidating equity or net capital, as applicable. Again, although this minimum requirement is unique to FLEX Options, the Exchange believes that it represents a suitable and adequate financial floor for FLEX Option-appointed market makers undertaking the substantial FLEX Quote responsibility.

Proposed Rule 7.59(c) extends the general letter of guarantee requirement under existing Exchange Rule 6.36(a) to FLEX Option market makers and FLEX Options floor brokers, thereby subjecting them to a focused credit worthiness review by their clearing members. The review and issuance requirement imposed under proposed Rule 7.59(c) substantially supplements the independent financial requirements of proposed Rules 7.59(a) and (b).[23]

IV. Discussion

The Commission believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Sections 6(b)(5)[24] and 11A.[25] In particular, the Commission believes that the proposed rule change is designed to provide investors with a tailored or customized product for broad-based indexes currently traded on the Exchange that may be more suitable to their investment needs than other outstanding FLEX Options.[26] Moreover, consistent with Section 11A, the proposal should encourage fair competition among brokers and dealers and exchange markets, by allowing the PSE to compete with the growing OTC market in customized index options.

For instance, as noted by the PSE, the OTC market in customized index options has developed, in part, to meet the needs of institutional investors who require increased flexibility for the purpose of satisfying particular investment objectives that could not be met by existing standardized exchange markets in options. Accordingly, the Commission believes the PSE proposal is a reasonable response by the Exchange to meet the demands of sophisticated portfolio managers and other institutional investors who are increasingly using the OTC market in order to satisfy their hedging needs, and will thereby promote competition among these markets.

In addition, the Commission believes that the PSE proposal will help to promote the maintenance of a fair a orderly market, consistent with Sections 6(b)(5) and 11A of the Act, because the purpose of the proposal is to extend the benefits of a listed, exchange market in Wilshire Index and Technology Index options that have certain terms varied by the particular investor. The attributes of the Exchange's options market versus an OTC market include, but are not limited to, a centralized market center, an auction market with posted transparent market quotations and transaction reporting, standardized contract specifications, parameters and procedures for clearance and settlement, and the guarantee of OCC for all contracts traded on the Exchange.

In general, transactions in FLEX Options will be subject to many of the same rules that apply to index options traded on the PSE. In order to provide investors with the flexibility to designate terms of the options and accommodate the special trading of FLEX Options, however, several new rules will apply solely to FLEX Options.

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[20] Proposed Rule 7.56 establishes exercise limit provisions that correspond to the position limits prescribed in proposed Rule 7.55.

[21] QIX options have not been approved for trading on the Technology Index.

[22] Under the proposal, FLEX Options would be listed for trading by the Exchange on a three-year pilot, during or following which adjustments may be required. In addition, among other things, the PSE has stated that it will monitor the effect of the position limits at the end of the first year of trading and provide the Commission with a report concerning the adequacy of the limits and its effects on the underlying cash market. *See*, Amendment No. 1 *supra* note 3.

[23] The proposed rule changes include the following changes as well as the changes discussed in the text. Proposed Rule 7.54 enables a Floor Broker to exercise discretion with respect to the number of FLEX Option contracts to be purchased or sold (notwithstanding contrary limitations in Rule 6.48) in view of the special features that will be associated with FLEX Option bidding and offering. Finally, proposed Rule 7.58 establishes a new class of Exchange employee (a FLEX Post Official) and sets forth the FLEX Post Official's special duties.

[24] 15 U.S.C. 78f(b)(5) (1982).

[25] 15 U.S.C. 78k–1 (1982).

[26] The Chicago Board Options Exchange, Inc. ("CBOE") trades FLEX Options based on the S&P 100, S&P 500, and Russell 2000 stock indexes. *See* Securities Exchange Act Release Nos. 31920 (February 24, 1993), 58 FR 12280 (March 3, 1993); and 32694 (July 29, 1993), 58 FR 41814 (August 5, 1993). The American Stock Exchange, Inc. ("AMEX") trades FLEX Options based on the Major Market, Institutional, and S&P MidCap 400 indexes. *See* Securities Exchange Act Release No. 32781 (August 20, 1993), 58 FR 45360 (August 27, 1993).

Due to the customized nature of these options, FLEX Options will not have trading rotations at either the opening or closing of trading. In addition, the auction process outlined above in proposed Rule 7.53 sets forth a procedure of customized negotiation for those investors seeking particular flexibility in setting certain options terms.[27] Accordingly, the PSE proposed rules specific to FLEX Options vary from the traditional procedure for trading regular index options.

The Commission believes that the FLEX Option auction process, as outlined in PSE's proposal, appears reasonably designed to provide the benefits of an Exchange auction environment for Wilshire and Technology Index options with features of a negotiated transaction between investors. The Commission recognizes that PSE's proposal marks, in many respects, an experiment in trading option contracts of substantial value, for which continuous quotation may be difficult to sustain. Accordingly, PSE has established procedures for quotes upon request, which must then be firm for a designated period and which will be disseminated through the Options Price Reporting Authority ("OPRA").

The Commission notes that FLEX Options based on the Wilshire and Technology Indexes can be constructed with expiration exercise settlement based on the closing values of the component securities, which could potentially result in adverse effects for the markets in these securities.[28] Although the Commission continues to believe that basing the settlement of index products on opening as opposed to closing prices on Expiration Friday helps alleviate stock market volatility,[29] these concerns are reduced in the case of FLEX Options because expiration of these stock index options will not correspond to the normal expiration of stock index options, stock index futures, and options on stock index futures. In particular, FLEX Options will never expire on an "Expiration Friday" or any other "Expiration Fridays" in March, June, September and December, thereby diminishing the impact that FLEX Options could have on the market.

Also, as noted above, the proposal would limit the effect on securities markets by addressing the relationship between FLEX Options and QIXs. As proposed, PSE Rule 7.55(c) requires P.M.-settled FLEX Options to be aggregated with QIXs that are based on the same index and have the same expiration date. In such a case, the FLEX Options would be aggregated two days prior to expiration subject to the lower position limits of 37,500 contracts for QIX options on the Wilshire Index. The Commission believes that these rules should help prevent an investor for using FLEX Options for the purpose of avoiding the position limits applicable to QIXs.

Nevertheless, because the position limits for FLEX Options are much higher than those currently existing for outstanding exchange-traded index options and open interest in one or more FLEX Option series could grow to significant exposure levels, the Commission cannot rule out the potential for adverse effects on the securities markets for the component securities underlying FLEX Option stock indices. The PSE has taken several steps to address this concern, including establishing the proposed FLEX Options as a three-year pilot and undertaking to monitor open interest, position limit compliance and potential adverse market effects carefully and to report to the Commission after one year's experience trading FLEX Options.[30] That report will include, among other things:

- The type of strategies used by FLEX Options market participants and whether FLEX Options are being used, in lieu of existing standardized stock index options.
- The type of market participants using FLEX Options.
- The terms which are predominantly being "flexed" by market participants, *i.e.*, strike prices, settlement value (A.M. v. P.M.), term of duration, European v. American style.
- The size of the FLEX Option position on average, the size of the largest FLEX Option positions on any given day and size of the largest FLEX Option position held by any single customer/member.
- The relationship between strike prices and current index value.
- Whether there is significant interest in long-term expirations greater than nine months.
- Any effect FLEX Option positions have had on the underlying cash market, including an analysis of FLEX Option positions and their market impact on days Rule 80A of the New York Stock Exchange is invoked.

In addition, the Commission expects the PSE to monitor the actual effect of FLEX Options once trading commences and take prompt action (including timely communication with marketplace self-regulatory organizations responsible for oversight of trading in component stocks) should any anticipated adverse market effects develop.

Lastly, based on representations from the PSE, the Commission believes that the PSE and OPRA will have adequate systems processing capacity to accommodate the additional options listed in connection with FLEX Options Specifically, the Exchange represents that PSE and OPRA have the necessary systems capacity to support the new series which could result from introduction of FLEX Options.[31]

The Commission finds good cause for approving Amendment Nos. 2 and 3 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Amendment No. 2 merely proposes to include in the PSE's rules applicable to FLEX Options those particular broad-based indexes on which FLEX Options have been approved for trading. The Commission believes this will serve to minimize investor confusion. Amendment No. 3 to the proposed rule change makes several clarifying amendments and other changes designed to conform the PSE's rules regarding FLEX Options to those rules approved for the listing and trading of FLEX Options by the CBOE and the Amex,[32] which to the Commission's knowledge, have not resulted in any problems. Accordingly, for the reasons discussed herein, the Commission believes that the changes contained in Amendment No. 3 strengthen the PSE's proposal and thus will help to promote the maintenance of a fair and orderly market.

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 2 and 3. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the

[27] A submitting member (the Exchange member that initiates the FLEX Option auction process by submitting a request for quotes) is under no obligation to accept any FLEX Option bid or offer, even if it is the BBO. *See*, Proposed PSE Rule 7.53.

[28] *See, e.g.*, Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992).

[29] *Id.*

[30] *See* Amendment No. 1, *supra* note 3.

[31] *See* Letter from Michael Pierson, Senior Attorney, Market Regulation, PSE, to Brad Ritter, Attorney, OMS, Division, Commission, dated May 27, 1994; and Letter from Joe Corrigan, Executive Director, OPRA, to Kim Koppien, PSE, dated May 26, 1994.

[32] *See supra* note 26.

proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–93–13 and should be submitted by August 9, 1994.

VI. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the Act and sections 6 and 11A of the Act in particular. In addition, the Commission finds pursuant to Rule 9b–1 under the Act, that FLEX Options based on the Wilshire and Technology Indexes are standardized options for purposes of the options disclosure framework established under Rule 9b–1 of the Act.[33]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[34] that the proposed rule change (SR–PSE–93–13) is approved, as amended, on a pilot basis until July 13, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[35]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17522 Filed 7–18–94; 8:45 am]

[33] As part of the original approval process of the FLEX Options framework, the Commission delegated to the Director of the Division of Market Regulation the authority to authorize the issuance of orders designating securities as standardized options pursuant to Rule 9b–1(a)(4) under the Act. *See* Securities Exchange Act Release No. 31911 (February 23, 1993), 58 FR 11792 (March 1, 1993). On May 4, 1993, Chairman Breeden, pursuant to Public Law 87–592, 76 Stat. 394 [15 U.S.C. 78d–1, 78d–2], and Article 30–3 of the Commission's Statement of Organization; Conduct and Ethics; and Information and Requests [17 CFR 200.30–3], designated that persons serving in the position of Deputy Director, Associate Director, and Assistant Director, in the Division of Market Regulation, be authorized to issue orders designating securities as "standardized options" pursuant to Rule 9b–1(A)(4). Accordingly, this subdelegation provides the necessary authority for Wilshire and Technology FLEX Options to be designated as "standardized options" by the Division of Market Regulation. *See* Designation of Personnel to Perform Delegated Functions in the Division of Market Regulation, dated May 4, 1993.

[34] 15 U.S.C. 78s(b)(2) (1982).

[35] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 34–34357; International Series Release No. 682; File No. SR–PHLX–94–05]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Quote Spread Parameters for Long-Term Foreign Currency Options

July 12, 1994.

On February 7, 1994, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] a proposal to amend Exchange Rule 1014, "Obligations and Restrictions Applicable to Specialists and Registered Options Traders," and Floor Procedure Advice ("Advice") F–6, "Option Quote Spread Parameters" to: (1) establish quote spread parameters for long-term foreign currency options ("FCOs"); (2) revise the quote spread parameters for options on the French franc; and (3) revise the quote spread parameters for cross-rate FCOs.

The proposal was published for comment in Securities Exchange Act Release No. 33693 (February 28, 1994), 59 FR 10659 (March 7, 1994). No comments were received on the proposal.[3]

The PHLX has traded long-term FCOs since 1992, when PHLX Rule 1012 was amended to permit the listing of options with an expiration of up to 36 months in the future.[4] The Long-Term FCO Approval Order stated specifically that long-term FCOs would not be subject to existing quote spread parameters because, at that time, there was no basis for establishing reasonable prices for long-term FCOs due to the lack of historical pricing. Under the Long-Term FCO Approval Order, long-term FCOs are subject to Advice F–6 once there is less than twelve months remaining until expiration.

Currently, the PHLX trades four long-term FCOs: British pound, German mark, French franc, and Japanese yen.[5] The PHLX proposes to codify specific parameters for long-term FCOs in order to demonstrate consistency in quote width to FCO customers and to prevent overly wide quotes.

Specifically, the PHLX proposes to establish the following quote spread parameters for long-term FCOs: for options on the British pound, a maximum quote spread of $.0100 where the bid is $.1500 or less and $.0150 where the bid is more than $.1500; for options on the French franc, a maximum quote spread of $.00100 where the bid is $.01500 or less and $.00150 where the bid is more than $.1500; for options on the German mark and Swiss franc, a maximum quote spread of $.0030 where the bid is $.0500 or less and $.0050 where the bid is more than $.0500; and for options on the Japanese yen, a maximum quote spread of $.000040 where the bid is $.000500 or less and $.000070 where the bid is over $.000500.

In addition, the PHLX proposes to correct the parameters for cross-rate FCOs, which appear in the incorrect base currency, and for French franc options, which cannot be quoted in odd numbers due to system limitations. Specifically, for options on the French Franc, the PHLX proposes to establish a maximum quote spread of $.00014 where the bid is $.00250 or less; $.00024 where the bid is between $.00252 and .00750; and $.00034 where the bid is over $.00750.

With respect to cross-rate options, the PHLX states that the original quote spread parameters were incorrect because the bids, which determine the quote spread, should be based on bids relating to the first currency. Under the current rule, for British pound/German mark cross-rate options, if the bid is .0100 German marks or less, the maximum quote spread is .0015 German marks. The PHLX states that this has proved incompatible with the

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1993).

[3] On June 27, 1994, the PHLX submitted a letter explaining the rationale for the proposed quote spread parameters for long-term FCOs. The PHLX notes that foreign currency swaps and forward contracts are used frequently to hedge long-term FCOs and that foreign currency swaps are the basis for pricing long-term FCOs because the swap market takes into account the interest rate differential among the relevant countries, which becomes less certain over time. In light of the hedging process for long-term FCOs, and based on its experience in trading long-term FCOs, the PHLX believes that the foreign currency swap market provides a reasonable basis for measuring quote spread parameters for long-term FCOs. *See* Letter from Edith Hallahan, Special Counsel, PHLX, to Michael Walinskas, Branch Chief, Options Regulation, Division of Market Regulation, Commission, dated June 23, 1994 ("June 23 Letter").

[4] *See* Securities Exchange Act Release No. 30672 (May 6, 1992), 57 FR 20546 (order approving File No. SR–PHLX–91–30) ("Long-Term FCO Approval Order").

[5] Although the PHLX has not yet listed a long-term option on the Swiss franc, the PHLX may do so in the future. Its proposed Swiss franc spread parameter would be identical to the proposed quote spread parameter applicable to the long-term German mark option.

parameters commonly employed by traders to quote the British pound/German mark cross-rate option for two reasons: (1) the range of bids did not correspond to the ranges previously used for British pound quotes;[6] and (2) the actual parameters (.0015, .0025 and .0035 German marks) proved to be too narrow in view of the unique pricing and settlement of cross-rate options. Thus, for British pound/German mark cross-rate options, the PHLX proposes the following parameters: a maximum quote spread of .0030 German marks where the bid is .0250 German marks or less; .0050 German marks where the bid is more than .0250 but does not exceed .0750 German marks; and .0070 German marks where the bid is more than .0750 German marks.

For German mark/Japanese yen cross-rate options, the PHLX proposes the following parameters: a maximum quote spread of .12 Japanese yen where the bid is .40 Japanese yen or less; .16 Japanese yen where the bid is more than .40 but does not exceed 1.60 Japanese yen; and .20 Japanese yen where the bid is more than 1.60 Japanese yen.

For British pound/Japanese yen options, the PHLX proposes to establish the following parameters:[7] a maximum quote spread of .0030 Japanese yen where the bid is .0250 Japanese yen or less; .0050 Japanese yen where the bid is more than .0250 but does not exceed .0750 Japanese yen; and .0070 Japanese yen where the bid is more than .0750 Japanese yen. The exchange proposes to correct the cross-rate parameters both in the text of exchange Rule 1014 as well as in Advice F–6 in order to facilitate the efficient trading and quoting of the relevant cross-rate options, as well as to inform members and customers of the maximum quote spread parameters.

The PHLX believes that the proposed rule change is consistent with Section 6 of the Act, in general, and, in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, and to protect investors and the public interest. Specifically, the PHLX believes that established quote spread parameters for long-term FCOs should prevent overly wide quotes and foster uniformity in quote width, consistent with Section 6(b)(5). In addition, the PHLX believes that the correction to cross-trade quote spread parameters should promote just and equitable principles of trade by providing a more feasible bid/ask differential, which, in turn, should facilitate trading in those options.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5) in that proposal is designed to promote just and equitable principles of trade and to protect investors and the public interest.[8] Specially, the Commission believes that the PHLX's proposal to establish quote spread parameters for long-term FCO's should result in improved price continuity and tighter, more liquid markets. In light of the hedging process for long-term FCOs and the PHLX's experience in trading long-term FCOS, the Commission believes that it is reasonable for the Exchange to base the quote spread parameters for long-term FCOs on the foreign currency swap and forward markets.[9] The Commission believes that the quote spread parameters for long-term FCOs should prevent overly wide quotes and are designed to be consistent with the obligations of PHLX specialists and Registered Options Treaders ("ROTs") under the Act to provide fair and orderly markets.

In addition, the Commission believes that it is reasonable for the PHLX to establish new even-numbered quote spread parameters for options on the French franc, which cannot be quoted in odd numbers, and to establish new quote spread parameters for cross-rate FCOs, which the PHLX believes should be based on bids relating to the first currency. The Commission believes that these amendments should benefit investors by helping the PHLX to maintain a fair and orderly market for FCOs.

In additional, the Commission believes that the proposed quote spread parameters for cross-fire FCOs are based on the PHLX's experience in trading cross-rate FCOs and more accurately reflect the market for those options. The Commission believes that the proposed parameters for cross-rate FCOs are intended to facilities tightly quoted markets without impairing specialist's and ROT's ability to provide market depth and liquidity. Accordingly, the Commission believes that the cross-rate FCO parameters are consistent with the obligations of PHLX specialists and ROTs to provide fair and orderly markets.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–PHLX–94–05) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17426 Filed 7–18–94; 8:45 am]

BILLING CODE 8010–01–M

[6] The range of bids that determine the quote spread parameters applicable to British pound options is: $.0250 or less, $.0251 to $.0750, and over $.0750.

[7] Although the PHLX has not yet listed the British pound/Japanese yen option, the same inconsistency with British pound bid ranges requires correction and the quote spread parameters were also proposed too narrowly.

[8] 15 U.S.C. 78f(b)(5) (1982).

[9] The PHLX states that swaps and forward contracts are often used to hedge FCOs and that swaps provide the basis for pricing long-term FCOs because the swap market takes into account the interest rate differential among the relevant countries. Because of the interest rate differential and the corresponding less-liquid nature of the market for long-term FCO forward contracts, the forward markets for long-term FCOs are wider than the FCO spot market, which provides the basis for pricing shorter-term FCOs. Accordingly, the quote spread parameters for long-term FCOs are wider than the quote spread parameters for shorter-term FCOs. *See* June 23 Letter, *supra* note 3.

[10] 15 U.S.C. § 78s(b)(2) (1982).

[11] 17 CFR 200.30–3(a)(12) (1993).

[Rel. No. IC–20403; 812–8954]

The PNC Fund, et al.; Notice of Application

July 13, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: The PNC Fund ("PNC"), PNC Institutional Management Corporation ("PIMC"), and Provident Distributors, Inc. ("PDI"), on behalf of themselves and other investment companies for which PIMC or PDI acts as investment adviser and distributor and which adhere to the representations and conditions set forth in the application (collectively, with PNC, the "Funds").[1]

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from sections 2(a)(32), 2(a)(35), 18(f), 18(g), 18(i), 22(c), and 22(d), and rule 22c–1.

SUMMARY OF APPLICATION: Applicants seek to amend an existing order that permits the portfolios of PNC to issue up to three classes of shares. The

[1] Although PIMC and PDI act as investment adviser or distributor, respectively, to other investment companies not named as parties to the application, none of those companies currently intends to rely on the requested relief. Such companies may in the future rely on the requested exemption if they determine to issue multiple classes of shares and impose a contingent deferred sales charge in accordance with the representations and conditions in the application.

amended order will permit each Fund's existing and future investment portfolios to issue an unlimited number of classes of shares, add a conversion feature, and assess and, under certain circumstances, waive a contingent deferred sales charge ("CDSC") upon certain redemptions of shares.

FILING DATES: The application was filed on April 28, 1994, and amended on July 1, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 8, 1994, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, D.C. 20549. Applicants: PNC and PIMC, Bellevue Corporate Center, 103 Bellevue Parkway, Wilmington, Delaware 19809; PDI, 259 Radnor-Chester Road, Suite 120, Radnor, Pennsylvania 19087.

FOR FURTHER INFORMATION CONTACT: James J. Dwyer, Staff Attorney, at (202) 942–0581, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a few at the SEC's Public Reference Branch.

Applicants' Representations

1. PNC is a Massachusetts business trust registered under the Act as an open-end management investment company. PNC currently is authorized to offer shares in twenty-five portfolios, and may create new portfolios in the future. PIMC serves as PNC's investment adviser. PDI serves as PNC's distributor.

2. On March 14, 1994, the SEC issued an order (the "Existing Order")[2] permitting each portfolio of PNC to offer up to three classes of shares—Investor Shares, Service Shares, and Institutional Shares. Applicants seek to amend the Existing Order to permit each Fund's existing and future portfolios to issue an unlimited number of classes of shares, add a conversion feature, and assess, and under certain circumstances, waive a CDSC upon certain redemptions of shares. The requested relief will supersede the Existing Order in its entirety. Investor Shares, Service Shares, and Institutional Shares will be offered as described in the application for the Existing Order.

3. Under the requested order, applicants may offer classes of shares subject to rule 12b–1 plans or shareholder services plans (each a "Plan"), certain class expenses described in condition 1 below that are attributable only to certain of the classes, certain conversion features as further described below, and/or the imposition of various front-end sales loads and/or CDSCs. The services provided under a Plan will augment or replace, but not duplicate, services otherwise provided by a Fund's investment adviser, transfer agent, and administrator. When a class of shares is subject to a rule 12b–1 Plan and a shareholder services Plan, the services provided under one Plan will augment (and not be duplicative of) the services provided under the other Plan.

4. All shares of a portfolio will bear Fund and portfolio expenses allocated *pro rata* to each class on the basis of the relative net asset value of the respective class. Expenses specific to a class will be allocated to that class. A Fund's investment adviser or other service contractor may reimburse or waive class expenses on certain classes on a voluntary, temporary basis, and the amount waived or reimbursed may vary from time to time.

5. Because of class expenses and payments made under a Plan that may be borne by each class of shares, the per share net income of, and dividends to, each class may differ from the net income of, and dividends to, the other classes of shares of a portfolio. In addition, except for portfolios that seek to maintain a stable net asset value and declare dividends daily, the net asset value attributable to each class of shares of a portfolio may differ.

6. Shares of a class of one portfolio will be exchangeable for shares of another portfolio that have similar characteristics. In addition, shares of an equity or fixed income portfolio will be exchangeable for shares of a money market portfolio, and vice-versa, and shares of one class of a portfolio will be exchangeable for shares of another class of the same portfolio. Exchanges will be effected in accordance with the provisions of rule 11a–3 under the Act.

7. Shares of certain of the classes may be subject to the imposition of a CDSC if they are redeemed within a prescribed time after their purchase.The amount of the CDSC will be calculated as the lesser of a specified percentage of the net asset value at the time of purchase or at the time of redemption.

8. No CDSC will be imposed on amounts representing increases in the value of shares due to capital appreciation, redemptions of shares acquired through reinvestment of dividends or capital gain distributions, or redemptions of shares held for longer than the CDSC period. In addition, no charge will be imposed on any shares purchased prior to the effective date of the requested order or prior to the disclosure of such CDSC in the prospectus of the applicable portfolio. In determining whether the CDSC is payable, it will be assumed that shares not subject to the CDSC are redeemed first and that other shares then are redeemed in the order purchased.

9. If a shareholder pays a CDSC upon redemption and a reinvestment occurs within a specified time period stated in the prospectus at the time the shares were sold, the shareholder may receive a credit, paid by the distributor, for any CDSC paid.

10. Any change in the specified terms of a CDSC arrangement will be reflected in the prospectus of the applicable portfolio. Such change will not affect shares that already have been issued, unless the change would result in terms more favorable to the shareholder.

11. Applicants request the ability to waive the CDSC on redemptions: (a) in connection with required (or, in some cases, discretionary) distributions to participants or beneficiaries of an employee pension, profit-sharing, or other trust or qualified retirement plan or Keogh plan, individual retirement account, or custodial account maintained pursuant to section 403(b)(7) of the Internal Revenue Code (the "Code"); (b) in connection with required (or, in some cases, discretionary) distributions to participants in qualified retirement or Keogh plans, individual retirement accounts, or custodial accounts maintained pursuant to section 403(b)(7) of the Code due to death, disability, or the attainment of age 59½; (c) in whole or in part, by shareholders whose accounts exceed $50,000, with additional reductions of the CDSC occurring in connection with redemptions of shares by shareholders whose accounts exceed certain higher breakpoints; (d) effected pursuant to a portfolio's right to liquidate a shareholder's account if the aggregate

[2] *The PNC Fund*, Investment Company Act Release Nos. 20081 (Feb. 17, 1994) (notice) and 20133 (Mar. 15, 1994) (order).

net asset value of shares held in the account is less than the minimum account size; (e) in connection with the combination of the portfolio with any other investment company registered under the Act by merger, acquisition of assets, or by any other transaction; (f) of shares that qualify for rights of accumulation, privileges under a letter of intent, or quantity discount; (g) resulting from a tax-free return of an excess contribution pursuant to section 408(d)(4) or (5) of the Code; (h) made in connection with a systematic withdrawal plan; (i) of shares held by current and/or former board members, officers, and employees (and their families) of applicants and current and/or former registered representatives or employees (and their families) of banks or broker/dealers that have entered into selling agreements with applicants; (j) by a state, county, or city, or any instrumentality thereof, and/or by trust companies and bank trust departments; (k) effected by advisory accounts managed by PIMC, PDI, or other firms registered (or exempt from registration) under the Investment Advisers Act of 1940; or ; (1) pursuant to a qualified domestic relations order, as defined in section 414(p) of the Code.

12. Shares of some classes subject to a CDSC ("Convertible CDSC Shares") could automatically convert into shares of other classes not subject to a CDSC ("Non-CDSC Shares") after a prescribed period following the purchase of Convertible CDSC Shares without the imposition of any sales charges. Shares acquired through the reinvestment of dividends and other distributions paid with respect to Convertible CDSC Shares will also be Convertible CDSC Shares, but will convert to Non-CDSC Shares on the earlier of a prescribed period following the date of such reinvestment or the conversion date of the most recently purchased Convertible CDSC Shares not acquired through the reinvestment of dividends or other distributions.

13. Applicants in all cases will comply with article III, section 26(d) of the Rules of Fair Practice of the National Association of Securities Dealers, Inc., as it relates to the maximum amount of asset-based sales charges that may be imposed by an investment company, when and in the form (as amended from time to time) the provisions of such rules relating to such charges become effective, and for as long as they remain in effect.

Applicants' Legal Analysis

1. Applicants request an exemptive order to the extent that the proposed issuance and sale of any of the classes of shares might be deemed to result in a "senior security" within the meaning of section 18(g) and prohibited by section 18(f)(1) and to violate the equal voting provisions of section 18(i).

2. Applicants believe that the ability to offer various classes of shares in each portfolio with different levels of service will better enable the Funds to meet the competitive demands of today's financial services industry. The proposed arrangement will permit the Funds both to facilitate the distribution of its securities and expand the depth and scope of its services without assuming excessive operational costs or unnecessary investment risks. In addition, the Funds would be able, under the proposed arrangement, to match more precisely its distribution costs, administrative support, and other expenses with those investors on whose behalf such costs and expenses are incurred.

3. Applicants assert that the proposed allocation of expenses and voting rights in the manner described is equitable and would not discriminate against any group of shareholders. Moreover, since the rights and privileges of all classes of shares of a portfolio would be substantially identical, the possibility that their interests would conflict would be remote.

4. Applicants also request an exemption under section 6(c) from sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act and rule 22c–1 thereunder to assess and, under certain circumstances, waive a CDSC on redemptions of shares. Applicants believe that their request to permit the CDSC arrangement would permit shareholders the option of having more investment dollars working for them from the time of their share purchases than if they chose a class with a front-end sales load.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief shall be subject to the following conditions:

1. Each class of shares representing interests in the same portfolio of a Fund will be identical in all respects, except as set forth below. The only differences between the classes of shares of the same portfolio will relate solely to: (a) the impact of (i) expenses assessed to a class pursuant to a Plan, (ii) other class expenses which would be limited to (A) transfer agency fees identified by the transfer agent as being attributable to a specific class of shares, (B) fees and expenses of a Fund's administrator that are identified and approved by the Fund's board as being attributable to a specific class of shares, (C) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses, and proxies to current shareholder of a class, (D) blue sky registration fees incurred by a class of shares, (E) SEC registration fees incurred by a class of shares, (F) the expense of administrative personnel and services as required to support the shareholders of a specific class, (G) litigation or other legal expenses or audit or other accounting expenses relating solely to one class of shares, and (H) trustees' fees incurred as a result of issues relating to one class of shares, and (iii) any other incremental expenses subsequently identified that should be properly allocated to one class and which are approved by the SEC pursuant to an amended order; (b) the fact that the classes will vote separately with respect to a portfolio's Plans and any matter submitted to shareholders relating to class expenses, except as provided in condition 17 below; (c) the different exchange privileges of the classes of shares; (d) the designation of each class of shares of a portfolio; and (e) certain conversion features offered by some of the classes.

2. The board of trustees [3] of a Fund, including a majority of the independent trustees, will approve the offering of different classes of shares under the multi-class distribution system. The minutes of the meetings of the trustees regarding the deliberations of the trustees with respect to the approvals necessary to implement a multi-class system will reflect in detail the reasons for the trustees' determination that the proposed multi-class system is in the best interests of both the Fund involved and its shareholders.

3. The initial determination of the class expenses that will be allocated to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the board of trustees of a Fund, including a majority of the trustees who are not interested persons of the Fund. Any person authorized to direct the allocation and disposition of monies paid or payable by a Fund to meet class expenses shall provide to the board of trustees, and the trustees shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

4. On an ongoing basis, the trustees of a Fund, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each portfolio having a multi-class system for the

[3] Any reference to "trustees" includes directors of a Fund that is organized as a corporation.

existence of any material conflicts among the interests of the various classes of each portfolio. The trustees, including a majority of the independent trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. A portfolio's investment adviser and distributor will be responsible for reporting any potential or existing conflicts to the trustees. If a conflict arises, a portfolio's investment adviser and/or distributor at their own cost will remedy such conflict up to and including establishing a new registered management investment company.

5. Any shareholder services Plan will be adopted and operated in accordance with the procedures set forth in rule 12b–1 (b) through (f) as if the expenditures made thereunder were subject to rule 12b–1, except that shareholders need not enjoy the voting rights specified in rule 12b–1.

6. The trustees of a Fund will receive quarterly and annual statements concerning distribution and shareholder servicing expenditures complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any distribution or servicing expenditure charged to that class. Expenditures not related to the sale or servicing of a particular class will not be presented to the trustees to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent trustees in the exercise of their fiduciary duties.

7. Dividends paid by a portfolio with respect to each class of its shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except that payments made under a Plan relating to each respective class of shares and the class expenses relating to each class of shares will be borne exclusively by that class.

8. The methodology and procedures for calculating the net asset value and dividends and distributions of the various classes in any portfolio having a multi-class distribution system and the proper allocation of expenses among the various classes in each such portfolio have been reviewed by an expert (the "Expert") who has rendered a report to the Fund involved, which report has been provided to the staff of the SEC, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Fund involved that the calculations and allocations are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to such reports, following request by the Fund involved (which the Fund agrees to provide), will be available for inspection by the SEC staff upon the written request to the Fund for such work papers by a senior member of the Division of Investment Management or a regional office of the SEC. Authorized staff members would be limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert will be a "report on policies and procedures placed in operation" and the ongoing reports will be "reports on policies and procedures placed in operation and tests of operating effectiveness" as defined and described in Statement of Auditing Standards No. 70 of the American Institute of Certified Public Accountants ("AICPA"), as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

9. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the various classes of shares and the proper allocation of expenses among the various classes of shares and this representation will be concurred with by the Expert in the initial report referred to in condition 8 above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition 8 above. Applicants will take immediate corrective measures if this representation is not concurred with by the Expert or appropriate substitute Expert.

10. The prospectus of each portfolio having a multi-class system will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing shares in a portfolio may receive different compensation with respect to one particular class of shares over another in the same portfolio.

11. The distributor for a Fund having a multi-class system will adopt compliance standards for any portfolio which has a multi-class system, which standards will relate to when each class of shares may appropriately be sold to particular investors. Applicants will require all persons selling shares of a portfolio having a multi-class system to conform to such applicable standards.

12. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the trustees with respect to the multi-class system will be set forth in guidelines which will be furnished to the trustees of a Fund having a multi-class system.

13. Each portfolio having a multi-class system will disclose the respective expenses, performance data, distribution arrangements, services, fees, front-end sales loads, CDSCs, conversion features, and exchange privileges applicable to each class of shares in a portfolio in every prospectus relating to such portfolio, regardless of whether all classes of shares are offered through each prospectus. Each such portfolio will disclose the respective expenses and performance data applicable to all classes of shares in a portfolio in every shareholder report relating to such portfolio to the extent required by SEC rule or interpretation. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the portfolio as a whole generally and not on a per class basis (each portfolio's per share data, however, will be prepared on a per class basis with respect to all classes of shares of such portfolio). To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares, it will also disclose the respective expenses and/or performance data applicable to all classes of shares. The information provided by applicants for publication in any newspaper or similar listing of any portfolio's net asset value and public offering price will present each class of shares separately.

14. Applicants acknowledge that the grant of the amended order requested by the application will not imply SEC approval, authorization, or acquiescence in any particular level of payments that the portfolios may make pursuant to a Plan in reliance on the exemptive order.

15. If a CDSC arrangement is implemented with respect to shares of a portfolio, applicants agree to comply with the provisions of proposed rule 6c–10 under the Act, Investment Company Act Release No. 16619 (Nov. 2, 1988), as

such rule is currently proposed and as it may be reproposed, adopted or amended.

16. Any class of shares with a conversion feature will convert into another class of shares on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee, or other charge. After conversion, the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in article III, section 26 of the NASD's Rules of Fair Practice), if any, that in the aggregate are lower than the asset-based sales charge and service fee to which they were subject prior to the conversion.

17. If a Fund implements any amendment to its 12b–1 Plan(s) (or, if presented to shareholders, adopts or implements any amendment to a shareholder services Plan or Plans) that would increase materially the amount that may be borne by the Non-CDSC Shares under the Plan, existing Convertible CDSC Shares will stop converting into the Non-CDSC Shares unless the Convertible CDSC Shares, voting separately as a class, approve the proposal. The trustees shall take such action as is necessary to ensure that existing Convertible CDSC Shares are exchanged or converted into a new class of shares ("New Non-CDSC Shares"), identical in all material respects to the Non-CDSC Shares as they existed prior to implementation of the proposal, no later than the date such shares previously were scheduled to convert into Non-CDSC Shares. If deemed advisable by the trustees to implement the foregoing, such action may include the exchange of all existing Convertible CDSC Shares for a new class ("New Convertible CDSC Shares"), identical to the existing Convertible CDSC Shares in all material respects except that the New Convertible CDSC Shares will convert into New Non-CDSC Shares. New Non-CDSC Shares or New Convertible CDSC Shares may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in a manner that the trustees reasonably believe will not be subject to federal taxation. In accordance with condition 4, any additional cost associated with the creation, exchange, or conversion of New Non-CDSC Shares or New Convertible CDSC Shares shall be borne solely by the adviser and the distributor. Convertible CDSC Shares sold after the implementation of the proposal may convert into Non-CDSC Shares subject to the higher maximum payment, provided that the material features of the Non-CDSC Share plan and the relationship of such plan to the Convertible CDSC Shares are disclosed in an effective registration statement.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17519 Filed 7–18–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20401; File No. 812–8720]

Chubb Life Insurance Company of America, et al.

July 12, 1994.

AGENCY: Securities and Exchange Commission (the "SEC" or the "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Chubb Life Insurance Company of America ("Chubb Life"), Chubb Separate Account C (the "Account"), any other separate account established in the future (the "Future Accounts") by Chubb Life or an affiliated life insurance company to support scheduled premium, single premium, or flexible premium variable life insurance contracts (the "Contracts"), and Chubb Securities Corporation ("Chubb Securities").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act for exemptions from Section 27(c)(2) of the 1940 Act and Rules 6e–2(c)(4)(v) and 6e–3(T)(c)(4)(v) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to permit them to deduct from premiums received under the Contracts an amount that is reasonable in relation to Chubb Life's increased federal income tax burden resulting from Chubb Life's receipt of such premiums in connection with the Contracts.

FILING DATE: The application was filed on December 10, 1993. An amended and restated application was filed on May 27, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on August 8, 1994 and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, Shari J. Lease, Esq., Chubb Life Insurance Company of America, One Granite Place, Concord, New Hampshire 03301.

FOR FURTHER INFORMATION CONTACT: Barbara J. Whisler, Senior Attorney, or Michael V. Wible, Special Counsel, both at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. Chubb Life, a stock life insurance company chartered under the laws of Tennessee and redomesticated in New Hampshire in 1991, is the depositor, for purposes of the 1940 Act, of the Account.

2. The Account, organized under New Hampshire law as an insurance company separate account, is registered with the Commission as a unit investment trust (File No. 33–72830). The Account will fund the Contracts issued by Chubb Life and the Contracts will be registered under the Securities Act of 1933. Chubb Series Trust (the "Trust"), a registered open-end management investment company (File No. 33–72834), will serve as the underlying investment medium for the Account. Applicants incorporate by reference the above-mentioned registration statements into the application.

3. Chubb Securities, a registered broker-dealer under the Securities Exchange Act of 1934 and a member of the National Association of Securities Dealers, Inc., is the principal underwriter for the Contracts. Chubb Securities is a wholly-owned subsidiary of Chubb Life.

4. The Contracts which are the subject of the application are flexible premium individual variable life insurance policies and flexible premium survivorship variable life insurance policies. Applicants state that the Contracts will be issued in reliance on Rule 6e–3(T)(b)(13)(i)(B). Applicants state that Chubb Life will deduct 1.25% of each premium payment to cover

Chubb Life's estimated cost for the federal income tax treatment of deferred acquisition costs.

5. Applicants state that they intend to offer the Contracts to the public pursuant to an offering registered under the Securities Act of 1933. Applicants further note that they will rely upon Rule 6e–3(T) in connection with the offering.

6. In the Omnibus Budget Reconciliation Act of 1990 ("OBRA 1990"), Congress amended the Internal Revenue Code of 1986 (the "Code") by, among other things, enacting Section 848 thereof. Section 848 changed how a life insurance company must compute its itemized deductions from gross income for federal income tax purposes. Section 848 requires an insurance company to capitalize and amortize over a period of ten years part of the company's general expenses for the current year. Under prior law, these general expenses were deductible in full from the current year's gross income.

7. The amount of deductions that must be capitalized and amortized over ten years rather than deducted in the year incurred is based solely upon "net premiums" received in connection with certain types of insurance contracts. Section 848 of the Code defines "net premium" for a type of contract as gross premiums received by the insurance company on the contracts minus return premiums and premiums paid by the insurance company for reinsurance of its obligations under such contracts. Applicants state that the effect of Section 848 is to accelerate the realization of income from insurance contracts covered by that Section, and, accordingly, the payment of taxes on the income generated by those contracts.

8. The amount of general deductions that must be capitalized depends upon the type of contract to which the premiums received relate and varies according to a schedule set forth in Section 848. Applicants state that the Contracts are "specified insurance contracts" that fall into the category of life insurance contracts, and under Section 848, 7.7% of the year's net premiums received must be capitalized and amortized.

9. Applicants state that the increased tax burden on Chubb Life resulting from Section 848 may be quantified as follows. For each $10,000 of net premiums received by Chubb Life under the Contracts in a given year, Section 848 requires Chubb Life to capitalize $770 (7.7% of $10,000) and $38.50 of this $770 may be deducted in the current year. This leaves $731.50 ($770 minus $38.50) subject to taxation at the corporate tax rate of 35% which results in Chubb Life owing $256.03 (.35 × $731.50) more in taxes for the current year than would have been owed by Chubb Life prior to OBRA 1990. This current increase in federal income tax will be partially offset by deductions that will be allowed during the next ten years as a result of amortizing the remainder of the $770 ($77 in each of the following nine years and $38.50 in year ten).

10. In the business judgment of Chubb Life, a discount rate of 10% is approximate for use in calculating the present value of Chubb Life's future tax deductions resulting from the amortization described above. Applicants state that Chubb Life seeks an after tax rate of return on the investment of its capital in excess of 10%. To the extent that capital must be used by Chubb Life to meet its increased federal tax burden under Section 848 resulting from the receipt of premiums, such capital is not available to Chubb Life for investment. Thus, Applicants argue, the cost of capital used to satisfy Chubb Life's increased federal income tax burden under Section 848 is, in essence, Chubb Life's after tax rate of return on capital; and, accordingly, the rate of return on capital is appropriate for use in this present value calculation. To the extent that the 10% discount rate is lower than Chubb Life's actual targeted rate of return, Applicants submit that a measure of comfort is provided that the calculation of Chubb Life's increased tax burden attributable to the receipt of premiums will continue to be reasonable over time, even if the corporate tax rate applicable to Chubb Life is reduced, or its targeted rate of return is lowered.

11. In determining the after tax rate of return used in arriving at this discount rate, Applicants state that Chubb Life considered a number of factors, including: market interest rates; Chubb Life's anticipated long term growth rate; the risk level for this type of business; inflation; and available information about the rates of return obtained by other life insurance companies. Chubb Life represents that such factors are appropriate factors to consider in determining Chubb Life's cost of capital. Applicants state that Chubb Life first projects its future growth rate based on the sales projections, the current interest rates, the inflation rate, and the amount of capital that Chubb Life can provide to support such growth. Chubb Life then uses the anticipated growth rate and the other factors enumerated above to set a rate of return on capital that equals or exceeds this rate of growth. Of these other factors, market

12. Using a corporate federal income tax rate of 35% and assuming a discount rate of 10%, the present value of the federal income tax effect of the increased deductions allowable in the following 10 years, which partially offsets the increased federal income tax burden, comes to $160.40. The effect of Section 848 on the Contracts is, therefore, an increased federal income tax burden with a present value of $95.63 for each $10,000 of net premiums, *i.e.*, $256.03 minus $160.40.

13. State premium taxes are deductible in computing federal income taxes. Thus, Chubb Life does not incur incremental federal income tax when it passes on state premium taxes to owners of the Contracts. Conversely, federal taxes are not deductible in computing Chubb Life's federal income taxes. To compensate Chubb Life fully for the impact of Section 848, therefore, it would be necessary to allow Chubb Life to impose an additional charge that would make it whole not only for the $95.63 additional federal income tax burden attributable to Section 848 but also for the federal income tax on the additional $95.63 itself. This federal income tax can be determined by dividing $95.63 by the complement of the 35% federal corporate income tax rate, *i.e.*, 65%, resulting in an additional charge of $147.12 for each $10,000 of net premiums, or 1.47%.

14. Based on prior experience, Chubb Life expects that all of its current and future deductions will be fully taken. It is Chubb Life's judgment that a charge of 1.25% would reimburse Chubb Life for the impact of Section 848 on Chubb Life's federal income tax liabilities. Applicants represent that the charge to be deducted by Chubb Life pursuant to the relief requested is reasonably related to Chubb Life's increased federal income tax burden under Section 848, taking into account the benefit to Chubb Life of the amortization permitted by Section 848, and the use by Chubb Life of a discount rate of 10% in computing the future deductions resulting from such amortization, such rate being the equivalent of Chubb Life's cost of capital.

15. While the application states that Chubb Life believes that a charge of 1.25% of premium payments would reimburse it for the impact of Section 848 (as currently written) on Chubb Life's federal income tax liabilities, the application also states, however, that Chubb Life believes that it will have to increase this charge if any future change in, or interpretation of Section 848, or any successor provision, results in an increased federal income tax burden due to the receipt of premiums. Such an

increase could result from a change in the corporate federal income tax rate, a change in the 7.7% figure, or a change in the amortization period.

Applicants' Legal Analysis

1. Applicants request an order of the Commission pursuant to Section 6(c) exempting them from the provisions of Section 27(c)(2) of the 1940 Act and Rules 6e–2(c)4)(v) and 6e–3(T)(c) (4)(v) thereunder to the extent necessary to permit deductions to be made from premium payments received in connection with the Contracts. The deductions would be in an amount that is reasonable in relation to Chubb Life's increased federal income tax burden related to the receipt of such premiums. Applicants further request an exemption from Rule 6e–3(T)(c)(4)(v) of the 1940 Act to permit the proposed deductions to be treated as other than "sales load" for the purposes of Section 27 of the 1940 Act and the exemptions from various provisions of that Section found in Rule 6e–3(T)(b)(13).

2. Section 6(c) of the 1940 Act provides, in pertinent part, that the Commission may, by order upon application, conditionally or unconditionally exempt any person, security or transaction from any provision of the 1940 Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and the provisions of the 1940 Act.

3. Section 27(c)(2) of the 1940 Act prohibits the sale of periodic payment plan certificates unless the proceeds of all payments (except such amounts as are deducted for sales load) are held under an indenture or agreement containing in substance the provisions required by Sections 26(a)(2) and 26(a)(3) of the 1940 Act. Applicants note that certain provisions of Rule 6e–3(T) provide a range of exemptive relief for the offering of flexible premium variable life insurance policies such as the Contracts. Rule 6e–3(T)(b)(13)(iii) provides, subject to certain conditions, exemptions from Section 27(c)(2) that include permitting a payment of certain administrative fees and expenses, the deduction of a charge for certain mortality and expense risks, and the "deduction of premium taxes imposed by any state or other governmental entity".

4. Rule 6e–2(c)(4)(v) defines "sales load" charged on any payment as the excess of the payment over certain specified charges and adjustments, including "a deduction approximately equal to state premium taxes". Rule 6e–3(T)(c)(4)(v) defines "sales load" charged during a contract period as the excess of any payments made during the period over the sum of certain specified charges and adjustments, including "a deduction for and approximately equal to state premium taxes".

5. Applicants submit that the deduction for federal income tax charges, proposed to be deducted in connection with the Contracts, is akin to a state premium tax charge in that it is an appropriate charge related to Chubb Life's tax burden attributable to premiums received. Thus, applicants submit that the proposed deduction be treated as other than sales load, as is a state premium tax charge, for purposes of the 1940 Act.

6. Applicants argue that the requested exemptions from Rules 6e–2(c)(4) and 6e–3(T)(c)(4) are necessary in connection with Applicants' reliance on certain provisions of Rules 6e–2(b)(13) and 6e–3(T)(b)(13), and particularly on subparagraphs (b)(13)(i) of the Rules, which provide exemptions from Sections 27(a)(1) and 27(h)(1) of the 1940 Act. Issuers and their affiliates may only rely on Rules 6e–2(b)(13)(i) or 6e–3(T)(b)(13)(i) if they meet the respective Rule's alternative limitations on sales load as defined in Rule 6e–2(c)(4) or Rule 6e–3(T)(c)(4). Applicants state that, depending upon the load structure of a particular Contract, these alternative limitations may not be met if the deduction for the increase in an issuer's federal tax burden is included in sales load. Although a deduction for an insurance company's increased federal tax burden does not fall squarely within any of the specified charges or adjustments which are excluded from the definition of "sales load" in Rules 6e–2(c)(4) and 6e–3(T)(c)(4), applicants state that they have found no public policy reason for including them in "sales load".

7. The public policy that underlies Rules 6e–2(b)(13)(i) and 6e–3(T)(b)(13)(i), like that which underlies Sections 27(a)(1) and 27(h)(1) of the 1940 Act, is to prevent excessive sales loads from being charged in connection with the sale of periodic payment plan certificates. Applicants submit that the treatment of a federal income tax charge attributable to premium payments as sales load would not in any way further this legislative purpose because such a deduction has no relation to the payment of sales commissions or other distribution expenses. Applicants state that the Commission has concurred with this conclusion by excluding deductions for state premium taxes from the definition of "sales load" in Rules 6e–2(c)(4) and 6e–3(T)(c)(4).

8. Applicants assert that the source for the definition of "sales load" found in the Rules supports this analysis. Applicants state that the Commission's intent in adopting such provisions was to tailor the general terms of Section 2(a)(35) of the 1940 Act to variable life insurance contracts. Just as the percentage limits of Sections 27(a)(1) and 27(h)(1) depend on the definition of "sales load" in Section 2(a)(35) for their efficacy, the percentage limits in Rules 6e–2(b)(13)(i) and 6e–3(T)(b)(13)(i) depend on Rules 6e–2(c)(4) and 6e–3(T)(c)(4), respectively, which do not depart, in principle, from Section 2(a)(35).

9. Section 2(a)(35) excludes deductions from premiums for "issue taxes" from the definition of "sales load" under the 1940 Act. Applicants submit that this suggests that it is consistent with the policies of the 1940 Act to exclude from the definition of "sales load" in Rules 6e–2 and 6e–3(T) deductions made to pay an insurance company's costs attributable to its tax obligations. Section 2(a)(35) also excludes administrative expenses or fees that are "not properly chargeable to sales or promotional activities". Applicants argue that this suggests that the only deductions intended to fall within the definition of "sales load" are those that are properly chargeable to such activities. Because the proposed deductions will be used to compensate Chubb Life for its increased federal income tax burden attributable to the receipt of premiums, and are not properly chargeable to sales or promotional activities, this language in Section 2(a)(35) is another indication that not treating such deductions as "sales load" is consistent with the policies of the 1940 Act.

10. Applicants assert that the terms of the relief requested with respect to Contracts to be issued through the Account or through Future Accounts are consistent with the standards enumerated in Section 6(c) of the 1940 Act. Without the requested relief, Chubb Life would have to request and obtain exemptive relief for each Contract to be issued through a Future Account. Applicants state that such additional requests for exemptive relief would present no issues under the 1940 Act not already addressed in this request for exemptive relief.

11. Applicants assert that the requested relief is appropriate in the public interest because it would promote competitiveness in the variable life insurance market by eliminating the need for Chubb Life or Future Accounts to file redundant exemptive applications, thereby reducing

administrative expenses and maximizing efficient use of resources. The delay and expense involved in having to seek repeated exemptive relief would impair the ability of Chubb Life and the Future Accounts to take advantage fully of business opportunities as those opportunities arise. Additionally, Applicants state that the requested relief is consistent with the purposes of the 1940 Act and the protection of investors for the same reasons. If Chubb Life and the Future Accounts were required to seek exemptive relief repeatedly with respect to the same issues addressed in this application, investors would not receive any benefit or additional protection thereby and might be disadvantaged as a result of increased overhead expenses for Chubb Life and the Future Accounts.

Conditions for Relief

1. Applicants represent that Chubb Life will monitor the reasonableness of the charge to be deducted by Chubb Life pursuant to the requested exemptive relief.

2. Applicants represent that the registration statement for each Contract under which the charge referenced in paragraph one of this section is deducted will: (i) disclose the charge; (ii) explain the purpose of the charge; and (iii) state that the charge is reasonable in relation to Chubb Life's increased federal income tax burden under Section 848 of the Code resulting from the receipt of premiums.

3. Applicants represent that the registration statement for each Contract under which the charge referenced in paragraph one of this section is deducted will contain as an exhibit an actuarial opinion as to: (i) the reasonableness of the charge in relation to the Account's increased federal income tax burden under Section 848 resulting from the receipt of premiums; (ii) the reasonableness of the after tax rate of return that is used in calculating such charge; and (iii) the appropriateness of the factors taken into account by Chubb Life in determining the after tax rate of return.

Conclusion

Applicants submit that, for the reasons and upon the facts set forth above, the requested exemptions from Section 27(c)(2) of the 1940 Act, and Rules 6e–2(c)(4)(v) and 6e–3(T)(c)(4)(v) thereunder, to permit Chubb Life to deduct 1.25% of premium payments under the Contracts meet the standards in Section 6(c) of the 1940 Act. In this regard, Applicants assert that granting the relief requested in the application would be appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17428 Filed 7–18–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD08–94–016]

RIN 2115–AE47

Drawbridge Operation Regulations; Humble Canal, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation.

SUMMARY: Notice is hereby given that the Coast Guard has issued a temporary deviation to the regulations governing the opening of a drawbridge over the Humble Canal, from July 25, through August 8, 1994. This deviation requires the Louisiana department of Transportation and Development (LDOTD) to close the bridge for a continuous 15-day period. The purpose of the closure is to allow the South Terrebonne Parish Tidewater Management & Conservation District to complete construction of a hurricane protection levee south of the bridge.

EFFECTIVE DATES: The period of deviation begins on Monday, July 25, 1994, and continues through Monday, August 8, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Rose A. Payne, Bridge Program Manager, Eighth Coast Guard District. Telephone Number (504) 589–2965.

SUPPLEMENTARY INFORMATION: The only economic consequences involve the rerouting of navigation presently using Humble Canal. However, an alternate route is available via Bayou Terrebonne and Lake Barre. This deviation is for the purpose of providing a specific time frame to complete construction of a hurricane protection levee for many residents living in the low area of South Terrebonne Parish.

This deviation from normal operating regulations (33 CFR 117.5) is authorized in accordance with the provisions of Title 33 of the Code of Federal Regulations, parts 117.35 and 117.37.

Dated: July 4, 1994.

R.C. North,

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

[FR Doc. 94–17533 Filed 7–18–94; 8:45 am]

BILLING CODE 4910–14–M

[CGD 94–047]

Implementation of the Port-State Control Initiative

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: The Coast Guard has implemented a port-state control initiative to identify and eliminate the operation of substandard ships in U.S. waters. The Coast Guard is increasing its enforcement efforts against these vessels. This notice is published to ensure wide dissemination of this information to those who may be affected by it.

DATES: Effective May 1, 1994.

ADDRESSES: Commandant (G–M), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, telephone (202) 267–1464.

FOR FURTHER INFORMATION CONTACT: Commander Joseph J. Saboe, Project Manager, Merchant Vessel Inspection and Documentation Division (G–MVI–1), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001, telephone (202) 267–1464.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The Coast Guard examines and inspects ships under the authority of a number of existing statutory and international convention provisions. This port-state control initiative uses a risk management approach to focus the Coast Guard's attention and resources on those foreign vessels which potentially pose the greatest threat to the safety of U.S. ports and the marine environment.

On September 27, 1993, the U.S. Senate Appropriations Committee published a report (103–150) on the 1994 Department of Transportation and Related Agencies Appropriations Bill. In part, the Committee expressed a strong interest in eliminating substandard ships from U.S. waters. To accomplish this the U.S. Coast Guard was directed to develop and initiate stricter port-state controls to identify substandard ships entering U.S. waters for boarding and examination. The Coast Guard was also directed to develop a system to ensure accountability if a substandard ship is found and deficiencies were not

detected in prior Coast Guard boardings or examinations.

A substandard vessel presents an unacceptable risk to the persons on board or to the marine environment. Under Coast Guard policy and applicable international guidelines, a ship is considered substandard if its hull, crew, machinery, or lifesaving, firefighting, or pollution prevention equipment are substantially below the standards required by U.S. laws or international conventions due to:

a. the absence of principal equipment or arrangements required by U.S. laws or international conventions;

b. gross noncompliance with equipment standards or arrangements under U.S. laws or international conventions;

c. substantial deterioration of the ship's structure or its essential equipment;

d. noncompliance with the operational and/or manning standards required by U.S. laws or international conventions;

e. clear lack of appropriate certification; or,

f. demonstrated lack of competence on the part of the crew.

The Coast Guard is authorized under several international maritime safety conventions to intervene if a vessel is not in compliance with existing international treaties and, if necessary, detain it until conditions are corrected. Conventions that provide port-state control intervention and/or detention authority include: the International Convention for the Safety of Life at Sea (SOLAS); the International Convention for the Prevention of Pollution From Ships, 1973 and its Protocol of 1978 (MARPOL 73/78); the International Conference on LoadLines, 1966 (LOADLINE 66); and the International Convention on Standards of Training, Certification and Watchkeeping, 1978 (STCW 78).

This initiative will also have a positive effect for vessels which are owned, managed, classed, and flagged by responsible parties who ensure their vessels meet U.S. and international safety standards. These vessels should be subject to a decrease in the number of boardings by the Coast Guard. This would result in a savings of vessel personnel time and operation costs.

The Coast Guard developed a matrix for determining vessel boarding priorities. This matrix uses information on a vessel's owner, operator and managing operator; destination; flag of registry; classification society; Coast Guard boarding history; and the type of ship to determine the vessel's relative risk. These criteria are assigned various point values in the matrix. Each of these criteria is discussed below.

Owner, Operator, and Managing Operator

A ship will be assigned points in the matrix if its owner, operator or managing operator had any of its ships subjected to an intervention by the U.S. Coast Guard within the past twelve months. All vessels associated with that owner, operator or managing operator will be assigned points in the matrix, not just the vessel that was subjected to intervention.

Destination

Coast Guard historical data indicates that substandard ships are more likely to call at certain facilities. A vessel will be assigned points in the matrix if it is enroute to a facility that has been identified by the local Capital of the Port as a facility that has a previous record of receiving substandard vessels.

Flag of Registry

Points may also be assigned in the matrix based on a vessel's flag of registry. Points will be assigned to a vessel if its flag state's rate of interventions to fleet size exceeds the average intervention ratio for all flag states calling in the U.S. Intervention ratios are calculated based on the number of ships of each flag state that are subject to intervention in U.S. waters in comparison to the total number of ships from the flag state which call at U.S. ports.

Yearly totals of interventions and port calls will be developed and averages over a three-year period will be calculated. A three-year rolling average of flag state intervention ratios will be used to reduce the effect of any anomalies in the annual data. This three-year average will be compared to the three-year average for all flag states. Baseline data for these ratios were obtained using the Coast Guard's records of interventions for the years 1991 through 1993.

The initial three-year rolling average intervention rate for all foreign vessels calling in the U.S. for the period 1991–1993 is 0.50 percent. Thus, vessels of flags of registry which experienced an average intervention rate greater than 0.50 percent will be assigned points in the boarding priority matrix.

Classification Society

A classification society is an organization that issues certificates of class or issues international convention certificates to a vessel under the authority of a flag state. Currently, approximately 68 entities have been identified that issue classification certificates or international convention certificates.

The Coast Guard will determine which of the organizations identified meet the guidelines in International Maritime Organization (IMO) Resolution A.739(18), "Guidelines for the Authorization of Organizations Acting on Behalf of the Administration." Resolution A.739(18) provides the following guidelines for organizations:

a. extensive experience;

b. publication of rules in English;

c. significant technical staffs;

d. qualified professional staffs;

e. a written code of ethics;

f. written policy and objectives;

g. an internal audit system based on an internationally recognized quality management system such as ISO 9000; and,

h. subject to certification of its quality system by independent auditors recognized by the appropriate flag administration.

The Coast Guard has sent a letter to each classification society or other organization it has identified, and requested information needed to determine if the society or organization meets the guidelines in Resolution A.739(18). The Chief, Merchant Vessel Inspection and Documentation Division will review the responses, and develop a list of those societies or organizations that meet the guidelines. Vessels that have received certificates from those organizations that are not considered to meet the criteria in IMO Resolution A.739(18) will be automatically assigned points in the matrix.

A vessel that has received a certificate from a classification society or other organization that meets IMO Resolution A.739(18) may also be assigned points in the matrix based on the classification society's intervention rate. A classification society's intervention rate will be calculated based on the number of ships classed by each classification society that are subject to intervention in U.S. waters in comparison to the total number of ships classed by that classification society which call on U.S. ports. Each society's rate will be compared to the average intervention ratio for all classification societies. Vessels that have received certificates of class from societies with intervention rates higher than the average will be assigned points in the matrix.

Boarding History

A vessel will also be assigned points in the matrix based upon its record in U.S. waters. A vessel will be assigned points if it has not been boarded within the past six months, or has been

involved in an intervention, civil penalty action, marine casualty, or oil or hazardous material pollution incident within the past 12 months.

Vessel Type

Vessel type will also be a factor in determining priorities for examination or inspection. Points are assigned within the matrix for vessels with inherent high risks, such as bulk chemical tankers, oil tankers, gas carriers, bulk freighters ten or more years old, passenger vessels, and ships carrying low-value commodities (e.g., tallow, scrap metal, asphalt, paper).

Boarding Priorities

The cumulative point total, determined by using the matrix, is one of the factors taken into account in establishing the Coast Guard priority for boarding that vessel.

Four priority levels have been established:

a. Priority I: targeted for examination prior to port entry;

b. Priority II: targeted for examination after port entry and prior to cargo operations or passenger embarkation;

c. Priority III: targeted for examination after port entry with no restriction on cargo or passenger operations; and,

d. Priority IV: not targeted.

The port-state control initiative is also intended to assist the Coast Guard to allocate its resources for inspection or examination of ships making future port calls. Personnel and logistics concerns, weather, or specific local conditions may affect a decision to board or not to board a particular vessel. Although identified as Priority I–III, a ship is not considered substandard unless a boarding reveals that its physical conditions or manning is substantially below applicable U.S. or international requirements. The authority of the District Commander or Captain of the Port, pursuant to the Ports and Waterways Safety Act, 33 Code of Federal Regulations (CFR), Part 160, or other applicable authorities, are neither expanded nor limited by the port state control initiative.

Additional information on this port-state control initiative may be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or by writing to the address under **ADDRESSES.**

Dated: July 11, 1994.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94–17531 Filed 7–18–94; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

RTCA, Inc.; RTCA Special Committee 180; Joint RTCA Special Committee 180 and Eurocae Working Group 46 Meeting; Design Assurance Guidance for Airborne Electronic Hardware; Sixth Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for Special Committee 180 meeting to be held September 27–29, starting at 8:30 a.m. on the first day and 8:00 a.m. on subsequent days. The meeting will be held at the EUROCAE, 17, rue Hamelin, Paris France.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) Installation of new co-chairperson; (3) Review and approval of meeting agenda; (4) Review and approval of EUROCAE WG–46 third meeting minutes held April 20–21, 1994; (5) Approve summary of first joint meeting held May 24–26, 1994; (6) Leadership team meeting report; (7) Review action items; (8) review issue logs; (9) Joint team status reports; (10) Joint team assignments; (11) Adjourn to joint team sessions; (12) Joint team reports; (13) Other business; (14) Agenda for next meeting; (15) Date and place of next meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue NW., suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on July 12, 1994.

James I. McDaniel,

Acting Designated Officer.

[FR Doc. 94–17389 Filed 7–18–94; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc.; RTCA Special Committee 177; Test Criteria and Guidance Relative to Portable Electronic Devices Carried on Board Aircraft; Eleventh Meeting

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for Special Committee 177 meeting to be held August 9–10, starting at 9:00 a.m. The meeting will be held at the RTCA Conference Room, 1140 Connecticut Avenue, NW, Suite 1020, Washington, DC 20036 on August 9. On August 10 the meeting will be held at the Electronics Industries Association, 2001 Pennsylvania Avenue NW, Washington, DC, 9th floor.

The agenda for this meeting is as follows: (1) Chairman's remarks; (2) Review of meeting agenda; (3) Approval of the summary of the tenth meeting; (4) Presentations of subcommittees: (a) PED testing update (Aviles); (b) Susceptibility analysis and testing (Covell); (c) In-aircraft test results (Aviles/Waltho); (5) Medical Device Review (Kern); (6) Computer modelling status (Hughes); (7) Report in-put review (Wright); (8) New/Other business; (9) Date and place of next meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

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

James I. McDaniel,

Acting Designated Officer.

[FR Doc. 94–17390 Filed 7–18–94; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc.; Meeting Change

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for a change in the dates of the meeting Special Committee 165, Aeronautical Mobile Satellite Services. The meeting will be held August 17–19, instead of August 16–18. Please note this change.

Attendance is open to the interested public but limited to space availability. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue NW., Suite 1020, Washington, DC 20036; (202) 9339. Any member of the public may present a written statement to the committee at any time.

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

James I. McDaniel,

Acting Designated Officer.

[FR Doc. 94–17391 Filed 7–18–94; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc., RTCA Special Committee 169; Aeronautical Data Link Applications; Twelfth Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for Special Committee 169 meeting to be held August 10, starting at 9:30 a.m. The meeting will be held at the RTCA Conference Room, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) Review of meeting agenda; (3) Approval of the summary of the eleventh meeting held April 12, 1994, (4) Report on Working Group 3, Flight Information Services Communications, activities; (5) Ground to ground data link systems; (6) Other business (RTCA TMC Taskings); (7) Date and place of next meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue NW., Suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC on July 11, 1994.

James I. McDaniel,

Acting Designated Officer.

[FR Doc. 94–17392 Filed 7–18–94; 8:45 am]

BILLING CODE 4910–13–M

Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Chicago Midway Airport, Chicago, IL

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 use the revenue from a PFC at Chicago Midway Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before August 18, 1994.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Room 258, Des Plaines, IL 60018.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. David R. Mosena, Commissioner of the City of Chicago Department of Aviation at the following address: O'Hare International Airport, P.O. Box 66142, Chicago, IL 60666.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Chicago Department of Aviation under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Louis H. Yates, Manager, Chicago Airports District Office, 2300 East Devon Avenue, Room 258, Des Plaines, IL 60018, (708) 294–7335. 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 use the revenue from a PFC at Chicago Midway 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 13, 1994, the FAA determined that the application to use the revenue from a PFC submitted by the City of Chicago Department of Aviation 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 10, 1994.

The following is a brief overview of the application:

Level of the PFC: $3.00.

Actual charge effective date: September 1, 1993.

Estimated charge expiration date: August 1, 2001.

Total approved net PFC revenue: $79,920,958.00.

Brief description of proposed projects: Airport Maintenance Complex, and Terminal/Concourse Emergency Power System. Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi.

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 City of Chicago Department of Aviation.

Issued in Des Plaines, Illinois on June 27, 1994.

Benito DeLeon,

Manager, Planning/Programming Branch, Great Lakes Region.

[FR Doc. 94–17388 Filed 7–18–94; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

Discretionary Cooperative Agreement To Support Research To Evaluate the Validity of a Functional Capacity Index That Measures the Consequences of Injuries Sustained in Motor Vehicle Crashes

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Announcement of Discretionary Cooperative Agreement Program.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA), having developed an index for measuring the reduction of functional capacity as a result of injuries sustained in motor vehicle crashes, announces a discretionary cooperative agreement program to support research in the validation of this index and solicits applications for projects under this program.

DATES: Applications must be received at the office designated below on or before September 14, 1994.

ADDRESSES: Applications must be submitted to the National Highway Traffic Safety Administration, Office of Contracts and Procurement (NAD–30), Attn: Linda Boor, 400 7th Street SW., room 5301, Washington, DC 20590. All applications submitted must include a reference to NHTSA Cooperative Agreement Program No. DTNH22–94H–06014. Interested applicants are advised that no separate application package exists beyond the content of this announcement.

FOR FURTHER INFORMATION CONTACT: General administrative questions may be directed to Linda Boor, Office of Contracts and Procurement, at (202) 366–0607. Questions relating to this cooperative agreement should be directed to Joan Harris, Planning and Policy Development Division, (NPP–32), National Highway Traffic Safety Administration, 400 7th Street SW., room 5208, Washington, DC 20590; (202) 366–2578. Copies of documents referenced in this announcement will be provided upon request to Joan Harris. Such documents include the final report

results from NHTSA Cooperative Agreement No. DTNH22–89–Z–06019 and the list of approximately 300 injuries that most frequently occur in motor vehicle crashes.

SUPPLEMENTARY INFORMATION:

Background

As a result of numerous improvements in highway and traffic safety, the number of fatalities resulting from motor vehicle crashes has been in a long term downtrend. The incidence of injured survivors, however, has been increasing. As a result, although NHTSA's attention to countermeasures to reduce fatalities continues undiminished, it is being supplemented by attention to countermeasures that reduce the long term consequences of serious injuries both to the injured individual and society as a whole. In order to estimate these long term societal and personal impacts, new analytical tools are being developed. One such tool, called the Functional Capacity Index, measures the degree to which an injured person will not be able to function as he/she did before the injury. The Functional Capacity Index combines decrements in each of ten dimensions of functioning into a whole body score. The index was described in a request for comment on the proposed index (57 FR 13157; April 15, 1992). Basically, the index consists of qualitative descriptions of level of functioning for ten attributes of total functioning, (eating, excretory function, sexual function, ambulation, hand and arm function, bending and lifting, visual function, auditory function, speech, and cognitive function), and a numerical value for each combination of levels of functioning derived from a sample of value judgments of a diverse set of sub-populations.

General Description

The basic assumption of the Functional Capacity Index is that life is its own best measure of value. This is in distinction to the human capital economic approach to measuring consequences that assumes that people are producers and consumers of goods and services. If there are things a person cannot do as well following an injury as before, there is a reduction in the person's overall functional capacity. With the functional capacity approach, the consequences of an injury to individuals of the same age and gender are the same, independent of their economic contribution to society.

The Functional Capacity Index (FCI) assigns scores to the AIS injury descriptions on a scale of 0 to 1.00, where 0 represents no limitation of function and 1.00 represents maximum limitation of function. The overall consequences of an injury are found by multiplying the FCI by the injured person's remaining life expectancy. This results in the Life-years Lost to Injury (LLI). The Functional Capacity Index can vary with time as the injured person's condition changes. Any effects of reduced life expectancy as a result of the injury also can be accounted for. If the injury was fatal, all of the remaining life expectancy is counted.

The initial phase of the development of the Functional Capacity Index has been completed. It consisted of developing definitions of the functional attributes and their various capacity levels, choosing a scaling approach, obtaining judgments of a cross section of the population on the value of each attribute and capacity level, developing an algorithm for combining values into a "whole-body" index based on multiattribute rating techniques, and applying the attributes and capacity levels to the injuries described in the AIS 90 dictionary according to the composite opinion of a multi-disciplinary panel of experts.

This request for applications is concerned with the next phase of the development of the Functional Capacity Index, which is to perform the necessary research to validate the conclusions reached through initial development of the Index under Cooperative Agreement No. DTNH22–89–Z–06019. It is assumed that the applicant is thoroughly familiar with the Abbreviated Injury Scale 1990 revision.

The experimental design should consider a number of issues of interest to the agency. In general, these relate to the need for balance between a thorough and complete validation of the index, and validation of injuries or categories of injuries of particular interest to the agency.

1. The recipient will evaluate the functional capacity of people injured in motor vehicle crashes, and the evaluation methods identified may differ for injuries to the different body regions. In some cases existing data may be available, and in others data may have to be obtained by testing people for performance of the functional capacity descriptors. It also is possible that disparate data sets will be used for different body regions. The validation will be conducted for the different body regions and different severity levels shown in the AIS '90 dictionary with priority given to those injuries described in a NHTSA listing of approximately 300 injuries that most frequently occur in motor vehicle crashes. In addition, the validation process shall not neglect minor and moderate injuries in any body region. The methodology for each body region shall balance the cost and time required for acquiring the data and the resulting statistical significance. In order to apply the FCI, all injury data used in the evaluation shall be converted, if necessary, to AIS–90.

2. The validation must include as a minimum a representative sample of injuries to each body region and each severity level, as well as injuries that affect each of the attributes of the index. This must be balanced against the need to emphasize the less than 300 injuries that most frequently occur in motor vehicle crashes out of the more than 1,300 injuries listed in the AIS '90 dictionary.

3. When weighted to the incidence of injury in motor vehicle crashes, 88.5 percent of the most frequently occurring injuries had a zero value for the FCI, as estimated by the expert panel. The research effort must include validation of injuries with a zero value of FCI as well as those with non-zero values.

4. The research design must include objective criteria for determining agreement/disagreement with the results of the prior effort.

Limitations

The concept of the Functional Capacity Index is broadly applicable to all injuries, all ages, and changes in functional capacity as the injured person experiences long term effects either to increase or decrease capacity. At its present state of development, the index has certain limitations which must be recognized in the validation research:

1. The current index is directly applicable only to the conditions one year post-injury for a previously healthy adult between the ages of 18 and 55. Changes in functional capacity from pre-existing conditions are not included.

2. The index in its present form is not applicable to young children, as the present functional capacity definitions do not take into account the age dependent developmental levels of normal healthy children.

3. The index in its present state of development is not applicable to older persons, as it is well documented that similar trauma has a greater effect on older persons.

4. The index in its present form is applicable to single injuries. Methodologies to estimate the change in functional capacity resulting from any synergistic effects of more than one injury, particularly injuries to different body regions, remain to be developed.

5. The present Functional Capacity Index is limited to the injury definitions in the 1990 version of the Abbreviated Injury Scale. Although the International Classification of Disease (ICD) injury descriptions are widely used, they generally do not contain sufficient detail for the agency's countermeasure development purposes. Any efforts to revise the current translation programs between ICD–9 and AIS 85 to reflect the descriptions in AIS 90 would be applicable to the Functional Capacity Index and minimize this limitation.

6. Although the psycho-behavioral consequences of injuries are known to be significant, they are not included in the Functional Capacity Index in its present state of development.

7. The Functional Capacity Index does not intend to include the effect of "fates worse than death". These are states where people say they would rather die than continue living with the particular impairment. The agency position is that these are states of preference rather than states of function.

NHTSA Involvement

NHTSA, Planning and Policy Development Division, will be involved in all activities undertaken as part of the performance of this cooperative agreement and will:

1. Provide, on an as-available basis, one professional staff person, to be designated as the Contracting Officer's Technical Representative (COTR), to participate in the planning and management of the cooperative agreement and to coordinate activities between the organization and NHTSA.

2. Make available information and technical assistance from government sources, within available resources and as determined appropriate by the COTR.

3. Provide liaison with other government agencies and organizations, as appropriate.

Period of Support

The research effort described in this announcement will be supported through the award of a single cooperative agreement. It is anticipated that the project performance period will be for up to 27 months. The total anticipated funding level is $250,000, with $125,000 provided in the first incremental period. The application for Federal Assistance should address what is proposed and can be accomplished within the time and funding constraints.

Eligibility Requirements

In order to be eligible to participate in this cooperative agreement program, an applicant must be an educational institution or research organization. For-profit research organizations may apply; however, no fee or profit will be allowed.

Application Procedure

Applicants must submit one original and two copies of their application package to: NHTSA, Office of Contracts and Procurement (NAD–30), 400 7th Street SW., Room 5301, Washington, DC 20590. Applications must include a reference to NHTSA Cooperative Agreement Program No. DTNH22–94H–06014. Only complete application packages received on or before September 14, 1994 shall be considered. Submission of three additional copies will expedite processing, but is not required.

Application Content

1. The application package must be submitted with OMB Standard Form 424 (rev. 4–88, including 424A and 424B), Application for Federal Assistance, with the required information filled in and certified assurances signed. While the Form 424A deals with budget information and Section B identifies budget categories, the available space does not permit a level of detail which is sufficient to provide for a meaningful evaluation of the proposed total costs. A supplemental sheet shall be provided which presents a detailed breakdown of the proposed costs. In preparing their cost proposals, applicants shall assume that awards will be made by September 30, 1994, and should prepare their applications accordingly.

2. A description of the objectives, goals, and anticipated outcomes of the proposed research effort and the method or methods that will be used must be included. This shall include an overall description of the experimental design including a discussion of why this design is the minimal cost program that can lead to a reliable validation of the Functional Capacity Index. The validation effort should address representative injuries for each body region and severity level, even though those injuries may not be included on the priority listing. The discussion will include at least the following:

(a) The approaches to be taken to compare the functional capacity of persons who have received a variety of injuries to the estimated level of functional capacity one year following injury for a previously healthy adult. This discussion should cover the methods to be used for each of the ten attributes as described in a request for comment on the proposed index (57 F.R. 13157; April 15, 1992), and for each body region described in the Abbreviated Injury Scale 1990 Revision as published by the Association for the Advancement of Automotive Medicine.

(b) The types and sources of data that will be used in the validation process and how the actual comparison with the expert judgement from the earlier work, as provided by NHTSA, will be accomplished. It is recognized that a number of approaches may be taken to validate the Functional Capacity Index pertaining to injuries to different body regions or different severity levels. If the use of disparate data sources are planned, the discussion shall indicate how these data will be treated to insure that they are compatible.

(c) The arrangements made or agreements entered into to assure access to data needed in the validation process. Prior to submitting any such data to NHTSA, the recipient will be required to purge any information from which the personal identity of individuals may be determined.

(d) The size of the population(s) used for the validation and the statistical significance that can be expected from such a population.

(e) The criteria that will be used to accept or reject differences between the final report from the earlier work to be provided by NHTSA and the evaluation data.

(f) The approaches to insuring compatibility of data, particularly if data from disparate data sets are used. In addition, applicant shall address coordination of effort if multiple sites are included in the proposal.

(g) An outline of the anticipated milestones and projected schedule for completion of work.

3. In addition to the minimal cost program recommended that will lead to a reliable validation of the Functional Capacity Index, applicants may choose to describe alternate methodologies that may be more costly than the basic approach but will result in greater statistical validity or have other desirable features compared to the basic approach.

4. The proposed program director and other key personnel identified for participation in the proposed research effort, including description of their qualifications and their respective organizational responsibilities.

5. A discussion of the management approach to be employed to ensure that the research will be completed in a timely manner.

6. A description of the applicant's previous experience or on-going research program that is related to this proposed research effort.

7. If data sources other than those owned by the applicant are to be used

in the proposed research, letters of intent to release the data shall be included.

Review Process and Criteria

Initially, all applications will be reviewed to confirm that the applicant is an eligible recipient and to assure that the application contains all of the information required by the Application Contents section of this notice.

Each complete application from an eligible recipient will then be evaluated by a Technical Evaluation Committee. The applications will be evaluated using the following criteria:

1. The technical merit of the proposed research effort, including the feasibility of the approach, planned methodology and anticipated results.

2. The adequacy of the organizational plan for accomplishing the proposed research effort, including the qualifications and experience of the research team, the various disciplines represented, the relative level of effort proposed for professional, technical and support staff.

3. The approaches to be employed to ensure timely completion of the research.

Terms and Conditions of the Award

1. Prior to award, each recipient must comply with the certification requirements of 49 CFR Part 20, Department of Transportation New Restrictions on Lobbying, and 49 CFR Part 29, Department of Transportation Government-wide Debarment and Suspension (Non-procurement) and Government-wide Requirements for Drug-Free Workplace (Grants).

2. During the effective period of the cooperative agreement awarded as a result of this notice, the agreement shall be subject to the general administrative requirements of 49 CFR Part 19, Department of Transportation Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Learning, Hospitals and Other Non-Profit Organizations; the cost principles of OMB Circulars A–21, or A–122, or FAR 31.2, as applicable to the recipients, and the requirements for a drug-free workplace set forth in 49 CFR Part 29.

3. If human subjects are to be used in any portions of this research, applications must include certification that the applicable provisions of 49 CFR Subtitle A Part 11 and NHTSA Order 700–1 will be followed.

4. Reporting Requirements and Deliverables: The recipient shall submit a quarterly performance report in letter format within 15 days after each quarter, a draft final report and draft technical summary within 24 months after contract award, any data bases and computer programs developed as part of this cooperative agreement on or before the completion date of this award, and a camera ready reproducible final report and technical summary within 27 months of contract award. An original and two copies of each report shall be submitted to the COTR.

Issued on: July 14, 1994.

Donald C. Bischoff,

Associate Administrator for Plans and Policy.

[FR Doc. 94–17497 Filed 7–18–94; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 94–61; Notice 1]

Uniroyal Goodrich Tire Company; Receipt of Petition for Determination of Inconsequential Noncompliance

The Uniroyal Goodrich Tire Company (Uniroyal) of Greenville, South Carolina, has determined that some of its tires fail to comply with 49 CFR 571.109, Federal Motor Vehicle Safety Standard (FMVSS) No. 109, "New Pneumatic Tires," and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports." Uniroyal has also petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) on the basis that the noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under Section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Paragraph S4.3.3(b) of FMVSS No. 109 specifies that each tire be labeled with an identification number. The last three digits of this identification number should represent the week and year of manufacture.

During the period of the 17th through the 20th week of 1994, Uniroyal manufactured approximately 2,800 P175/70R13 MOTOMASTER LE tires with an incorrect week and year of manufacture contained in the tire identification number. The last three digits in the identification number on the subject tires are incorrectly marked "167," "168," "169," and "120." The last three digits in the identification numbers for these tires should be "174," "184," "194," and "204" signifying the 17th, 18th, 19th, and 20th weeks of 1994. All tires are sold only in the replacement market.

Uniroyal supports its petition for inconsequential noncompliance with the following.

[Uniroyal does] not believe that this error will impact motor vehicle safety since only the week and year of manufacture is incorrect.

Uniroyal offers further rationale in its Part 573 Report.

The dates marked on these tires could be interpreted as the year 1987 through 1990 or 1997 through 2000. This tire line was introduced during the fourth quarter of 1992; therefore, there would not be pre-existent tires with these numbers. In the event a recall is necessary prior to the week and year (years 1997 through 2000) marked on these tires, there will be no difficulty in identifying them since there will be no tires that were actually manufactured during these weeks. If it is necessary to recall these tires during or after the weeks marked, the recall population would comprise both the mismarked and properly marked tires.

Interested persons are invited to submit written data, views, and arguments on the petition of Uniroyal, described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the petition is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: August 18, 1994.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: July 13, 1994.

Stanley R. Scheiner,

Acting Associate Administrator for Rulemaking.

[FR Doc. 94–17491 Filed 7–18–94; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1986, the Department

of the Treasury is publishing a current list of countries which may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986.)

Bahrain
Iraq
Jordan
Kuwait
Lebanon
Libya
Oman
Qatar
Saudi Arabia
Syria
United Arab Emirates
Yemen, Republic of

Dated: July 7, 1994.

Cynthia G. Beerbower,

Deputy Assistant Secretary for Tax Policy.

[FR Doc. 94–17420 Filed 7–18–94; 8:45 am]

BILLING CODE 4810–25–M

Office of the Comptroller of the Currency

[Docket No. 94–12]

Report to the Congress Regarding the Differences in Capital and Accounting Standards Among the Federal Banking and Thrift Agencies

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

ACTION: Report to the Committee on Banking, Housing, and Urban Affairs of the United States Senate and to the Committee on Banking, Finance and Urban Affairs of the United States House of Representatives regarding differences in capital and accounting standards among the federal banking and thrift agencies.

SUMMARY: The Office of the Comptroller of the Currency (OCC) has prepared this 1993 report as required by the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA). FDICIA requires the OCC to provide a report to Congress on any differences in capital standards among the federal financial regulatory agencies. This notice is intended to satisfy the FDICIA requirement that the report be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Roger Tufts, Senior Economic Advisor, Office of the Chief National Bank Examiner, (202) 874–5070, or Ronald Shimabukuro, Senior Attorney, Banking Operations and Assets Division, (202) 874–4460, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: Section 121 of FDICIA, Pub. L. 102–242, 105 Stat. 2236 (December 19, 1991), requires each federal banking agency to report annually to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives on any differences between the capital standards used by the OCC and the capital standards used by the other financial institutions supervisory agencies. The text of that report is provided as follows:

Differences in Capital and Accounting Standards Among the Federal Banking and Thrift Agencies,[1] Report to the Committee on Banking, Housing, and Urban Affairs of the United States Senate and to the Committee on Banking, Finance and Urban Affairs of the United States House of Representatives, 1993

This annual report details the differences in the capital requirements of the OCC, the Federal Reserve Board (FRB), the Federal Deposit Insurance Corporation (FDIC) and the Office of Thrift Supervision (OTS).[2] This report is divided into three sections. The first section briefly discusses recent efforts of the agencies to promote more consistent capital standards; the second section discusses the differences in the capital standards; and the third section discusses the differences in accounting standards.

A. Recent Efforts of the Agencies

Representatives of each of the agencies meet regularly to discuss capital and related accounting issues as part of an ongoing effort to promote consistent interpretation and application of capital requirements and to develop uniform capital standards. The agencies are committed to achieve full uniformity in their capital and accounting standards. During this past year, the banking agencies have been extremely busy in these efforts. The agencies have issued several final and proposed rules relating to:

- Identifiable intangible assets.
- Multifamily housing loans.
- Interest rate risk.
- Risks from concentrations of credit and nontraditional activities.
- Collateralized transactions.
- Bilateral netting contracts.
- Deferred tax assets (FAS 109).
- Unrealized gains and losses on securities available for sale (FAS 115).

In addition, the agencies issued changes to regulatory reporting requirements for sales of other real estate owned (OREO) as part of the initiative to implement the President's March 10, 1993, program to improve the availability of credit to businesses and individuals. The reporting change for OREO generally made the regulatory reporting requirements consistent with generally accepted accounting principles.

B. Differences in Capital Standards Among the Federal Financial Institution Regulatory Agencies

In 1989 the banking agencies and OTS adopted the risk-based capital guidelines. The risk-based capital guidelines impose capital requirements based on the credit risk profiles of the assets held by an institution and provide a means to measure off-balance sheet risks. The risk-based capital guidelines implement the Accord on International Convergence of Capital Measurement and Capital Standards of July 1988, as adopted by the Committee on Banking Regulation and Supervisory Practice (Basle Accord). Under the risk-based capital guidelines bank and thrift institutions are required to maintain total capital[3] of at least 8 percent of risk-weighted assets. The risk-based capital requirements are the minimum capital requirements.

Most institutions are expected to, and generally do, maintain capital well above this minimum level.

In addition to the risk-based capital guidelines, the federal banking agencies impose leverage capital requirements based on the ratio of Tier 1 capital to total assets. The leverage capital requirements work in conjunction with the risk-based capital guidelines and

[1] This report is made pursuant to section 121 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) which superseded section 1215 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA).

[2] The OCC is the primary supervisor of national banks. Bank holding companies and state-chartered banks that are members of the Federal Reserve System are supervised by the FRB. State-chartered nonmember banks are supervised by the FDIC. The OTS supervises savings and loan associations.

[3] Total capital consists of Tier 1 capital plus Tier 2 capital less required deductions. Tier 1 capital is defined to include common stockholders' equity, noncumulative perpetual preferred stock and related surplus, and minority interests in consolidated subsidiaries. Tier 2 capital is generally defined to include the allowance for loan and lease losses, up to 1.25% of risk weighted assets, cumulative perpetual preferred stock and other qualifying subordinated debt and hybrid capital instruments.

impose minimum capital requirements regardless of the risk weights assigned to the assets held by the institution.

Although the agencies have adopted common leverage capital requirements and risk-based capital guidelines, there remain some technical differences in language and interpretation of the capital standards among the agencies. These minor differences are detailed below.

1. Leverage Capital Requirements

Under the leverage capital requirements, highly-rated banks (composite CAMEL rating of 1) must maintain a minimum leverage capital ratio of 3 percent of Tier 1 capital to total assets. All other banks must maintain an additional 100 to 200 basis points of Tier 1 capital to total assets.

In addition to the leverage ratio requirements, thrift institutions also must maintain a tangible equity ratio of 1.5 percent of total assets. This additional tangible equity requirement is required by the Financial Institution Reform, Recovery and Enforcement Act (FIRREA). The OTS is currently amending its leverage ratio requirement to make it more consistent with the leverage ratio requirements of the other banking agencies. The only notable difference will be the definition of core capital. While the definition of core capital will generally be consistent with the definition of Tier 1 capital, certain adjustments, such as supervisory goodwill,[4] will result in some differences.

2. Equity Investments

In general, commercial banks are not permitted to invest in equity securities, not are they generally permitted to engage in real estate investment or development activities. To the extent that a bank is permitted to hold equity securities (as with securities obtained in connection with debts previously contracted), the risk-based capital guidelines of the banking agencies require these investments to be risk-weighted at 100 percent. However, on a case-by-case basis, the banking agencies may require deduction of equity investments from the capital of the parent bank or impose other requirements in order to assess an appropriate capital charge above the minimum capital requirements. The capital treatment of equity investments is also discussed in the section on operating subsidiaries.

[4] With respect to supervisory goodwill, it should be noted that supervisory goodwill for thrifts will be phased out by the end of 1994.

The OTS risk-based capital requirements require thrift institutions to deduct equity investment from capital over a phased-in period ending July 1, 1994. This phased-in period may be extended to July 1, 1996, by the OTS on a case-by-case basis. In the interim, the portion of these equity investments not deducted will be risk-weighted at 100 percent.

3. Assets subject to Guarantee Arrangements by the Federal Savings and Loan Insurance Corporation (FLSIC)/Federal Deposit Insurance Corporation

The risk-based capital guidelines of the banking agencies assign assets subject to FLSIC or FDIC guarantees to the 20 percent risk-weight category, the same category to which claims on depository institutions and government-sponsored agencies are assigned. The OTS assigns these assets to the zero percent risk weight category.

4. Limitation on Subordinated Debt and Limited-Life Preferred Stock

Consistent with the Basle Accord, the banking agencies limit the amount of subordinated debt and limited-life preferred stock that may be included in Tier 2 capital to 50 percent of Tier 1 capital. This limitation is in addition to the overall limitation on Tier 2 capital which restricts the amount of Tier 2 capital that may be included in total capital to 100 percent of Tier 1 capital. In addition, the risk-based capital guidelines of the banking agencies require that subordinated debt and limited-life preferred stock by discounted 20 percent in each of the five years prior to maturity.

While subordinated debt and limited-life preferred stock do provide some measure of protection to the FDIC insurance fund, neither are a permanent source of funds. Moreover, subordinated debt cannot absorb losses while the bank continues to operate as a going concern. This limitation permits the inclusion of some subordinated debt and limited-life preferred stock in capital, while assuring that permanent stockholders' equity capital remains the predominant element in bank regulatory capital.

The OTS risk-based capital guidelines do not contain any sublimit on the total amount of limited-life instruments that may be included within Tier 2 capital. In addition, the OTS allows thrift institutions the option of either (1) discounting maturing capital instruments (issued on or after November 7, 1989) by 20 percent a year over the last five years of their term, or (2) including the full amount of such instruments, provided that the amount maturing in any of the next seven years does not exceed 20 percent of the total capital of the thrift institution.

5. Subsidiaries

The banking agencies generally require that all significant majority-owned subsidiaries be consolidated with the parent organization for both regulatory reporting and capital purposes. This requirement is consistent with the Basle Accord and is designed to ensure that all risk exposures of the banking organization are taken into account.

While significant majority-owned subsidiaries are generally consolidated, in some instances the OCC does not require a bank to consolidate certain subsidiaries. In these instances the bank's investment in the subsidiary constitutes a capital investment in the subsidiary. The OCC risk-based capital guidelines specifically provide that capital investment in an unconsolidated banking or financial subsidiary must be deducted from the total capital of the bank. In addition, the OCC risk-based capital guidelines permit the OCC to require the deduction of investment in other subsidiaries and associated companies on a case-by-case basis.

Similarly, the FRB risk-based capital guidelines generally require the deduction of investments in unconsolidated banking and finance subsidiaries. With respect to the investment in other types of unconsolidated subsidiaries (other than banking and finance subsidiaries) or joint ventures and associated companies, the FRB does retain flexibility in the capital treatment. The FRB may require the investments in such subsidiaries (1) to be deducted, (2) to be appropriately risk-weighted against the proportionate share of the assets of the entity, (3) to be consolidated line-by-line with the entity, or (4) otherwise to require the parent organization to maintain capital above the minimum standard sufficient to compensate for any risks associated with the investment.

In addition, the FRB risk-based capital guidelines also explicitly permit the deduction of investments in certain subsidiaries that, while consolidated for accounting purposes, are not consolidated for certain specified supervisory or regulatory purposes. For example, the FRB deducts investments in, and unsecured advances to, Section 20 securities subsidiaries from the capital of the parent bank holding company. The FDIC accords similar treatment to securities subsidiaries of state-chartered nonmember banks.

Moreover, under the FDIC rules, investments in, and extensions of credit to, certain mortgage banking subsidiaries are also deducted in computing the capita of the parent bank. Neither the OCC nor the FRB has a similar requirement with regard to mortgage banking subsidiaries.

The deduction of investments in subsidiaries from the capital of the parent bank is designed to ensure that the capital supporting the subsidiary is not also used as the basis of further leveraging and risk-taking by the parent bank. In deducting investments in, and advances to, certain subsidiaries from the capital of the parent bank, the banking agencies expect the parent bank to satisfy or exceed minimum regulatory capital requirements without reliance on the capital invested in the subsidiary. In assessing the overall capital adequacy of the parent bank, the banking agencies may also consider the parent bank's fully consolidated capital position.

Under OTS risk-based capital guidelines, a distinction is made between subsidiaries engaged in activities permissible for national banks and subsidiaries engaged in activities "impermissible" for national banks. This distinction is mandated by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. Subsidiaries of thrift institutions that engage only in activities permissible for national banks are consolidated on a line-for-line basis if majority-owned and on a *pro rata* basis if ownership is between 5 percent and 50 percent. As a general rule, investments, including loans, in subsidiaries that engage in impermissible activities are deducted in determining the capital adequacy of the parent thrift institution. The remaining assets (the percent of assets corresponding to the nondeducted portion of the investment in the subsidiary) are consolidated with the parent thrift. However, investments, including loans, outstanding as of April 12, 1989, to subsidiaries that were engaged in impermissible activities prior to that date are grandfathered and will be phased-out of capital over a transition period that expires on July 1, 1994. The transition period may be extended to July 1, 1996, by the OTS on a case-by-case basis. During this transition period, investments in subsidiaries engaged in impermissible activities that have not been phased out of capital are to be consolidated on a *pro rata* basis.

6. Qualifying Multifamily Mortgage Loans

Pursuant to Section 618(b) of the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991 (RTCRRIA), the banking agencies and OTS have amended their risk-based capital guidelines to lower the risk weight of certain multifamily housing loans, and securities backed by such loans, from 100 percent to 50 percent. Specifically, loans secured by multifamily residential properties may qualify for a 50 percent risk weight subject to the following conditions:

(1) The loan must be secured by a first mortgage on a multifamily residential property consisting of five or more dwelling units;

(2) The original amortization of principal and interest must not exceed 30 years;

(3) The original minimum maturity for repayment of principal must not be less than seven years;

(4) All principal and interest payments must have been made on a timely basis in accordance with the terms of the loan for at least one year immediately preceding the risk weighting of the loan in the 50 percent risk weight category;

(5) The loan cannot be otherwise 90 days or more past due, or carried in nonaccrual status;

(6) The loan must be in accordance with applicable lending limit requirements and prudent underwriting standards; and

(7) If the rate of interest does not change over the term of the loan, then the current loan amount must not exceed 80 percent of the current value of the property, and in the most recent fiscal year, the ratio of annual net operating income generated by the property to annual debt service on the loan must not be less than 120 percent; or

(8) If the rate of interest changes over the term of the loan, then the current loan amount must not exceed 75 percent of the current value of the property, and in the most recent fiscal year, the ratio of annual net operating income generated by the property to annual debt service on the loan must not be less than 115 percent.

7. Goodwill

As required by FIRREA, the federal banking agencies do not allow banks or FDIC-supervised savings banks to include goodwill as capital for either risk-based capital guidelines or the leverage capital requirements. Bank holding companies included goodwill acquired prior to March 12, 1988, in Tier 1 for the purposes of the risk-based capital guidelines (although not for leverage capital requirements) until the end of 1992. After 1992, all goodwill must be deducted from bank holding company capital.

As permitted by FIRREA, OTS allows "qualifying supervisory goodwill" to be included as part of core capital through year-end 1994. After this date, thrift institutions must satisfy their minimum core capital requirement without reliance on goodwill.

8. Nonresidential Construction and Land Loans

Under the risk-based capital guidelines of the banking agencies, loans for real estate development and construction are assigned to the 100 percent risk-weight category. Reserves or charge-offs are required for such loans when weaknesses or losses develop. The banking agencies have no requirement for an automatic charge-off when the amount of a loan exceeds the fair value of the property pledged as collateral for the loan.

OTS generally also assigns these loans to the 100 percent risk weight category. However, if the amount of the loan exceeds 80 percent of the fair value of the property, that excess portion must be deducted from capital in accordance with a phase-in rule which ends on July 1, 1994.

9. Mortgage-Backed Securities (MBS)

The risk-based capital guidelines of the banking agencies generally assign a risk weight to privately-issued MBSs according to the underlying assets, but in no case would it be assigned to the zero percent risk-weight category. Privately-issued MBSs where the direct underlying assets are mortgages, are generally assigned a risk weight of 50 percent or 100 percent. Privately-issued MBSs that have government agency or government-sponsored agency securities as their direct underlying assets are generally assigned to the 20 percent risk-weight category.

The OTS assigns privately-issued high quality mortgage-related securities to the 20 percent risk-weight category. However, these are privately-issued MBSs with AA or better investment ratings from private rating companies.

With respect to other MBSs, the federal banking agencies assign to the 100 percent risk weight category certain MBSs, including interest-only strips, residuals, and similar instruments that can absorb more than their *pro rata* share of loss. The OCC, in conjunction with the other banking agencies and the OTS, on January 10, 1992, issued more

specific guidance as to the types of "high types" MBSs that require a 100 percent risk weight.

10. Assets Sold With Recourse

In general, recourse is any risk of loss retained by an institution when it sells an asset. Recourse arrangements allow the purchaser of an aset to seek recovery against the originating institution that sold the asset under the conditions in the agreement. Recovery may take various forms, but usually permits the buyer to "put," or resell, the asset back to the selling institution or to obtain reimbursement from the selling institution for the amount of the loss. A typical condition for recourse would be if the asset ceases to perform satisfactorily. Therefore, recourse provisions generally expose the originating institution to loss associated with the asset.

Generally, under the risk-based capital guidelines of the banking agencies, sales of assets involving any recourse must be reported as financings, so that the assets are retained on the balance sheet of the selling bank. This has the effect of requiring a full leverage and risk-based capital charge whenever assets are sold with recourse, including limited recourse.

The OCC has recently revised its risk-based capital guidelines to clarify the definition of recourse and to permit a limited exception for transactions involving the sale of certain mortgage loan pools where the selling bank has retained only minimal recourse and generally has provided for all potential losses.

The FRB generally applies a capital charge to any recourse arrangement that is the equivalent of an off-balance sheet guarantee, regardless of the nature of the transaction that gives rise to the recourse obligation. As with the OCC, the FRB provides an exception for pools of one-to four-family residential mortgages and for certain farm mortgage loans. These recourse transactions are reported by the bank as sales, removing them from leverage capital requirements. These transactions, which are the equivalent of off-balance sheet guarantees, involve the type of credit risk that is addressed by the risk-based capital guidelines. However, some questions have been raised because of the treatment afforded these transactions for the purposes of the leverage capital requirements. The FRB has clarified its risk-based capital guidelines to ensure that recourse sales involving residential mortgages are to be taken into account for determining compliance with risk-based capital requirements. The FDIC has also clarified their risk-based capital guidelines on this issue in 1993.

In general, OTS also requires a full capital charge against assets sold with recourse. However, for certain limited recourse arrangements, OTS limits the capital charge to the lesser of the amount of recourse or the actual amount of capital that would otherwise be required against that asset, that is, the normal full capital charge.

At present the banking agencies do not provide for any special treatment of securitized assets. Some securitized asset arrangements may involve the issuance of senior and subordinated classes of securities against pools of assets. When a bank originates such a transaction by placing loans that it owns in a trust and retains any portion of the subordinated securities, the banking agencies require that capital be maintained against the entire amount of the asset pool. Regardless of whether a bank acquires a subordinated or senior security in a pool of assets that it did not originate, the banking agencies assign both the investment in the subordinated piece or the senior piece to the 100 percent risk-weight category. The banking agencies review these instruments to determine if additional reserves, asset write-downs, or capital are necessary to protect the bank.

The OTS requires that capital be maintained against the entire amount of the asset pool in both of the situations described in the preceding paragraph. Additionally, the OTS applies a capital charge to the full amount of assets being serviced when the servicer is required to absorb credit losses on the assets being serviced.

In 1990, under the auspices of the FFIEC, the banking agencies and the OTS issued for public comment a fact finding paper pertaining to the full range of issues relating to recourse arrangements. These issues include the definition of "recourse" and the appropriate reporting and capital treatments to be applied to recourse arrangements, as well as so-called recourse servicing arrangements and limited recourse. The objective of this effort was to develop in a comprehensive and consistent fashion an appropriate and uniform approach to recourse arrangements for capital adequacy, reporting, and other regulatory purposes. The comments received were very extensive and generally illustrated the complexity of the subject. In view of the significance and complexity of this project, the FFIEC in December 1990 decided to narrow the scope of the initial phase of the recourse project to credit-related recourse arrangements that involve limited recourse or that support a third party's assets.

A recourse working group, composed of representatives from all four agencies, presented a report and recommendations to the FFIEC in August 1992 and were directed to carry out a study of the impact of their recommendations on depository institutions, financial markets, and other affected parties. The interagency working group completed a study in early 1993. As a result of that study, the interagency working group has revised several of its recommendations to reflect market practice especially for securitized assets. A joint interagency notice of proposed rulemaking and advance notice of proposed rulemaking was published in the **Federal Register** on May 25, 1994 (59 Fed. Reg. 27116).

11. Agricultural Loan Loss Amortization

In determining regulatory capital, those banks accepted into the agricultural loan loss amortization program pursuant to Title VIII of the Competitive Equality Banking Act of 1987 are permitted to defer and amortize losses incurred on agricultural loans between January 1, 1984, and December 31, 1991. The program also applies to losses incurred between January 1, 1983, and December 31, 1991, as a result of reappraisals and sales of agricultural and other real estate owned and agricultural personal property. These losses must be fully amortized over a period not to exceed seven years and, in any case, must be fully amortized by year-end 1998. Thrift institutions are not eligible to participate in the agricultural loan loss amortization program established by this statute.

12. Treatment of Junior Liens on One-to Four-Family Properties

In some cases, a banking organization may make two loans secured by a single piece of residential property—one loan secured by a first lien, the other by a second lien. The OCC and OTS generally assign first liens on one- to four-family properties to the 50 percent risk-weight category. All second liens on residential property are assigned to the 100 percent risk-weight category, regardless of whether the institution also holds the first lien. The assignment of first lien mortgages to the 50 percent risk-weight category is based upon the requirement that banks will adhere to prudent underwriting standards with respect to the maximum loan-to-value ratio, the borrower's paying capacity and the long-term expectations for the real estate market in which the bank is lending.

The FDIC similarly assigns all second liens to the 100 percent risk-weight category. However, in determining the risk-weight of the first lien, the FDIC considers the first and second liens together to assess whether the first lien satisfies prudent underwriting standards. When evaluated together, if the first and second liens are within the prudent loan-to-value ratio and satisfy all other underwriting standards, then the first lien will be assigned to the 50 percent risk-weight category; otherwise, it will be assigned to the 100 percent risk category.

The FRB and OTS consider the first and second liens as a single loan, provided there are no intervening liens. Therefore, the total amount of these transactions may be assigned to the 100 percent risk-weight category, if, in the aggregate, the two loans exceeds a prudent loan-to-value ratio and, therefore, do not qualify for the 50 percent risk-weight category. This approach is intended to avoid possible circumvention of the capital requirements and capture the risks associated with the combined transactions. However, if the total amount of the transaction does satisfy a prudent loan-to-value ratio and other underwriting standards, then both the first and second liens may be assigned to the 50 percent risk-weight category.

Although there are some technical differences in the methodology, all the agencies have the same ability to adjust the capital requirements of an individual bank to account for imprudent loans secured by first liens on one- to four-family properties.

13. Pledged Deposits and Nonwithdrawable Accounts

The OTS capital guidelines permit thrift institutions to include in capital certain pledged deposits and nonwithdrawal accounts that satisfy specified OTS criteria. Income capital certificates and mutual capital certificates held by OTS may also be included in capital by thrift institutions. These instruments are not relevant to commercial banks, and, therefore, they are not addressed in the risk-based capital guidelines of the banking agencies.

14. Mutual Funds

The three banking agencies assign all of the holdings of a bank in a mutual fund to the risk category appropriate to the highest risk asset that a particular mutual fund is *permitted* to hold under its operating rules. The purposes of this is to take into account the maximum degree of risk to which a bank may be exposed when investing in a mutual fund in view of the fact that the future composition and risk characteristics of the fund cannot be known in advance.

The OTS applies a capital charge based on the riskiest asset that is *actually* held by the mutual fund at a particular time. In addition the OTS guidelines also permit, on a case-by-case basis, investments in mutual funds to be allocated on a *pro rata* basis dependent on the actual composition of the fund.

15. Interest Rate Risk

The risk-based capital guidelines were designed primarily as a broad measure of the relative credit risk of the assets. However, the banking agencies and OTS are continuing their efforts to refine the risk-based capital guidelines to take into account other noncredit risks, including interest rate risk. The agencies are required to consider interest rate risk, as well as the risk of concentrations of credit and the risks of nontraditional activities, under Section 305 of FDICIA.

The OTS has adopted an interest rate risk component to its risk-based capital guidelines, which became effective on January 1, 1994. Under this new rule, thrift institutions with an above normal level of interest rate risk will be subject to a capital charge commensurate to their risk exposure.

The banking agencies also are developing an interest rate risk component. On September 14, 1993, the banking agencies published a joint notice of proposed rulemaking in the **Federal Register** and are currently in the process of drafting a final rule.

16. Concentrations of Credit and Nontraditional Activities

As required by Section 305 of FDICIA, the banking agencies and the OTS published a joint proposal in the **Federal Register** on February 22, 1994. The proposed rule would amend the capital standards of the banking agencies and the OTS by explicitly identifying concentration of credit risk and certain risks arising from nontraditional activities as important factors in assessing an institution's overall capital adequacy. The banking agencies and the OTS are currently reviewing the comment letters received and are drafting a final rule.

17. Collateralized Transactions

In December 1992, the FRB amended its risk-based capital guidelines to lower the risk-weight on loans collateralized by cash or government securities from 20 percent to zero percent. In August 1993, the OCC issued a proposed rule that would similarly lower the risk-weight on loans collateralized by cash or government securities from 20 percent of zero percent for national banks. The OCC is currently drafting a final rule. The FDIC and OTS are also considering this issue.

18. Deferred Tax Assets

On December 23, 1993, the OCC published in the **Federal Register** a proposed rule on deferred tax assets. This proposal was developed jointly by the banking agencies and the OTS in response to Financial Accounting Standard (FAS) Number 109 which was adopted for regulatory reporting purposes beginning January 1, 1993. The proposed rule would amend the capital standards to limit the amount of certain deferred tax assets that may be included in an institution's Tier 1 capital. The other banking agencies and the OTS have issued or are considering similar proposals. The OCC will be working with the other banking agencies and the OTS in drafting a final rule.

19. Unrealized Gains and Losses on Securities Available for Sale

On April 18, 1994, the OCC published in the **Federal Register** a proposed rule on unrealized gains and losses on securities available for sale. This proposal was developed jointly by the banking agencies and OTS in response to FAS 115, which was adopted for regulatory reporting purposes beginning December 15, 1993. The proposed rule would amend the definition of "common stockholders' equity" in the capital guidelines to include both unrealized gains and losses on securities available for sale. The other banking agencies and the OTS have issued or are planning to issue similar proposals. The OCC will be working with the other banking agencies and the OTS in drafting a final rule.

20. Bilateral Netting Contracts

The banking agencies and the OTS have been meeting to discuss an amendment to the risk-based capital guideline to provide for the recognition of bilateral netting contracts for the purpose of determining the capital requirement for off-balance sheet rate contracts. In May of 1994, the OCC and the FRB have issued a joint proposed rule that generally would permit an institution to net positive and negative mark-to-market values of interest rate and foreign exchange rate contracts with a single counterparty if those rate contracts are subject to qualifying bilateral netting contracts. The OTS and the FDIC are considering the issuance of similar proposed rules.

C. Interagency Differences in Accounting Principles

The OCC, as well as the other banking agencies, requires banks to follow generally accepted accounting principles (GAAP), except when the agency determines that a specific accounting standard under GAAP does not meet the accounting objectives included in Section 121 of FDICIA. In such cases, the use of accounting principles more stringent than GAAP may be required. For the most part, the regulatory accounting standards for all commercial banks, whether regulated by the OCC, the FRB, or the FDIC, are prescribed in the Instructions to the Report of Condition and Income (Call Report).

The Call Report instructions are established by the FFIEC and are generally consistent with GAAP. Differences in interpretations between the OCC and the other banking agencies may occur. However, such differences are usually infrequent and involve immaterial or emerging issues, which the FFIEC has not yet reviewed on a joint agency basis.

Under Section 121 of FDICIA, the federal banking agencies must require financial institutions to use accounting principles "no less stringent than GAAP." The banking agencies believe that GAAP generally satisfies the accounting objectives included in FDICIA Section 121. However, as previously noted, in certain circumstances, accounting principals more stringent than GAAP are required to satisfy accounting objectives included in FDICIA.

The OTS requires each thrift institution to file the Thrift Financial Report. That report is filed on a basis consistent with GAAP, as it is applied by thrift institutions, which differs in a few respects from GAAP as it is applied by banks.

These differences in accounting principles between the banks and thrift institutions may cause differences in financial statement presentation and in amounts of regulatory capital required to be maintained by depository institutions.

The following summarizes the significant differences in accounting standards between the Thrift Financial Report and the Call Report. These differences generally arise because of either: (1) differences between regulatory reporting standards and GAAP applicable to banks, or (2) differences in GAAP applicable to banks and GAAP applicable to thrift institutions.

1. Futures and Forward Contracts

Differences in this area result because the banking regulators generally require future and forward contracts to be marked to market, whereas thrift institutions may defer gains and losses resulting from hedging activities. The banking agencies do not follow GAAP, but require banks to report changes in the market value of futures and forward contracts, even when used as hedges, in current income. However, futures contracts used to hedge mortgage banking operations are reported in accordance with GAAP. This issue will be reexamined as part of an ongoing project on accounting for derivatives.

The OTS requires thrift institutions to follow GAAP to account for futures contracts. Accordingly, when specified hedging criteria are satisfied, the accounting for the futures contract is matched with the accounting for the hedged item. Changes in the market value of the futures contract are recognized in income when the income effects of the hedged item are recognized. This reporting can result in the deferral of both gains and losses. Although there is no specific GAAP for forward contracts, the OTS applies these same principles to forward contracts.

2. Push-Down Accounting

When a depository institution is acquired by a holding company in a purchase transaction, the holding company is required to revalue all of the assets and liabilities of the depository institution at fair value at the time of acquisition. When push-down accounting is applied, the same fair value adjustments recorded by the parent holding company are also recorded at the depository institution level.

All of the agencies require the use of push-down accounting when there has been a substantial change in the ownership of the institution. However, differing standards have been applied to determine when this substantial change has occurred.

The three banking agencies require push-down accounting when there is at least a 95 percent change in ownership of the institution. This approach is consistent with interpretations of the Securities and Exchange Commission.

The OTS requires push-down accounting when there is at least a 90 percent change of ownership.

3. Excess Service Fees

Thrift institutions consider excess servicing fees in the determination of the gain or loss on a loan sale, whereas banks generally recognize the excess fee over the life of the loan.

The banking agencies require banks to follow GAAP for residential first mortgage loans. This requires that when loans are sold with servicing retained and the stated servicing fee is sufficiently higher than a normal servicing fee, the sales price is adjusted to determine the gain or loss from the sale. This allows additional gain recognition at the time of sale and recognizes a normal servicing fee in each subsequent year. This gain cannot exceed the gain assuming the loans were sold with servicing released.

For all other loans, the banking agencies require that excess servicing fees retained on loans sold be recognized over the contractual life of the transferred assets.

The OTS follows GAAP in valuing all excessive service fees. Therefore, the accounting stated above for sales of mortgage loans with excess servicing at banking institutions would apply to all loan sales with excess servicing at thrift institutions.

4. In-Substance Defeasance of Debt

The banking agencies do not permit banks to defease their liabilities in accordance with FASB Statement Number 76, whereas thrift institutions may eliminate defeased liabilities from the balance sheet.

The banking agencies report in-substance defeased debt as a liability and the securities contributed to a trust as assets with no recognition of any gain or loss on the transaction.

The OTS accounts for debt that has been in-substance defeased in accordance with GAAP.

Therefore, when a debtor irrevocably places risk-free monetary assets in a trust solely for satisfying the debt and the possibility that the debtor will be required to make further payments is remote, the debt is considered extinguished. The transfer can result in a gain or loss in the current period.

5. Sales of Assets with Recourse

The banking agencies generally do not allow banks to report sales of receivables if any risk of loss is retained. Thrift institutions report sales when the risk of loss can be estimated in accordance with FASB Statement Number 77.

The banking agencies generally allow banks to report transfers of receivables as sales only when the transferring institution: (1) retains no risk of loss from the assets transferred and (2) has no obligation for the payment of principal or interest on the assets transferred. As a result, assets transferred with recourse are reported as financings, not sales.

However, this rule does not apply to the transfer of mortgage loans under certain government programs (GNMA, FNMA, etc.). Transfers of mortgages under one of these programs are automatically treated as sales. Furthermore, private transfers of pools of mortgages are also reported as sales if the transferring institution does not retain more than an insignificant risk of loss on the assets transferred.

The OTS follows GAAP to account for a transfer of all receivables with recourse. A transfer of receivables with recourse is recognized as a sale if: (1) the seller surrenders control of the future economic benefits, (2) the transferor's obligation under the recourse provisions can be reasonably estimated, and (3) the transferee cannot require repurchase of the receivables except pursuant to the recourse provisions.

The FFIEC has a study under way involving the topic of transfers with recourse. As part of this study, the staff of the OCC is reviewing the reporting requirements for sales of assets with recourse. The purpose of this study is to determine whether a reduction or elimination of the differences between regulatory reporting requirements and GAAP may be achieved in this area.

6. Negative Goodwill

The three banking agencies require that negative goodwill [5] be reported as a liability, and not netted against the goodwill asset.

The OTS permits negative goodwill to offset the goodwill assets resulting from other acquisitions.

7. Offsetting of Amounts Related to Certain Contracts

FASB Interpretation Number 39 (FIN 39) became effective in 1994. FIN 39 allows the offsetting of certain assets and liabilities on the balance sheet (e.g., loans, deposits, etc.), as well as the netting of assets and liabilities arising from off-balance sheet derivative instruments, when four conditions are met. These conditions relate to whether a valid right of offset exists. The three banking agencies are planning to adopt FIN 39 sometime in 1994 solely for on-balance sheet amounts arising from conditional and exchange contracts (e.g., interest rate swaps, options, etc.). The Call Report's existing guidance, which generally prohibits netting of assets and liabilities, will continue to be followed in all other cases.

[5] Negative goodwill typically is created when a bank purchases assets for less than the determined fair value of the assets.

The OTS policy on netting of assets and liabilities is consistent with GAAP and FIN 39.

8. Specific Valuation Allowance for and Charge-Offs of Troubled Loans

The banking agencies generally consider real estate loans that lack acceptable cash flows or other repayment sources to be "collateral dependent." When the fair value of the collateral of such a loan has declined below book value, the loan is reduced to fair value. This approach is consistent with GAAP applicable to banks.

Prior to September 30, 1993, the OTS required specific valuation allowances for troubled loans based on the net realizable value of the collateral. Effective September 30, 1993, the OTS issued a revised policy that requires a specific valuation allowance against, or partial charge-off, of a loan when its book value exceeds its "value," as defined. The "value" is either the present value of the expected future cash flows discounted at the loan's effective interest rate, the observable market price, or the fair value of the collateral. This revised policy, which is similar to the requirements of FASB Statement No. 114, narrows the differences between banks and thrifts.

Dated: July 11, 1994.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 94–17435 Filed 7–18–94; 8:45 am]

BILLING CODE 4810–33–M

U.S. Customs Service

[T.D. 94–59]

Tariff Classification of Camera Lenses Imported in Same Shipment With Camera Bodies

AGENCY: U.S. Customs Service, Department of Treasury.

ACTION: Final interpretive rule.

SUMMARY: This document gives notice of a change of position regarding the classification of different sized camera lenses imported in the same shipment with an equal number of 35mm camera bodies under the Harmonized Tariff Schedule of the United States (HTSUS). Pursuant to rulings on such shipments, Customs has classified as a single tariff entity each camera body and "normal" lens which could be matched together. Camera bodies and lenses, if they are imported in the same shipment but are not packaged together for retail sale as cameras and lenses, are now presumed to retain their separate commercial identities and are separately classifiable under the HTSUS. The result of this change of position under the HTSUS is an increase in the rate of duty on lenses not put up together for retail sale with matched camera bodies at the time of entry, because the lenses will no longer be classifiable together with camera bodies as cameras, but will be separately classifiable as lenses. This change of position does not apply to lenses and camera bodies, imported together in the same shipment in equal numbers, which are put up together for retail sale at the time of entry into the U.S. Comments received in response to the notice proposing this change were carefully considered prior to determining that our previous position needed to be changed.

DATES: The change in tariff classification resulting from this decision will be effective as to merchandise entered for consumption or withdrawn from warehouse on or after October 17, 1994.

FOR FURTHER INFORMATION CONTACT: David W. Spence, Office of Regulations and Rulings (202) 482–7030.

SUPPLEMENTARY INFORMATION:

Background

In a ruling dated May 2, 1988 (HQ 076497), it was determined by Customs that, under the Tariff Schedules of the United States (TSUS), the precursor to the Harmonized Tariff Schedule of the United States (HTSUS), a 35mm camera body matched up with a "normal" lens in the same shipment was a single tariff entity. Specifically, it was held that a 35mm single lens reflex camera body imported with a 50–55mm lens was a single article subject to classification under item 722.16, TSUS, as a camera. It was also determined that zoom lenses with a focal length of 35mm to 70mm had also become "normal" lenses when imported with the 35mm camera bodies.

The position of classifying a 35mm camera body imported with a "normal" lens in the same shipment as a single entity continued after the transition from the TSUS to the HTSUS on January 1, 1989.

Under the HTSUS, the subheadings under consideration are as follows:

9006.51.00: [o]ther cameras: [w]ith through-the-lens viewfinder (single lens reflex (SLR)), for roll film of a width not exceeding 35mm.

The general, column one rate of duty is 3 percent *ad valorem.*

9002.11.80: [o]bjective lenses and parts and accessories thereof: [f]or cameras, projectors or photographic enlargers or reducers: [o]ther.

The general, column one rate of duty is 6.6 percent *ad valorem.*

In understanding the language of the HTSUS, the Harmonized Commodity

Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes, although not dispositive, should be consulted for guidance in determining the proper interpretation of the HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989). In part, Explanatory Note 90.06(I) (p.1465) provides that heading 9006, HTSUS, covers all kinds of photographic cameras (other than cinematographic cameras), whether for professional or amateur use, and whether or not presented with their optical elements (objective lenses, viewfinders, etc.). It further states that there are many different types of cameras, but the conventional types consist essentially of a light-tight chamber, a lens, a shutter, a diaphragm, a holder for a photographic plate or film, and a viewfinder.

Explanatory Note 90.06(I) states that a camera body with a lens constitutes a camera. Therefore, a lens and a camera body, imported in the same shipment and put up together for retail sale at the time of entry into the U.S., are classifiable under subheading 9006.51.00, HTSUS, as a camera. However, the note also states that a camera body is classifiable as a camera whether or not presented with the optical element. The issue, then, is whether camera bodies, imported with numerous camera lenses in the same shipment and not put up together for retail sale once entered into the U.S., constitute complete and unassembled cameras.

It is noted that imported merchandise must be classified under the HTSUS with reference to its condition as imported.

General Rule of Interpretation (GRI) 2(a), HTSUS, provides that "any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as entered, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), entered unassembled or disassembled."

Explanatory Note 2(a)(V) (p. 2) states that the second part of Rule 2(a) provides that complete or finished articles presented unassembled or disassembled are to be classified in the same heading as the assembled article. When goods are so presented, it is usually for reasons such as requirements or convenience of packing, handling or transport.

In a notice published in the **Federal Register** on December 7, 1993 (58 FR 64423), Customs furnished notice that the classification of the subject merchandise was under review and comments from interested parties were requested. An extension of time to file comments was published in the **Federal Register** on February 15, 1994 (59 FR 7297).

Only four submissions were received in response to the notice. While all four opposed the proposed change of position, only one provided a substantive discussion of the legal issues involved.

Discussion of Comments

Comment: The continued classification of lenses with their accompanying camera bodies as cameras is required by GRI 2(a).

Response: Customs disagrees, unless, the lenses and camera bodies, imported together in the same shipment in equal numbers, are put up together for retail sale at the time of entry into the U.S. Otherwise, it is the position of Customs that lenses and camera bodies, not put up together for retail sale, retain their separate commercial identities and are separately classifiable under the HTSUS. GRI 2(a) does not apply in this instance because the lenses and camera bodies are not entered packaged separately primarily for reasons such as convenience of packing, handling or transport, but so that the lenses will receive the lower duty rate for cameras, even if the lenses will not be used with those camera bodies.

Comment: Lenses and camera bodies, imported in the same shipment but not put up together for retail sale, are to be classifiable as cameras because they constitute composite goods under GRI 3(b).

Response: In part, Explanatory Note 3(b)(IX) (p. 4) states that "[f]or the purposes of this Rule, composite goods made up of different components shall be taken to mean not only those in which the components are attached to each other to form a practically inseparable whole but also those with separable components, provided these components are adapted one to the other and are mutually complementary and that together they form a whole which would not normally be offered for sale in separate parts."

It is the position of Customs that the lenses and camera bodies retain their separate commercial identities. Therefore, they cannot together constitute composite goods, because they do not together form a whole. Also, the lenses and camera bodies are quite often offered for sale one without the other.

Comment: The change of position is inconsistent with the Doctrine of Entireties.

Response: The Doctrine of Entireties, applicable under the TSUS, has been supplanted by GRI 2(a). As previously noted, GRI 2(a) does not apply in this instance.

Comment: The change of position should not apply to "normal" lenses.

Response: The HTSUS does not distinguish "normal" lenses from other types of camera lenses.

Conclusion

After careful analysis of the comments submitted and further review of this matter, Customs deems that numerous camera lenses, imported together with an equal amount of 35mm camera bodies in the same shipment and not put up together for retail sale at the time of entry into the U.S., do not constitute complete and unassembled cameras, and the different sized lenses are separately classifiable under subheading 9002.11.80, HTSUS, as objective lenses for cameras. The camera lenses and the camera bodies possess separate commercial identities. In the absence of any evidence to the contrary, Customs is of the opinion that they lack the degree of commercial integration to be considered as cameras with lenses, unassembled, for the purposes of GRI 2(a).

The change of position also applies to different sized lenses imported together with an unequal amount of 35mm camera bodies. Those lenses and camera bodies put up together for retail sale will be classifiable under subheading 9006.51.00, HTSUS, as cameras. The remaining lenses in the shipment, not put up together for retail sale at the time of entry with corresponding camera bodies, will be classifiable under subheading 9002.11.80, HTSUS, as objective lenses for cameras.

Pursuant to section 177.10(e), Customs Regulations [19 CFR 177.10(e)], to allow sufficient time for interested parties to be aware of this change and to make necessary arrangements, this change in classification is being delayed 90 days from the date of publication in the **Federal Register**.

Michael H. Lane,

Acting Commissioner of Customs.

Approved: June 8, 1994.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 94–17548 Filed 7–18–94; 8:45 am]

BILLING CODE 4820–02–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 F.R. 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 F.R. 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Origins of Impressionism" (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Metropolitan Museum of Art, New York, New York from on or about September 19, 1994 to on or about January 8, 1995, is in the national interest. Public Notice of this determination is ordered to be published in the **Federal Register.**

Dated: July 14, 1994.

Les Jin,

General Counsel.

[FR Doc. 94–17535 Filed 7–18–94; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review: VA Request for Determination of Reasonable Value Real Estate)—HUD Application for Property Appraisal and Commitment, VA Form 26–1805/HUD Form 92800–1

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) the title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, Room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before August 18, 1994.

Dated: June 29, 1994.

By direction of the Secretary.

Donald L. Neilson,

Director, Records Management Service.

Extension

1. VA Request for Determination of Reasonable Value (Real Estate)—HUD Application for Property Appraisal and Commitment, VA Form 26–1805/HUD Form 92800–1
2. The form is used to determine the reasonable value of properties proposed as security for guaranteed or direct loans and to require minimum property standards. The request provides information to permit assignment of appraisal and inspection of the property for these purposes.
3. Individuals or households
4. 97,000 hours
5. 12 minutes
6. On occasion
7. 485,000 respondents.

[FR Doc. 94–17422 Filed 7–18–94; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review: Funeral Arrangements, VA Form 10–2065; Application for Medical Benefits, VA Form 10–10; Financial Worksheet, VA Form 10–10F; Insurance Information, VA Form 10–101; and Spouse's Verification of Income, Form Letter 10–490

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Ann Bickoff, Veterans Health Administration (161B4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 535–7407.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, Room 3002, Washington, DC 20503, (202) 7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before August 18, 1994.

Dated: June 29, 1994.

By direction of the Secretary.

Donald L. Neilson,

Director, Records Management Service.

Revision

1. The Title and Form Number.

a. Funeral Arrangements, VA Form 10–2065.

b. Application for Medical Benefits, VA Form 10–10.

c. Financial Worksheet, VA Form 10–10F.

d. Insurance Information, VA Form 10–10I.

e. Spouse's Verification of Income, Form Letter 10–490.

2. Description of the Need and Use.

a. VA Form 10–2065 is used primarily in VA medical facilities and serves as an official records of the funeral director to which the person making funeral arrangements wishes the remains to be released.

b. VA Form 10–10 is used primarily in VA medical facilities to collect information to determine eligibility of applicants for VA medical benefits.

c. VA Form 10–10F is used by VA personnel to determine the eligibility for VA medical care of those veterans who must certify their inability to defray the cost of needed medical care through resources other than VA.

d. VA Form 10–10I is used by VA personnel to complete claims to health insurance carriers which will allow VA

[1] A copy of this list may be obtained by contacting Mr. Paul W. Manning of the Office of the General Counsel of USIA. The telephone number is 202/619–6827, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

to recover the cost of medical care furnished to veterans for treatment of nonservice-connected conditions.

e. Form Letter 10–490 is used by VA personnel for spouses of veterans whose eligibility for VA medical care is based on income.

3. Individuals or households.

4. Estimated Total Annual Reporting Hours—3,210,303.

a. VA Form 10–2065—3,071 hours.

b. VA Form 10–10—2,175,000 hours.

c. VA Form 10–10F—454,667 hours.

d. VA Form 10–10I—580,000 hours.

e. Form Letter 10–490—

5. Estimated Average Burden Hours Per Respondent.

a. VA Form 10–2064—5 minutes.

b. VA Form 10–10—45 minutes.

c. VA Form 10–10F—20 minutes.

d. VA Form 10–10I—12 minutes.

e. Form Letter 10–490—None, for verification only.

6. On occasion.

7. Estimated Number of Respondents—9,000,850.

a. VA Form 10–2064—34,850.

b. VA Form 10–10—2,900,000.

c. VA Form 10–10F—1,364,000.

d. VA Form 10–10I—2,900,000.

e. Form Letter 10–490—1,800,000.

[FR Doc. 94–17423 Filed 7–18–94; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review: Request for Armed Forces Records From Veteran, VA Form Letter 21–80e

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, Room 3002, Washington, DC 20503, (202) 395–7316. Do no send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: June 29, 1994.

By direction of the Secretary:

Donald L. Neilson,

Director, Records Management Service.

Reinstatement

1. Request for Armed Forces Records from Veteran, VA Form Letter 21–80e.

2. The form letter is completed by the veteran to furnish information related to his/her military service. The information is used by VA to help obtain verification of service.

3. Individuals or households.

4. 17,700 hours.

5. 10 minutes.

6. On occasion.

7. 102,000 respondents.

[FR Doc. 94–17421 Filed 7–18–94; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 137
Tuesday, July 19, 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).

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of July 18, 25, August 1, and 8, 1994.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of July 18

Tuesday, July 19

10:00 a.m.
Briefing on Fuel Cycle and Waste Management Activities in France (Public Meeting)

Wednesday, July 20

10:00 a.m.
Discussion of Interagency and Management Issues (Closed—Ex. 9 (Part I); 2 and 6 (Part II)

3:00 p.m.
Briefing on Proposed Changes to 10 CFR 50.36—Technical Specifications (Public Meeting)
(Contact: Christopher Grimes, 301–504–1161)

Thursday, July 21

3:00 p.m.
Briefing on Proposed Rulemaking on Decommissioning of Nuclear Power Reactors (Public Meeting)
(Contact: David Futoma, 301–504–1621)

4:30 p.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Response to Stay Motion in Sequoyah Fuels Proceeding (Tentative)

Week of July 25—Tentative

There are no meetings scheduled for the Week of July 25.

Week of August 1—Tentative

There are no meetings scheduled for the Week of August 1.

Week of August 8—Tentative

There are no meetings scheduled for the Week of August 8.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. It there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill, (301) 504–1661.

Dated: July 14, 1994.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 94–17620 Filed 7–15–94; 10:58 am]
BILLING CODE 7590–01–M

Federal Register

Tuesday
July 19, 1994

Part II

Department of Housing and Urban Development

Office of the Secretary

24 CFR Parts 203, 982, and 984
Section 8 Certificates and Vouchers Homeownership Program; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 203, 982, and 984

[Docket No. R–94–1716; FR–3385–P–01]

RIN 2577–AB23

Section 8 Certificates and Vouchers Homeownership Program

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This rule proposes additional amendments to the Section 8 Certificate and Voucher programs at 24 CFR part 982, in addition to those amendments previously proposed by HUD on February 24, 1993 (58 FR 11292). These amendments would implement section 185 of the Housing and Community Development Act of 1992 (HCD Act), which authorizes public housing agencies, including Indian housing authorities (HAs), to make available to eligible families section 8 certificates or vouchers to pay for homeownership costs under a mortgage. The proposed rule would amend 24 CFR part 203 to authorize the use of FHA insurance in connection with a mortgage receiving section 8 certificate or voucher assistance, and would also make technical conforming amendments. In addition, the proposed rule would amend the Family Self-Sufficiency (FSS) regulations at 24 CFR part 984 to enable a family receiving section 8 certificate or voucher assistance under this homeownership authority to use a portion of its FSS escrow account to pay for the cost of major repairs and replacements in the dwelling, and for down payment expenses.

DATES: Comments must be submitted by September 19, 1994.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Office of the General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–0500.

Comments should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m. Eastern time) at the above address.

FOR FURTHER INFORMATION CONTACT: Louise Hunt, Director of Policies and Procedures Branch, Rental Assistance Division, Public and Indian Housing, Department of Housing and Urban Development, Room 4216, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708–3887. Hearing or speech impaired individuals may call HUD's TDD number (202) 708–4594. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Statement

The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520).

The public reporting burden for each of these collections of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading, *Other Matters*. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW., Room 10276, Washington, DC 20410; and to the Office of Management and Budget, Attention: Desk Officer for HUD, Washington, DC 20503.

II. Background

The purpose of this proposed rule is to implement section 185 of the Housing and Community Development Act of 1992 (HCD Act) (Pub. L. 102–550, approved October 28, 1992), which amended section 8 of the United States Housing Act of 1937 to authorize public housing agencies (including Indian housing authorities) (HAs) to make available to eligible families section 8 certificates or vouchers for the purchase of a home owned by one or more members of the family.

[The reader is advised that on February 24, 1993, HUD published a rule that proposed to unify the rules for tenant-based section 8 rental assistance under the rental certificate program and the rental voucher program (*see* 58 FR 11292). Under that rule, HUD proposed consolidating the rental certificate program (currently 24 CFR part 882) and the rental voucher program (currently 24 CFR part 887) into a unified tenant-based program at 24 CFR part 982 ("unified rule"). Today's proposed amendments to the section 8 program should be read in conjunction with the amendments already proposed by HUD in its February 24, 1993 unified rule.]

The Department is proposing to implement the section 185 amendments to the section 8 program by adding a new form of "Special Housing" under 24 CFR part 982, subpart M, of the unified rule. Section 8 certificates and vouchers used in accordance with this new subheading would be designated as homeownership vouchers and certificates. The rule refers to this component of the section 8 certificate and voucher program as simply the "homeownership program."

The proposed rule requires HAs to implement the homeownership provisions of the section 8 certificate and voucher program. The rule states that a family meeting the homeownership eligibility criteria (either an applicant or a participant) may choose to use its certificate or voucher for homeownership purposes and clarifies that there is no separate funding for homeownership purposes. Rather, any eligible applicant selected to participate in the section 8 program, or any eligible current participant, may exercise the option to pursue homeownership opportunities in accordance with the program rules.

Since families determined by an HA to be eligible to participate in the homeownership program must secure their own mortgage financing, section 185 of the HCD Act also amended section 203 of the National Housing Act to authorize the use of FHA insurance in connection with a mortgage for which section 8 assistance is provided under the homeownership program. Such a mortgage will be treated as an obligation of the General Insurance Fund. HUD has included in this rule a number of proposed amendments to 24 CFR part 203 to implement this statutory authority.

Finally, section 185 amended the Family Self-Sufficiency Program (FSS) to permit an eligible family to use a portion of its FSS escrow account to pay for the down payment, and for major repairs and replacements, on a unit receiving homeownership assistance. The Department is proposing to implement this statutory authority by amending the section 8 FSS regulations at 24 CFR part 984.

III. Section-By-Section Analysis

A. Amendments to 24 CFR Part 203—Single Family Mortgage Insurance

Under section 185 of the HCD Act, a mortgage that is insured under section 203 of the National Housing Act (NHA), and for which assistance is provided under the homeownership program, is

treated as an obligation of the General Insurance Fund. This provision alters the general rule under the NHA that a mortgage insured under section 203 must be treated as an obligation of the Mutual Mortgage Insurance Fund. A technical amendment to reflect this modification to the applicable insurance fund is included at § 203.391 ("Title objection waiver with reduced insurance benefits").

Section 185 also provides that a FHA-insured mortgage for which assistance is provided under the homeownership program is subject to both an upfront mortgage insurance premium (MIP) as well as an annual MIP. HUD is proposing to implement this statutory directive at §§ 203.259a ("Scope"); 203.284 ("Calculation of up-front and annual MIP on or after July 1, 1991"); and 203.285 ("Fifteen-year mortgages: calculation of up-front and annual MIP on or after December 26, 1992").

HUD has also included in this proposed rule a new § 203.559 ("Responsibilities of FHA-insured mortgagees accepting section 8 tenant-based assistance"). This provision is directed at FHA-insured mortgagees that are receiving assistance under the homeownership program on behalf of an eligible family. The purpose of the section is to inform such mortgagees that, as a result of their acceptance of the section 8 assistance payments, the mortgagee is required to comply with the notification requirements set forth in this proposed rule. The Department will include in FHA-insured mortgages that receive section 8 homeownership assistance a specific rider to this effect, so that the mortgagee and subsequent purchasers have actual notice of these requirements. HUD requests public comment as to how non-FHA-insured mortgagees and their assignees can be given actual notice of their obligations under this proposed rule while still preserving the viability of these mortgages on the secondary mortgage market.

HUD notes that underwriting for a FHA-insured mortgage in connection with assistance provided under the homeownership program will follow standard FHA single family requirements (see HUD Handbook 4155.1 REV–4). Moreover, such mortgages will be eligible for streamline refinancing with the mortgage remaining an obligation of the General Insurance Fund, if the family still holds a homeownership certificate or voucher at the time of refinancing.

B. Amendments to 24 CFR part 982 (Including Amendments to Subpart M—Assistance for Homeownership)

—§ 982.52 HUD requirements. This section states that for purposes of the section 8 homeownership program, HUD must comply with 24 CFR part 50 (Protection and Enhancement of Environmental Quality). This section also requires that HAs supply HUD with environmental threshold data to assist it in complying with the applicable Federal environmental laws and authorities listed in 24 CFR § 50.4.

—§ 982.552 HA denial or termination of assistance for family. This proposed rule revises § 982.552(b)(1) of the unified rule ("HA denial or termination of assistance for family") by providing that a HA may deny or terminate program assistance on behalf of an applicant or participant in the section 8 homeownership program if the family has violated any of its obligations under the section 8 program (§ 982.551), or under the section 8 homeownership program at subpart M (§§ 982.631–982.633). In such instances, the procedural requirements applicable to denials or terminations of assistance under the general section 8 program will apply (*see* § 982.553).

—§ 982.629 Homeownership Program: Purpose, implementation and applicability. This section states the purpose of the homeownership program, which is to provide homeownership opportunities for low-income families. The section states that the HA must allow a certificate or voucher family that meets the homeownership eligibility criteria to use the certificate or voucher in the homeownership program. The proposed rule specifies that HAs must inform families of the homeownership option during the briefing session. Families that have already been issued certificates or vouchers (both a participant with a unit under HAP contract and a family that was issued a certificate or voucher to search for a rental unit) must be informed of the homeownership option no later than the next regularly scheduled recertification.

The Department is aware that some HAs may wish to give current public housing tenants the opportunity to participate in the section 8 homeownership option. While families receiving section 8 certificates and vouchers must be selected from the section 8 waiting list, HAs are reminded that the proposed unified rule published on February 24, 1993 allows HAs to provide a selection preference to public housing residents, and that such a preference could be provided to families interested in participating in the homeownership program.

In addition, the Department will soon implement legislation that allows certain public housing residents to retain their federal preference status for the section 8 program (i.e., their preference status on the certificate and voucher waiting list) even after they move into public housing, and even after the federal preference condition no longer exists (e.g., rent burden, substandard housing). Implementation of this provision may increase the number of former public housing families receiving section 8 assistance who meet the eligibility criteria for the section 8 homeownership program.

Section 982.629 clarifies the relationship of the homeownership program to other sections under subpart M, and notes that the requirements contained in the other subparts of part 982 also apply to the homeownership program, except as expressly indicated under this section and as provided in the proposed rule.

The proposed rule states that homeownership certificates and vouchers may not be used in conjunction with part 882, subpart G, project-based assistance under the certificate program. This is because section 185 of the HCD Act of 1992 specifically limits participation in the section 8 homeownership program to "families receiving tenant-based assistance." However, even aside from this statutory impediment, the Department believes that it would not be appropriate to allow project-basing under this program. Since the subsidy for both homeownership vouchers and certificates would permit families to pay more than 30 percent of their income for housing costs, project-basing in the homeownership program could result in a "take it or leave it" offer of a homeownership unit at a price set by the owner, forcing families to accept a higher financial burden than if they shopped for their own units, or to have their assistance delayed. Furthermore, since there are specific eligibility criteria (e.g., a minimum income threshold) under the homeownership program, above and beyond the eligibility requirements for rental families, federal preference holders and other needy families could be unfairly skipped over on the waiting list to reach "homeownership families" to fill the project-based units. Finally, the tenant-based certificate and voucher programs offer housing choice opportunities not

available under project-based subsidy programs. HUD believes that this housing choice opportunity should not be negated in the homeownership program by tying the homeowner subsidy to specific units.

The Department recognizes that many nonprofit sponsors have been looking to homeownership certificates and vouchers to finance their development projects as part of larger neighborhood transformation efforts. There are ways, other than through project-basing, that these sponsors can use homeownership certificates and vouchers. There is nothing to prevent HAs from establishing cooperative relationships with these sponsors, referring families to them or even sharing waiting lists with them.

—§ 982.630 Homeownership Program: Definitions. The proposed rule defines a number of terms used in the homeownership program, including: "average equity," "average passbook savings rate," "default," "down payment," "first-time homeowner," "homeownership assistance," "homeownership unit," "imputed amount of family contribution for assets," "major repairs and replacements," "monthly homeownership expenses," "mortgage," "mortgagee," "net sales proceeds," "public assistance," and "Statement of Family Responsibilities." The definitions under the homeownership program supplement the definitions already proposed in § 982.4 of the section 8 unified rule.

Following are the salient points the Department considered in developing some of the homeownership program definitions:

1. "*Default.*" HUD believes that the determination of whether a default has occurred under the mortgage instrument must be left to the determination of the mortgagee, not HUD. Hence, the proposed rule provides that a default under a FHA-insured mortgage must be determined in accordance with the general rules set forth in 24 CFR part 200. A default under a non-FHA-insured mortgage must be determined by the mortgagee under the terms of the mortgage instrument.

2. "*Down payment.*" Under section 185 of the HCD Act, a family is required to contribute from its own resources (which HUD is defining to mean cash resources obtained through a gift or inheritance, personal savings, or amounts in its FSS escrow account) 80 percent of the down payment for the home. HUD has defined the term "down payment" to mean the difference between the purchase price and the mortgage amount. The Department opted not to include in this definition other expenses, such as the cost of points, appraisals, legal fees, and other closing costs, since this would increase the amount the family must pay out-of-pocket.

3. "*First-time homeowner.*" Section 185 of the HCD Act limits eligibility under the homeownership program to a "first-time homeowner," and defines the term to mean "a family, no member of which has had a present ownership interest in a principal residence during the 3 years preceding the date on which the family initially receives [homeownership assistance] . . ."

Once a family establishes that it is a first-time homeowner under this definition, and is in compliance with all program (including eligibility) requirements, it will not lose its status as a first-time homeowner simply because it wants to sell its existing home and buy a new one. This is because the statutory definition of "first-time homeowner" establishes eligibility based upon the date the family *initially* received assistance for homeownership. However, to retain its eligibility, the family must be participating continuously in the section 8 homeownership program, and may not have been in default under a previous section 8-assisted mortgage.

In this proposed rule, HUD has declined to exercise the statutory authority granted to it under the HCD Act that would enable it to expand the definition of a first-time homeowner. The Department specifically requests comments from the public as to how HUD might expand the definition of a first-time homeowner so that participation in the homeownership program may be broadened.

4. "*Imputed amount of family contribution for assets.*" See discussion below concerning § 982.641.

5. "*Monthly homeownership expenses.*" HUD is proposing in this rule to define "monthly homeownership expenses" to include a family's total monthly expenses for the homeownership unit, including the cost of mortgage principal and interest (limited to the lesser of the principal and interest payment on the initial first mortgage or any subsequent refinancing, but excluding principal and interest payments on any second mortgages, home equity loans, or cash-out refinancings), real estate taxes and special assessments, imputed maintenance expenses equal to 5% of the FMR for the unit size purchased at the time of move-in or at the regular re-examination, home insurance, and an allowance for utilities using the HA's utility allowance schedule.

6. "*Net sales proceeds.*" Upon sale of the homeownership unit, the HA is to recapture from any net proceeds the amount of additional assistance paid to or on behalf of the eligible family because the HA did not take into account the value of the family's equity in the homeownership unit for purposes of calculating the monthly assistance payment. (See discussion below regarding the exclusion and recapture provisions.) HUD has defined net sales proceeds to be the market value of the house (as opposed to the selling price), less the sum of any unpaid balance on the first mortgage. HUD decided to use the current market value of the house rather than the actual sale price to prevent families from either giving away or under-pricing the house as a means of circumventing the recapture provision. The Department is only taking into account the unpaid balance of the first mortgage in order to prevent families from cashing out all equity at the time of the sale through a vehicle such as a home equity loan in order to escape the recapture provision.

—§ 982.631 Homeownership Program: Initial family eligibility. Section 185 of the HCD Act establishes the criteria for determining a family's eligibility for participation under the homeownership program. A family that expresses interest in the homeownership program, but that does not meet the criteria listed in this section, may not be considered for the homeownership program. A family that meets these conditions is eligible for assistance under the homeownership program, provided it fulfills the requirements listed in § 982.632. The initial eligibility requirements include:

1. *First-time homeowner.* Section 185 requires that the family be a first-time homeowner. See the discussion at § 982.630 for the statutory definition of a "first-time homeowner." It is noted that a family that previously participated in the homeownership program, but that subsequently defaulted, is ineligible to participate in the homeownership program again, regardless if three years have passed from the date it last owned a home (see § 982.640).

2. *Participation in FSS or adequate income.* Under the homeownership program, a family must either be participating in the HA's Family Self-Sufficiency (FSS) Program and be in compliance with the FSS contract of participation, or it must demonstrate that it has an adequate income, from

sources other than public assistance, to cover its homeownership expenses.

A family not participating in an HA's FSS program, can still be considered for participation in the homeownership program if its gross monthly income (not including public assistance) is at least two and a half times the Existing Housing fair market rent (FMR) for the area in which the homeownership unit is located. The proposed rule separately defines the meaning of "public assistance," thereby identifying the types of income that may *not* be included in determining whether a family meets the homeownership income standard.

3. *Employment.* Section 185 states that, except as provided by HUD, the family must be able to demonstrate at the time that it initially receives homeownership certificate or voucher assistance that one or more adult members of the family have been employed for the time period established by HUD.

The Department is proposing in this rule that one or more adult members of the family must be currently employed on a full-time basis, and must have been continuously so employed for at least one year before the date the HA determines family eligibility for homeownership assistance. If a family is eligible to participate under the homeownership program because it is participating in the FSS program (rather than because it met the homeownership income test), it is still subject to the one-year employment requirement.

The Department requests public comment concerning whether it should grant an exception to the one-year employment requirement in the case of disabled persons who can establish that they have an adequate income (from sources other than public assistance) to cover their monthly homeownership expenses.

—§ 982.632 Homeownership Program: Actions after an HA determines that an interested family is eligible for the homeownership program. This section details the actions that must occur after the HA determines a family is eligible for the homeownership program.

In drafting this section of the proposed rule, the Department seriously considered, but decided against, requiring or allowing the HA to disapprove homeownership units if it considered either the purchase price of the unit or the financing terms to be unreasonable. HUD is concerned with the added administrative burden such a requirement would place on HAs and questions whether HA staff have adequate expertise in these areas. In addition, delays attributable to HA review and approval of these items could result in families losing the desired homeownership unit to another interested buyer.

There are other timing problems that affected HUD's decision. Requiring the HA to determine if the listed purchase price is reasonable is not necessarily an accurate reflection of the real purchase price, since in most cases buyers and sellers negotiate a final price. As for evaluating the financing terms, buyers do not typically secure financing before executing a contract to purchase a homeownership unit. In most cases, the family would already have entered into a legally binding contract to purchase the property before the HA disapproved the terms of the financing.

The Department believes that requiring the family to wait for the HA to determine the reasonableness of the listed price or of the family's offer, or requiring that the family convince the owner to accept a contract contingent on the family's obtaining financing satisfactory to the HA, would place a severe handicap on section 8 homeownership families' ability to make an offer that is timely and, thus, acceptable to the seller.

Alternatively, though, the Department is prohibiting in this proposed rule seller-financing (except in the case of financing provided by a nonprofit entity), since HUD believes that seller-financing poses the greatest risk to homebuyers of artificially inflated sales prices or unreasonable financing terms. As a result, in the vast majority of cases the family will be required to secure mortgage financing from a lender that will require an appraisal, and that would be unlikely to approve a mortgage for a homeownership unit that has an inflated purchase price. In addition, HUD is prohibiting in this proposed rule the use of balloon mortgages, since it considers these financing instruments to be inherently risky, and particularly so when used by low-income families. The Department believes that this approach, in conjunction with homeownership counseling at the front-end, is the more efficient and effective strategy to prevent bad deals.

HUD requests specifically public comment as to whether the final rule should authorize the use by families of adjustable rate mortgages (so-called "ARMs"). While these types of mortgages tend to increase the number of families that can qualify for financing and, thus, participate in the program, HUD is concerned that they may also result in an increased risk of default. This is because the homebuyer's mortgage payment could rise precipitously during periods of high inflation, while the family's income and homeownership subsidy payment remain constant.

In addition, the Department requests comments as to whether it should establish certain guidelines or restrictions with respect to the types of seller-financing instruments that may be utilized by a nonprofit, including whether to limit such entities to the use of fixed-rate mortgages.

Finally, HUD considered requiring that the family's share of the monthly homeownership expenses could not exceed 40 percent of the family's monthly adjusted income, but ultimately decided against a limit. The Department believes that such a limit would be very difficult to administer since the actual purchase price is subject to negotiation and the financing terms often would not be known until near the end of the purchase process. HUD further believes that the lender should make the determination of the family's risk of default. The homeownership counseling will also play an important role in assisting families in determining an acceptable percentage of income to devote to homeownership expenses.

The Department specifically invites comments concerning whether a cap on the amount of a family's monthly homeownership expenses relative to its income should be imposed in the final rule, and whether the HA or another entity should approve the purchase price or financing terms.

Section 982.632 outlines the sequence of actions that take place once the family has been determined by the HA to be eligible initially for the program. These actions are:

1. *Family Participation in a homeownership and housing counseling program.* The family must attend a homeownership and housing counseling program that covers areas such as: negotiating purchase prices; securing mortgage financing; home maintenance; budgeting; credit counseling; credit repair; money management; transportation options and opportunities for housing and schools located throughout the metropolitan area; and the availability of multiple listing services through local realtors so that families can explore the full range of housing options located throughout the metropolitan area.

The HA must provide such counseling to prospective homebuyers through a HUD-approved counseling agency, where it exists, or by developing its own program or arranging to make

use of an existing program in the community. Eligible sources of funding that an HA may use to pay for the cost of a homeownership and housing counseling program include administrative fees, local resources, and the section 8 administrative fee reserve.

The Department believes that homeownership counseling is an integral and vital component of the section 8 homeownership program, and will be critical to the program's ultimate success or failure. Consequently, HUD specifically requests public comment as to whether implementation of the section 8 homeownership option should be limited to PHAs that have adequate resources (e.g., local resources, section 8 administrative fee reserves, etc.) to provide initial and ongoing homeownership and housing counseling to eligible families.

2. *HA issues the family a homeownership certificate or voucher.* The term of the homeownership certificate or voucher is 120 days, and the family must submit a completed Request for Authorization to Purchase a Homeownership Unit and either make an offer to purchase, or execute a contract of sale, before the expiration date of the certificate or voucher. There are no extensions for homeownership certificates and vouchers. However, once a family submits a completed Request for Authorization to Purchase a Homeownership Unit, the HA must suspend the term of the certificate or voucher until the HQS inspection is completed (see discussion below).

The family may only submit one Request for Authorization to Purchase a Homeownership Unit at a time. The Request for Authorization to Purchase serves several functions. First, its submission suspends the term of the family homeownership certificate or voucher. It identifies the location of the property and the identity of the seller, and, in the same manner as the Request for Lease Approval in the rental program, triggers the HQS inspection.

It is important to note that the term of the homeownership certificate and voucher only controls a family's search-time to locate a homeownership unit, submit a Request for Authorization to Purchase a homeownership unit, and either make an offer to purchase the unit or execute a contract of sale for the unit. The family is not required to have secured mortgage financing, obtained title to the property, or brought the unit up to HQS before the certificate or voucher expires, although all three conditions must be met before housing assistance payments may be made on behalf of the family. The family has nine months (plus tolling, i.e., the time between when the family submits a Request for Authorization to Purchase a Homeownership Unit for HA approval and the time when the HA approves or denies the request) from the date the HA issued the homeownership certificate or voucher in which to satisfy these conditions. The proposed rule also provides that during the 120-day term of the homeownership certificate or voucher, the family may request to convert the certificate or voucher into a rental certificate or voucher. The HA must determine the term of the rental certificate or voucher in accordance with § 982.302, except that the time period used under the homeownership certificate or voucher must first be deducted. It is possible that if such a request occurred after the initial sixty days, the HA may have to consider giving the family an extension, in accordance with its administrative policy, to convert the certificate or voucher back to the rental program. The family is not entitled to the expiration date on the homeownership certificate or voucher if it requests to change to the rental program.

3. *Request for Authorization to Purchase a Homeownership Unit; HQS Inspection.* Once the family submits a Request for Authorization to Purchase a Homeownership Unit, the HA must inspect the unit to determine whether it is in compliance with the HQS. If the homeownership unit does not meet HQS, the HA must provide the family with a list of deficiencies. The family does not have to wait for the HQS inspection before making an offer or signing a purchase contract, since such a restriction would severely limit the family's chances of purchasing the unit. However, the family must be informed that the housing assistance payments may not be made until the unit is in compliance with HQS. The HA may disapprove the Request for Authorization to Purchase a Homeownership Unit if the unit is structurally unsound or if there are many serious HQS violations and the HA determines that the family will be unable to have the HQS violations corrected within nine months (plus tolling) from the date the HA issued the homeownership certificate or voucher. Although disapproving a unit after the family has made a purchase offer or executed a contract of sale is undesirable, this protection is necessary to prevent immediate mortgage defaults. In such cases, a section 8 family may lose its down payment, and possibly other out-of-pocket expenses, depending on the contract terms.

The Department solicits comments as to whether it should require all participating families to have their proposed homeownership unit inspected professionally by a third party before entering into a purchase offer or contract of sale; whether the purchase offer or contract should be made contingent on the outcome of the inspection; or whether implementation of a homeownership program should be limited to areas where pre-purchase inspections are available at no cost to the family (e.g., funded from community development block grants). HUD believes that such an inspection would be extremely beneficial in alerting the family to potentially costly defects in the home. This is especially important since the HQS inspection conducted by the HA is unlikely to determine whether the unit is structurally sound, and the extent to which the family is likely to incur significant repair and replacement costs. On the other hand, the Department also recognizes that participating families have limited income and may have difficulty paying for such an inspection.

In addition, the Department wants to request comment as to whether it should consider establishing a time period in which the HA must complete its HQS inspection of the unit. HUD believes that such a deadline may be beneficial for purposes of minimizing the amount of time between the family's offer to purchase the unit (or execution of the contract of sale) and its need to obtain financing.

4. *Mortgage Financing; title.* The family is responsible for securing mortgage financing to purchase the property. Before monthly assistance payments can commence, the family must provide evidence to the HA that it has a mortgage on the homeownership unit, although purchase-money mortgages (i.e., a mortgage taken by the seller on the homeownership unit in exchange for its agreement to finance the family's purchase of the unit) and "balloon" mortgages are expressly prohibited. HUD is providing an exception to the prohibition on purchase-money mortgages in the case of financing provided by a bona fide nonprofit entity. Because of the requirement that the family obtain a mortgage on the homeownership unit, it is anticipated that lenders will require appraisals as a condition of providing financing to the family. The Department believes that this requirement will enable the family to assess the reasonableness of the purchase price.

The family is also required to execute a second mortgage on behalf of the HA to secure the repayment of the recapture amount due under § 982.641. This second mortgage must be executed and

recorded by the HA before section 8 homeownership assistance may commence on behalf of the family. As a result of this second mortgage, the HA will be able to recover the recapture amount at the time the family subsequently sells the dwelling. However, if for any reason there are inadequate cash proceeds generated by the sale of the unit to repay the full recapture amount, the family will be required to repay this amount to the HA. One method the HA may employ to recover this amount from the family is to offset the amount against any future section 8 rental payments paid on behalf of the family, in accordance with a schedule established by the HA. The Department believes that there will be few instances in which the HA will have to resort to such offsetting measures, particularly since any financial mechanisms a family may employ to withdraw the equity in its home (e.g., home equity loans or cash-out refinancings) would be limited by the amount of HUD's second mortgage on the property.

In addition, the proposed rule requires the family to obtain title to the property. Title may be held by any member or members of the family, and the family must provide the HA with adequate evidence of its ownership.

The family is required to secure mortgage financing, obtain title to the unit, and bring the unit into compliance with the HQS within nine months (plus tolling) of the date the HA issued the family the homeownership certificate or voucher. Monthly housing assistance payments may not commence until these conditions are met.

5. *Statement of Family Responsibilities; section 8 payments to mortgagee and utility suppliers.* Once the family brings the unit into compliance with the HQS within the nine month deadline, the HA must reinspect the unit. If the unit meets the HQS and the family has taken possession of the unit, the family must execute a Statement of Family Responsibilities (SFR) in the form prescribed by HUD. In the SFR, the family agrees to combine the HA's payment with its own required contributions, and to pay such amounts directly to the mortgagee and utility suppliers. The family also agrees that, if the HA determines that the family's past performance in making such payments so warrants, the HA may pay housing assistance payments directly to the mortgagee and utility suppliers.

The Department has decided to give the monthly housing assistance payment to the family rather than sending it directly to the mortgagee, to eliminate the need for the mortgagee to maintain a dual system for recording payments from the HA and the family. HUD also chose not to require the family to make its payment to the HA, with the HA sending one consolidated payment to the mortgagee, simply because this procedure appears to be at odds with the fundamental notion of family homeownership. Nevertheless, the Department requests comments from mortgagees and others concerning these issues, as well as any other issues that may affect the sale on the secondary mortgage market of mortgages receiving section 8 assistance.

6. *Submission of documents from mortgagee.* Before commencement of homeownership assistance, the family must submit to the HA any documents prescribed by HUD, and executed by the mortgagee, indicating that the mortgagee agrees to comply with the notification requirements established under this proposed rule. These requirements consist primarily of notifying the HA in the event the family defaults on the mortgage, or when a defaulting family has complied with the conditions for the resumption of section 8 rental assistance. In addition, FHA-insured mortgagees must inform the HA as to whether the family has elected to participate in, and has qualified for, HUD's Assignment Program under 24 CFR part 203, subpart C.

7. *Down payment requirements.* The family must provide from its own resources (which may include cash resources obtained through a gift or inheritance, or from the family's personal savings) at least 80 percent of the down payment on a homeownership unit. The family may use up to 50 percent of the amount contained in its FSS escrow account to meet this down payment requirement. Not more than 20 percent of the down payment may be provided from other sources, such as funds provided by nonprofit entities or from state or local government programs.

8. *Environmental review.* HUD must comply with the applicable environmental laws and authorities listed in 24 CFR § 50.4. HAs must assist HUD by establishing procedures to assure that prior to approval of any "Request for Authorization to Purchase a Unit," full compliance is made with Federal laws and authorities related to coastal barriers, flood insurance, and runway clear zones. In addition, HAs must supply HUD with threshold data to assist HUD in complying with the historic preservation requirements set forth in 24 CFR § 50.4. HUD will carry out a historic preservation review with respect to any property that requires rehabilitation to bring it up to HQS. If the HA determines during its HQS inspection of the unit that, as a condition of meeting the HQS, the family must undertake rehabilitation of the dwelling, it must so inform the family. Thereafter, until such time as HUD completes its environmental review, the family may not carry out any rehabilitation work in the dwelling. It is noted that many HQS violations will not require the family to undertake rehabilitation work in order to correct the deficiencies and bring the unit into compliance with HQS. For instance, minor interior repairs would not be subject to a historic preservation review. When the homeownership program is implemented, the Department will issue specific guidance on what conditions would require actual rehabilitation work and would be subject to the historic preservation review.

—§ 982.633 Homeownership Program: Continued assistance requirements.

In addition to initial eligibility requirements, HUD is also proposing a number of requirements concerning continued homeownership assistance. These requirements are in addition to the general section 8 requirements contained in § 982.551 that apply to all families receiving tenant-based assistance.

The proposed continued assistance requirements include: (1) attending homeownership and housing counseling on a continuing basis (if required by the HA); (2) complying with the terms of its mortgage with the mortgagee and its SFR with the HA; (3) notifying the HA before the family refinances the mortgage or sells the homeownership unit, and of any change in the family's monthly homeownership expenses or when the mortgage on the property is paid off; (4) maintaining the unit in accordance with the HQS, and allowing the HA to inspect the unit; (5) paying the monthly mortgage installment and utility payments in a timely manner; (6) maintaining the unit as the family's residence without leasing or subleasing any portion of the premises; and (7) maintaining all lender- or federally-required home insurance for the unit, including flood insurance.

The unit must meet the HQS throughout the period the family is receiving monthly homeownership assistance payments from the HA. Assistance payments may not commence until the HA determines that the unit meets the HQS. Failure of the family to maintain the unit in compliance with the HQS may result in the termination of assistance payments.

After purchasing the homeownership unit, the family may use amounts in its FSS escrow account to pay for the cost of major repairs and replacements. (See § 982.630 for the definition of "major repairs and replacements".) This proposed rule would require the HA to inspect the homeownership unit before the closing date, and to reinspect the unit within the nine month deadline for meeting HQS deficiencies to determine whether housing assistance payments may commence. Thereafter, the HA would inspect the unit at least annually, and at other times as needed, to determine if the family is meeting its obligation to maintain the unit in accordance with HQS.

The family's ability to budget successfully adequate amounts to make necessary repairs is a prime concern of the Department. Homeownership counseling will play a vital role in assuring that the family is prepared to handle repair and replacement needs. In addition, the Department has decided to include as part of the family's monthly homeownership expenses an imputed maintenance expense equal to 5% of the FMR for the unit size for the area in which the homeownership unit is located. This will assist some families in meeting repair and replacement costs as they occur, without putting an undue strain on the family. However, since families may not actually set aside funds for maintenance expenses on a monthly basis, and since the statutory formula for determining the monthly homeownership assistance payment is not necessarily predicated upon the amount of the family's monthly homeownership expenses, there is no assurance that a family will be able to meet routine or unexpected maintenance expenses.

For example, if a family's monthly assistance payment is calculated based upon the extent to which FMR exceeds 30 percent of the family's monthly adjusted income, the family would not receive any credit for imputed maintenance expenses (i.e., since the family's formula calculation does not rely upon its monthly homeownership expenses). Conversely, if the family's monthly assistance payment is calculated based upon the extent to which the family's monthly homeownership expenses exceed 10 percent of the family's monthly income, then a certain portion of the monthly assistance payment would be imputed by the HA for maintenance expenses. The Department does not have the discretion to authorize the use of one subsidy formulation over the other, since this is statutorily mandated.

The Department considered having the HA establish and maintain a replacement reserve to help offset the costs of major repairs and replacements that are essential for ensuring that the family's unit complies with HQS. However, concerns surfaced regarding both the added burden on HAs to maintain the reserves and what, if any, control the HA would exercise over releasing the reserve for use by the family. Another concern is whether amounts in the reserve would be sufficient to cover necessary expenditures. Experience with the homeownership program under section 235 of the National Housing Act was that when the homeownership units were not newly constructed, the replacement reserve balance was often insufficient to cover the costs of replacing roofs and other major expenditure items.

The Department requests comments concerning the establishment and operation of the maintenance reserve, in light of the family's obligation to maintain the unit in accordance with the HQS. In particular, the Department is requesting comments concerning whether participation in the homeownership program should be limited to families agreeing to deposit funds in a replacement reserve, or to locations where there are adequate local resources to establish and maintain a replacement reserve on behalf of each homeownership family.

—§ 982.634 Homeownership Program: Use of Family Self Sufficiency escrow account.

In addition to a family's ability to use a portion of its FSS escrow account toward the down payment on the unit, section 185 also authorizes the family to use any amounts remaining in the FSS escrow account to cover the costs of major repairs and replacements of the homeownership unit.

The rule proposes to adopt to a significant degree the IRS definition of the term "major repairs and replacements." The IRS defines this term to mean a capital expenditure (an expenditure to acquire property having a useful life of more than one year, to increase the value of the property, or to prolong the property life) to repair or replace a major building system, equipment or component. The Department has modified this definition in one respect by requiring the HA to make the determination that the family's proposed expenditure actually qualifies as a capital expenditure.

Examples of major repairs and replacements provided in the proposed rule are repairing or replacing a roof, repairing or replacing a heating system, replacing a hot water heater and rewiring. The Department specifically requests public comment as to whether a different definition of "major repairs and replacements" should be substituted in the final rule, or whether HUD should consider modifications to its proposed definition.

The rule also proposes to establish a procedure to be followed by the family and the HA before allowing a family to draw down funds from the FSS escrow account for major repairs and replacements. This procedure would require the family to submit to the HA documentation to substantiate that the proposed repairs and replacements are eligible work items, and that the amount proposed to be spent by the family on such repairs and replacements is reasonable. The family may not draw down funds from its FSS escrow account without the HA's approval.

Section 185(a) further provides that if a family defaults in connection with a homeownership program-supported mortgage, the family may not receive section 8 rental assistance unless it agrees that "any amounts the family is required to pay to reimburse the escrow account under section 23(d)(3) [the FSS statutory provision] may be deducted by the [HA] from the assistance payment otherwise payable on behalf of the family."

The Department has decided to implement this statutory provision, notwithstanding the fact that section 185(b), the provision that actually amends the FSS statutory provision, refers only to the Secretary's obligation to recapture any "remaining amounts" contained in the FSS escrow account, but does not refer to the family's obligation to reimburse the escrow account for amounts previously expended.

The Department has adopted this approach to discourage families from defaulting on their mortgages and reverting without consequence to rental status, and to protect the integrity of the General Insurance Fund. Moreover, HUD's approach is consistent with language contained in the Senate Committee Report to the HCD Act of 1992, which makes clear that Congress fully intended that defaulting homebuyers would be obligated to reimburse the FSS account for all amounts obtained from the account. Specifically, the Committee Report states:

* * * The family could not continue to receive voucher or certificate assistance unless it transferred the dwelling to HUD, moved from the dwelling within the deadlines established or approved by HUD.

agreed that any amounts the family is required to pay to reimburse the Family Self-Sufficiency program escrow account, as required by section 23(d)(3) may be deducted by the public housing agency from the assistance payment otherwise payable on behalf of the family (the family would have to make up any difference with additional payments to the owner) and meet other requirements established or approved by HUD. In this way, unsuccessful families would have an incentive to minimize the loss to HUD that occurs through the often lengthy process of foreclosure. (See S. Rep. No. 332, 102d Cong., 2d Sess. 161–62 (1992).)

Consequently, under this proposed rule, the HA would be able to recover from the family all amounts that the family obtained from the FSS escrow account pursuant to § 982.634 of the rule. To recover this amount, the HA would deduct from any future section 8 monthly rental payments provided on behalf of the family a certain sum based upon a schedule established by the HA. As a result of this reduced subsidy paid on behalf of the family, the family would be required to increase its contribution toward the monthly rent on the unit. The family would continue to pay this higher rent until it reimbursed the full amount of the FSS escrow account.

In addition, section 185(b), which amends the FSS program by adding the new section 23(d)(3), provides that "[I]f a family defaults in connection with the loan to purchase a dwelling and the mortgage is foreclosed, the remaining amounts in the escrow account shall be recaptured by the Secretary." HUD is implementing this statutory provision in this proposed rule, and provides that the HA may use such recaptured amounts as program receipts under the Consolidated ACC.

—§ 982.635 Homeownership Program: Monthly housing assistance payment.

Section 185 establishes the amount of the monthly subsidy payment to be provided by the HA to the eligible family. Under the statutory formula, the amount of the subsidy is the lesser of: (1) the Existing Housing FMR for the family unit size for the area in which the homeownership unit is located, minus 30 percent of the family's monthly adjusted income; or (2) the family's monthly homeownership expenses minus 10 percent of the family's gross monthly income. The proposed rule directs the HA to make the monthly assistance payment directly to the family, which must then combine the HA's payment with its own contribution to pay both the mortgage and utility expenses.

Furthermore, in determining the monthly housing assistance payment, HUD has decided that the HA will use the greater of the Existing Housing FMR in effect at the time of the regular re-examination for the area in which the homeownership unit is located, or the FMR in effect for the area in which the homeownership unit is located when the family initially received homeownership assistance for that unit.

Section 185 specifically states that the HA may not reduce the amount of the subsidy payment to take into account the family's imputed equity in the homeownership unit. Thus, section 185 expressly authorizes the HA to disregard the normal section 8 procedure at 24 CFR § 813.106(b)(3) for taking equity into account when calculating the amount of a family's subsidy payment.

Nevertheless, section 185 also provides that upon the sale of the unit, the family is required to repay to HUD from the net sales proceeds the amount of additional assistance provided to the family because HUD did not consider the family's equity in calculating the monthly assistance payment. (See preamble discussion titled "Sale of homeownership unit.")

This section also includes a provision that states that any mortgagee accepting section 8 homeownership certificate or voucher payments from a family or an HA under the homeownership program thereby agrees to comply with the responsibilities of a mortgagee, as set forth in these regulations. This provision gives notice to such mortgagees that they are subject to certain obligations under the homeownership program because of their acceptance of the section 8 subsidy.

Section 982.635(e) clarifies that housing assistance payments may only be paid on behalf of the family for the period that the unit is occupied by the family.

Section 982.635(f) states that the HA may receive the ongoing administrative fee described in § 982.151(c) for each month that a homeownership subsidy is paid on behalf of the family.

—982.636 Homeownership Program: HA periodic unit inspections; HA remedies.

This section requires the HA to inspect the homeownership unit at least annually, and at other times as needed, to determine if the family is meeting its obligation to maintain the unit in accordance with the HQS. In addition, the section provides that if the family fails to so maintain the unit, the HQ must take prompt and vigorous action to enforce the family's obligations, which may include termination or reduction of the housing assistance payment. This provision also provides that the HA must not make any housing assistance payments for a homeownership unit that fails to meet the HQS, unless the family corrects the defect within the period specified by the HA and the HA verifies correction of the defect(s).

—§ 982.637 Homeownership Program: Prohibition on use of additional homeownership assistance.

Section 185 prohibits a family receiving section 8 assistance under the homeownership program from receiving additional assistance under other Federal homeownership programs, as determined by HUD, subsequent to the purchase date of the unit (e.g., mortgage principal or interest rate reductions). Assistance under other Federal homeownership programs may be used, however, for pre-purchase activities. For instance, assistance under other federal homeownership programs could be used to write down the initial purchase price, to complete pre-purchase rehabilitation, and for other pre-purchase activities.

In addition, language contained in the Senate Committee Report to the HCD Act of 1992 makes clear that Congress also intended that assistance under the section 8 homeownership program could be used to purchase homes sold under the FHA Property Disposition (PD) program, or properties held by the Resolution Trust Corporation (RTC) and the Federal Deposit Insurance Corporation (FDIC). The Senate also expressed its view that state programs funded from the proceeds of mortgage revenue bonds could be used to finance dwellings being purchased with homeownership assistance. (*See* S. Rep. No. 332, 102d Cong., 2d Sess. 61 (1992).) Accordingly, the Department has included in this proposed rulemaking the Senate's recommendations.

The Department has also concluded that section 8 homeownership assistance may be used in conjunction with an unsubsidized VA- or FmHA-guaranteed loan. HUD believes that these programs operate in a manner very similar to FHA insurance. Since unsubsidized FHA insurance is expressly permitted by section 185 to be used in conjunction with section 8 homeownership assistance, there appears to be little basis for prohibiting unsubsidized VA- and FmHA-guarantee assistance as well. These programs will promote the availability of mortgage capital, which in turn will help to ensure the success of the section 8 homeownership program.

A non-exclusive statutory listing of Federal homeownership programs that are included under the post-purchase

prohibition include assistance under the HOME Investment Partnerships Act, the Homeownership and Opportunity Through HOPE Act, Emergency Low Income Housing Preservation Act of 1987, financial assistance provided by the Farmers Home Administration pursuant to section 502 of the Housing Act of 1949.

—§ 982.638 Homeownership Program: Automatic termination of assistance.

This section states that a family will be terminated automatically from the section 8 homeownership program when six months have elapsed from the date of the last housing assistance payment because assistance payments are no longer necessary (i.e., 10 percent of the family's monthly gross income equals or exceeds the monthly homeownership expenses, or when the first mortgage is paid off. (The proposed rule defines "mortgage" as a first lien to secure the unpaid purchase price of real estate under the laws of the jurisdiction where the property is located. Other mortgages assumed by the family, home equity loans and cash-out refinancings are not covered by the homeownership program, since the program is intended to enable families to become homeowners, and not to subsidize families that have retired the debt incurred to initially purchase the unit.)

—§ 982.639 Homeownership Program: Termination of assistance for mortgage default.

Section 982.639 specifies the procedures to be followed when a family that is complying with its obligations under the section 8 program (including requirements for continued assistance under the homeownership program) defaults on its mortgage for the homeownership unit. This section of the proposed rule also sets forth the obligations of the mortgagee and the HA in the event of a default on the mortgage, and describes the conditions under which section 8 rental assistance on behalf of the family may be reinstated.

Specifically, the proposed rule provides that a mortgagee must inform the HA in writing if the family defaults. FHA-insured mortgagees are also required to comply with the requirements governing assignment of FHA-insured mortgages to HUD before proceeding to acquire the property through foreclosure or deed in lieu of foreclosure. Consequently, the proposed rule requires a FHA-insured mortgagee to inform the HA in writing as to whether the family has elected to participate in, and has qualified for, the HUD Assignment Program.

If an HA receives notice from a FHA-insured mortgagee that a family has defaulted on its mortgage, the HA must await notice from the mortgagee as to whether the family has elected to participate in, and has qualified for, the HUD Assignment Program. If the mortgagee notifies the HA that the family has so elected and qualified under the Assignment Program, the HA must discontinue further termination action related to the default against the family.

However, if the HA receives written notice from the mortgagee that a family has defaulted on a FHA-insured mortgage and has elected not to participate in, or has failed to qualify for, the HUD Assignment Program, the HA must take steps to terminate promptly homeownership assistance on behalf of the family.

Similarly, if the HA determines that the family has defaulted on a non-FHA mortgage (i.e., a mortgage that is not eligible under the FHA Insured Assignment Program), it must also take steps to terminate promptly homeownership assistance on behalf of the family.

In terminating assistance on behalf of a family receiving assistance under the homeownership program, the HA is required generally to follow the same procedures proposed under the section 8 unified rule. In a number of instances, however, this proposed rule would supplement or modify those requirements.

For example, before terminating assistance, the HA must send to the family and the mortgagee the required notice of termination of assistance under the section 8 unified rule (*see* § 982.553(c)). However, in cases where the HA is terminating assistance because of a mortgage default, the HA must include in that notice a statement that the family can move from the homeownership unit and receive section 8 rental certificate or voucher assistance if the family: (1) transfers to the mortgagee (or HUD, if applicable) marketable title to the dwelling in lieu of foreclosure within the period established or approved by HUD; (2) moves from the dwelling within a specified time period; and (3) agrees that any amounts the family is required to pay to reimburse the FSS escrow account for funds obtained pursuant to § 982.634 may be deducted by the HA from the assistance payment otherwise payable on behalf of the family.

The HA must also inform the family that section 8 assistance on behalf of the family will be terminated unless the family can demonstrate within a specified period of time that it has complied with the conditions for resumption of section 8 rental certificate or voucher assistance. As noted, this would require the family to demonstrate that it has conveyed title to the property either to the mortgagee or to HUD, and has certified that it will move from the homeownership unit within the time period established by the HA, and will pay a higher contribution toward the monthly rental payment until such time as the FSS escrow account is completely reimbursed for amounts expended by the family pursuant to § 982.634. If the family is unable or unwilling to comply with all of these requirements, the HA must terminate promptly section 8 assistance on behalf of the family.

HUD notes that while section 185 sets forth the conditions for the resumption of section 8 rental assistance on behalf of a family that has defaulted on a FHA-insured mortgage, it does not identify the conditions under which assistance should be reinstated on behalf of a family that has defaulted on a non-FHA mortgage. In this proposed rule, HUD has decided to employ the same conditions for the resumption of section 8 rental assistance, regardless of the type of mortgage. The public is invited to comment on whether this decision might pose problems for mortgagees, and to suggest possible alternative courses of action.

In addition, the Department has decided not to specify in this proposed rule the time period in which the family must move from the homeownership unit to be eligible to receive section 8 rental assistance payments. HUD believes that this determination is best left to the HA to decide on a case-by-case basis.

Finally, the proposed rule specifies that if HUD accepts assignment of a FHA-insured mortgage, and the family subsequently defaults in making payments under the HUD-held mortgage, HUD will assume the responsibilities of a mortgagee by notifying the HA of the family's default under the mortgage.

—§ 982.640 Homeownership Program: Effect of default on subsequent purchases.

The proposed rule tracks the language of section 185 in providing that a family that receives homeownership assistance under the homeownership program, and that subsequently defaults on its mortgage, is precluded from receiving homeownership assistance for another unit owned by one or more members of the family. This prohibition extends beyond the three-year time period required to establish eligibility as a "first-time homebuyer," and

permanently disqualifies such a family from participating in the homeownership program. In addition, the family will be required to reimburse the FSS escrow account for all amounts that it obtained pursuant to § 982.634, and to forfeit any remaining FSS escrow account balance. (See § 982.634.)

—§ 982.641 Homeownership Program: Sale of homeownership unit; recapture. Once a family that has received assistance payments under the homeownership program sells the homeownership unit, it is required to repay to the HA the amount of additional assistance paid to or on behalf of the eligible family because the HA did not take into account the value of the family's equity in the homeownership unit for purposes of calculating the monthly assistance payment.

The amount of "additional assistance" to be recaptured by the HA is based upon the amount that the HA disregarded under § 813.106(b)(3) when it calculated the amount of the subsidy payment, and which was secured by a second mortgage on the property. When the family sells the homeownership unit, the HA will obtain at settlement the amount due under the recapture provision and release the second mortgage. The recaptured amount may be used by the HA as program receipts under the Consolidated ACC.

This section also explains how to calculate the value of the family's equity in the homeownership unit for purposes of determining the recapture amount. The recapture amount is the lesser of: (1) the net sales proceeds; or (2) the amount of family contribution not paid during the ownership period that would have been paid if the equity in the home had been treated as an asset with income imputed to that asset (referred to in this proposed rule as "imputed amount of family contribution for assets"). The recapture amount is not automatically the imputed amount of family contribution for assets because the statute directs HUD to recapture the amount from the net sales proceeds. Therefore, the amount recaptured can never exceed the net sales proceeds. However, as noted earlier, if for any reason there are insufficient cash proceeds generated at the time of sale to repay the HA the full recapture amount, the HA may elect to recover this amount from any future section 8 rental assistance payments paid on behalf of the family, in accordance with a schedule established by the HA.

The term "imputed amount of family contribution for assets" is defined in § 982.630 as being equal to the average equity in the property (AE), multiplied by the average passbook savings rate (APSR), multiplied by the number of full years of family ownership, multiplied by 30 percent. The Department believes that calculating this amount based on equity at the times the family buys and sells the unit, and the interest rate in effect at those times, will involve a much simpler and less burdensome procedure.

To calculate the imputed amount of family contribution for assets, the HA must record the first year market value at the time of the purchase less the mortgage amount (initial equity amount) and the passbook savings rate at the time of the purchase. When the family sells the unit, the HA determines the market value of the unit at the time of sale less the unpaid mortgage debt (equity at time of sale), and the current passbook savings rate. The HA then adds the equity at time of sale to the initial equity amount, and divides by two to come up with the average equity. The HA then adds the current passbook savings rate to the passbook savings rate in effect at the time of the purchase, and divides by two to calculate the average passbook savings rate. The HA then simply multiplies the average equity by the average passbook savings rate by the number of full years of family ownership by 30 percent. (That is, AE × APSR × # of full years of ownership × 30%.)

The proposed rule uses the estimated market value, rather than the purchase and selling prices, to capture the actual value of the asset and to prevent families from either giving away or under-pricing the house as a way of circumventing the recapture provision. The following example illustrates this calculation.

A family purchases a home worth $50,000 in January 1994 and sells the house after 10 full years in April 2004. The estimated market value of the house in 2004 is $60,000, and the mortgage debt balance is $40,000. The passbook savings rates in 1994 and 2004 respectively were 3 percent and 5 percent. The family assumed a mortgage debt of $45,000 at the time of purchase. When the family purchases the house, the HA takes the market value of the house and subtracts the mortgage debt (i.e., $50,000–$45,000) and records the initial equity amount ($5,000). Ten years later, the family sells the house. The HA takes the current market value and subtracts the outstanding mortgage debt at the time of sale ($60,000–$40,000) to determine the equity at the time of sale ($20,000). The HA calculates the average equity ($5,000+$20,000÷2=$12,500) and the average passbook savings rate (3%+5%÷2=4%), and then multiplies the average equity x the average passbook savings rate x number of full years of family ownership x 30 percent ($12,500x4%x10x30%) to determine the recapture amount ($1500). Thus, in this example, the recapture amount is $1,500, since this amount is less than the net sales proceeds of $10,000.

D. Amendments to 24 CFR part 984—Section 8 FSS Program.—§ 984.305 FSS Account. Section 984.305 is being amended to implement section 185(b) of the HCD Act, which provides that if an HA elects to implement a homeownership program, the family may use up to 50 percent of the amount in its FSS escrow account for a down payment on the homeownership unit. This section also provides that after the family purchases the homeownership unit, the family may use any amounts remaining in its FSS escrow account to cover the major repair and replacement needs of the unit. If the family defaults on the mortgage, it must reimburse the FSS escrow account for all amounts expended from the account pursuant to § 982.634 by agreeing to a reduced section 8 rental subsidy paid by the HA on behalf of the family, and by paying a higher tenant contribution toward its monthly section 8 rental payment in accordance with a schedule established by the HA. In addition, any remaining amounts in its FSS escrow account will be recaptured.

IV. Other Matters

The information collection requirements for the section 8 Homeownership Program have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Information on these requirements is provided as follows:

SECTION 8.—HOMEOWNERSHIP RULE

Description	Number of respondents	Responses per respondent	Total annual responses	Hours per response	Total hours	Regulatory reference
Homeownership vouchers and certificates	2,500 PHAs	7	17,500	0.08	1,400	982.632(b)
Request for authorization to purchase unit	10,500	1	10,500	0.08	840	982.632(c)
Statement of family responsibilities	7,500	1	7,500	0.25	1,875	982.632(e)
Mortgagee compliance letter	7,500	1	7,500	0.08	600	982.632(h)
Request to draw-down FSS escrow funds	1,875	1	1,875	0.25	470	982.634(b)
Mortgagee notification of default	375	1	375	0.08	30	982.639(a)
Total Burden Hours					5,215	

NEPA. A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours (7:30 a.m. to 5:00 p.m. weekdays) in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, S.W., Washington, DC 20410.

Executive Order 12866. This proposed rule was reviewed by the Office of Management and Budget under Executive Order 12866 as a significant regulatory action. Any changes made in this proposed rule as a result of that review are clearly identified in the docket file, which is available for public inspection in the Office of HUD's Rules Docket Clerk, room 10276, 451 Seventh Street SW., Washington, DC.

Semiannual Agenda. This proposed rule was listed as sequence number 1686 in the Department's Semiannual Regulatory Agenda published on April 25, 1994 (59 FR 20424, 20469) under Executive Order 12866 and the Regulatory Flexibility Act.

Regulatory Flexibility Act. Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this proposed rule does not have a significant economic impact on a substantial number of small entities. The proposed rule does not purport to fund a new program of rental assistance, but rather adds an additional use to those already authorized under the section 8 rental certificate and voucher programs. Hence, HUD does not anticipate a significant economic impact on small entities since the amount of funding under the section 8 rental certificate and voucher program will remain constant.

Anti-lobbying provisions. On February 26, 1990, the Department published an interim rule (24 CFR part 87) advising recipients and subrecipients of Federal contracts, grants, cooperative agreements and loans of a new prohibition recently mandated by Congress. Section 319 of the Department of the Interior Appropriations Act (Pub. L. 101–121, approved October 23, 1989) 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 interim rule generally prohibits the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. In addition, the recipient must also file a disclosure if it has made or has agreed to make any payment with nonappropriated funds that would be prohibited, if paid with appropriated funds. These requirements do not apply to IHAs organized under tribal law.

The certification and disclosure requirements apply to all grants in excess of $100,000. All potential grantees are required to submit the certification, and to make the required disclosure if the grant amount exceeds $100,000. Potential grantees should refer to 24 CFR part 87 for the language for the certification and disclosure. The law provides substantial monetary penalties for failure to file the required certification or disclosure.

Executive Order 12612, Federalism. This proposed rule has been developed in accordance with Executive Order 12612, *Federalism*, and determined by the General Counsel not to have substantial, direct effects on PHAs. The section 8 homeownership program authorizes the use of section 8 rental certificates and vouchers to be used for homeownership purposes, but does not allocate additional funding for such purposes. The new program is consistent with federalism principles. In addition, since the changes in this proposed rule relate solely to the establishment of an alternative use of section 8 rental certificates and vouchers, the proposed rule lacks the direct and substantial effects on PHAs required for a policy with federalism implications under the Order.

Executive Order 12606, the Family. This proposed rule has been developed in accordance with Executive Order 12606, *the Family.* The proposed rule does have the potential for significant positive impact on family formation, maintenance, and general well-being, since its effect will be to increase homeownership opportunities for low income families, which can be expected to yield numerous benefits, such as increased opportunities for affordable homeownership, strengthened family ties to the community, and increased personal empowerment.

Catalog of Domestic Assistance Numbers. The Catalog of Domestic Assistance numbers for the programs affected by this proposed rule are 14.146, 14.147, 14.850, 14.851, 14.852, and 15.141.

List of Subjects

24 CFR Part 203

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 982

Grant programs—housing and community development, Housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 984

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 24 CFR parts 203 and 984 would be amended and 24 CFR part 982, as it was proposed in the **Federal Register** on February 24, 1993 (58 FR 11292), would be further amended, as follows:

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

1. The authority citation for 24 CFR Part 203 would continue to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b; 42 U.S.C. 3535(d). In addition, subpart C is also issued under 12 U.S.C. 1715u.

2. Section 203.259a would be amended by redesignating paragraph (c) as paragraph (d), and by adding a new paragraph (c), to read as follows:

§ 203.259a Scope.

* * * * *

(c) The Commissioner shall charge an up-front MIP pursuant to §§ 203.284 or 203.285 for any mortgage that is insured in connection with section 8 assistance provided under the undesignated subheading in 24 CFR Part 982, Subpart M, entitled, "Homeownership Program," if the mortgage would have been an obligation of the Mutual Mortgage Insurance Fund in the absence of section 8 assistance.

* * * * *

3. Section 203.284 would be amended by revising paragraph (a) introductory text and paragraph (b) introductory text, to read as follows:

§ 203.284 Calculation of up-front and annual MIP on or after July 1, 1991.

* * * * *

(a) *Permanent provisions.* Any mortgage executed on or after October 1, 1994 that is an obligation of the Mutual Mortgage Insurance Fund, or that is an obligation of the General Insurance Fund and insured in connection with section 8 assistance provided under the undesignated subheading in 24 CFR part 982, Subpart M, entitled, "Homeownership Program," shall be subject to the following requirements:

* * * * *

(b) *Transition provisions.* Mortgage insurance premiums on mortgages executed during fiscal years 1991 through 1994 that are obligations of the Mutual Mortgage Insurance Fund, or that are an obligation of the General Insurance Fund and insured in connection with section 8 assistance provided under the undesignated subheading in 24 CFR Part 982, Subpart M, entitled, "Homeownership Program," shall be subject to the following requirements:

* * * * *

4. Section 203.285 would be amended by revising the first sentence of paragraph (a), to read as follows:

§ 203.285 Fifteen-year mortgages: calculation of up-front and annual MIP on or after December 26, 1992.

(a) *Up Front.* Any mortgage for a term of 15 or fewer years executed on or after December 26, 1992 that is an obligation of the Mutual Mortgage Insurance Fund, or that is an obligation of the General Insurance Fund and insured in connection with section 8 assistance provided under the undesignated subheading in 24 CFR part 982, Subpart M, entitled, "Homeownership Program," shall be subject to a single up-front premium payment, established and collected by the Commissioner in an amount equal to 2.0 percent of the amount of the original insured principal obligation of the mortgage. * * *

* * * * *

5. Section 203.391 would be amended by adding at the end of the section a new sentence, to read as follows:

§ 203.391 Title objection waiver with reduced insurance benefits.

* * *In such instances, the claim will be paid if the mortgagee agrees to accept a reduction in insurance benefits considered adequate by the Commissioner to compensate for any anticipated loss to the appropriate insurance fund as a result of the existence of the title condition at the time of claim.

6. A new § 203.559 would be added to the end of the undesignated center heading "GENERAL REQUIREMENTS", to read as follows:

§ 203.559 Responsibilities of FHA-insured mortgagees accepting section 8 tenant-based assistance.

A mortgagee accepting assistance payments from a public housing agency or Indian housing authority under a mortgage insured in connection with section 8 assistance provided under the undesignated subheading in 24 CFR Part 982, Subpart M ("Homeownership Program") thereby agrees to comply with all of the responsibilities of a mortgagee, as set forth in that subheading.

PART 982—SECTION 8 TENANT-BASED ASSISTANCE: UNIFIED RULE FOR TENANT-BASED ASSISTANCE UNDER THE SECTION 8 RENTAL CERTIFICATE PROGRAM AND THE SECTION 8 RENTAL VOUCHER PROGRAM

7. The authority citation for 24 CFR Part 982 would be revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

8. Section 982.52 would be amended by adding a new paragraph (d), to read as follows:

§ 982.52 HUD requirements.

* * * * *

(d) For the homeownership program under Subpart M of this part, HUD must comply with 24 CFR part 50 (Protection and Enhancement of Environmental Quality). HAs shall supply HUD with environmental threshold data to assist HUD in complying with applicable Federal environmental laws and authorities listed in 24 CFR § 50.4.

9. Section 982.552 would be amended by revising paragraphs (b) introductory text and (b)(1), to read as follows:

§ 982.552 HA denial or termination of assistance for family.

* * * * *

(b) *Grounds for denial or termination of assistance.* The HA may at any time deny or terminate program assistance for a family for any of the following grounds:

(1) If the family has violated any family obligations under the program (*see* § 982.551 and, for the section 8 homeownership program under subpart M of this part, *see also* §§ 982.631 through 982.633).

* * * * *

10–11. Subpart M would be amended by adding at the end a new undesignated center heading entitled, "Homeownership Program" and under it sections §§ 982.629 through 982.641, to read as follows:

Subpart M—Special Housing Types

* * * * *

Homeownership Program

Sec.

982.629 Homeownership Program: Purpose, implementation and applicability.
982.630 Homeownership Program: Definitions.
982.631 Homeownership Program: Initial family eligibility.
982.632 Homeownership Program: Actions after an HA determines that an interested family is eligible for the homeownership program.
982.633 Homeownership Program: Continued assistance requirements.
982.634 Homeownership Program: Use of Family Self Sufficiency escrow account.
982.635 Homeownership Program: Monthly housing assistance payment.
982.636 HA periodic unit inspections; HA remedies.
982.637 Homeownership Program: Prohibition on use of additional homeownership assistance.
982.638 Homeownership Program: Automatic termination of assistance.
982.639 Homeownership Program: Termination of assistance for mortgage default.

982.640 Homeownership Program: Effect of default on subsequent purchases.
982.641 Homeownership Program: Sale of homeownership unit; recapture.

Subpart M—Special Housing Types

* * * * *

Homeownership Program

§ 982.629 Homeownership Program: Purpose, implementation and applicability.

(a) *Purpose.* The purpose of the section 8 homeownership program is to provide homeownership opportunities for low-income families. In lieu of providing rental subsidies to landlords, the monthly section 8 certificate or voucher housing assistance payments, as determined under this section, will be used to enable eligible families to purchase a homeownership unit owned by one or more family members.

(b) *Implementation.* Implementation of the homeownership program is mandatory for HAs administering certificate and voucher programs. Participation by families in the homeownership program is at the sole option of the family and is restricted to those families that meet the initial eligibility criteria and other requirements for homeownership assistance. HAs must inform families of the homeownership option during the briefing, or no later than the next regularly scheduled recertification for participants and families that have been issued certificates and vouchers. There is no separate funding designated for the homeownership program. Instead, the HA will use funds under the consolidated ACC for the rental certificate and rental voucher programs for this purpose.

(c) *Applicability.* Provisions under this undesignated heading apply only to the sections under this subheading and do not apply to any other forms of special housing under subpart M of this part.

(1) *Applicability of other requirements.* Except as otherwise modified by the provisions of this subpart or section, the requirements contained in the other subparts of 24 CFR part 982 apply to section 8 homeownership assistance. The following provisions are not applicable to section 8 homeownership assistance:

(i) All provisions or references relating to owners and to the housing assistance payment contract with the owner, including the amount a section 8 owner receives if the family moves from the assisted unit (§ 982.309); owner responsibility for maintaining the unit at HQS (§ 982.403); HA periodic unit inspections to determine whether an owner is complying with its obligations to maintain the unit at HQS (§ 982.404); and Subpart J—Housing Assistance Payments Contract and Owner Responsibilities of this part;

(ii) All provisions governing the assisted tenancy, including the provisions concerning HA approval for assisted tenancy (§ 982.305); the assisted lease (§ 982.306); owner termination of tenancy (§ 982.307); and security deposits payable by tenants to the section 8 owner (§ 982.308);

(iii) The term of the certificate or voucher (§ 982.302); the prohibition against using a unit occupied by an owner or person with an interest in the unit (§ 982.304(a)(6)); and the prohibition against any unit receiving, or which has received in the past five years, a local or state mortgage interest subsidy, construction or rehabilitation subsidy, or project-based rent subsidy (§ 982.304(a)(8));

(iv) The prohibition against selecting families based on participation in a Family Self Sufficiency program (§ 982.202(c)(3)(i)(F)); or based on income level (§ 982.202 (c)(3)(ii));

(v) All provisions and references relating to rent, including Subpart K—Rent and Housing Assistance Payment of this part (except for the provisions concerning HA examinations of family income and composition and utility allowances (§§ 982.509 and 982.510));

(vi) The provision at § 982.551(c), HQS breach caused by family, since all HQS violations are the responsibility of the family; and the provision at § 982.551(g) that prohibits the family from owning or having any interest in the unit;

(vii) Subpart M—Special Housing Types of this part (except the portion of Subpart M beginning at § 982.629); and

(viii) Subpart G of Part 882 of this title—Project-Based Certificate Program.

(2) [Reserved]

§ 982.630 Homeownership Program: Definitions.

Average equity. The imputed equity amount accrued by the family in the homeownership unit during the ownership period. Average equity is calculated as one-half of the sum of:

(1) The market value of the homeownership unit at the time of purchase, less any unpaid balance on the mortgage; and

(2) The market value of the homeownership unit at the time of sale, less any unpaid balance on the mortgage.

Average passbook savings rate. The imputed average passbook savings rate during the length of the ownership period. The average passbook savings rate is calculated as one-half of the sum of:

(1) The passbook savings rate at the time of purchase; and

(2) The passbook savings rate at the time of sale.

Default. The point at which an eligible family breaches its obligations under a mortgage for a homeownership unit. For purposes of a FHA-insured mortgage, "default" means a default in accordance with 24 CFR part 200. For purposes of a non-FHA-insured mortgage, "default" means a default in accordance with the terms of the mortgage instrument.

Down payment. The difference between the purchase price and the mortgage amount.

First-time homeowner. A family, no member of which has had a present ownership interest in a principal residence during the 3 years preceding the date on which the family initially receives homeownership assistance. For a family to retain its eligibility as a first-time homeowner even after selling its homeownership unit, it must participate continuously in the section 8 homeownership program and not be in default on any previous section 8-assisted mortgage.

Homeownership assistance. Monthly homeownership assistance payments provided by the HA to an eligible family pursuant to this undesignated heading.

Homeownership unit. A unit for which section 8 certificate or voucher homeownership assistance is provided.

Imputed amount of family contribution for assets. The amount of additional assistance provided by the HA to the family because the HA did not take into account the value of the family's equity in the homeownership unit when it calculated the family's monthly assistance payment. The imputed amount of family contribution for assets is equal to the average equity in the property (AE), multiplied by the average passbook savings rate (APSR), multiplied by the number of full years of family ownership, multiplied by 30 percent (i.e., AE × APSR × # of full years of ownership × 30%).

Major repairs and replacements. A capital expenditure (an expenditure, as approved by the HA, to acquire property having a useful life of more than one year, to increase the value of the property, or to prolong the property life) to repair or replace a major building system, equipment or component. Repairing or replacing a roof, repairing or replacing a heating system, replacing a hot water heater and rewiring are examples of major repairs and replacements.

Monthly homeownership expenses. A family's total monthly expenses for the homeownership unit to cover the cost of the mortgage principal and interest (limited to the lesser of the initial first mortgage or any subsequent refinancing, but excluding any second mortgage, home equity loan, or cash-out refinancing), real estate taxes and special assessments, home insurance, imputed maintenance expenses equal to 5 percent of the FMR for the size unit purchased at the time of move-in or at the regular re-examination, and an allowance for utilities using the HA's utility allowance schedule for the size unit purchased by the homebuyer.

Mortgage. A first lien to secure the unpaid purchase price of real estate under the laws of the jurisdiction where the homeownership unit is located, and for which homeownership assistance is provided. A mortgage may refer both to a security instrument creating a lien (whether called a mortgage, deed of trust, security deed or another term used in a particular jurisdiction), as well as the credit instrument, or note, secured thereby. Unless otherwise stated, "mortgage" does not include other mortgages assumed by the family, home equity loans, or cash-out refinancings.

Mortgagee. The original lender under a mortgage and its successors and assigns.

Net sales proceeds. The market value of the house when sold, less the sum of outstanding first mortgage indebtedness (limited to the lesser of the initial first mortgage or any subsequent refinancing, but excluding any other mortgage, home equity loan, or cash-out refinancing).

Public assistance. Income assistance from Federal, state or local welfare programs, and includes assistance provided under the Aid to Families with Dependent Children (AFDC) Program; Supplemental Security Income (SSI) that is subject to an income eligibility test; food stamps, general assistance or other assistance provided under a Federal, state or local program directed to meeting general living expenses, such as food, health care, child care, but does not include assistance directed solely to meeting housing expenses (e.g., rent, mortgage or utilities payments), and does not include transitional welfare assistance (e.g., Medicaid) provided to JOBS participants.

Statement of Family Responsibilities (SFR). A document executed by the family that evidences the family's agreement to comply with requirements under the homeownership program. The SFR, which must be in a form prescribed by HUD, is executed by the family before the HA begins housing assistance payments for the homeownership unit.

§ 982.631 Homeownership Program: Initial family eligibility.

To be eligible initially to receive section 8 homeownership assistance, a family must:

(a) Be a first-time homeowner;

(b)(1) Be a participant of the HA's Family Self-Sufficiency (FSS) Program and be in compliance with the FSS contract of participation; or

(2) Have a gross monthly income from sources other than public assistance that is not less than two and a half times the Existing Housing FMR for the area in which the homeownership unit is located; and

(c) Demonstrate that one or more adult members of the family are currently employed on a full-time basis, and have been continuously so employed for at least one year prior to the date the HA determines family eligibility for homeownership assistance.

§ 982.632 Homeownership Program: Actions after an HA determines that an interested family is eligible for the homeownership program.

After an HA determines that an interested family is eligible for the homeownership program, the following actions must occur:

(a) *Counseling.* The family must participate in a homeownership and housing counseling program provided by a HUD-approved counseling agency that covers areas such as: home maintenance; budgeting; money management; credit counseling; credit repair; negotiating purchase price; securing mortgage financing; transportation options and opportunities for housing and schools located throughout the metropolitan area; and the availability of multiple listing services through local realtors, so that families can explore the full range of housing options located throughout the metropolitan area. If a HUD-approved housing counseling agency is not available, the counseling may be provided by the HA or another qualified entity.

(b) *Issuance of certificate or voucher.* The HA must issue the family a certificate or voucher with a term of 120 days. The running of the term for the certificate or voucher stops from the time the family submits a Request for Authorization to Purchase a Homeownership Unit until the time when the HA completes the HQS inspection and either approves or denies the request. During the term of the homeownership certificate or voucher, the HA may require the family to report progress in purchasing a homeownership unit. Such reports may be required at such intervals or times as determined by the HA. During the term of the homeownership certificate or voucher, the family may request to exchange the homeownership certificate or voucher for a rental certificate or voucher. The HA must determine the term of the rental certificate or voucher in accordance with § 982.302, except that the time period already used while searching for a homeownership unit under the homeownership certificate or voucher must be subtracted from the term of the rental certificate or voucher.

(c) *Request for Authorization to Purchase a Homeownership Unit.* The family must submit to the HA a completed Request for Authorization to Purchase a Homeownership Unit and, during the term of the certificate or voucher, execute a contract or other agreement that demonstrates the owner's willingness to sell the homeownership unit. The family may only submit one Request for Authorization to Purchase a Homeownership Unit at a time. This request must include the information prescribed by HUD, such as the location of the homeownership unit and the name of the seller. The HA must notify promptly the family whether the Request for Authorization to Purchase a Homeownership Unit is approved or disapproved. The family has nine months (plus tolling, i.e., the time between when the family submits a Request for Authorization to Purchase a Homeownership Unit for HA approval and the time when the HA approves or denies the request) from the date of issuance of the homeownership certificate or voucher in which to secure mortgage financing and execute a second mortgage on behalf of the HA to secure the repayment of the recapture amount under § 982.641; obtain title to the homeownership unit; and bring the unit into compliance with the HQS. In no event may monthly assistance payments be made to a family before these requirements are met.

(d)(1) *HQS requirements.* Housing assistance payments may not commence until the HA determines that the unit meets the HQS requirements set forth in § 982.401. It is the family's responsibility to ensure that the homeownership unit meets the HQS throughout the period when it is receiving monthly homeownership assistance payments from the HA. The family may use amounts in its FSS escrow account to pay for major repairs and replacements in the homeownership unit.

(2) Before approving a Request for Authorization to Purchase a Homeownership Unit, the HA must inspect the homeownership unit to determine whether it meets the HQS. If the homeownership unit does not meet the HQS, the HA must provide the family with a list of deficiencies. The family is not required to wait for the HQS inspection before making an offer or executing a contract of sale, although the HA must inform the family that housing assistance payments will not commence until the unit is in compliance with the HQS. The HA may disapprove the Request for Authorization to Purchase a Homeownership Unit if the unit is structurally unsound or if there are many serious HQS violations and the HA determines that the family will be unable to have the HQS violations corrected within the time period set forth in paragraph (d)(3) of this section. If the HA disapproves the Request for Authorization to Purchase a Homeownership Unit, the family may lose any out of pocket costs it may have incurred at the time it made the offer to purchase the unit or executed the contract of sale, depending upon the contract terms with the seller.

(3) Any HQS deficiencies must be corrected within nine months (plus tolling, i.e., the time when the family submits for HA approval a Request for Authorization to Purchase a Homeownership Unit and the time when the HA approves or denies the request) from the date of issuance of the homeownership certificate or voucher and the HA must reinspect the unit to determine whether housing assistance payments may commence.

(e) *Statement of Family Responsibilities.* If the HA determines that the homeownership unit meets the HQS, and that the family has secured mortgage financing and obtained title to the homeownership unit, the family must execute a Statement of Family Responsibilities (SFR), in the form prescribed by HUD. Housing assistance payments may not commence until the family executes the SFR. In the SFR:

(1) The family agrees to combine the HA's payment with its own required contributions toward the mortgage and utility payments, and to pay such amounts directly to the mortgagee and utility suppliers. The family also agrees that, if the HA determines that the family's past performance in making such payments so warrants, the HA may pay the housing assistance payment directly to the mortgagee and the utility suppliers.

(2) The family agrees that it must comply with all applicable requirements pertaining to the section 8 program, in addition to special requirements established under the section 8 homeownership program.

(f) *Mortgage.* Before commencement of homeownership assistance, the family must obtain and provide evidence to the HA that it has a mortgage to purchase the homeownership unit. Purchase-money mortgages (i.e., a mortgage taken back by the seller on the homeownership unit in exchange for its agreement to finance the family's purchase of the unit) and "balloon" mortgages are expressly prohibited. An exception to the prohibition on purchase-money mortgages is that a family may obtain such a mortgage from a seller that is a bona fide nonprofit entity. In addition, the family must execute on behalf of the HA a second mortgage to secure the repayment of the recapture amount under § 982.641. The family must secure mortgage financing for the homeownership unit and execute the second mortgage within nine months (plus tolling) from the date of issuance of the homeownership certificate or voucher.

(g) *Title.* Monthly housing assistance payments may not commence until such time as the family obtains title to the homeownership unit. Title may be held by any member or members of the family, and the family must furnish the HA with adequate evidence of its ownership. The family must obtain title to the homeownership unit within nine months (plus tolling) from the date of issuance of the homeownership certificate or voucher.

(h) *Submission of documents from mortgagee.* Before commencement of homeownership assistance, the family must submit to the HA any documents prescribed by HUD, and executed by the mortgagee, indicating that the mortgagee agrees to comply with its responsibilities under § 982.639.

(i) *Down payment requirement.* The family must provide from its own resources (which may include cash resources obtained through a gift or inheritance, or from the family's personal savings) at least 80 percent of the down payment on a homeownership unit. The family may use up to 50 percent of the amount contained in its FSS escrow account to meet this 80 percent down payment requirement. Not more than 20 percent of the down payment may be provided from other sources, such as funds provided by nonprofit entities or programs of states and units of general local government.

(j)(1) *Environmental review.* HUD is responsible for complying with the applicable Federal environmental laws and authorities listed in 24 CFR 50.4. HAs shall assist HUD by establishing procedures to assure that prior to approval of any "Request for Authorization to Purchase a Homeownership Unit," full compliance is made with the following Federal environmental laws and authorities:

(i) *Site within designated coastal barrier resources:* Pursuant to the Coastal Barrier Resources Act, as amended by the Coastal Barrier Improvement Act of 1990 (15 U.S.C. 3501), financial assistance under the homeownership program may not be used for activities undertaken in the Coastal Barrier Resources System.

(ii)(A) *Buildings requiring flood insurance protection:* Under the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4128), Federal financial assistance for acquisition and construction purposes (including repair and improvement) may not be used in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

(*1*) The community in which the area is situated is participating in the National Flood Insurance Program (see 44 CFR parts 59 through 79), or less than one year has passed since the FEMA notification regarding such hazards; and

(*2*) Flood insurance protection is to be obtained as a condition of the HA's approval of financial assistance to the family.

(B) HAs assisting acquisition and construction (including repair and improvement) located in an area identified by FEMA as having special flood hazards are responsible for assuring that flood insurance under the National Flood Insurance Program is obtained and maintained by the family.

(iii) *Site within runway clear zones of airports:* In cases involving HUD assistance for the purchase or sale of an existing property in a Runway Clear Zone of a civil airport or Clear Zone of a military airfield, as defined in 24 CFR part 51, HAs shall advise the family that the property is in a runway clear zone or clear zone, what the implications of such a location are, and that there is a possibility that the property may, at a later date, be acquired by the airport operator. In these cases, the family must sign, as part of the Request for Authorization to Purchase a Homeownership Unit, a statement acknowledging receipt of this information from the HA.

(2) *Historic preservation.* HAs shall supply HUD with threshold data to assist HUD in complying with the historic preservation requirements set

forth in 24 CFR 50.4(a). HUD shall carry out a historic preservation review pursuant to § 50.4(a) with respect to any property that requires rehabilitation to bring it up to HQS. If the HA determines during its HQS inspection of the unit that, as a condition of meeting the HQS, the family must undertake rehabilitation of the dwelling, it must so inform the family. Thereafter, until such time as HUD completes its environmental review, the family may not carry out any rehabilitation work on the dwelling.

§ 982.633 Homeownership Program: Continued assistance requirements.

To continue to receive homeownership assistance, a family must comply with the obligations set forth in § 982.551, in addition to the following requirements:

(a) *Ongoing counseling.* Attend homeownership and housing counseling on a continuing basis, as deemed appropriate by the HA;

(b) *Compliance with mortgage and Statement of Family Responsibilities.* Comply with the terms of its mortgage with the mortgagee and its Statement of Family Responsibilities with the HA;

(c) *Notification to HA.* Notify the HA before the family refinances the mortgage on the homeownership unit or sells the unit. In addition, the family must notify the HA of any change in the family's monthly homeownership expenses, and when the mortgage on the property is paid off. Failure to notify the HA of these changes shall be considered fraud by the family and will result in appropriate enforcement action by the HA.

(d) *HQS requirements.* Maintain the homeownership unit in accordance with the HQS, including performance of ordinary and extraordinary maintenance. In addition, the family must allow the HA to inspect the unit at least annually, and at other times as needed, to determine if the family is meeting its obligation to maintain the unit in accordance with the HQS.

(e) *Timely monthly payments.* Pay in a timely manner to the mortgagee the monthly mortgage installment, and to utility suppliers the amounts owed for utilities and services, using the HA's monthly contributions toward these expenditures.

(f) *Maintain unit as family's residence.* Maintain the unit as the family's residence without leasing or sub-leasing any portion of the homeownership unit.

(g) *Insurance.* Maintain all lender- or Federally-required insurance for the unit, including flood insurance.

§ 982.634 Homeownership Program: Use of Family Self Sufficiency escrow account.

(a) *Down payment assistance.* A family that is in compliance with its FSS contract of participation may use up to 50 percent of the amount in its Family Self-Sufficiency escrow account toward the down payment on a homeownership unit.

(b) *Major repairs and replacements.* After a family purchases a homeownership unit, a family that is in compliance with its FSS contract of participation may use any amounts in the FSS escrow account to cover the costs of major repairs and replacements in the homeownership unit. Before approving the use of FSS funds for this purpose, the HA shall require the family to submit evidence, as required by the HA, to substantiate that the proposed repairs and replacements are eligible work items, and that the amount proposed to be spent on such repairs and replacements is reasonable. Funds may not be drawn down from the FSS escrow account without the HA's approval.

(c) *Recapture.* If the family defaults on a mortgage used to purchase the homeownership unit, and the mortgage is foreclosed, the family must reimburse the FSS escrow account for amounts obtained by the family pursuant to paragraphs (a) and (b) of this section by agreeing to a reduced section 8 rental subsidy paid by the HA on behalf of the family, and by paying a higher tenant contribution toward its monthly section 8 rental payment in accordance with a schedule established by the HA. In addition, any remaining amounts in its FSS escrow account will be recaptured by the HA and used by the HA as program receipts under the Consolidated ACC.

§ 982.635 Homeownership Program: Monthly housing assistance payment.

(a) *Amount of monthly housing assistance payment.* The HA shall make a monthly housing assistance payment to the family that is equal to the *lesser* of:

(1) The Existing Housing FMR for the family unit size for the area in which the homeownership unit is located, minus 30 percent of the family's monthly adjusted income; or

(2) The family's monthly homeownership expenses minus 10 percent of the family's monthly gross income.

(b) *FMR used in subsidy calculation.* In determining the monthly housing assistance payment, the HA will use the greater of the Existing Housing FMR in effect at the time of the regular re-examination for the area in which the homeownership unit is located, or the FMR in effect for the area in which the homeownership unit is located when the family initially received homeownership assistance for that unit.

(c) *Exclusion of equity from calculation of monthly income.* In determining a family's monthly income for purposes of calculating the family's monthly assistance payment, the family's equity in the homeownership unit is excluded when applying § 813.106(b)(3) of this title, which provides that where the family has net family assets in excess of $5,000, annual income includes the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate. Upon sale of the homeownership unit, the family shall be required to repay to HUD from the net sales proceeds the amount of additional assistance provided to the family because HUD did not consider the family's equity in calculating the monthly assistance payment.

(d) *Responsibility of mortgagee accepting section 8 payments.* Any mortgagee accepting section 8 homeownership certificate or voucher housing assistance payments from a family or HA thereby agrees to comply with the responsibilities of a mortgagee, as set forth in § 982.639.

(e) *Occupancy of homeownership unit.* Housing assistance payments may only be paid for the period the homeownership unit is occupied by the family.

(f) *Administrative fees.* The ongoing administrative fee described in § 982.151(c) is paid to the HA for each month that a homeownership subsidy is paid on behalf of the family or until the family's participation in the program is terminated.

§ 982.636 HA periodic unit inspections; HA remedies.

(a) (1) *HA period inspections.* The HA must inspect the homeownership unit at least annually, and at other times as needed, to determine if the family is meeting the obligation to maintain the unit in accordance with HQS.

(2) In scheduling inspections, the HA must consider complaints and any other information brought to the attention of the HA.

(b) (1) *HA remedies.* If the family fails to maintain the homeownership unit in compliance with HQS, the HA must take prompt and vigorous action to enforce the family obligations. HA rights and remedies include termination or reduction of housing assistance payments.

(2) The HA must not make any housing assistance payments for a homeownership unit that fails to meet the HQS, unless the family corrects the defect within the period specified by the HA and the HA verifies the correction.

§ 982.637 Homeownership Program: Prohibition on use of additional homeownership assistance.

A family receiving section 8 homeownership assistance may not receive additional assistance (e.g., mortgage principal or interest rate reduction subsidy) under other Federal homeownership assistance programs, including assistance under the HOME Investment Partnerships Act, the Homeownership and Opportunity Through HOPE Act, Emergency Low Income Housing Preservation Act of 1987, or financial assistance provided by the Farmers Home Administration pursuant to section 502 of the Housing Act of 1949 subsequent to the purchase date of the homeownership unit. Assistance under these programs may be used, however, to write down the initial purchase price, to complete pre-purchase rehabilitation, provide down payment or closing cost funds, and for other pre-purchase activities. In addition, homeownership assistance may be used in combination with state or local tax-exempt bond financing programs, or with unsubsidized VA- or FmHA-guaranteed mortgages. Homeownership assistance can also be used to purchase a unit under the FHA Property Disposition Program, from the Resolution Trust Corporation or from the Federal Deposit Insurance Corporation.

§ 982.638 Homeownership Program: Automatic termination of assistance.

A family will be terminated automatically from the section 8 homeownership program when six months have elapsed since the date of the last housing assistance payment because assistance payments are no longer necessary, or when the first mortgage is paid off.

§ 982.639 Homeownership Program: Termination of assistance for mortgage default.

If a family defaults on the mortgage, the following procedures apply:

(a) *Mortgagee obligations.* The mortgagee must inform the HA in writing of the family's default. In addition, a FHA-insured mortgagee must comply with 24 CFR part 203, subpart C, before acquiring the property through foreclosure or deed in lieu of foreclosure, and must inform the HA in writing as to whether the family has elected to participate in, and has qualified for, the HUD Assignment Program under 24 CFR part 203, subpart C. In the case of a family that has defaulted on an assigned FHA-insured mortgage, HUD shall notify the HA of the family's default.

(b) *When assistance is terminated.* The HA must take steps to terminate promptly homeownership assistance on behalf of a family that has defaulted on its mortgage if the HA receives written notice from the mortgagee (or HUD) that:

(1) For a family that has defaulted on a FHA-insured mortgage, the family has elected not to participate in, or has failed to qualify for, the HUD Assignment Program; or

(2) The family has defaulted on a non-FHA insured mortgage; or

(3) In the case of a mortgage held by HUD, when HUD determines that the family has defaulted on the assigned mortgage.

(c) *Notice to family.* If the family defaults on the mortgage, the HA must include in the required notice of termination of assistance (see § 982.553(c)) a statement that the family can move from the homeownership unit with continued section 8 certificate or voucher assistance for a rental unit if the family:

(1) Transfers to the mortgagee or HUD marketable title to the homeownership unit in lieu of foreclosure within the period established or approved by the mortgagee or HUD;

(2) Moves from the homeownership unit within the period established by the HA; and

(3) Agrees in writing that any amounts the family is required to pay to reimburse the FSS escrow account for amounts expended by the family pursuant to § 982.634 may be deducted by the HA from the section 8 rental assistance payment otherwise payable on behalf of the family, and that the family will accordingly pay a higher monthly tenant contribution in accordance with a schedule established by the HA until such time as the account is fully reimbursed.

(d) *Continuation or termination of section 8 rental assistance.* The family will be issued a rental certificate or voucher to locate suitable rental housing if the family demonstrates that it has conveyed title to the property either to the mortgagee or to HUD within the period established or approved by the mortgagee or HUD, and certifies it will move from the homeownership unit within the period established by the HA and agrees to reimburse the FSS escrow account for all amounts expended by the family pursuant to § 982.634 for the homeownership unit in accordance with the schedule established by the HA. If the family is unable to demonstrate within the period specified by the HA that it has met the conditions for continuing section 8 rental certificate or voucher assistance (or if the HA otherwise has a basis for terminating assistance on behalf of the family in accordance with § 982.552), the HA shall terminate promptly section 8 assistance on behalf of the family.

§ 982.640 Homeownership Program: Effect of default on subsequent purchases.

A family receiving homeownership assistance that defaults under a mortgage may not receive homeownership assistance for occupancy of another dwelling owned by one or more members of the family. Additionally, the family will be required to reimburse the FSS account for all amounts that it expended pursuant to § 982.634, and to forfeit any remaining FSS escrow account balance.

§ 982.641 Homeownership Program: Sale of homeownership unit; recapture.

(a) *General.* Upon the sale of the homeownership unit, the HA shall recapture from any net sales proceeds the amount of additional assistance paid to or on behalf of the eligible family because the HA did not take into account the value of the family's equity in the homeownership unit for purposes of calculating the monthly assistance payment.

(b) *Calculation of recapture amount.* The amount of additional assistance to be recovered by the HA pursuant to paragraph (a) of this section is the lesser of:

(1) The net sales proceeds; or

(2) the imputed amount of family contribution for assets. If there are insufficient cash proceeds generated by the sale to repay HUD for the recapture amount, the family shall continue to owe the HA the remaining recapture amount. The HA may elect, as one option, to recover this amount by deducting from any future section 8 rental payments otherwise payable on behalf of the family the full amount required under this paragraph (b). Such deductions shall be made in accordance with a schedule established by the HA, and shall result in the family's making a higher tenant contribution toward the monthly rental on the unit until such time as the full recapture amount is paid off. Recaptured amounts shall be used by the HA as program receipts under the Consolidated ACC.

PART 984—SECTION 8 FAMILY SELF-SUFFICIENCY PROGRAM

12. The authority citation for part 984 would be revised to read as follows:

Authority: 42 U.S.C. 1437f, 1437u, and 3535(d).

13. Section 984.305 would be amended by redesignating paragraph (e) as paragraph (f), and by adding a new paragraph (e), to read as follows:

§ 984.305 FSS account.

* * * * *

(e) *Use of FSS account for section 8 homeownership.* Notwithstanding paragraphs (c) and (f)(l)(ii) of this section, a family that is in compliance with the FSS contract of participation may use up to 50 percent of the amount in its FSS escrow account for a down payment on a homeownership unit receiving section 8 homeownership assistance under 24 CFR part 982, subpart M ("Homeownership Program"). In addition, after the family purchases the homeownership unit, a family that is in compliance with the FSS contract of participation may use any amounts in the FSS escrow account to cover major repairs and replacements in the homeownership unit, as those terms are defined at § 982.630 of this chapter. If the family defaults on the mortgage for which section 8 homeownership certificate or voucher assistance is being provided under 24 CFR part 982, subpart M, it must reimburse the FSS escrow account for all amounts expended by the family pursuant to § 982.634 of this chapter by agreeing to a reduced section 8 rental subsidy paid by the HA on behalf of the family, and by paying a higher tenant contribution toward its monthly section 8 rental payment in accordance with a schedule established by the HA. In addition, any remaining amounts in its FSS escrow account will be recaptured in accordance with paragraph (f)(2) of this section. A PHA may use recaptured amounts as program receipts under the Consolidated ACC.

* * * * *

Dated: July 7, 1994.

Henry G. Cisneros,

Secretary.

[FR Doc. 94–17152 Filed 7–18–94; 8:45 am]

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July 19, 1994

Part III

Department of Agriculture

Forest Service

36 CFR Part 292
Hells Canyon National Recreation Area, Federal Lands; Final Rule

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 292

RIN 0596–AB08

Hells Canyon National Recreation Area—Federal Lands

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule implements Sections 10(b)–(e) of the Hells Canyon National Recreation Area Act of 1975 (hereafter "the Act"). The Act established the Hells Canyon National Recreation Area (hereafter "the HCNRA") and directed the Secretary of Agriculture to promulgate rules and regulations for federal lands in the HCNRA that would: insure the full protection and preservation of the historic, archeological, and paleontological resources; provide for the control of the use of motorized and mechanical equipment; provide for the control of the use and number of motorized and non-motorized river craft; and, establish standards for the management, utilization, and disposal of natural resources by timber harvesting, mining and grazing which are compatible with the provisions of the Act. This rule will ensure that the HCNRA will be administered in such a way as to protect the values for which it was established.

EFFECTIVE DATE: This rule is effective July 19, 1994.

FOR FURTHER INFORMATION CONTACT: Tom Lennon, Branch Chief, Special Designations, Recreation, Cultural Resources, and Wilderness Management Staff, (202) 205–1423 or Ed Cole, Area Ranger, (503) 426–4978.

SUPPLEMENTARY INFORMATION:

Background

Congress established the HCNRA in the Act in order to "assure that the natural beauty, and historical and archeological values of the Hells Canyon area * * * are preserved for this and future generations, and that the recreational and ecologic values and public enjoyment of the area are thereby enhanced." P.L. 94–199, 89 Stat. 1117 at § 1 (codified at 16 U.S.C. § 460gg). While the overarching goals and objectives of the Act are to preserve and enhance the natural, historic, paleontologic, recreation, and other values in the HCNRA, Congress also expressly recognized as "valid" certain timber harvesting, grazing and rivercraft uses of the area that predated the establishment of the HCNRA. *Id.* at §§ 10, 13 (codified at 16 U.S.C. §§ 460gg–7, –10).

The HCNRA consists of 625,193 acres of federal land. Included in this acreage is the Hells Canyon Wilderness which totals 219,500 acreas and a portion of the Eagle Cap Wilderness which totals 3,553 acres. Also included in the total HCNRA acreage are 33,767 acres in the Snake, Rapid, and Imnaha Wild and Scenic River corridors. The Hells Canyon Wilderness was designated by Congress in Section 2 of the Act; the Snake and Rapid Wild and Scenic Rivers were designated in Section 3 of the Act.

Section 10 of the Act authorized the Secretary to promulgate regulations addressing several issues that were of concern to Congress when it established the HCNRA in 1975. Section 10(b) authorized the promulgation of regulations which would ensure the full protection and preservation of the historic, archeological, and paleontological resources in the HCNRA. Section 10(c) authorized the promulgation of regulations which would provide for the control of the use of motorized and mechanical equipment for transportation over, or alteration of, the surface of any Federal land in the HCNRA. Section 10(d) authorized the promulgation of regulations which would provide for the control of the use and number of motorized and nonmotorized rivercraft while recognizing the validity of the use of such craft on the Snake River in the HCNRA. Section 10(e) authorized the promulgation of regulations which would establish standards compatible with the provisions of the Act for the management, utilization, and disposal of natural resources in the HCNRA through timber harvesting, mining, and grazing. Parenthetically, it should be noted that Section 10(a) authorized the Secretary to promulgate regulations which would establish standards for the use and development of privately owned lands in the HCNRA. This section was the subject of a separate rulemaking in which a final rule was adopted on June 13, 1994 (59 Federal Register 30492). Accordingly, it is not discussed further in this proceeding.

Following enactment of the Act in 1975, the Forest Service construed the authority in Section 10 to promulgate regulations as discretionary and that the issues identified therein could be adequately addressed under existing statutory and regulatory authority. This interpretation was challenged in a 1988 lawsuit which contended that the regulatory authority in Section 10 was mandatory, not discretionary. *Oregon Natural Resources Council* v. *Lyng*, slip op. No. 88–680PA (D. Or. 1989) (hereafter *"ONRC* v. *Lyng"*). The district court in Oregon rejected ONRC's argument that the Secretary had a non-discretionary duty to issue regulations under Section 10 and dismissed the case. On appeal, however, the Ninth Circuit reversed the district court and concluded that the regulations were, in fact, required by Section 10. According to the Ninth Circuit, Section 10 "compels the Secretary to promulgate nonduplicative regulations of the sort described by subsections 10(a) through (e). *ONRC* v. *Lyng*, 882 F.2d 1417, 1421 (9th Cir. 1989).

Within three months of the 9th Circuit's decision in *ONRC* v. *Lyng*, an interim rule establishing standards and guidelines for the federal lands in the HCNRA had been adopted and public comment solicited. 54 FR 41089 (Oct. 5, 1989). Only two comments were received on the interim rule. The interim rule has never been published as a final rule.

Recently, another lawsuit was filed against the Forest Service alleging that the agency had unreasonably delayed promulgation of the regulations for the HCNRA following the Ninth Circuit's 1989 decision in *ONRC* v. *Lyng. Hells Canyon Preservation Council* v. *Richmond*, Slip Op. Cv. No. 92–1432–ST (D. Or.). The district court agreed that the Forest Service had unreasonably delayed the promulgation of rules for the HCNRA and established a schedule for their completion. As it related to regulations for the federal lands in the HCNRA, the court directed that a proposed rule be published in the Federal Register not later than January 20, 1994; that the comment period on the proposed rule close not later than March 21, 1994; and that a final rule be adopted and published in the Federal Register not later than July 19, 1994.

On January 19, 1994, the Forest Service published a proposed rule for the National Forest System lands in the HCNRA pursuant to Sections 10(b)–(e) of the Act (59 FR 2782). The proposed rule consisted of the following sections: purpose and scope, definitions, management standards and guidelines, protection and preservation of cultural and paleontological resources, use of motorized and mechanical equipment, use of motorized and non-motorized rivercraft, timber harvesting activities, mining activities, and grazing activities. In recognition of the proportionately greater protection that Congress felt the wilderness areas should receive over other parts of the HCNRA, the proposed rule also divided the HCNRA into Wilderness Lands, consisting of the approximately 223,000 acres of

designated wilderness in the HCNRA and Other Lands, consisting of the remaining approximately 402,000 acres of federal lands in the HCNRA. This latter category included the approximately 33,000 acres of federal lands in the Snake, Rapid, and Imnaha Wild and Scenic River corridors.

Against this backdrop, the proposed rule then established standards for each of the items identified in Sections 10(b) through (e) of the Act. Some of the standards varied depending on whether the affected activity or use occurred on or was contemplated in the Wilderness Lands or the Other Lands. The standards for the grazing activities were, however, identical for Wilderness Lands and Other Lands. The standards for motorized and non-motorized rivercraft use did not differentiate between Wilderness Lands and Other Lands. Rather, this section of the proposed rule established standards applicable only to river segments that had been designated as wild and scenic rivers.

Nineteen letters expressing a variety of viewpoints were received by the expiration of the 60 day comment period on March 21, 1994. These letters contained the views of, among others, a utility company, a recreation group, several environmental groups, a federal agency, a grazing permittee, an association representing the personal watercraft industry, a commercial river outfitter and numerous concerned citizens. Two individuals submitted two separate comments on the proposed rule. The comments contained in these letters have been considered in the adoption of this final rule. The Department appreciates the time and energy the reviewers invested in preparing these letters and articulating their concerns with the proposed rule.

All comments received are available for review in the Office of the Director, Recreation, Cultural Resources, and Wilderness Management Staff, Auditors Building, 4th Floor, 201 14th Street, SE., at Independence Ave., SW., Washington DC, during regular business hours (8 a.m. to 5 p.m.) Monday through Friday.

Analysis of Public Comment

Comments on the proposed rule dealt with general issues like the terminology, enforceability, and format of the regulation. Comments also were made concerning the specific standards enumerated in the proposed rule. A brief statement of the salient issues, responses, and modifications in the proposed rule follows.

General Comments on Proposed Subpart E of 36 CFR Part 292

1. The Ambiguity of the Standards in the Proposed Rule

A number of reviewers contended that many of the standards set out in §§ 292.43 through 292.48 of the proposed rule were vague and imprecise. As a result, these reviewers noted, the Forest Service could exercise unfettered discretion in the administration of the HCNRA. These reviewers suggested that this could result in arbitrary decisions allowing or, in some cases, disallowing certain activities or uses in the HCNRA. They concluded that the standards should be clarified to further circumscribe the agency's decisionmaking authority. If additional clarification could not be achieved, then some of the reviewers recommended that the affected standard simply be eliminated.

Response. The Forest Service generally disfavors the use of rigid and fixed standards in a rule notwithstanding the fact that such standards might reduce the potential for arbitrary agency action and might enhance the agency's and the public's ability to predict whether certain behavior would be in conformance with them. The reason that the agency resists this practice is twofold. First, the agency believes that there is a significant risk that rigid and fixed standards in a rule, though perhaps appropriate at the time of adoption, may quickly be rendered obsolete or impractical due to changes or developments in law, science, technology, or societal norms and understandings. Second, where such standards are deemed desirable, they can typically be incorporated in the forest plan or a related document, like the Comprehensive Management Plan for the HCNRA, which are, by their nature, more fluid and dynamic and thus better suited than a rule to respond to evolution and change.

As a result, the Forest Service acknowledges that some discretion exists in most, if not all, of the standards in the proposed rule. It is the agency's view that an element of discretion is essential if the HCNRA is to be successfully administered in conformance with the Act.

Nonetheless, the agency has reviewed the standards of the proposed rule to determine whether additional clarification can be supplied without compromising the flexibility necessary to administer the HCNRA. To the extent a standard might appear to be so vague as to be unenforceable, additional clarification has been supplied in the rule. Such clarification is explained in the section-by-section comments that follow. In many circumstances, additional clarification may also be supplied in the Comprehensive Management Plan (CMP) for the HCNRA which will apply the general goals and objectives of the Act in conjunction with the standards of this rule to the specific uses or activities occurring in or contemplated on the HCNRA.

Finally, it should be noted that the mere existence of discretion in an agency decisionmaker does not necessarily mean that the discretion will be abused. This is neither the purpose nor intent of this rule. In the event that a party believes that the Forest Service has acted arbitrarily or capriciously or has otherwise abused its discretion, judicial review is available in accordance with the Administrative Procedures Act, 5 U.S.C. §§ 706 *et seq.*

2. Absence of a Mechanism in the Proposed Rule To Enforce the Standards Contained Therein

Many reviewers submitted comments that supported the standards in the proposed rule with the caveat that the Forest Service implement and enforce them. One reviewer was concerned that the proposed rule failed to supply any mechanism by which the standards could be enforced. Presumably, this reviewer believed that the lack of a viable enforcement mechanism would make the rule a paper tiger and render it ineffectual as a means of protecting against depredations in the HCNRA and enhancing the values for which the HCNRA was established.

Response. Notwithstanding the lack of a specific enforcement mechanism in the proposed rule, the Forest Service does not consider the standards of §§ 292.43 through 292.48 to be unenforceable. The Forest Service has several tools at its disposal which can help to ensure compliance with the standards of this rule.

As was noted in § 292.40(b) of the proposed rule, this rule for the HCNRA would supplement, not supplant, existing statutory and regulatory authorities generally applicable to National Forest System lands. This authority includes, but is not limited to, Forest Service regulations governing prohibitions at 36 CFR part 261 *et seq.* These regulations provide for fines of up to $5000 and/or imprisonment of up to six months for violations of the enumerated prohibitions. At a minimum, prohibitions in Subpart A of 36 CFR part 261 concerning timber and other forest products (36 CFR 261.6), livestock (36 CFR 261.7), property (36 CFR 261.9), occupancy and use (36 CFR 261.10), forest development roads and

trails (36 CFR 261.12), use of vehicles off roads (36 CFR 261.13), and national forest wilderness (36 CFR 261.16) may directly apply to the HCNRA and the standards set out herein.

Prohibitions may also be established by order of the Chief, Regional Forester, or Forest Supervisor pursuant to Subpart B of 36 CFR 261.50 *et seq.* In the event that such an order was issued, prohibitions concerning special closures (36 CFR 261.53), forest development roads (36 CFR 261.54), forest development trails (36 CFR 261.55), use of vehicles off forest development roads (36 CFR 261.56), national forest wilderness (36 CFR 261.57), and occupancy and use (36 CFR 261.58) may directly apply to the HCNRA and the standards set out in this rule.

Furthermore, the authorizations for domestic livestock grazing and rivercraft use will be dependent upon compliance with, among other things, the applicable standards in this rule. Thus, violations of the standards set out herein could result in the loss of grazing privileges or rivercraft use. This, in and of itself, is a valuable enforcement mechanism.

In addition to all of the above enforcement tools, the Forest Service may always pursue a civil enforcement action to enjoin an offending use or activity.

The Forest Service is currently considering whether the prohibition regulations at 36 CFR part 261 *et seq.* should be amended to include a section specifically related to the HCNRA. If this is deemed advisable, it would be the subject of a separate rulemaking. In the meantime, to clarify that the Forest Service may utilize the prohibition regulations to enforce the standards set out in this rule, a new subsection (c) has been added to § 292.42.

3. Inconsistency of Certain Standards for Other Lands in the HCNRA With the Management of Wild and Scenic Rivers

One reviewer contended that several standards for Other Lands in the HCNRA could result in uses of or activities on wild and scenic river corridor lands that would otherwise be precluded under the Wild and Scenic Rivers Act, 16 U.S.C. §§ 1271 *et seq.* In particular, this reviewer noted that standards regarding motorized and mechanical equipment and timber harvesting could be problematic, especially for wild and scenic river sections classified "wild." This reviewer recommended that the Other Lands category be further subdivided into Wild and Scenic River Areas and Recreation Lands. In splitting this category, standards could be specifically tailored to wild and scenic river corridor lands to avoid any potential conflict with the Wild and Scenic Rivers Act.

Response: As noted above and in the proposed rule, when Congress established the HCNRA it also designated the Hells Canyon Wilderness and the Snake and Rapid Wild and Scenic Rivers within the HCNRA. Portions of the Eagle Cap Wilderness and the Imnaha Wild and Scenic River are also within the HCNRA boundary. While these wilderness areas and wild and scenic rivers are within the HCNRA boundaries, they are administered pursuant to the Wilderness Act and Wild and Scenic Rivers Act, respectively. Therefore, the standards in this rule as applied to federal lands within a designated wilderness in the HCNRA can not be in conflict with the Wilderness Act. So too, the standards in this rule as applied to federal lands in a designated wild and scenic river corridor in the HCNRA can not run afoul of the Wild and Scenic Rivers Act.

It was the initial opinion of the Forest Service that the standards for the Wilderness Lands were consistent with the Wilderness Act and that the standards for the Other Lands in the proposed rule were consistent with the Wild and Scenic Rivers Act where wild and scenic river corridor lands were involved and the Act where the remaining federal lands in the HCNRA were involved. On further reflection, however, the Forest Service agrees with the reviewer that some additional adjustments are necessary to ensure that there is no inconsistency between activities or uses that may be authorized under this rule and those that may be authorized under the Wild and Scenic Rivers Act. To that end, the final rule has split out Wild and Scenic Rivers from the Other Lands category. This new category includes the approximately 33,000 acres of federal lands in the Snake, Rapid, and Imnaha Wild and Scenic River corridors. The standards have been revised accordingly and are more thoroughly discussed in the section by section comments which follow. The remaining federal lands in the HCNRA are still referred to as the Other Lands.

4. Opportunities for Public Involvement in Decisionmaking Should Be Maximized in the HCNRA

Several reviewers encouraged the Forest Service to involve the public in decisions affecting the National Forest System lands in the HCNRA.

Response. The Forest Service remains absolutely committed to involving the public in decisions affecting the HCNRA to the maximum extent allowable by law. To that end, the Forest Service has solicited and will continue to solicit the public's input on the broad array of resource, recreation, and other issues currently affecting the HCNRA. Recent examples of public involvement include discussions concerning the administration of rivercraft on the Snake River and preventing the spread of disease in bighorn sheep. The agency steadfastly believes that public involvement is the key to the successful administration of the HCNRA in conformance with the Act.

5. Regulatory Flexibility Act Analysis

One reviewer was critical of the statement in the proposed rule that this regulation would "not have a significant economic impact on a substantial number of small entities." This reviewer classified himself as one of the "small entities" on whom the rule would have a major effect.

Response. Section 3(a) of the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 601 *et seq.*, requires the preparation of a regulatory flexibility analysis whenever an agency is engaged in a notice and comment rulemaking. However, section 5(a) of the RFA negates this requirement if the agency certifies that the rule will not have a "significant economic impact on a substantial number of small entities."

In this instance, the Forest Service determined that preparation of a regulatory flexibility analysis was not required pursuant to Section 5(a) of the RFA since this rule would neither pose a significant economic impact nor would it affect a substantial number of small entities. The economic impact of this rule, if any, would be slight since it only establishes standards and guidelines for the administration of the HCNRA. Furthermore, the number of small entities affected by this rule is not substantial. In fact, the number of affected small entities is relatively small and generally confined to businesses that operate in and around the HCNRA.

6. Substitution of Authorized Officer for Area Ranger

The final rule uses the term "authorized officer" instead of the term "Area Ranger" that was used in the proposed rule to describe the agency official responsible for implementing the various provisions of this rule. This change was deemed necessary in order to avoid any confusion regarding which Forest Service line officer has the delegated authority to undertake actions that are authorized by this rule. In some instances, the authorized officer would be the Area Ranger. In most other cases, the authorized officer would be the

Forest Supervisor. The use of the term "authorized officer" preserves the status quo of Forest Service line officer authority and ensures that there will be no confusion regarding whether this rule contains an implied delegation of authority from the Forest Supervisor to the Area Ranger. A definition of "authorized officer" is supplied in the rule.

Specific Comments on Proposed Subpart E of 36 CFR Part 292

The following is a discussion of comments that were received pertaining to specific sections of the proposed rule and the changes in the final rule, if any, resulting therefrom. Section 292.40, Purpose and Scope, is not specifically covered in this analysis since there were no comments on or changes made to the provisions of this section. Additionally, § 292.41, Definitions, and § 292.42, Management Standards and Guidelines are also not specifically covered in this analysis because the comments on and modifications to the provisions of these sections are discussed elsewhere in this analysis. Additions, deletions, or modifications to definitions in § 292.41 are discussed in the context of the standards in §§ 292.43 through 292.48 with appropriate cross references to § 292.41. The only change to § 292.42 was the inclusion of a new subsection (c) dealing with enforcement which was discussed in the General Comment analysis above.

1. Section 292.43, Protection and Preservation of Cultural and Paleontological Resources

The proposed rule established four standards for the administration of cultural and paleontological resources in the Other Lands of the HCNRA. These same four standards and two additional ones were established for the administration of these resources in the Wilderness Lands of the HCNRA. Briefly, the standards in the proposed rule were: (1) that protection should be the Forest Service's primary management objective for cultural resources in the HCNRA; (2) that management priorities for cultural resources in the HCNRA should be based on the significance of the resource; (3) that significant cultural resources should be protected on-site if possible; (4) that the primary management objective for paleontological resources should be scientific study; (5) that information regarding cultural resources on Wilderness Lands should be provided outside Wilderness Lands; and (6) that trails may not be developed or relocated in Wilderness Lands solely to gain access to cultural resources.

Comment: Forest Service administration of cultural resources should balance protection and education. One reviewer felt that the standards of the proposed rule could be interpreted by the Forest Service as a way to justify the exclusion of all humans from any cultural resources in the HCNRA since any human presence would present a risk of harm. This reviewer contended that such an interpretation would be contrary to the legislative history of the Act.

Response: The agency does not believe that exclusion of all persons is a reasonable interpretation of the standards in the proposed rule. The proposed rule clearly states that protection of cultural resources in the HCNRA will be the dominant management objective. However, it also clearly states that education about cultural resources is an important management objective. Only in the event of a conflict between protection of and education about a particular cultural resource, would the education efforts have to yield.

Comment: Disturbance or removal of paleontological resources. One reviewer noted that the standard which required prior written authorization before a paleontological resource could be disturbed or removed for scientific study could be construed as requiring no such authorization if the resource was disturbed or removed for any other reason.

Response: The agency agrees with the reviewer's observation. This standard in the final rule has been modified to clarify that disturbance or removal of paleontological resources may only occur in conjunction with scientific studies. And, even in those cases, prior written authorization must be obtained.

Comment: Traditional and cultural properties should be added to archeological and historic properties. Two reviewers urged the Forest Service to expand the type of properties covered by the standards of this section to include "traditional and cultural" properties. These terms were not defined.

Response: Section 10(b) of the Act specifically authorizes the Secretary to promulgate regulations "to insure the full protection and preservation of the historic, archeological, and paleontological resources in the recreation area." In developing this rule, the Forest Service has sought to conform as closely as possible with the precise language of the Act. Therefore, to the extent that "traditional and cultural" properties referenced in the reviewer's comment may also be construed as an historic or archaeologic property, then the standards of this rule would apply. Otherwise, these properties will be administered in accordance with the other relevant statutory and regulatory authorities available.

Comment: References to the National Historic Preservation Act (NHPA), Archeological Resources Protection Act (ARPA), and American Indian Religious Freedom Act (AIRFA) should be included in the rule. In light of the Forest Service's responsibilities pursuant to NHPA, ARPA, and AIRFA, two reviewers suggested that the rule should include explicit references to ensure that the agency complies with their provisions in carrying out the provisions of this rule. These reviewers also urged that the rule include consultation requirements with affected Indian tribes.

Response: Section 292.42 of the proposed rule acknowledged that the administration of the HCNRA must be in accordance with all the laws and regulations applicable to National Forest System lands and resources, not just those specifically applicable to the HCNRA. The Forest Service determined that it would be too unwieldy to call out in the text of the rule each statute and/or regulation that applies to a particular use or activity in the HCNRA. Consequently, the Supplementary Information section of the proposed rule referenced those authorities. For historic, archeological, and paleontological resources, the proposed rule listed NHPA, ARPA, the Antiquities Act, and regulations at 36 CFR parts 296, 800. This list should also have included AIRFA. Express consultation requirements with Indian tribes would be duplicative of existing authority and thus not necessary in this rule.

Comment: Access to archeological sites should be limited and Forest Service personnel should be present for interpretation and protection purposes. One reviewer agreed with the proposed rule that protection should be the dominant management objective for cultural resources but attributed two recent acts of vandalism at an archeological site to the Forest Service's reconstruction of a road to this site and the lack of protection there. Based on the above, this reviewer suggested that the rule should be strengthened to include standards which would bar further development of roads or other access routes to archeological sites. In addition, this reviewer recommended that all interpretation activities occur off-site unless a site is already developed and regularly visited, in

which case Forest Service personnel should be available at the site to interpret it and guard against theft and vandalism.

Response: The recent incidents of vandalism at Pittsburgh Landing, a popular recreation site, are truly unfortunate. The Forest Service is currently evaluating steps that can be taken to prevent a recurrence of this type of incident in the future. The agency strongly believes that these incidents are the exception rather than the rule and that thousands of people enjoy and learn from the historic and archeological properties in the HCNRA every year.

The agency does not believe that the reviewer's recommended modifications to the rule would significantly strengthen the protection afforded cultural resources in the HCNRA. Sufficient authority exists under the standards of this rule to address problems like the one experienced at Pittsburgh Landing on a case by case basis. While the reviewer's recommendations would not necessarily improve the level of protection afforded under the rule, it would greatly impair efforts to manage these resources for education and enjoyment. As a result, this suggestion did not result in a change in the final rule.

Comment: Funding for the protection of cultural resources should be a priority for the HCNRA and should be written into the rule. One reviewer noted that funding for the protection of cultural resources should be one of three funding priorities for the HCNRA and that this should be explicitly written into the rule.

Response: Funding for the various functions and operations of the HCNRA, or any other unit of the National Forest System for that matter, is extremely complicated and depends on, among other things, the annual budget and appropriations processes. Establishing priorities in a rule is neither appropriate nor an accepted means of allocating funds.

2. Section 292.44, Use of Motorized and Mechanical Equipment

The proposed rule established four standards for the use of motorized and mechanical equipment in the Other Lands of the HCNRA. Briefly, the standards for the Other Lands were: (1) that motorized and mechanical equipment could be used on Forest Service roads and airstrips; (2) that motorized and mechanical equipment could be used on Forest Service trails if the use is compatible with Section 7 of the Act; (3) that mechanical equipment could be used off roads, airstrips, and trails if the use is compatible with Section 7 of the Act; and (4) that motorized equipment would be prohibited off roads, airstrips, and trails unless it was necessary to comply with Section 7 of the Act. For the Wilderness Lands in the HCNRA, the proposed rule simply explained that the use of motorized and mechanical equipment was prohibited except as provided for under the Wilderness Act. The Wilderness Act prohibits the use of motorized and mechanical equipment except for administrative purposes, and to control fire, insects, and disease.

The proposed rule adopted the definitions of "motorized equipment" and "mechanical transport" currently located in 36 CFR 293.6 rather than derive a new definition for these terms. The proposed rule also exempted from these standards administrative functions, scientific research, public health or safety emergencies, access to inholdings, and timber harvesting, grazing and mining as authorized under this rule.

Comment: The definition of motorized and mechanical equipment is confusing. Several reviewers commented that the definition of motorized and mechanical equipment in the proposed rule was confusing and that a specific definition for those terms should be provided rather than including a cross reference to another section of the Code of Federal Regulations (CFR). One reviewer suggested that the rule adopt the terms "motorized equipment" and "mechanical transport" as used in the Wilderness Act.

Response: The Forest Service agrees and has included a full definition of motorized and mechanical equipment in § 292.41 of the final rule rather than a citation to a different section of the CFR. The meaning of this term is unchanged. The final rule does not substitute "motorized equipment" and "mechanical transport" for "motorized and mechanical equipment" since the latter term was specifically used in Section 10(c) of the Act.

Comment: The exceptions to the standards restricting use of motorized and mechanical equipment in the HCNRA swallow the rule. One reviewer felt that the exceptions for administration, access, research, health and safety, timber harvesting, grazing and mining listed at the beginning of this section rendered the motorized and mechanical equipment use standards of little force and effect.

Response: The Forest Service disagrees. The exceptions listed in this section are intended to be narrowly construed. They were deemed necessary for two reasons. The administrative, access, research, and health and safety exceptions were thought necessary to meet the fundamental needs of the Forest Service to administer the HCNRA in conformance with the Act. The timber harvesting, mining, and grazing exceptions were deemed necessary to avoid any potential internal conflict between this section and the sections governing those activities. That is, conceivably some activities that could be authorized under the timber harvesting, mining, or grazing activities sections of the rule could be foreclosed if the use of motorized or mechanical equipment was required for these activities but prohibited under this section. Therefore, the Forest Service decided that, in those limited circumstances prescribed by this rule where timber harvesting, mining or grazing could occur within the HCNRA, the standards for use of motorized and mechanical equipment could not operate to impair or preclude that activity.

Comment: More restrictive conditions should apply to the use of motorized and mechanical equipment in the HCNRA. Two reviewers urged that the restrictions on the use of motorized and mechanical equipment should be more stringent. One reviewer urged that all motorized equipment should be banned which conflicts with non-motorized use of the HCNRA. Another reviewer urged that all use of motorized and mechanical equipment should be prohibited except that necessary for emergency responses and for the delivery of mail. Another reviewer suggested that the impacts of the use of motorized and mechanical equipment on rivers and fish and wildlife habitat should be evaluated and banned where damage can be documented.

Response: More restrictive conditions on the use of motorized and mechanical equipment as described above are both unnecessary and undesirable. The Forest Service believes that conflicts between motorized and non-motorized use can be better addressed through the planning process and amendments to the Comprehensive Management Plan which would designate roads and trails where the use of motorized equipment can occur. The agency also believes that an outright ban on all use of motorized and mechanical equipment except to deal with emergencies and to deliver mail is not a reasonable proposal in light of the Act's acknowledgment that such use is permissible, the sheer magnitude of the HCNRA, and the nature of the agency's administrative and other responsibilities.

Comment: Off Road Vehicles (ORVs), All Terrain Vehicles (ATVs), Bulldozers,

and other Land Disturbing Vehicles should be Specifically Addressed in the Rule. One reviewer commented that the above types of vehicles should be expressly dealt with in the rule.

Response: ORVs, ATVs, bulldozers and other land disturbing vehicles are covered by the definition of motorized equipment. Specific reference to these types of vehicle is not necessary.

Comment: Activities on or uses of the Other Lands in the HCNRA that could be authorized under these standards may be contrary to the Wild and Scenic Rivers Act. As described in the General Comments section above, one reviewer noted that the standards for Other Lands which authorized the use of motorized and mechanical equipment off of roads, trails, and airstrips subject to its consistency with the management objectives of Section 7 of the Act presented a potential conflict where wild and scenic river corridor lands were concerned. The potential for conflict would be exacerbated on wild and scenic river segments classified as "wild" which is defined by the Wild and Scenic Rivers Act as "* * * generally inaccessible except by trail, which watersheds or shorelines essentially primitive." 16 U.S.C. § 1274(b).

Response: The Forest Service agrees with this reviewer's observations and has split out Wild and Scenic Rivers from the Other Lands category. Accordingly, in Section 292.41, the definition of "Other Lands" has been modified to exclude Wild and Scenic Rivers from its scope and the definition of "Wild and Scenic Rivers" has been modified to clarify that lands within the wild and scenic corridor are included as part of this category.

In this section, the final rule includes two new standards for wild and scenic rivers. The first authorizes the use of this equipment on segments designated "scenic" or "recreational" provided that such use is compatible with the Wild and Scenic Rivers Act. The second authorizes the use of this equipment on segments designated "wild" only if this use is necessary to protect and enhance the values for which the river was designated.

Comment: The role of airstrips in the HCNRA. Several reviewers objected to the number and use of airstrips in the HCNRA and urged that standards should be adopted which would reduce or eliminate airstrips in the HCNRA. One reviewer remarked that the term "designated" should apply to airstrips as well as roads and trails.

Response: There are only eight airstrips in the 625,00 acre HCNRA. These airstrips have been used for more than 40 years. Of these eight strips, seven are primitive, two-wheeled routes on naturally flat land surfaces. Only one is roughly surfaced with rock to allow for water drainage. The primitive strips do not appear on Forest Service or FAA maps and are primarily used for low use and emergency landings. The Forest Service believes that the primitive landing strips are a necessary adjunct of administering an area as expansive as the HCNRA and may be an important, though seldom used, safety feature. Whether and to what extent some or all of these airstrips should be closed is an issue that should be discussed in the context of the Comprehensive Management Plan and not this rule. The Forest Service has inserted the term "designated" as a modifier for "airstrips" in the final rule.

3. Section 292.45, Use of Motorized and Non-Motorized Rivercraft

The proposed rule established seven standards for the use of motorized and non-motorized rivercraft in the HCNRA. The standards only applied to the Snake, Rapid, and Imnaha Wild and Scenic Rivers and any other rivers in the HCNRA which might be subsequently designated pursuant to the Wild and Scenic Rivers Act. Briefly, the standards were: (1) that the use of non-motorized rivercraft was authorized subject to certain terms and conditions; (2) that the use of motorized rivercraft was prohibited except on the Snake Wild and Scenic River; (3) that all rivercraft use is subject to boating safety and registration laws; (4) that the use of motorized and non-motorized rivercraft on the Snake River required prior written authorization and was subject to certain terms and conditions; (5) that the authorization of motorized and non-motorized rivercraft use on the Snake River must reasonably accommodate private and commercial users of each type of rivercraft; (6) that authorization of motorized and non-motorized rivercraft use on the Snake River must not exceed the user capacity of the Snake River; and (7) that authorization of motorized and non-motorized rivercraft use on the Snake River must be done in such a way as to minimize conflicts between motorized and non-motorized rivercraft users and between rivercraft users and all other users of the Snake River.

By far, the greatest number of comments received on the proposed rule concerned this section. The comments were exceptionally diverse, generally sound, and frequently included diametrically opposed solutions to improve the rule. For instance, some reviewers concluded that no conflict existed between motorized and non-motorized rivercraft use, others concluded that the conflict threatened the very integrity of the HCNRA. Some reviewers felt that the commercial users were principally responsible for the conflict, others concluded that the private users were as much, if not more, to blame. Some reviewers wanted to accommodate personal watercraft (jet ski) use in the HCNRA, others wanted to prohibit it.

Comment: The Forest Service lacks the legal authority to regulate rivercraft use on the Snake and Salmon Rivers. One reviewer argued that the Forest Service had vastly exceeded the scope of its legal authority by developing standards for recreational uses of rivercraft on the Snake and Salmon Rivers since those rivers are navigable waterways and thus "owned" by the States of Oregon and Idaho. Accordingly, this reviewer suggested that only Oregon and Idaho could regulate recreational activities on the Snake and Salmon Rivers. The Forest Service authority could only extend to activities on those streams that could be regulated pursuant to the Property and Commerce Clauses of the Constitution. The only way a standard in this section could be valid under the Property Clause would be if that standard was "reasonably necessary to protect federal land." Likewise, the only way a standard in this section could be valid under the Commerce Clause would be if that standard was related to and necessary for navigation. The reviewer noted that standards in the proposed rule dealing with safe use and enjoyment of the river, seasons of use, noise limits, user capacity, and conflicts between rivercraft and other users of the HCNRA all exceeded the federal government's limited authority under the Commerce and Property Clauses.

Response: The Forest Service disagrees and believes that the reviewer has adopted an unusually pinched view of the Federal Government's authority under the Commerce and Property Clauses of the Constitution.

Congress has defined "navigable waters" to include those parts of streams or other bodies of water over which Congress has jurisdiction under its authority to regulate commerce with foreign nations and among the several states, and which either in their natural or improved condition are used or suitable for use for the transportation of persons or property in interstate or foreign commerce. 16 U.S.C. § 796(8). It would appear, based on the above definition, that the Snake River clearly qualifies as a navigable water of the United States.

Assuming the Snake River is navigable, the Federal Government has paramount control over it for purposes or regulating interstate and foreign commerce. The power of the United States over navigable waters extends to any matter that may properly be considered a regulation of interstate or foreign commerce on such waters and is not limited to control for purposes of navigation only. In *United States* v. *Appalachian Electric Power Co.*, 311 U.S. 377, 426 (1941), the Supreme Court categorically rejected a similar view to that proffered by this reviewer when it stated,

> In our view, it cannot properly be said that the constitutional power of the United States over its waters is limited to control for navigation. By navigation, respondent means no more than operation of boats and improvement of the waterway itself. In truth, the authority of the United States is the regulation of commerce on its waters. Navigability, in the sense just stated, is but a part of this whole. Flood protection, watershed development, recovery of the cost of improvements through utilization of power are likewise parts of commerce control.

While the States may exercise substantial control over navigable waters, they may only do so to the point that it is not inconsistent with federal actions or functions and does not materially or unreasonably interfere with or burden commerce.

In this instance, as the reviewer correctly pointed out, the Federal Government may also regulate under the Property Clause of the Constitution which enables Congress to "* * * make all needful rules and regulations respecting the * * * property of the United States." U.S. Const. Art. IV, § 3, cl. 2. The reviewer also correctly noted that such regulations may regulate conduct on non-federal land when reasonably necessary to protect adjacent federal property or navigable waters. *United States* v. *Lindsay, 595 F.2d 5, 6 (9th Cir. 1979).*

Inasmuch as a considerable amount of commerce takes place on the Snake River annually and thousands of acres of National Forest land surround it, the Forest Service believes that each of the standards challenged by the reviewer is authorized under either the Commerce Clause or the Property Clause.

Comment: Because the Forest Service has been unable to demonstrate that a conflict exists involving motorized and non-motorized rivercraft, this section should be eliminated. One reviewer commented that he had repeatedly requested information from the Forest Service concerning the existence and scope of the conflict between motorized and non-motorized rivercraft and, to date, had not received a satisfactory response from the agency. Therefore, this reviewer stated that this section of the rule is unnecessary and should be deleted.

Response: As a factual matter, there may be some dispute over the existence of a conflict between motorized and non-motorized rivercraft. Contrary to this reviewer, several other noted that the conflict between rivercraft users was extreme.

However, the reviewer misses the point by suggesting that a conflict must exist in order to justify this regulation. As described in some detail above, the Act authorized the Secretary to promulgate regulations for "the control of the use and number of motorized and non-motorized rivercraft * * *". The United State Court of Appeals for the 9th Circuit concluded that this authority was non-discretionary in *ONRC* v. *Lyng*. Therefore, regardless of the existence or absence of a conflict, this rule must be promulgated.

Comment: The standards should not distinguish between designated wild and scenic rivers and other rivers in the HCNRA. Several reviewers commented that it was confusing and potentially difficult to comply with the standards in this section that pertained only to rivers in the HCNRA that had been designated wild and scenic. Most reviewers thought that the standards should be more broadly applied to all rivers in the HCNRA regardless of wild and scenic designation. One reviewer felt that this section improperly overemphasized wild and scenic rivers over the HCNRA.

Response: The Forest Service agrees that the selective application of standards to motorized and non-motorized rivercraft use based solely on the location of the craft on a river might be difficult to comply with and to administer. This would especially be the case on the Snake River where one segment of the river is undesignated while the adjacent segments are designated. Therefore, the scope of the section dealing with rivercraft use standards will be broadened to apply to rivers throughout the HCNRA.

Wild and scenic rivers have not been overemphasized in this rule. It is important to remember, though, that the wild and scenic rivers in the HCNRA are administered pursuant to the Wild and Scenic Rivers Act, not the HCNRA Act. The inclusion of this language simply ensures that the application of these standards to wild and scenic rivers will not be contrary to direction in the Wild and Scenic River Act.

Comment: Motorized use of the "wild" sections of the Snake Wild and Scenic River should be prohibited. One reviewer noted that notwithstanding the HCNRA Act's recognition of motorized rivercraft use as "valid" on the Snake River, such use is inconsistent with and should be prohibited on those segments of the Snake Wild and Scenic River that are classified as "wild" under the Wild and Scenic Rivers Act.

Response: The legislative history of the Act indicates that a 32.4 mile segment of the Snake River, from Hells Canyon Dam downstream to Pittsburg Landing is classified as a "wild" river under the Wild and Scenic Rivers Act. 94th Cong., 1st Sess., Comm. on Interior and Insular Affairs, Rept. No. 153 at 4 (May 22, 1975).

Section 2(b) of the Wild and Scenic Rivers Act defines "wild" in the context of classifying segments of rivers designated under the Wild and Scenic Rivers Act as "[t]hose rivers or sections of rivers that are free of impoundments and generally inaccessible except by trail, with watersheds or shorelines essentially primitive and waters unpolluted. These represent vestiges of primitive America." 16 U.S.C. § 1272(b)(1). In the Guidelines for Eligibility, Classification, and Management of River Areas (hereafter "Guidelines") published jointly by the Department of the Interior and the Department of Agriculture, the criteria for classifying a river segment as "wild" was further detailed. 47 Federal Register 39454, 39457 (Sept. 7, 1982).

Based on the above, "wild" as defined in the Wild and Scenic Rivers Act and further developed in the Guidelines relates principally to the quantum and type of development that exists on the shorelines and in the corridors through which a wild and scenic river traverses. It does not relate to the type of rivercraft used on the river itself.

Even assuming that the definition of "wild" in the Wild and Scenic Rivers Act could be construed to foreclose or discourage motorized use on segments so classified, Section 10 of the HCNRA Act included a clear expression of congressional intent that recognized motorized rivercraft use of the Snake River as valid. The Forest Service believes that this clear statement of congressional policy in the HCNRA Act overcomes any contrary interpretation of the Wild and Scenic Rivers Act and Guidelines which might be proffered as a means of categorically prohibiting motorized rivercraft use on the Snake River.

Comment: Specific standards for motorized rivercraft use of the Snake River should include provisions for slowing for floaters, speed limits for specific locations, noise level limits, no-

wake zones, use of music or sound devices, water skiing, visible identification numbers, limited jet boat runs, defining jet boat launches, prohibiting operation while under the influence of intoxicants, requiring fuel leakage reduction, rights of way for floaters in rapids, prohibiting jet skis and other nontraditional rivercraft. One reviewer argued that the proposed rule, in general, is "grossly inadequate" and this section, in particular, "completely fails to satisfy the requirement of the NRA Act * * *". This reviewer interpreted the 9th Circuit decision in *ONRC* v. *Lyng* as requiring site specific standards tailored to the unique situation on the Snake River where both motorized and non-motorized rivercraft use is present. The proposed regulations, however, "simply defer to another undescribed forum, and have virtually no force in carrying out the requirements of the Act." To remedy this flaw, this reviewer asserted that the above lengthy and nearly exhaustive list of standards should be included in this section and posted at all portals. Furthermore, the reviewer stated that all jet boat operators should be required to sign a statement that they have read and understood these standards.

Response: The scope and extent of standards which this reviewer seeks to include in this rule is not legally mandated under either the Act or the 9th Circuit's decision in *ONRC* v. *Lyng*. The Act authorized regulations "for the control of the use and number of motorized and non-motorized rivercraft; Provided that the use of such craft is hereby recognized as a valid use of the Snake River within the recreation area." 16 U.S.C. § 460gg–7(d). The 9th Circuit decision in *ONRC* v. *Lyng* merely interpreted the Act as mandating the promulgation of "nonduplicative regulations of the sort described by Sections 10(a) through (e)." Neither the Act nor the 9th Circuit prescribed the form or content that those regulations should take.

Not only are the adoption of standards in this rule such as those recommended by this reviewer not legally required, they are also not conducive to prudent and responsible land and resource management. The Forest Service believes that the inclusion in rule form of these standards would hamstring their ability to administer the HCNRA in conformance with the Act. For instance, the inclusion of these standards in this rule might require the agency to allocate scarce resources for enforcement of matters which rate relatively low in an overall scale of management priorities. Furthermore, the standards would inevitably become obsolete at some point in the future. That point could come in six weeks, six months, or six years and could depend on advances in science, technology, or the law. It could also simply be dependent on changing social norms. Once the point of obsolescence was reached, however, another rulemaking would be necessary. This is a poor way to address and respond to development which requires a shift in management emphasis.

Far better from the agency's point of view that these developments be accommodated in the Comprehensive Management Plan. This document can be amended and revised more expeditiously than a regulation which requires notice and comment under the Administrative Procedures Act. Of course, as was noted in the proposed rule, management direction in the Comprehensive Management Plan would necessarily have to conform with the provisions of the Act and the standards in this rule.

Finally, the agency wishes to point out that one of the standards in the proposed rule required compliance with all Federal and State boating safety and registration laws. This would include, but not be limited to the Idaho Safe Boating Act, I.C. §§ 67–7001 *et seq.*, and the Oregon Small Watercraft Act, O.R.S. §§ 830.005 *et seq.* Many of the items that the reviewer wanted to include as explicit standards in this rule are amply treated in these enactments and may be enforced in the HCNRA pursuant to this provision in the rule.

Comment: Rivercraft use standards should not discriminate against users of personal watercraft in the HCNRA. One reviewer wrote to ensure that standards for the use of motorized rivercraft not unfairly discriminate against personal watercraft which are commonly, though incorrectly, referred to as "jet skis." This reviewer acknowledged that the proposed rule did not, on its face, include any such discrimination and encouraged that any further refinement of these standards in the final rule or Comprehensive Management Plan classify and treat personal watercraft just like any other form of motorized rivercraft.

Response: The reviewer is correct that no attempt is made in this rule to consider personal watercraft separately from other forms of motorized rivercraft. However, the inclusion of personal watercraft, jet boats, motor boats, and other vessels as "motorized rivercraft" in this rule does not mean that they are identical or should be treated identically in all situations that may arise in the future. Clearly, there are differences in the size, weight, speed, maneuverability, and other features of these vessels which may suggest, or indeed dictate, that they be under different management regimes in order to protect the HCNRA or to protect public health and safety. Those management decisions will be made in the context of the Comprehensive Management Plan. In the event such management decisions distinguishing between the various types of motorized rivercraft are made, they would be well-reasoned, based on credible evidence, and would include the benefit of public involvement.

Comment: The term "carrying capacity" should be used instead of "user capacity." Several reviewers urged that the term "carrying capacity," rather than the term "user capacity," be employed in the section concerning standards for rivercraft use. One reviewer felt that the phrase "limits of acceptable change" would be preferable to "user capacity" or "carrying capacity" for determining the benchmark for rivercraft use. The reviewers encouraged that these terms should be defined.

Response: The Forest Service agrees with the reviewers who felt that the term "carrying capacity" was more appropriate in this rule and has substituted that term for "user capacity" in the final rule. However, since this is a well understood term in the planning and recreation professions and would not be subject to a special meaning under this rule, a definition is deemed unnecessary.

Comment: Definitions should be included in the rule for "numbers," "values," "user conflicts," "seasons," "noise limits," "private users," and "commercial users." One reviewer noted that several key terms in this section of the rule should be specifically defined. Presumably, this reviewer felt that definitions would be necessary to ensure that the Forest Service's interpretation is not unreasonable, is not changed over time, or is not selectively applied.

Response: The above terms are neither unusual nor do they have a special connotation as applied in this rule. Common sense will be the guide in defining these terms. Special definitions in this rule are unnecessary for these terms.

Comment: Rivercraft use levels should be restricted to the levels in existence as of 1975, the date of establishment of the HCNRA. Two reviewers commented that rivercraft use has greatly expanded since Congress designated the HCNRA in 1975 and that this rule should be used to scale back the amount of rivercraft use to 1975 levels.

Response: In enacting the Act, Congress authorized regulations for "the control of the use and number of motorized and non-motorized rivercraft; Provided that the use of such craft is hereby recognized as a valid use of the Snake River within the recreation area." There is no indication in the Act that Congress intended to restrict the use of rivercraft to the level that existed in 1975. Clearly, Congress could have included such a condition if it had been so inclined.

Absent clear congressional expressions in the Act stipulating that rivercraft use be locked into 1975 levels, the Forest Service has adopted the well-reasoned and balanced approach that the amount of rivercraft use will depend on what use can be sustained while meeting the management goals and objectives of the Act and the Wild and Scenic Rivers Act. Therefore, the Forest Service declines to modify the rule in the manner recommended by these reviewers.

Comment: The authorization of motorized rivercraft use should extend to that portion of the Salmon River in the HCNRA. One reviewer mentioned that a short ¼ mile segment of the Salmon River is located within the HCNRA and that motorized rivercraft are currently used on this segment. This reviewer urged that the standards be revised to extend the authorization of motorized rivercraft to this ¼ mile segment of the Salmon River.

Response: The Forest Service agrees that the standard which prohibits motorized rivercraft use in the HCNRA should exclude both the Snake River and that portion of the Salmon River in the HCNRA. The rule has been changed accordingly.

Comment: Violations of the standards of this section should result in forfeiture of private land. One reviewer explained that compliance with the provisions of this section is as important as compliance with the land uses set out in the private rules. Therefore, this reviewer queried why violations of the motorized rivercraft standards shouldn't also result in the forfeiture of private land.

Responses: The "private rules" referred to by this reviewer are the recently adopted final regulations under Section 10(a) of the Act which established standards for the use and development of private land. That rule established standards and guidelines for development of privately-owned land in the HCNRA which, if violated, could lead to the Forest Service's acquisition of the land or an interest therein with or without the landowner's consent. Acquisition without the landowner's consent is technically referred to as "condemnation," not "forfeiture." Since the Forest Service may not regulate private land uses per se, condemnation was deemed to be the most effective means by which the agency could ensure that private land uses and developments would not compromise the integrity of the HCNRA. Condemnation of private land would be a highly inappropriate response to violations of the motorized rivercraft use standards. Condemnation is available only to acquire lands used in a manner inconsistent with the private land use regulations. Use of watercraft has nothing to do with private lands. The rule already includes a sufficient array of mechanisms by which the standards of this section can be enforced. These enforcement mechanisms include issuing citations under 36 CFR §§ 261 *et seq.*, revoking the authorization for rivercraft use, or pursuing an injunction in a civil enforcement action.

4. Section 292.46, Timber Harvesting Activities

The proposed rule established two standards for timber harvesting in the Other Lands of the HCNRA. Briefly, the standards for the Other Lands were: (1) that timber could only be harvested to protect and enhance ecosystem health and wildlife habitat, promote recreational activities, remove hazard trees, or in response to disease or pest infestation, fire, flood, earthquake, or similar natural events; and (2) that where authorized, the harvesting could be accomplished only by means of selective or intermediate cuttings in which the openings created by the cutting would be limited to the minimum size and number necessary to accomplish the purpose of the harvest. For the Wilderness Lands in the HCNRA, the proposed rule simply explained that timber harvesting was prohibited except in accordance with the provisions of the Wilderness Act.

Comment: The rule should expressly include a standard stating that timber will not be harvested principally for commercial purposes. Two reviewers noted that in the preamble to the proposed rule it was noted that timber would not be harvested solely for commercial gain but that this statement was not reiterated in the text of the proposed rule. These reviewers recommended that the text of the regulation include this language. One of these reviewers also noted that the primary objective of these standards should be to overrule and void the provision in the Comprehensive Managemment Plan that includes forests in the HCNRA as part of the regulated component of the Wallowa-Whitman National Forest timber base.

Response. The Forest Service agrees and has revised the first standard in this section to explain that timber may "only" be harvested for the reasons set out in this standard. In so doing, the Forest Service expects that the situations where timber harvesting may be authorized will be better understood. It should be noted, however, that in those instances where timber harvesting is consistent with the standards in this rule, it will usually be accomplished by means of a commercial harvest. That is, the Forest Service will identify the area where harvesting is desired and the conditions under which the harvesting can occur. Then a written agreement would be entered into with a timber purchaser who would carry out the harvest in accordance with the terms and conditions of the agreement.

The inclusion of a specific standard overruling that portion of the Comprehensive Management Plan is unnecessary since § 292.42 clearly states that "[t]he standards and guidelines of this [rule] govern the previous programmatic direction in the Comprehensive Management Plan that has been incorporated into the Wallowa-Whitman National Forest Land and Resource Management Plan."

Comment: Timber harvesting by means of intermediate cutting should be eliminated. Several reviewers were critical of the inclusion of "intermediate cutting" as a viable means of harvesting timber where that activity would be authorized under the standards for the HCNRA. They urged that the term be removed.

Response: Where authorized under the standards in this rule, the Forest Service will restrict timber harvesting to selective cutting in conformance with the standards in this rule. All references to "intermediate cutting" have been removed from the final rule.

Comment: Insect infestation, rather than pest infestation, should be listed as a recognized purpose of timber harvesting in the HCNRA. One reviewer felt that it was more appropriate and less pejorative to use the term "insect infestation" instead of "pest infestation" to describe one of the purposes for which timber harvesting may be engaged in the HCNRA.

Response: The Forest Service agrees and has inserted the term "insect" for the term "pest" in the final rule.

Comment: Timber harvesting should be authorized only in situations where hazard trees threaten popular sites and where fires threaten campgrounds or picnic areas. One reviewer was

concerned that the exceptions under which timber harvesting could be authorized were too broad and would be abused by the Forest Service. This reviewer suggested that timber harvesting should only occur to remove hazard trees from popular areas or to protect campgrounds or picnic areas from fire. Otherwise, there should be no further logging in the HCNRA.

Response: Section 13 of the Act recognizes the harveting of timber as a valid use of the HCNRA. Section 10 of the Act authorizes regulations for timber harvesting as are consistent with the management objectives of the HCNRA which include, among other things, the protection of free-flowing streams, the conservation of scenic, wilderness, cultural, and scientific values, the preservation of biologically unique features, the protection of fish and wildlife habitat, the protection of archeological and paleontologic sites, and the preservation and restoration of historic sites.

The standards in this section fully comply with the management objectives of the Act. Furthermore, additional limitations on situations where harvesting could be authorized may severely impair the agency's ability to administer the HCNRA in conformance with the Act. As a case in point, consider the windstorm that blew down several acres of spruce trees in a roadless area just outside the HCNRA boundary a few years ago. There, a decision was made not to harvest those tree. Subsequently, an endemic spruce bark beetle population grew to epidemic proportions, spreading out from the site of the original blowdown and killing most of the spruce trees in the HCNRA. Many of these spruce trees were located near streams and in riparian areas which have suffered in their absence from the loss of critical shade which kept the streams cool and root systems which kept the streambanks stabilized. In hingsight, it is worth considering whether this loss of trees and resultant damage to riparian areas could have been averted by the prompt removal of the windthrown trees.

These standards will enable the agency to address this type of situation efficiently and with due regard for the resources in the HCNRA and objectives for which they are to be managed.

Comment: Where timber harvesting is to be authorized it should be done sensitively, holistically, or by using non-mechanized equipment like draft horses. Several reviewers urged that in those cases where timber harvesting would be authorized under the standards in this rule, it should be accomplished in the most sensitive manner possible. For example, these reviewers recommended that draft horse logging could be required as an alternative to the construction of costly and environmentally damaging logging roads.

Response. When authorized under this rule, timber harvesting activities will be conducted using the most appropriate technique that fits the particular situation. Clearly, in some instances logging by means of draft horses would be feasible and entirely appropriate. In other cases, harvesting by mechanized and/or motorized equipment may be necessary due to the location of the harvest and/or the urgency associated with it. All of these factors will be duly considered in fashioning the harvest method.

Timber harvesting will be conducted using an ecological approach to management, subject to the limits imposed by this rule, and will generally be designed to maintain or create forest vegetation patterns and landscapes that mimic those from historic natural disturbances.

Comment: Standards for timber harvesting activities within wild and scenic river corridors in the HCNRA are inconsistent with the Wild and Scenic Rivers Act. One reviewer remarked that the timber harvesting standards for Other Lands in the HCNRA would result in the authorization of certain timber harvesting activities within wild and scenic river corridors that exceed the legal authority for such activities under the Wild and Scenic Rivers Act. This would particularly be the case on wild and scenic river segments classified "wild" under the Wild and Scenic Rivers Act.

Response. The Forest Service believes that the standards in the proposed rule for Other Lands were sufficiently restrictive that they would pass muster under the Wild and Scenic River Act where wild and scenic river corridor lands were involved. However, in order to maintain consistency with the other sections of this rule, separate timber harvesting standards have been developed in the final rule for wild and scenic river corridor lands and the other non-wilderness National Forest Lands in the HCNRA.

For river segments classified "scenic" or "recreational," timber may be harvested only when to do so would protect and enhance the values for which the river was designated. For river segments classified "wild," timber could only be harvested to provide for recreational facilities like trails, remove hazard trees, or to respond to natural events. In those cases where timber harvesting would be authorized within the corridors of wild and scenic rivers, the harvest would be conducted in the same manner as harvests on the Other Lands of the HCNRA.

5. Section 292.47, Mining Activities

The proposed rule established four standards for mining activities in the Other Lands of the HCNRA. These same four standards and an additional one were established for mining activities in the Wilderness Lands in the HCNRA. Briefly those standards were: (1) That all mining activities were prohibited subject to valid existing rights; (2) that the impact of mining activities would be limited and directed away from Wilderness Lands and Wild and Scenic Rivers; (3) that mineral materials may be used in the HCNRA only for the construction and maintenance of roads, airfields, trails, and recreation developments; (4) that sources of mineral materials should be located outside the HCNRA unless the costs are significant or the transportation presents a safety concern; and (5) that the extraction of mineral materials is prohibited on Wilderness Lands.

Comment: Restrictions by the United States on mining activities in the bed and banks of navigable rivers in the HCNRA are impermissible since that land is owned and controlled by the States of Oregon and Idaho. One reviewer contended that the bed and banks of the Snake River below the mean high water line are owned by the States of Oregon and Idaho and therefore any mining activities occurring thereon would be subject to the control of the state, not the federal, government. This reviewer encouraged the Forest Service to clarify the ownership of these lands in the final rule in order to avoid future confusion.

Response: At the outset, it should be noted that no provision in the proposed rule purported to prohibit or restrict mining activities on non-National Forest System lands. Section 292.42(b) of the proposed rule specifically stated that the standards in the rule applied only to National Forest System lands in the HCNRA. Obviously, lands owned by the States of Oregon and Idaho would not fall under the provisions of this rule.

The Forest Service agrees that clarifying the issue of who owns the bed and banks of navigable rivers in the HCNRA and who has regulatory authority over them would be beneficial and may reduce the potential for controversy and confusion in the future. However, such clarification cannot be done in this Federal Regulation since it may involve the adjudication of property rights.

The reviewer is correct that the rights and interests in the beds and banks of navigable waters are owned by the state in which they are located, and that the regulation of the land under navigable waters is properly the subject of the state's police power regulatory authority. However, the state's regulatory authority over these matters is not absolute. Rather, as is the case with navigable waters, lands underneath navigable waters are also subject to the paramount authority of the United States. This paramount authority is derived from the Commerce and Property Clauses and extends to matters involving commerce, navigation, and protection of Federal lands, among other things. Mining would clearly fall into the category of activities that could be regulated by the United States under this paramount authority.

Comment: By including activities under the Materials Act of 1947 in the definition of "mining," there is an inconsistency in the standards which prohibit all mining activities but provide for certain mineral material extraction activities. One reviewer noted that the standards for mining activities were confusing based on the definition of "mining" in the rule which encompassed activities under the Materials Act. By including the Materials Act in the definition of mining, the first standard of § 292.47(a) would be read to prohibit all mineral material extraction activities. However, the third and fourth standards specifically treat mineral material extraction activities.

Response: The Forest Service agrees that there is an internal conflict in the standards of this section based on the definition of "mining." As a result, the definition of "mining" in the final rule has been modified to delete references to the Materials Act. The standards of the Mining Activities section remain unchanged.

Comment: Gold panning is a legitimate recreational activity that should be accommodated in the rule. One reviewer criticized the proposed rule's prohibition of gold panning subject to valid existing rights. This reviewer contended that panning was a recreational activity, not a mining activity, that could be accomplished without threatening the HCNRA if it was limited to hand work and no tools except the pan itself. Therefore, this reviewer felt it was inappropriate to prohibit this activity.

Response: Individuals engaged in the extraction of minerals from federal lands whether it be by pan, sluice box, suction dredge, or some other means, are subject to the applicable federal and state mining laws. It is immaterial that the underlying purpose of the mineral extraction activity is recreational. It is also immaterial that the impact of the mineral extraction activity would not negatively impact the HCNRA.

In this case, Section 11 of the HCNRA Act withdrew all federal lands in the HCNRA from the operation of the mining and mineral leasing laws subject to valid existing rights. Similar withdrawal provisions exist in Section 9 of the Wild and Scenic Rivers Act and Section 4(d)(3) of the Wilderness Act. This provision did not make an exception for mining conducted for recreational purposes nor did it make an exception for mining that would not threaten the values for which the HCNRA was established.

Therefore, in order to engage in panning or any other mining activity for recreational purposes on federal lands in the HCNRA, it is necessary to demonstrate that the individual wishing to engage in that activity held valid existing rights prior to the date of withdrawal.

Comment: If the Mining Law of 1872 is amended, royalties derived from mining activities in the HCNRA should go to the HCNRA. One reviewer suggested that if the Mining Law of 1872 is amended to provide for the payment of royalties, all royalties derived from mining activities in the HCNRA should be returned there and be used in the administration of the area.

Response. Currently, as this reviewer indicated, there is no legal authority under the Mining Law of 1872 to adopt this reviewer's position. Since this comment is based on pure conjecture over whether, and to what extent, the Mining Law of 1872 will be amended, it is premature to address this comment at this time.

Comment: No additional gravel pits should be constructed in the HCNRA. One reviewer recommended that any mineral materials removed from the HCNRA should be taken from existing gravel pits and that no new gravel pits should be excavated.

Response. The proposed rule greatly reduced the potential for additional excavation of gravel pits in the HCNRA. It did not, however, completely eliminate that possibility. Where non-wilderness HCNRA lands are involved, § 292.47(a)(4) of the proposed rule required that development of gravel pits or other sites for mineral materials should first be considered on lands outside the HCNRA. This section also provided that sites within the HCNRA would only be considered if there were significant economic or safety reasons militating in its favor. Additionally, the proposed rule required that mineral materials used inside the HCNRA must be for constructing or maintaining facilities that are consistent with and in furtherance of the management objectives of the Act. If the mineral materials are used outside the HCNRA, it must be for a project which has a direct benefit to the HCNRA. Finally, this section directed that a mineral material extraction site inside the HCNRA must be reclaimed to its original condition, or as close to that condition as is practicable, upon the completion of the extraction activities. Section 292.47(b)(2) prohibits the extraction of mineral materials in the wilderness lands of the HCNRA.

Given the preference for development of gravel pits and other mineral material extraction sites on non-HCNRA lands and the stringent controls on the uses to which such mineral materials may be applied and the reclamation requirements, the Forest Service does not think it is necessary to completely foreclose all potential future development of these sites inside the HCNRA. There may come a time when the development of a mineral material extraction site inside the HCNRA is necessary and appropriate and fully consistent with the purposes for which the HCNRA was established. This provision preserves that possibility.

Comment: Additional specifications for revegetation should be provided in the rule. One reviewer noted that the standard in § 292.47(a)(4) requiring land contouring and reestablishing vegetation failed to inform the reader as to the extent of such activities that would be required following the extraction of mineral materials. This reviewer contended that this provision would be abused by those seeking to minimize the responsibility and cost associated with such activities. This reviewer recommended that the rule include a standard directing that land contouring, revegetation, and other appropriate measures be required as necessary to restore the area to its original condition.

Response: The Forest Service agrees that additional clarification to this standard is desirable. However, it may be impossible to return every mineral material site precisely to its original condition. As a result, the new standard will require the party responsible for the extraction of mineral materials to reclaim the site to its original condition, or as reasonably close thereto as is practicable, by land contouring and revegetation. The Forest Service believes that this will clarify the purpose of the revegetation and land contouring without creating an

insurmountable obstacle to mineral material extraction activities.

Comment: Performance bonds should be required prior to the initiation of any ground disturbing activity related to mining. One reviewer recommended that the rule include a specific provision requiring a miner to post a bond which would be sufficient to enable the Forest Service to restore the mining site to its original condition if the miner does not and to serve as security for compliance with other environmental protection requirements.

Response: Bonding is specifically required by the Forest Service for the extraction and development of locatable minerals and mineral materials on National Forest System lands with a few minor exceptions. These requirements are set forth in 36 CFR 228.13 and 228.51, respectively. Since this rule supplements existing authority, it was deemed unnecessary to incorporate a specific bonding provision in this rule.

Comment: Geothermal development should be prohibited in the HCNRA. One reviewer suggested that the rule should contain a provision prohibiting geothermal development in the HCNRA.

Response: Section 15 of the Geothermal Steam Leasing Act of 1970, 30 U.S.C. 1014, precludes the issuance of geothermal leases by the Secretary of the Interior on National Forest System lands located within a national recreation area. Since existing law already precludes this type of development in the HCNRA, it was deemed unnecessary to include an express provision in the rule reiterating that prohibition.

Comment: All valid existing rights in the HCNRA should be bought out by the Forest Service. Two reviewers suggested that the Forest Service consider buying out all current valid existing rights. Presumably, in this fashion the Forest Service could consolidate landownership patterns, improve administration of the HCNRA, and eliminate a potentially incompatible land use from the HCNRA.

Response: Acquisition of mining lands, or interests therein, in the HCNRA is governed by the regulations which established standards for the use and development of private lands in the HCNRA which were promulgated pursuant to Section 10(a) of the Act. Briefly, those regulations are consistent with Section 9(g) of the Act which authorized the Secretary to acquire all mining lands in the HCNRA with or without the consent of the landowner.

Although the authority exists to acquire all valid existing mineral interests in the HCNRA, it is not viewed by the Forest Service as a prudent step to take at this time in light of the prohibitive potential cost associated with such acquisitions and the very limited acquisition funds available. At this juncture, it is preferable to regulate such activity where it exists to protect HCNRA values.

6. Section 292.48, Grazing Activities

The proposed rule established four standards for the administration of domestic livestock grazing activities in the HCNRA. These standards applied to both the Other Lands and the Wilderness Lands of the HCNRA. Briefly, the standards were: (1) That grazing could only occur on rangeland suitable for grazing and in satisfactory condition; (2) that domestic livestock grazing practices would be modified if they are incompatible with preserving fish and wildlife habitat, recreation uses, or other natural resource values and that the grazing would be terminated if the incompatibility couldn't be eliminated; (3) that range improvements must be designed and located in such a way as to minimize their impact on scenic, natural, and other values in the HCNRA; and (4) that grazing permits must include provisions to protect and conserve riparian areas.

Comment: Additional restrictions on domestic livestock grazing should be instituted in the HCNRA in this rule. Several reviewers encouraged the Forest Service to include additional and express restrictions on all forms of domestic livestock grazing activity in the HCNRA. For instance, one reviewer recommended that all grazing should be terminated in the HCNRA and all permits should be "bought out" by the Forest Service. Another reviewer recommended that grazing in designated wilderness areas in the HCNRA should be phased out gradually through annual 10% reductions in the numbers of livestock.

Response. Section 13 of the HCNRA Act states that "[r]anching [and] grazing, * * * are recognized as traditional and valid uses of the recreation area."

Section 4(d)(4)(2) of the Wilderness Act states that "the grazing of livestock, where established prior to the effective date of this Act, shall be permitted to continue subject to such reasonable regulations as are deemed necessary by the Secretary of Agriculture." In the legislative history to the Colorado Wilderness Act of 1980, Congress interpreted this provision to mean that grazing permits and privileges will not be curtailed or phased out in an area simply because that area is designated as wilderness. In a nationwide guideline and statement of legislative policy, Congress declared

> There shall be no curtailments of grazing in wilderness areas simply because an area is, or has been designated as wilderness, nor should wilderness designations be used as an excuse by administrators to slowly "phase out" grazing. Any adjustments in the numbers of livestock permitted to graze in wilderness areas should be made as a result of revisions in the normal grazing and land management planning and policy setting process, giving consideration to legal mandates, range condition, and the protection of the range resource from deterioration.

(Designating Certain National Forest System Lands in the National Wilderness Preservation System, and for Other Purposes, H. Rept. 617, 96th Cong., 1st Sess. at 11 (Nov. 14, 1979)).

Based on the above statutes and legislative history, reductions in or outright termination of livestock grazing in the HCNRA or designated wilderness in the HCNRA cannot occur simply by virtue of the designation of these areas as a national recreation area or a wilderness area. Furthermore, even if such a course of action were an option, the Forest Service would not have to "buy out" the permits. Permits to graze on federal lands have been recognized by Congress and the courts for almost a century as only conferring a license or privilege to graze upon the permittee. As a result, except in extremely limited circumstances, cancellation or revocation of grazing permits does not require the payment of compensation.

Based on the above, these reviewers' suggestions are not adopted and no change in the rule is necessary.

Comment: Future of livestock grazing activities in conflict with natural, scenic, resource and other values for which the HCNRA established. One reviewer suggested that the provision in the proposed rule enabling a permittee to modify his or her livestock grazing practices to avoid a conflict with the values for which the HCNRA was established should be stricken. This reviewer argued that wherever a conflict exists, the grazing activity should be terminated since, in many instances, the modification proposed to avoid the conflict has an equally deleterious impact on the HCNRA. Another reviewer argued in favor of allowing the permittee to make the adjustments in the grazing area necessary to avoid the conflict while allowing the grazing activity to continue.

Response. Section 13 of the HCNRA Act states that "[r]anching [and] grazing, * * * are recognized as traditional and valid uses of the recreation area." This section of the proposed rule, developed pursuant to section 10(e) of the Act, establishes standards for the continuation of grazing in the HCNRA

which are compatible with the provisions of the HCNRA Act.

The Forest Service believes that a reasonable interpretation of the HCNRA Act, is to work with the grazing permittees and other interested parties to determine whether the grazing activity could be adjusted to avoid conflicts. This provision of the rule remains unchanged.

Comment: Grazing should only occur if the rangeland is in excellent, not satisfactory, condition. Two reviewers noted that the standard limiting grazing to rangelands lands in satisfactory condition, while an improvement over existing management of the HCNRA, was still inadequate under Section 7 of the HCNRA Act which requires, among other things, that the HCNRA be administered in a manner compatible with the "conservation of scenic, wilderness, cultural, scientific and other values contributing to the public benefit." According to this reviewer, that objective can be achieved only if the rule is revised to accommodate grazing on rangeland which is at or above 76% Potential Natural Vegetation (PNV), or 76% of the natural vegetation community that would exist if the area remained ungrazed. This is typically referred to by the Forest Service as "excellent condition."

Response. The Forest Service disagrees with the reviewer's proposition that the only way to ensure that the scenic, wilderness, cultural, scientific and other values of the HCNRA are conserved is to require rangelands to be in excellent condition prior to the authorization of any grazing activities. The Forest Service believes that authorizing grazing on rangelands in satisfactory condition is fully consistent with each of the management objectives in Section 7 of the HCNRA Act including the one referenced by this reviewer. The satisfactory condition requirement is also in conformance with Section 13 of the HCNRA Act which recognizes ranching and grazing as traditional and valid uses of the HCNRA. Arguably, limiting grazing to rangelands deemed to be in excellent condition may be inconsistent with this provision.

Finally, it bears mentioning that the satisfactory condition is a minimum threshold which must be maintained throughout the duration of the permit term which is normally ten years. As a result, assuming rangelands are in satisfactory condition in the first year of the permit, the grazing activity and the allotment must be managed in such a way as to ensure that the rangelands do not fall below this minimum threshold. If such a threat exists, it may necessitate adjustments in livestock numbers, seasons of use, locations of grazing, and the development of range improvements during the permit term. It may even require the partial or total removal of livestock from the area if the other management options are unavailing.

Thus, the rule which requires that rangelands be maintained in satisfactory condition, at a minimum, throughout the term of the authorized grazing activity, is consistent with Sections 7 and 13 of the HCNRA Act. No additional changes to the proposed rule are warranted based on this comment.

Comment: Grazing should be authorized not only on rangelands that are currently in satisfactory condition, but also on rangelands that are moving toward satisfactory condition. One reviewer noted that limiting domestic livestock grazing only to rangelands in satisfactory condition might be unnecessarily restrictive and might result in the cessation of grazing even in those instances where the rangelands may not be in satisfactory condition at the time the rule goes into effect, but there have been demonstrable strides towards achieving that condition.

Response: The Forest Service agrees. In many situations, livestock grazing may be occurring on rangelands that might be deemed to be in less than satisfactory condition. The status of some of these rangelands may be due not so much to the absence of vegetation and forage, but rather due to the type of vegetation and forage. In other words, the presence of invader species of vegetation may result in an allotment being classified as in unsatisfactory condition. In many of these cases, the elimination of the invader species can only be accomplished through burning or closely monitored livestock grazing.

The intent is not to allow continued grazing on allotments that exhibit an unsatisfactory condition without an aggressively scheduled effort to reach "satisfactory" in a reasonable period of time. The comprehensive plan will identify goals, objectives, and schedules to bring unsuitable lands into a healthy condition, defining "satisfactory."

Therefore, while satisfactory condition is an important benchmark and one which the Forest Service hopes will be achieved on all allotments in the HCNRA in the future, some flexibility should be built into the rule to allow for the continuation of livestock grazing, even on lands that may be in less than satisfactory condition, if that activity results in the rangelands moving towards the satisfactory condition benchmark. In order to determine whether the rangelands are indeed moving towards satisfactory condition, the Forest Service will evaluate the rangelands and the grazing against the specific standards and guidelines related to this activity that are included in the forest plan. Section 292.49(a) has been changed to provide this flexibility.

Comment: The Forest Service should immediately conduct studies to determine the condition of rangelands in the HCNRA and all grazing activities should be prohibited pending their completion. One reviewer was comfortable with the Forest Service's use of satisfactory condition as the threshold condition beyond which livestock grazing in the HCNRA may be authorized. However, this reviewer was concerned that the Forest Service did not possess all the necessary monitoring and other information at this time to determine whether the rangelands were in satisfactory or better condition. Therefore, this reviewer suggested that all grazing be terminated pending the completion of studies indicating the condition of all the rangelands in the HCNRA.

Response. The Forest Service is currently conducting analysis on active allotments. Much of this activity is actually a re-analysis updating information previously gathered. This information is supplemented through range administration and monitoring which is conducted on a regular basis. Each allotment has an annual operating plan which is part of the permit and included the Forest Plan standards and guidelines as well as any new standards developed for resource management reasons. In addition to the range analysis and monitoring, other resource areas such as fish, wildlife, botany, and silviculture are also gathering resource data within the allotments. The data collected from these studies adds to the cumulative picture of the condition of resources within the allotment. Terminating all livestock grazing activities pending the completion of these studies would result in a harsh and unreasonable penalty for many permittees by halting grazing activities on allotments which are in compliance with the terms of the permits and the standards and guidelines of the forest plan.

The Forest Service is aware that if the standards in this section are to be successful in protecting and conserving the HCNRA as well as allowing traditional and valid grazing activities, the studies of range condition must continue. To that end, the Forest Service will, subject to the availability of appropriated funds, continue to take steps to analyze range condition and trend in the HCNRA following the final adoption of this rule. Priorities of the

agency for range condition studies will be those areas which appear to be in less than satisfactory condition and those areas that are associated with permits that are scheduled to expire in the near future. No changes to the proposed rule are warranted based on this comment.

Comment: A definition of rangelands in "satisfactory condition" should be supplied in the rule. Four reviewers encouraged the Forest Service to include a definition for "satisfactory condition" to further delineate the federal lands in the HCNRA where grazing by domestic livestock may occur. Two of the four reviewers offered criteria that could be used in a definition of "satisfactory condition."

Response: The Forest Service determines rangeland conditions based on a professional review and assessment of forage and soil conditions, among other things. The precise contours of what constitutes "satisfactory condition" may change over time as techniques for the review and assessment of forage and soil conditions change, as new information is discovered, or even as changes in societal norms and understandings occur. Accordingly, the appropriate location for the definition of satisfactory condition, like many other terms used in this rule, is in the Comprehensive Management Plan which can more readily address and respond to these potential future developments. Due to their rigidity and relative difficulty to amend, regulations are notoriously poor documents to set out definitions of terms which may change over time. Accordingly, the definition of "satisfactory condition" will appear in the Comprehensive Management Plan for the HCNRA rather than these regulations. The agency intends to identify goals, objectives, and standards pertaining to "satisfactory condition" when the Comprehensive Management Plan is revised. The public will have an opportunity to review and comment in the development of the plans.

Comment: The rule should expressly exclude certain types of rangelands as "suitable" for grazing. One reviewer recommended that riparian areas, highly erodible lands, and threatened and endangered species habitat should be expressly declared as not "suitable" for grazing in the rule.

Response: The Forest Service believes that the types of land listed by this reviewer may or may not be unsuitable for grazing depending on a variety of factors including, but not limited to, the type and amount of forage available, the impact of the grazing activity on the lands, and the management regime under which the livestock grazing activity is conducted. In many cases, grazing on riparian areas, highly erodible lands, and land that is habitat for threatened and endangered species may not negatively impact these areas. Therefore, a categorical exclusion in this rule of these areas from rangelands deemed suitable for livestock grazing would be inappropriate.

Comment: Recreation livestock should not be covered by the standards in this section. One reviewer noted that the proposed rule failed to distinguish recreation livestock used in conjunction with recreational activities like hunting or trail riding from domestic livestock which are authorized by a grazing permit. This reviewer asserted that the standards of this rule should be applied only to domestic livestock grazing activities and should exclude recreational livestock grazing activities from its coverage.

Response. The proposed rule was not intended to exclude recreation livestock from its coverage. It was intended to cover all domestic livestock grazing activities occurring on the HCNRA, regardless of the underlying purpose for that activity.

The reviewer fails to offer any additional information upon which the Forest Service could discern a rational basis for distinguishing recreation livestock from other forms of livestock on the HCNRA and exempt them from the provisions of this rule. It may be that in a given situation, the determination of whether an incompatibility exists may differ between recreation livestock and other forms of livestock due to the nature, amount, and location of grazing use. This would be a fact dependent inquiry and would be made on a case-by-case basis. However, once an incompatibility is found to exist between livestock grazing and other listed values for which the HCNRA was established, it matters little whether the grazing is in furtherance of a commercial ranching operation or a commercial recreational enterprise. Under this rule, that livestock grazing activity will have to be modified or abolished. No additional modification of the proposed rule is warranted.

Comment: The standard requiring rangelands to be in satisfactory condition before grazing may be authorized is insufficient for wild and scenic river corridors where that activity must be shown to protect and enhance the values for which the river was designated. Using the Forest Service's definition of "satisfactory condition" in the Forest Service Manual, one reviewer noted that this standard was adequate for federal lands in the HCNRA outside designated wild and scenic river corridors. Once on wild and scenic river corridor lands, however, this reviewer explained that the satisfactory condition standard failed to take into account Section 10 of the Wild and Scenic Rivers Act which requires designated rivers to be administered to protect and enhance the values which caused them to be added to the system. For the Snake and Imnaha Rivers, these values included, among others, vegetation. Merely maintaining the rangeland in satisfactory condition does not equate to "protecting and enhancing" the vegetation of these rivers.

Response: The Forest Service disagrees for two reasons. The first reason is that the Forest Service Manual definition of "satisfactory condition" provided by this reviewer is sufficiently protective of wild and scenic river values. The Forest Service Manual (FSM 2210.5) defines "satisfactory condition" as "[t]he condition in which * * * forage species composition and production meets forest plan objectives * * *". The forest plan in this case is the Wallowa-Whitman National Forest Land and Resource Management Plan (LRMP). Under Section 6(f) of the National Forest Management Act, a LRMP is a forestwide document that establishes management direction for all National Forest System lands within its boundaries. As a forestwide document, it must, by necessity, take into account and be consistent with specially designated conservation system units that are within its boundaries. For the Wallowa-Whitman National Forest, this would mean that the LRMP must incorporate management direction for, among other areas, the HCNRA, the Hells Canyon Wilderness, and the Snake, Rapid, and Imnaha Wild and Scenic Rivers. This management direction for these ares may not be inconsistent with the statutes under which these units were established. In this case that would include the HCNRA Act, Wilderness Act, and Wild and Scenic Rivers Act. Consequently, the Wallowa-Whitman LRMP objectives for forage species composition and production take into account the different conservation system units located within the Forest. To that end, the objectives may, but need not be, different.

The second reason that the Forest Service considers this section to be sufficient as applied to wild and scenic river corridor lands is based on the identification of the traditional ranching use of this area as one of the outstanding remarkable values for which the rivers in the HCNRA were designated. For instance, the Environmental Assessment

for the Imnaha River Wild and Scenic River Management Plan states

> The Imnaha River canyon represents a living vestige typifying the economic and social history of the region and the American West. It is very difficult to describe the mystique which glorifies the frontier cowboy west that is so important to the American psyche. More specifically, and worthy of recognition -and protection, is the fact that the Imnaha River setting is a unique remnant of Euro-American adaptation of the mountainous inland Northwest. [This] * * * is a value that meets the legislative intent of "historical, cultural, or other similar value," of the Wild and Scenic Rivers Act and therefore is an Outstandingly Remarkable Value of the Imnaha Wild and Scenic River.

(Imnaha River EA, App. C. pp. 12–14 (Jan. 1993)). Based on the fact that both traditional ranching use and vegetation are outstandingly remarkable values for which rivers in the HCNRA may have been designated, the Forest Service considers the standards of this section to be a reasonable attempt to reconcile conflicts that may arise in administering the rivers to protect and enhance these values. No change to the proposed rule is warranted based on this comment.

Comment: Concentrated livestock feeding areas should be closed in the HCNRA. One reviewer felt that the rule should specifically deal with confined animal feeding operations (CAFOs) that exist in the HCNRA. There are two CAFOs in the HCNRA, each of which exceeds 100 acres. Cattle may occupy CAFOs anywhere from one to four months. According to this reviewer, CAFOs negatively impact the nearby fish and wildlife habitat, scenic, biological, recreation, and other values for which the HCNRA was established. This reviewer suggested that another standard should be added to this section but failed to note what it should say. Based on the tenor of this reviewer's comments, the proposed standard would prohibit all existing and proposed CAFOs within the HCNRA. Another reviewer inquired as to whether and how these CAFOs would be handled under this section.

Response. The Forest Service does not have any CAFOs on National Forest System lands in the HCNRA. There are two allotments in the HCNRA where animals can be fed during part of the grazing season authorized by the grazing permit. On one allotment, this activity is for emergency purposes only when winter weather conditions or animal health require feeding for short periods of time. on the other allotment, cattle are moved to a pasture and are fed hay during calving. After calving, the cattle are moved to other pastures in the allotment in accordance with the terms of the grazing permit. It should be noted that both of these operations have been reviewed by the Environmental Protection Agency and neither fits the definition of a CAFO.

If these grazing activities present a problem, the incompatibility provisions of § 292.48(b) would apply and require a review of the operation to determine what modifications, if any, could be implemented to avoid the incompatibility. As this section expressly noted, if the incompatibility could not be avoided, the grazing activity would have to terminate. The Forest Service does not consider the addition of another standard addressing this situation to be necessary.

Comment: Domestic sheep grazing should be terminated in the HCNRA. One reviewer noted that disease transmission from domestic to bighorn sheep has resulted in the decimation of bighorn herds in the HCNRA. Based on this impact, this reviewer recommended that the rule include a standard which prohibits domestic sheep grazing in the HCNRA.

Response. As in the discussion concerning CAFOs above, this issue could be easily addressed through § 292.48(b) which requires the modification of livestock grazing activity if it is incompatible with, among other things, the maintenance of wildlife and/or their habitat in the HCNRA. If the incompatibility persists even after the modification, then the grazing activity would have to cease. Accordingly, a specific standard prohibiting domestic sheep grazing in the HCNRA is unnecessary.

It should also be noted that on June 10, 1994, the Forest Supervisor of the Wallowa-Whitman National Forest signed a decision to cancel all domestic sheep grazing permits in the HCNRA. This decision was made after a thorough review of all the research on the transmission of disease between domestic sheep and bighorn sheep. The conclusion drawn from this review was that continuation of domestic sheep grazing as that activity is currently conducted would likely result in the death of bighorn sheep in the future. This decision is fully consistent with the Act which recognized grazing as a traditional and valid use and provided for its continuation only to the extent that it did not impair the values, including protection of wildlife and their habitat, for which the HCNRA was established.

Comment: The standard requiring that grazing permit include terms and conditions to protect and conserve riparian areas should be more specific. One reviewer noted that the standard directing that terms and conditions be included in grazing permits provide for the protection and conservation of riparian areas was "another step in the right direction but [] essentially meaningless * * *". This reviewer thought that specific criteria for grazing permits should be included as standards in this rule including compliance with state Best Management Practices, seasons of use, removal or exclusion of livestock, numbers of animals to be grazed, buffer zones, and unsuitable locations.

Response. As with many of the other responses to comments made on the proposed rule, the Forest Service does not consider a regulation to be the appropriate document to include the level of detail sought by this reviewer. The regulation embodies the standard to which the agency must adhere. How the Forest Service meets this standard may vary and some flexibility must be built into this process to accommodate it. This is especially true in this situation where the variability of the affected riparian areas and management practices that can be employed at a given site may lead to a number of ways in which these areas can be protected and conserved. In this way, the agency can tailor the protection and conservation measures individually, recognizing that not all measures may be appropriate in all situations.

Comment: Range improvement standard is inconsistent with the HCNRA Act. One reviewer contended that the standard in § 292.48(c) concerning range improvements was contrary to the HCNRA Act's direction that any livestock grazing occurring in the HCNRA must be compatible with the protection of cultural and natural values for which the area was established. Specifically, this section required that range improvements be designed and located to have, to the extent practicable, the minimal impact on scenic, cultural, fish and wildlife and other values in the HCNRA. As an alternative, this reviewer suggested that the standard should be modified to simply prohibit any range improvement that has the potential to impact the ecological, recreational, or cultural values of the HCNRA.

Response. As noted earlier in this discussion, Congress expressly recognized in Section 13 of the HCNRA Act that ranching and grazing were "traditional and valid" uses of the HCNRA. In keeping with this recognition, the Forest Service has formulated standards for grazing which will enable it to be continued in perpetuity provided that it is compatible with the management objectives for the

HCNRA as articulated in Section 7 of the Act. In other words, this section provides for the continuation of grazing unless it is incompatible with the scenic, fish and wildlife, and other values for which the HCNRA was established. In that case, as the proposed rule makes clear, the ranching or grazing activity must yield.

One means by which incompatibilities between grazing and HCNRA values can potentially be avoided is through the use of range improvements. Range improvements may either be structural or nonstructural in nature and are defined as

> [A]ny activity or program on or relating to rangelands which is designed to improve production of forage; change vegetative composition; control patterns of use; provide water; stabilize soil and water conditions; and provide habitat for livestock and wildlife.

(Forest Service Manual 2240.5(8). One example of a range improvement is a fence. Fences can be installed in order to limit access to important riparian areas or to facilitate the rotation of livestock to different parts of an allotment thereby avoiding overuse in any one area. Another example of a range improvement are water tanks or troughs which can be situated in such a way as to entice livestock away from natural water sources like streams and ponds. Suffice it to say that it would be extremely difficult to run a successful livestock operation without using at least some range improvements.

This section of the rule provides that where range improvements are a necessary component of a successful livestock operation, they will have as little impact as possible on the scenic, fish and wildlife and other values for which the HCNRA was established while still accomplishing the objective of the improvement. The impact of range improvements can be reduced through, among other things, the use of special materials, locating the site of the improvement to blend in with the natural topography, and constructing the improvement at special times of the year.

The reviewer's suggestion which would bar all range improvements based simply on their "potential impact" to the HCNRA resources is unreasonable and would inevitably lead to the partial or complete elimination of grazing in the HCNRA due to the exacerbation of incompatibilities between grazing and the other resource values in the HCNRA. No change to the rule has been made based on this reviewer's comment.

Comment: Environmental analysis is necessary prior to the authorization of livestock grazing on allotments that are currently vacant as well as those where grazing activity is occurring. One reviewer noted that the rule should include two express provisions regarding the circumstances under which grazing may be authorized on an allotment in the HCNRA. The first case dealt with allotments currently being grazed. There, this reviewer explained that the rule should authorize grazing only when there has been current environmental analysis that considers range condition and the effects of past livestock use of the allotment. The second case dealt with allotments where no grazing is currently occurring. In this case, this reviewer noted that the rule should include a standard requiring a new environmental analysis prior to the authorization of livestock grazing which would justify that activity on that allotment.

Response. Through the forest planning process, a schedule was established for updating all of the allotment management plans on the Wallowa-Whitman National Forest, including those in the HCNRA. It was recognized that funding would not be available to update all of these plans at once. Therefore, the allotments were prioritized for updating. Allotments with the highest priority were those where evidence suggested that some resource damage had occurred or was occurring. Allotments are also required to be in compliance with the relevant standards and guidelines in the forest plan. These standards and guidelines, as well as any updates, are built into the annual operating plans which become a term of the grazing permit.

Permits for vacant allotments are not issued until the range analysis, NEPA documentation and the allotment management plan are complete.

Regulatory Impact

This final rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. It has been determined that this is not a significant rule. This rule will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This rule will not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. In short, little or no effect on the National economy will result from this rule, since it affects only public lands within the HCNRA. Accordingly, this final rule is not subject to OMB review under Executive Order 12866.

Moreover, this final rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and it has been determined that this action will not have a significant economic impact on a substantial number of small entities as defined by that Act. To the extent that the rule imposes additional requirements on any small entity, these requirements are the minimum necessary to protect the public interest, are not administratively burdensome or costly to meet, and are well within the capability of small entities to perform.

Takings Implication

This rule has been reviewed by the agency under Executive Order 12630 to determine whether its adoption presents the risk of a taking which would require the payment of just compensation under the 5th Amendment to the United States Constitution. Because this rule primarily involves the administration of federal lands, neither the adoption of this rule nor its implementation presents the risk of a taking. Furthermore, where mining activities are concerned, the prohibitions contained herein are subject to valid existing rights which also insulates the government against the risk of an adverse decision in a takings claim.

Executive Order 12778, Civil Justice Reform Act

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Accordingly, (1) all state and local laws and regulations that are in conflict with this rule or which impede its full implementation are preempted; (2) no retroactive effect will be given to this rule; and (3) it will not require administrative proceedings before parties could file suit in court challenging its provisions.

Environmental Impact

This rule was discussed as a proposed rule in the final Environmental Impact Statement and Comprehensive Management Plan for the Hells Canyon National Recreation Area, pages 155–158. The analysis completed for the Comprehensive Management Plan was revalidated in April 1990 with the signing of the Wallowa-Whitman National Forest Land and Resource Management Plan (pages 1–2). Information pertaining to the environmental analysis may be obtained by writing or calling the persons or offices listed under **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**.

Controlling Paperwork Burdens on the Public

As outlined in the proposed rule, prior written authorization will be required under this rule for certain activities related to the scientific research of paleontological resources in the HCNRA and the use of motorized and non-motorized rivercraft use on the Snake and Salmon Rivers in the HCNRA. The information that will need to be submitted to the authorized officer represents a new information requirement as defined in 5 CFR Part 1320, Controlling Paperwork Burdens on the Public. In accordance with those regulations and the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, the Forest Service has requested the review and approval of the information required. The agency estimates that a private individual preparing seeking authorization under the provisions of this rule will spend an average of 5 hours to gather, prepare, and submit the application for authorization.

List of Subjects in 36 CFR Part 292

National recreation areas.

Therefore, for the reasons set forth in the preamble, part 292 of chapter II of title 36 of the Code of Federal Regulations is hereby amended by revising subpart F to read as follows:

PART 292—NATIONAL RECREATION AREAS

Subpart F—Hells Canyon National Recreation Area—Federal Lands

Sec.

292.40 Purpose and scope.
292.41 Definitions.
292.42 Management standards and guidelines.
292.43 Protection and preservation of cultural and paleontological resources.
292.44 Use of motorized and mechanical equipment.
292.45 Use of motorized and non-motorized rivercraft.
292.46 Timber harvesting activities.
292.47 Mining activities.
292.48 Grazing activities.

Subpart F—Hells Canyon National Recreation Area—Federal Lands

Authority: 16 U.S.C. 460gg–7.

§ 292.40 Purpose and scope.

(a) *Purpose.* The rules of this subpart establish standards and guidelines for the protection and preservation of historic, archeological, and paleontological resources, the use of motorized and mechanical equipment, the use of motorized and non-motorized rivercraft, and the management, utilization, and disposal of natural resources by timber harvesting, mining and grazing on National Forest System lands that comprise the Hells Canyon National Recreation Area located in the Wallowa-Whitman, Nez Perce, and Payette National Forests in the States of Idaho and Oregon as established by the Act of December 31, 1975, as amended (89 Stat. 1117, 16 U.S.C. 460gg *et seq.*).

(b) *Scope.* Management of National Forest System lands within the Hells Canyon National Recreation Area is subject to all laws, rules, and regulations applicable to the national Forest System, except as otherwise provided in this subpart. In the event of a conflict of inconsistency between rules of this subpart and other rules within this title, the rules of this subpart shall take precedence to the extent permitted by law.

§ 292.41 Definitions.

Special terms used in this subpart are defined as follows:

"*Act*" means the Act of December 31, 1975, as amended (Pub. L. 94–199, 89 Stat. 1117) which established the Hells Canyon National Recreation Area.

"*Authorized Officer*" is a Forest Service line officer who has been delegated the authority to take certain actions pursuant to the provisions of this subpart.

"*Comprehensive Management Plan*" is the document that establishes the array, levels, and manner of resource uses within the HCNRA. It is incorporated as part of the Wallowa-Whitman National Forest Land and Resource Management Plan.

"*Cultural resources*" means historic and archeological resources.

"*HCNRA*" is the abbreviation for the Hells Canyon National Recreation Area.

"*Mechanical equipment*" means any contrivance which travels over ground, snow or water on wheels, tracks, skids, or by flotation that is powered by a living source. This term does not include non-motorized rivercraft which is defined separately herein, wheelchairs, or other similar devices used solely to assist persons with disabilities.

"*Mining*" means any activity related to the discovery, extraction and exploitation of minerals under the Mining Act of 1872, 30 U.S.C. 22 *et seq.*, and the Mineral Leasing Act of 1920, 30 U.S.C. 181 *et seq.*, through the use of, among other things, hydraulic equipment, pans, ground sluicing, sluice boxes, rockers, or suction dredges.

"*Motorized equipment*" means any machine powered by a nonliving source. This term does not include motorized rivercraft which is defined separately herein or small, hand-held devices such as flashlights, shavers, wristwatches, and Geiger counters.

"*Motorized rivercraft*" means any boat capable of being mechanically propelled by propeller(s) or jet pump(s) upstream through rapids.

"*Non-Motorized rivercraft*" means any boat which is not a motorized rivercraft.

"*Other lands*" means all National Forest System lands in the HCNRA except for Wild and Scenic Rivers and Wilderness Lands.

"*Paleontological resources*" means any remains, trace, or imprint of a plant or animal that has been preserved in the Earth's crust prior to the Holocene epoch.

"*Selective cutting*" means single tree or group selection cutting and is the periodic removal of trees individually or in small groups from an uneven aged forest in order to maintain diverse stands, with the sustainability and improvement of the forest using an ecosystem approach to management being a primary consideration.

"*Suitable*" means it is appropriate to apply certain resource management practices to a particular area of land, as determined by an ecological and environmental analysis of the land. A unit of land may be suitable for a variety of individual or combined management practices.

"*Wild and Scenic Rivers*" means the segments of the Snake, Rapid, and Imnaha Rivers designated as components of the National Wild and Scenic Rivers System and any other river or segment thereof in the HCNRA hereafter designated. Wild and Scenic Rivers include all National Forest System lands within the designated Wild and Scenic River corridor.

"*Wilderness lands*" means the Hells Canyon Wilderness, that portion of the Eagle Cap Wilderness in the HCNRA, and any other wilderness in the HCNRA hereafter designated as components of the National Wilderness Preservation System.

§ 292.42 Management standards and guidelines.

(a) In addition to existing statutory and regulatory authority governing administration of National Forest System lands and resources, the standards and guidelines in §§ 292.43 to 292.48 of this subpart prescribe the scope and extent of certain activities that may occur in the HCNRA. These standards and guidelines are consistent with the overall objective of administering the HCNRA to preserve its natural beauty, historical and archaeological values and enhance its recreational and ecological values and

the public's enjoyment. The standards and guidelines may vary depending on whether the land where the proposed activity is contemplated is within the Wilderness Lands, Wild and Scenic Rivers, or the Other Lands.

(b) The standards and guidelines of this subpart govern the previous programmatic direction in the Comprehensive Management Plan that has been incorporated into the Wallowa-Whitman National Forest Land and Resource Management Plan. Site specific environmental analysis may be required even in those situations where a use or activity is permissible under the standards and guidelines set forth in this subpart.

(c) The standards and guidelines of this subpart may be enforced by the authorized officer pursuant to 36 CFR part 261.

§ 292.43 Protection and preservation of cultural and paleontological resources.

(a) Other Lands and Wild and Scenic Rivers. The following standards and guidelines of this section apply to the protection and preservation of cultural and paleontological resources on the Other Lands and the Wild and Scenic Rivers in the HCNRA:

(1) The primary objective of managing cultural resources is the protection of the resource from damage or destruction. To the extent consistent with protection, cultural resources may also be managed for scientific research, public education and enjoyment. Where interpretation of these sites for public benefit and knowledge is developed, it shall be compatible with the protection of cultural resources.

(2) The authorized officer shall establish priorities for management emphasis and protection of cultural resources based, in part, on whether the appropriate State Historic Preservation Office has concurred with the Forest Service's determination that a cultural resource is significant.

(3) Significant cultural resources are to be protected on-site, unless the authorized officer determines that off-site protection is preferable because adequate protection cannot be provided on-site, the resource is already adequately represented and protected on-site elsewhere, protection on-site is not consistent with the administration of Wilderness Lands, or for other good cause shown. Information about significant cultural resources shall be documented.

(4) The primary objective of managing paleontological resources is scientific research. Paleontological resources may only be disturbed or removed in conjunction with scientific research and only upon the issuance of prior written authorization of the disturbance or removal activity.

(b) *Wilderness Lands.* The following standards and guidelines apply to the protection and preservation of cultural and paleontological resources in the Wilderness Lands category of the HCNRA.

(1) The standards and guidelines for Other Lands and Wild and Scenic Rivers in paragraph (a) of this section also apply to Wilderness Lands.

(2) Public education and information activities concerning cultural resources on Wilderness Lands may not be offered or established inside Wilderness Lands.

(3) New trails and relocations of existing trails may not be developed for the sole purpose of providing public access to cultural resource sites on Wilderness Lands.

§ 292.44 Use of motorized and mechanical equipment.

The standards and guidelines of this section apply to the use of motorized and mechanical equipment in the HCNRA. These standards and guidelines shall not be construed to impair or preclude use of such equipment in the Forest Service's administration of the HCNRA; authorized scientific and other research activities within the HCNRA; timber harvesting, mining, or grazing activities as authorized in §§ 292.46–292.48 of this subpart; responses by the Forest Service or any other Federal, state, or local agency to public health or safety emergencies; or access to private inholdings within the HCNRA.

(a) *Other Lands.* The following standards and guidelines apply to the use of motorized and mechanical equipment in the Other Lands category of the HCNRA.

(1) Motorized and mechanical equipment may be used on designated Forest Service roads, trails, and airstrips subject to terms and conditions deemed necessary by the authorized officer for the safe use of such facilities.

(2) The use of motorized and mechanical equipment is prohibited off of designated Forest Service roads, trails, and airstrips unless authorized by the authorized officer subject to terms and conditions deemed necessary by the authorized officer for the safe use of such equipment and to ensure that its use is compatible with the Act.

(b) *Wild and Scenic Rivers.* The following standards and guidelines apply to the use of motorized and mechanical equipment in the Wild and Scenic Rivers category in the HCNRA.

(1) The use of motorized and mechanical equipment on designated Forest Service roads, trails and airstrips is permissible on wild and scenic river segments classified "scenic" or "recreational" subject to terms and conditions necessary for safe use of such equipment and to ensure its use is compatible with the Wild and Scenic Rivers Act.

(2) The use of motorized and mechanical equipment on designated Forest Service roads, trails, and airstrips is prohibited on wild and scenic river segments classified "wild" except as provided for by the authorized officer upon a determination that such use is necessary for the administration of the river or to protect and enhance the values for which river was designated.

(c) *Wilderness Lands.* Except as provided for in Sections 4 (c) and (d) of the Wilderness Act and regulations at 36 CFR parts 261 and 293, the use of motorized and mechanical equipment is prohibited on Wilderness Lands.

§ 292.45 Use of motorized and non-motorized rivercraft.

The standards and guidelines of this section apply to the use of motorized and non-motorized rivercraft on rivers within the HCNRA.

(a) The use of non-motorized rivercraft may be permitted subject to restrictions on size, type of craft, numbers, duration, seasons, or other matters which may be deemed by the authorized officer to be necessary to ensure the safe use and enjoyment of the rivers: Provided, that where wild and scenic rivers are concerned, the authorized officer may impose such additional terms and conditions as may be necessary to protect and enhance the values for which the river was designated.

(b) The use of motorized rivercraft is prohibited except on the Snake River and that portion of the Salmon River in the HCNRA administered by the Forest Service where such activity may be permitted subject to restrictions on size, type of craft, numbers, noise limits, duration, seasons or other matters which may be deemed by the authorized officer necessary for the safe use and enjoyment of the rivers: Provided, that where wild and scenic rivers are involved, the authorized officer may impose such additional terms and conditions as may be necessary to protect and enhance the values for which the river was designated.

(c) The use of motorized and non-motorized rivercraft is subject to all federal and state boating registration and safety laws.

(d) The use of motorized or non-motorized rivercraft on the Snake River and that portion of the Salmon River in

the HCNRA administered by the Forest Service requires prior written authorization from the authorized officer.

(e) In authorizing the use of motorized and non-motorized rivercraft on the Snake River, the authorized officer must reasonably accommodate both private and commercial users of each type of rivercraft.

(f) In authorizing the use of motorized and non-motorized rivercraft on the Snake River, the authorized officer must ensure that the carrying capacity of the river is not exceeded.

(g) In authorizing the use of motorized and non-motorized rivercraft on the Snake River, the authorized officer shall seek to minimize, where practicable, conflicts between motorized and non-motorized rivercraft users and between both types of rivercraft users and all other users of the river.

§ 292.46 Timber harvesting activities.

(a) *Other Lands.* The standards and guidelines of this section apply to timber harvesting activities in the Other Lands category of the HCNRA.

(1) Timber may be harvested only to protect and enhance ecosystem health, wildlife habitat, or recreational and scenic uses; to reduce the risk of harm posed by hazard trees; or to respond to natural events such as wildfire, flood, earthquake, volcanic eruption, high winds, and disease or insect infestation.

(2) Where authorized, trees may be harvested by selective cuttings. Openings created by the timber harvesting activity must be limited in size and number to the minimum necessary to accomplish the purpose of the harvest, and must blend with the natural landscape to the extent practicable.

(b) *Wild and Scenic Rivers.* The following standards and guidelines apply to timber harvesting activities in the Wild and Scenic Rivers category of the HNCRA.

(1) Timber may be harvested on river segments classified "scenic" or "recreational" to protect and enhance the values for which the river was designated.

(2) Timber may be harvested on river segments classified "wild" only when necessary to provide for recreational facilities such as trails, to reduce the risk of hazard trees, or to respond to natural events provided that the activity is consistent with the Wild and Scenic Rivers Act.

(3) Where authorized, timber harvesting activities on wild and scenic rivers may be conducted in accordance with and using the same methods as prescribed in section (a)(2) above.

(c) *Wilderness Lands.* Except as provided for in Sections 4 (c) and (d) of the Wilderness Act and regulations at 36 CFR part 293, timber harvesting is prohibited on Wilderness Lands.

§ 292.47 Mining activities.

(a) *Other Lands.* The standards and guidelines of this section apply to mining activities in the Other Lands category of the HCNRA.

(1) All mining activities are prohibited subject to valid existing rights as of December 31, 1975.

(2) The impact of mining activities including, but not limited to, drilling and the development of ingress and egress routes, must be minimized and directed away from Wilderness Lands and Wild and Scenic Rivers to the extent practicable.

(3) Mineral materials including, but not limited to common varieties of gravel, sand, or stone, may be used only within the HCNRA for the purpose of construction and maintenance of facilities including, but not limited to, roads, airfields, trails, and recreation developments.

(4) Sources of mineral materials should be located outside the HCNRA. Sources for mineral materials that may be used to benefit the HCNRA may be located inside the HCNRA if the cost of obtaining the materials outside the HCNRA adds significantly to the costs of the materials, or the transportation of mineral materials from outside the HCNRA presents a safety hazard. When mineral materials are obtained from inside the HCNRA, the environmental effects at the source of extraction must be mitigated by site reclamation upon the termination of the extraction activity. Site reclamation may include contouring the land, re-establishing vegetation, and other measures deemed appropriate by the authorized officer to blend the site into the surrounding environment to the extent practicable. The HCNRA shall not be the source of mineral materials for use outside the HCNRA for projects that do not directly benefit the HCNRA.

(b) *Wilderness Lands and Wild and Scenic Rivers.* The standards and guidelines of this section apply to mining activities in the Wilderness Lands and Wild and Scenic Rivers categories of the HCNRA.

(1) The standards and guidelines for Other Lands in paragraphs (a)(1) and (2) of this section also apply to Wilderness Lands and Wild and Scenic Rivers.

(2) Extraction of mineral materials is prohibited on Wilderness Lands and Wild and Scenic Rivers subject to valid existing rights.

§ 292.48 Grazing activities.

The following standards and guidelines apply to domestic livestock grazing activities on Other Lands, Wild and Scenic Rivers, and Wilderness Lands in the HCNRA.

(a) Grazing may be authorized only on rangeland determined by the authorized officer to be suitable for grazing and meeting or moving towards satisfactory condition and meeting the conditions described in paragraph (b) of this section.

(b) Where domestic livestock grazing is incompatible with the protection, restoration, or maintenance of fish and wildlife or their habitats; public outdoor recreation; conservation of scenic, wilderness, and scientific values; rare combinations of outstanding ecosystems, or the protection and enhancement of the values for which a wild and scenic river was designated, the livestock use shall be modified as necessary to eliminate or avoid the incompatibility. In the event an incompatibility persists after the modification or modification is not feasible, the livestock use shall be terminated.

(c) Range improvements must be designed and located to minimize their impact on scenic, cultural, fish and wildlife, and other resources in the HCNRA.

(d) The authorization of grazing use, through a grazing permit, must provide for terms and conditions which protect and conserve riparian areas.

Dated: July 13, 1994.

James R. Lyons,

Assistant Secretary, Natural Resources and Environment.

[FR Doc. 94–17521 Filed 7–18–94; 8:45 am]

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Federal Register

Tuesday
July 19, 1994

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 583
Supportive Housing Program; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 583

[Docket No. R–94–1631; FR–3379–F–01]

RIN A506–AB45

Supportive Housing Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: This is the final rule for the Supportive Housing Program, a program to provide assistance for housing and supportive services for homeless persons authorized by title IV, subtitle C of the Stewart B. McKinney Homeless Assistance Act, 42 U.S.C. 11381 (McKinney Act).

EFFECTIVE DATE: August 18, 1994.

FOR FURTHER INFORMATION CONTACT: The Office of Special Needs Assistance Programs, Room 7262, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; (202) 708–1234 or, TDD for hearing and speech-impaired, (202) 708–2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980, and approved under OMB control number 2506–0112.

II. Background

Section 1403 of the 1992 HCD Act amended title IV of the McKinney Act by striking subtitles C and D (the Supportive Housing Demonstration and SAFAH programs, respectively), and replacing them with a new subtitle C, which authorizes the Supportive Housing Program. (The Supportive Housing Demonstration program consisted of the Transitional Housing and the Permanent Housing for Handicapped Homeless programs.) On March 15, 1993, the Department published an interim rule (58 FR 13870), hereafter referred to as the "first interim rule," implementing the Supportive Housing Program. The first interim rule is codified at 24 CFR 583. On May 10, 1994, the Department published a second interim rule at 52 FR 24252 which amended the application and selection criteria provisions of the rule and clarified the Comprehensive Housing Affordability provisions.

The Supportive Housing Program combines the features of the Demonstration programs and the SAFAH program into one single program of assistance to governmental entities and private nonprofit organizations to provide housing and supportive services to homeless persons.

As stated in the first interim rule, Transitional Housing, Permanent Housing for Handicapped Homeless, and SAFAH projects previously approved under those program regulations (24 CFR parts 577, 578, and 579, respectively) will continue to be subject to those regulations. However, projects that are renewed under the new Supportive Housing Program are subject to these regulations.

Finally, the Department is publishing this final rule for effect immediately upon publication. Generally, in accordance with section 7(o) of the Department of Housing and Urban Development Act, the Department does not publish a rule or regulation for effect until after the expiration of the 30-day calendar period beginning on the day after the rule or regulation is published. However, because section 427 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1992 (42 U.S.C. 11387) provides that the final rule implementing the new Supportive Housing Program is to be "effective upon issuance," this provision of section 7(o) does not apply to this final rule.

III. Discussion of Public Comments From Interim Rule

The Department received 17 public comments in response to the interim rule. The comments were from local governments, housing authorities, and nonprofit organizations and advocacy groups for homeless individuals. The final rule contains changes made to the interim rule in response to public comments. The following discussion summarizes the comments and provides HUD's responses to those comments.

Definitions: § 583.5

Homeless Family

Several commenters suggested that HUD broaden the definition of homeless family with children to include parent/child relationships that exist without legal recognition of that relationship. One commenter suggested that the definition also include a dependent child over 18 who is mentally or physically disabled. One commenter recommended that homeless parents who have been separated from their children through foster care be permitted to enter SHPs with their children.

The Department does not believe that the definition of homeless families with children restricts serving families that include these types of relationships. A dependent child over 18 who is mentally or physically disabled can certainly be served. The term "homeless family with children" is defined in the rule only so that the Department can determine that it meets the statutory requirement that at least 25 percent of the funds appropriated for the program be used for homeless families with children. Therefore, the definition has not been changed.

Homeless Person

A number of commenters felt that HUD should expand the definition of homeless person. Several commenters recommended that the definition include a person who will be evicted from a dwelling unit within 30 days, released from an institution within 30 days, or required to leave within the time an opening is likely to be available in the supportive housing program. One commenter recommended that the definition include individuals who are doubled or tripled up with family or friends. One commenter stated that the term "adequate" was vague in the definition ("fixed, regular and adequate nighttime residence").

HUD does not believe that the current interpretation of homelessness need be expanded as suggested. The Department's focus remains on serving the most needy. This is most readily determined by the test that a person is homeless if, without HUD assistance, she or he would have to spend the night in a shelter or in a place not meant for human habitation. With regard to the term "adequate", the definition in the rule reflects the statutory language exactly.

Permanent Housing for Homeless Persons With Disabilities

The interim rule defines permanent housing for homeless persons with disabilities to mean community-based housing for homeless persons with disabilities that provides long-term housing and supportive services for not more than (1) 8 such persons in a single structure or contiguous structure; (2) 16 such persons, but only if not more than 20 percent of the units in a structure are designated for such persons; or (3) more than 16 persons if the applicant

demonstrates that local market conditions dictate the development of a large project and such development will achieve the neighborhood integration objectives of the program within the context of the affected community.

One commenter objected to the requirement, in the definition of permanent housing for homeless persons with disabilities, that an applicant must demonstrate that local market conditions justify the development of a permanent supportive housing project for more than 16 persons. This requirement is imposed by section 424(c)(1) of the McKinney Act, which requires that an applicant provide a "justification" for a permanent supportive housing project with more than 16 persons.

Supportive Services

Several commenters recommended that the definition of supportive services be expanded to include providing legal assistance to obtain permanent housing, housing subsidies, and other entitlements such as income support, food and medical assistance. The Department does not believe that the current definition of supportive services excludes legal assistance to obtain permanent housing, housing subsidies and other entitlements. Not every eligible supportive service is listed in the definition. However, for clarification, the regulatory definition has been expanded to specifically state that supportive services include "but are not limited to" the services listed. Grantees and participants are reminded that most homeless persons qualify for free legal assistance and that, except for filing lawsuits, persons other than licensed attorneys may provide the services mentioned by the commenters, most likely at a lower cost.

Use of SHP Funds

Eligible Activities/Projects: § 583.1

The interim rule provides in § 583.1 that supportive housing funds may be used for: (1) Transitional housing to facilitate the movement of homeless individuals and families to permanent housing; (2) permanent housing that provides long-term housing for homeless persons with disabilities; (3) housing that is, or is part of, a particularly innovative project for, or alternative methods of, meeting the immediate and long-term needs of homeless persons; or (4) supportive services for homeless persons not provided in conjunction with supportive housing.

Two commenters objected to restricting permanent housing projects under the Supportive Housing Program to disabled homeless persons. While section 424(a) of the McKinney Act restricts projects under the permanent housing component to homeless persons with disabilities, the Department does have the authority to make SHP funds available for permanent housing projects for other homeless persons under the innovative component.

One commenter objected to the use of SHP funds to provide services for homeless persons unrelated to housing. Because section 425 of the McKinney Act authorizes the provision of supportive services for homeless persons not provided in conjunction with supportive housing, and section 429 of the McKinney Act requires that at least 10% of appropriations be allocated for providing supportive services not provided in conjunction with supportive housing, the rule remains unchanged in this regard.

One commenter suggested that HUD expand the rule to include new construction of supportive service facilities. Because new construction of supportive service facilities is not an eligible activity under § 423(a)(2) of the McKinney Act, the Department does not have the authority to expand the rule in this respect.

Improving Existing Facilities: § 583.100

One commenter suggested that HUD allow SHP funds to be used to rehabilitate projects to preserve and bring existing housing stock up to code. Another commenter argued that recipients should be allowed to use SHP funds to improve existing transitional housing facilities, or to complete projects in progress.

Currently, SHP funds may be used to expand existing facilities in order to increase the number of homeless persons served and to provide additional supportive services. The Department agrees that existing facilities may also be improved to the extent that such improvements are needed for public health and safety, and has modified § 583.100 to reflect this. Finally, with regard to the use of SHP funds for completion of projects in process, HUD does not believe that it is necessary to broaden the use of SHP funds to cover completion of projects in progress since presumably projects in progress are already funded through completion.

Property Damages: § 583.115(b)(2)

One commenter felt that grant funds should be available to pay for property damages caused by a program participant. The Department agrees, and has added as an eligible leasing cost the use of up to one month's rent to pay a landlord who is not the recipient for any damage to housing due to the action of a homeless participant.

Grants for Supportive Services Costs: § 583.120

One commenter objected to the limitation of six months for providing supportive services after a homeless person leaves a transitional housing project, and recommended that recipients provide supportive services following placement in permanent housing for up to 12 months. The Department believes that providing supportive services beyond six months following placement in permanent housing expands the definition of transitional housing beyond what the statute envisions. SHP funds can be used for permanent housing resources for homeless persons with disabilities.

Grants for Operating Costs: § 583.125

One commenter suggested that maintenance reserve be included as an operating cost. HUD does not believe that it is necessary to include maintenance reserve as an operating cost. Because of recent changes in the homeless programs' financial system, recipients do not lose unexpended operating funds at the end of each year; they are carried over to the next operating year. Since the operating budget may include a repair and maintenance line item, it is no longer necessary to set up a separate reserve account to ensure that funds are available each year; the balance of repair and maintenance grant funds will carry over.

Commitment of Grant Amounts for Leasing, Supportive Services, and Operating Costs: § 583.130

One commenter questioned whether the reference in § 583.130 to HUD's obligation of funds for a period "not to exceed five operating years" meant that grants for supportive services will be available for up to five years. The Department agrees that this point requires clarification, and has modified § 583.120 to show that grants for supportive services will also be available for up to five years.

Administrative Costs: § 583.135

Several commenters objected to the limitation of 5% for administrative expenses, and suggested that the Department increase the cap on administrative expenses to between 7% and 10%. Because section 426(i) of the McKinney Act establishes a 5% cap on administrative expenses, the

Department does not have the authority to increase the cap.

Limitations on Use of Assistance: § 583.150

Several commenters objected to the prohibition against using SHP funding in structures assisted under other Federal programs. This provision has been frequently misinterpreted due, in part, to its complex language and, in part, to a more stringent provision contained in the proposed rule published on January 6, 1992 for the Supportive Housing Demonstration Program. The restriction in the first interim rule prohibited using SHP funds to assist a *structure* that has been assisted with other Federal funds. The first interim rule did not prohibit using SHP funds to assist *residents* of a structure, where either the structure or the residents have been assisted with other Federal funds. For example, applicants could provide supportive services funded by SHP to such residents. Another commenter felt that SHP funds should be allowed to be used for units in any structure receiving Federal assistance, except directly to units receiving HUD rental assistance. Again, the first interim rule did not prevent SHP funds from assisting a pro rata share of the units. That is, if only a portion of a structure's units have been assisted with Federal funds, the unassisted units could be assisted with SHP funds.

Nevertheless, HUD believes that this provision is counterproductive with regard to encouraging the development of permanent affordable housing. This is particularly true given the limited rent-paying ability of homeless participants and the likelihood that recipients will need other resources to meet operating costs. The section has been deleted from the rule.

Predevelopment Costs

One commenter suggested that HUD allow SHP grants to be used for certain predevelopment costs incurred prior to award of HUD funding. HUD does not agree. It has been a long-standing practice not to reimburse for costs such as those incurred to determine project feasibility, options to secure site control, and other costs associated with preparing an application.

Program Requirements

Grants for Acquisition and Rehabilitation; New Construction

Several commenters objected to the development cost caps for acquisition and rehabilitation and new construction in §§ 583.105 and 583.110. Because section 423(a) of the McKinney Act establishes development cost caps for acquisition and rehabilitation, and new construction, HUD does not have the authority to eliminate or raise the development cost caps.

Matching Requirements: § 583.145

Several commenters suggested that HUD reduce the matching requirement of § 583.145 from a 100% match, and permit the use of non-cash resources for matching. Because section 426(e) of the McKinney Act requires a 100% cash match of any grant for acquisition, rehabilitation or new construction under the Supportive Housing Program, the rule remains unchanged in this regard.

Sharing of Supportive Service Costs

One commenter suggested that HUD require a 25% share of supportive service costs of sponsors for each year of the grant. Since section 423(a)(5) of the McKinney Act authorizes HUD to pay 100% of the cost of supportive services the rule remains unchanged in this regard.

Habitability Standards: § 583.300(b)

Several commenters recommended that HUD modify the habitability standards in § 583.300(b) with respect to space and security, and interior air quality. Several commenters recommended that the regulations specifically prohibit funding projects for congregate temporary shelters. A few commenters suggested that each resident should be guaranteed private living space with a lock on the door. One commenter felt that HUD should require that bedroom sizes in supportive housing projects conform with other federal housing programs, and that families have private food storage and preparation facilities. With respect to interior air quality, one commenter suggested more detailed regulatory requirements, including a requirement which assures that building ventilation is sufficient to reduce the risk of transmission of airborne illnesses.

While there are many ways in which the standards could be expanded to address more specific issues, the Department believes that the standards as set forth in § 583.300(b), together with applicable local health and safety standards, adequately address habitability.

Ongoing Assessment of Supportive Services: § 583.300(d)

Several commenters recommended that HUD modify § 583.300(d) to require that if a recipient determines that a participant needs a particular service which is not provided by the recipient, the recipient must either provide the service, contract out the needed service, or refer the participant to another agency. The Department believes that a regulatory provision requiring the recipient to provide supportive services for any identified need of a participant would unreasonably burden recipients. However, the Department expects that recipients who are unable to provide needed services will coordinate with other providers to assure their availability, to the extent practicable.

Residential Supervision: § 583.300(e)

Several commenters objected to the residential supervision requirement for scattered site projects. The Department agrees that in some situations residential supervision may not be necessary, and that recipients should make the determination whether residential supervision is appropriate. Section 583.300(e) has been modified to reflect this.

Participation of Homeless Persons: § 583.300(f)

Section 583.300(f) requires that at least one homeless person or formerly homeless person participate on the board of directors or an equivalent policymaking entity of the Supportive Housing project. This requirement is waived if an applicant is unable to meet it and presents a plan, for HUD approval, to otherwise consult with homeless or formerly homeless persons in considering and making such policies and decisions. One commenter suggested that a waiver to § 583.300(f) be granted only where clear evidence exists that homeless persons are being involved in the decision-making process in meaningful ways. HUD has not received any requests for a waiver of § 583.300(f) and would not grant one except where clearly warranted. As with any other regulatory requirement, grantees who do not meet the provisions of the rule are subject to the normal sanctions of the program.

One commenter asked to what extent should homeless persons be involved in the supportive housing facility. As indicated in the statute, homeless persons should be involved in supportive housing activities to the maximum extent practicable.

Confidentiality: § 583.300(h)

Two commenters felt that § 583.300(h) should be expanded to ensure that all sensitive participant information is confidential. The Department believes that the current regulations adequately address the issue of confidentiality, and is not aware of any problems involving

the disclosure of confidential information concerning homeless individuals. If in the future problems arise, the Department will revisit this issue at that time.

Termination of Housing Assistance: § 583.300(i)

Several commenters were concerned that § 583.300(i) did not provide adequate due process protections prior to termination of housing assistance, and argued that participants should be treated as tenants for purposes of due process prior to eviction. Several commenters suggested that the Department make clear that the regulations not preempt any state or local law which guarantees greater protections during the termination process. Two commenters felt that the regulations should be more explicit as to the procedures required prior to termination of housing assistance, and notify homeless participants of their rights prior to termination. One commenter also felt that HUD should carefully monitor a recipient's adherence to due process requirements. Two commenters argued that a violation of program requirements should not serve as basis for termination of housing assistance to residents.

Section 583.300(i) requires that a recipient provide a formal process to a homeless participant that recognizes the homeless participant's right to due process, prior to termination of a homeless participant's housing assistance. Currently, the regulations require, at a minimum, that recipients must provide: (1) Written notice to the participant which contains a clear statement of the reasons for termination; (2) a review of the decision, in which the participant is given the opportunity to present written or oral objections to a person other than the person (or subordinate of such person) who made or approved the termination decision; and (3) prompt written notice of the final decision to the participant. The Department believes that the current regulations adequately protect a homeless person's due process rights. With regard to the preemption concern, the Department cannot affirm that the regulations do not preempt any state or local law. The Transitional Housing component with its 24-month limitation preempts such laws.

Finally, the issue of whether a violation of the SHP rules is a basis for termination of housing assistance has been subject to considerable debate within the Department. Section 426(i) of the McKinney Act allows a recipient to terminate assistance if a homeless participant violates program requirements. Section 583.300(i) allows a recipient to determine which program violations will result in a termination of housing assistance; however, section 583.300(i) also provides that recipients should only terminate assistance in the most severe cases. At this time, the Department believes that recipients should continue to have the discretion and flexibility to determine which program violations serve as the basis of termination of assistance.

Term of Commitment; Repayment of Grants; Prevention of Undue Benefits: § 583.305

One commenter objected to the conversion of a project which is no longer needed for supportive housing to one that serves low income persons, arguing that if a project is no longer needed for supportive housing then the project should be approved only for use for the *very* low income, rather than just for low income persons. Section 423(b)(3) of the McKinney Act authorizes the conversion of a project which is no longer needed for supportive housing to a project for low income persons. As such, the Department does not have the authority to limit conversion of SHP projects to serve only very low income persons, rather than just low income persons.

One commenter objected to the requirement that grantees operate for at least 20 years a project which was acquired, rehabilitated or constructed under the SHP unless HUD also provides operating and supportive service funding for 20 years. Section 423(b)(1) of the McKinney Act requires that projects which were acquired, rehabilitated or constructed under the SHP be operated by grantees for the purpose specified in the application for at least 20 years.

Application Process/Selection Criteria

Rating Criteria: § 583.215

Several commenters recommended that the Department modify the rating criteria in § 583.215 to specifically include: (a) Participation of homeless and formerly homeless; (b) provision of employment opportunities for homeless in the project, (c) due process protections to be adopted for a particular project; (d) proven effectiveness of an applicant; or (e) site control by the applicant. One commenter objected to targeting the "hardest to serve" homeless as a rating criterion, arguing that it was too restrictive. One commenter objected to the use of innovation as a rating criterion. Two commenters recommended that the determination of "hardest to serve" be made on the local level. One commenter felt that the current rating criteria will discriminate against rural and suburban communities with few or no shelters and with a homeless population which is living with friends and family.

Section 426(b) of the McKinney Act requires that the rating criteria include: (1) Ability of the applicant to develop and operate a project; (2) innovative quality of the proposal in providing a project; (3) need for the type of project proposed by the applicant in the area to be served; (4) extent to which the amount of assistance to be provided under this part will be supplemented with resources from other public and private sources; (5) cost effectiveness of the proposed project; and (6) extent to which the applicant has demonstrated coordination with other Federal, State, local, private and other entities serving homeless persons in the planning and operation of the project, to the extent practicable.

Section 426(b)(7) also authorizes the Secretary to add additional criteria, if appropriate, to carry out the SHP in an effective and efficient manner. In accordance with § 426(b)(7), the first interim rule added two additional rating criteria: (7) extent to which the project targets homeless persons living in emergency shelters or in places not designed for, or ordinarily used as, a regular sleeping accommodation for human beings; and (8) quality of the project. Earlier this year, the Department published a second interim rule for SHP in which the rating criteria were revised to reflect the statutory flexibility allowed. Accordingly, the first interim rule was modified by deleting the rating criteria that do not appear in the statute (i.e., criterion 7 (extent of targeting) and criterion 8 (quality of a project)), and including the statutory language that allows such other rating factors as the Department determines to be appropriate. Any additional rating criteria will now appear in the annual notice of funds availability (NOFA) and may be adjusted from year to year based upon experience.

Selecting Applicants: § 583.220

One commenter recommended that HUD modify § 583.220(c) so that in the event of a tie between applicants HUD would use two rating criteria, rather than one, to break the tie. This commenter also suggested that the Department use the rating criteria in 583.215(b)(6) ("extent to which the applicant has demonstrated coordination with other Federal, State, local, private and other entities serving homeless persons in the planning and

operation of the project") and § 583.215(b)(8) ("quality of the project") to break a tie, rather than the rating criterion in § 583.215(b)(3) ("need for the type of project proposed by the applicant in the area to be served").

The second interim rule made this an issue to be covered in the annual NOFA rather than in the regulations. Moreover, based upon HUD's experience in similar programs and the predecessor programs to the SHP, the Department does not believe that the use of one factor as a tie breaker is problematic. (The Department has never had a tie among applicants at the funding line in the SHP program or predecessor programs.)

Competitive Distribution of SHP Funds

One commenter objected to the competitive process for selecting recipients, and suggested that SHP funds be distributed to localities on a needs basis instead. Section 426(b) of the McKinney Act requires that the Secretary select applicants through a national competition based upon statutory selection criteria, and other selection criteria established by the Secretary.

Miscellaneous Comments

Renewal Grants

One commenter objected to the use of October 28, 1992 in § 583.235(a) as an arbitrary cutoff date for renewal of grants on a noncompetitive basis. The Department selected October 28, 1992 as the cutoff date because that is the date of enactment of the 1992 HCD Act. No grantee has been excluded from renewing a grant in a predecessor program as a result of the October 28, 1992 cutoff date.

One commenter suggested that HUD allow grantees who are recipients of multiple grants to combine these grants into one at the annual renewal date of any grant to provide administrative cost savings to HUD and the grantee. The Department agrees that there may be situations where it is cost effective to combine grants for renewal purposes. However, this may be done only on a case by case basis, and will not be addressed in the program regulations.

Technical Assistance: § 583.140

One commenter suggested that HUD provide technical assistance to help nonprofit providers build the capacity to successfully develop facilities and programs. Another commenter recommended that HUD provide technical assistance to service providers on ways to minimize risk of transmission of infectious diseases.

The first suggestion, since it appears to be for supportive housing projects, would be an eligible use of technical assistance funds under the regulations. The second suggestion would be an eligible use of technical assistance funds under the regulations, if done in conjunction with supportive housing projects.

Because the first interim rule was ambiguous as to whether HUD staff could provide technical assistance, the rule has been revised to make clear that HUD staff may do so. Technical assistance for supportive housing activities can often be provided most effectively by HUD staff.

The rule has also been revised to delete the two percent provision and to clarify the purpose of the technical assistance. While HUD anticipates reserving no more than two percent annually, the provision now enables HUD to spend more than that percent as necessary to improve the capacity of homeless providers and achieve the purpose of the program.

Resident Rent: § 583.315

Two commenters suggested that § 583.315(b), which addresses the use of rent, prohibit rent which is set aside for the participant's use in moving to permanent housing from counting as available income for public assistance programs. The Department does not have the authority in this program to exclude rent which is set aside for a participant's use in moving to permanent housing from counting as available income for public assistance programs. However, the Department is discussing this issue with the Department of Health and Human Services.

Waiting Lists

One commenter recommended that the final rule address a housing authority's use of waiting lists for the SHP. The Department does not believe that a housing authority's waiting list should necessarily be used to fill spaces in a supportive housing project. Homeless persons are often transient, and the Department does not believe that the use of a waiting list is the most effective way of identifying homeless persons.

Advertising SHP Projects

Several commenters felt that HUD should add a detailed regulatory provision for advertising the availability of supportive housing projects. Some of the suggestions included requiring recipients to post notices throughout the community, and send written notice to those on waiting lists with a federal preference based on homelessness. One commenter felt that a more detailed regulatory provision is necessary to assure that supportive housing projects are filled in accordance with fair housing requirements. HUD believes the current regulatory provisions are adequate with regard to fair housing requirements and advertising. The language in section 583.325 (b) and (c) addresses these issues specifically. The regulation states that use of assistance under this program must comply with the requirements of the Fair Housing Act and title VI of the Civil Rights Act of 1964, and that applicants must ensure that homeless persons can obtain information concerning the availability of supportive housing. Compliance with these requirements is a matter which is subject to monitoring by HUD.

Serving Community Residents

One commenter suggested that the SHP be more flexible and permit nonprofit agencies to serve community residents in addition to families or individuals residing in their facilities. Section 424 of the McKinney Act authorizes supportive services for homeless persons. The Department does not have the authority to permit nonprofit agencies to provide supportive services to community residents who are not homeless.

Technical Corrections

Commitment of Grant Amounts for Leasing, Supportive Services, and Operating Costs: § 583.130

This section is amended to clarify that HUD will obligate funds upon execution of a grant agreement, rather than upon approval of an application for assistance, as stated in the first interim rule. This section was in conflict with § 583.410, which states that funds are obligated when HUD and the applicant execute a grant agreement.

Limitations on Use of Assistance: § 583.150

The Department has added § 583.150(c), *Participant control of site*, to clarify that certain uses of SHP funds are not practicable where a homeless family or individual will eventually own or control the site. Applicants requesting acquisition, rehabilitation, or new construction funds must certify that the site will be used for homeless persons for not less than 20 years. As a practical matter, no applicant will be able to make this certification where the participant will eventually control the site. Therefore, this section precludes applicants from requesting acquisition, rehabilitation, or new construction funds under such circumstances.

Displacement, Relocation, and Acquisition: § 583.310

The Department is making three changes to this section. At section 583.310(f) the rule is clarified regarding the definition of "displaced person" when site changes occur. The rule states that one of the determining factors is the date the recipient submits a request for an application amendment to HUD.

At section 583.310(g) the term "selection of the project site, if later" is deleted because it is unnecessary. Formerly the sentence indicated that the term initiation of negotiations occurred at the time of execution of grant agreement or at project selection, if later. However, site control must be obtained before grant agreement execution and, therefore, could not occur at a later time.

A definition of "project" consistent with the use of the term under the Uniform Relocation Act is added at section 583.310(h).

Resident Rent: § 583.315

This section is amended to include the age of family members in the calculation of resident rent in § 583.315(a)(1). This was inadvertently left out of the interim rule.

IV. Other Matters

A. Environmental Impact

A Finding of No Significant Impact with respect to the environment was made on the Interim Rule in accordance with HUD regulations in 24 CFR Part 50 which implements Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. That Finding is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW, Washington, DC 20410. Since the environmental provisions of this Final Rule are unchanged from those published in the Interim Rule, the original Finding of No Significant Impact is still valid.

B. Executive Order 12612, Federalism

The General Counsel has determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, *Federalism*, that the provisions in the rule requiring applicants to assume the responsibilities for environmental review, decisionmaking, and action under NEPA and other environmental authorities have Federalism implications. While the assignment of these responsibilities under section 104(g) of the Housing and Community Development Act of 1974 is discretionary with HUD, it is authorized by and clearly the intent of section 443 of the McKinney Act. Therefore, the policy is not subject to review under Executive Order 12612.

C. Executive Order 12606, the Family

The General Counsel, as the designated official under Executive Order 12606, *The Family*, has determined that some of the policies in this proposed rule may have a potential significant impact on the formation, maintenance, and general well-being of participating homeless families. Participation of families in the program can be expected to support family values, by helping families remain together; by enabling them to live in decent, safe, and sanitary housing; and by offering the supportive services that are necessary to acquire the skills and means to live independently in mainstream American society. Since the impact on the family is considered to be a beneficial one, no further review is necessary.

D. Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. The program has been designed to allow applicants to design programs that provide housing and supportive services to homeless families and individuals with as little regulation as possible under the existing law.

E. Regulatory Agenda

This rule was listed as item no. 1653 in the Department's Semiannual Agenda of Regulations published on April 25, 1994 (59 FR 20424, 20462) under Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 583

Homeless, Rent subsidies, Reporting and recordkeeping requirements, Supportive housing programs—housing and community development, Supportive services.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers are 14.235 and 14.236.

For the reasons stated in the preamble, 24 CFR part 583 is amended by adopting the interim rule published in the **Federal Register** on March 15, 1993 (58 FR 13870) and amended by an interim rule published in the **Federal Register** on May 10, 1994 (59 FR 24252) as final with the following amendments to read as follows:

PART 583—SUPPORTIVE HOUSING PROGRAM

1. The authority citation for part 583 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 11389.

2. In § 583.5, the introductory text for the definition of *"Supportive services"* is revised to read as follows:

§ 583.5 Definitions.

* * * * *

Supportive services means services, which may be designed by the recipient or program participants, designed to address the special needs of the homeless persons to be served by the project. Supportive services include, but are not limited to: * * *

* * * * *

3. In § 583.100, paragraphs (b)(3), (b)(4) and (b)(5) are redesignated (b)(4), (b)(5) and (b)(6), respectively, and a new paragraph (b)(3) is added to read as follows:

§ 583.100 Types and uses of assistance.

* * * * *

(b) * * *

(3) Bring existing facilities up to a level that meets State and local government health and safety standards;

* * * * *

4. In § 583.115, paragraph (b)(2) is amended by adding a sentence to the end, to read as follows:

§ 583.115 Grants for leasing.

* * * * *

(b) * * *

(2) *Leasing individual units.* * * * Recipients may use grant funds in an amount up to one month's rent to pay the non-recipient landlord for any damages to leased units by homeless participants.

5. In § 583.120, paragraph (a) is amended by revising the first sentence, to read as follows:

§ 583.120 Grants for supportive services costs.

(a) *General.* HUD will provide grants to pay (as described in § 583.130 of this part) for the actual costs of supportive services for homeless persons for up to five years. * * *

* * * * *

6. Section 583.130 is revised to read as follows:

§ 583.130 Commitment of grant amounts for leasing, supportive services, and operating costs.

Upon execution of a grant agreement covering assistance for leasing,

supportive services, or operating costs, HUD will obligate amounts for a period not to exceed five operating years. The total amount obligated will be equal to an amount necessary for the specified years of operation, less the recipient's share of operating costs.

(Approved by the Office of Management and Budget under OMB Control Number 2506–0112)

7. Section 583.140 is revised to read as follows:

§ 583.140 Technical assistance.

(a) *General.* HUD may set aside funds annually to provide technical assistance, either directly by HUD staff or indirectly through third-party providers, for any supportive housing project. This technical assistance is for the purpose of promoting the development of supportive housing and supportive services as part of a continuum of care approach, including innovative approaches to assist homeless persons in the transition from homelessness, and promoting the provision of supportive housing to homeless persons to enable them to live as independently as possible.

(b) *Uses of technical assistance.* HUD may use these funds to provide technical assistance to prospective applicants, applicants, recipients, or other providers of supportive housing or services for homeless persons, for supportive housing projects. The assistance may include, but is not limited to, written information such as papers, monographs, manuals, guides, and brochures; person-to-person exchanges; and training and related costs.

(c) *Selection of providers.* From time to time, as HUD determines the need, HUD may advertise and competitively select providers to deliver technical assistance. HUD may enter into contracts, grants, or cooperative agreements, when necessary, to implement the technical assistance.

8. In § 583.150, paragraph (b) is removed, paragraph (c) is redesignated as (b), and a new paragraph (c) is added to read as follows:

§ 583.150 Limitations on use of assistance.

* * * * *

(c) *Participant control of site.* Where an applicant does not propose to have control of a site or sites but rather proposes to assist a homeless family or individual in obtaining a lease, which may include assistance with rent payments and receiving supportive services, after which time the family or individual remains in the same housing without further assistance under this part, that applicant may not request assistance for acquisition, rehabilitation, or new construction.

9. In § 583.300, paragraph (e) is amended by revising the first sentence, to read as follows:

§ 583.300 General operation.

* * * * *

(e) *Residential supervision.* Each recipient of assistance under this part must provide residential supervision as necessary to facilitate the adequate provision of supportive services to the residents of the housing throughout the term of the commitment to operate supportive housing. * * *

* * * * *

10. In § 583.310, paragraphs (f)(1)(i) and (g) are revised, and paragraph (h) is added, to read as follows:

§ 583.310 Displacement, relocation, and acquisition.

* * * * *

(f) *Definition of displaced person.* (1) For purposes of this section, the term "displaced person" means a person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property permanently as a direct result of acquisition, rehabilitation, or demolition for supportive housing projects assisted under this part. The term "displaced person" includes, but may not be limited to:

(i) A person that moves permanently from the real property after the property owner (or person in control of the site) issues a vacate notice, or refuses to renew an expiring lease in order to evade the responsibility to provide relocation assistance, if the move occurs on or after the date the recipient submits to HUD the application or application amendment designating the project site.

* * * * *

(g) *Definition of initiation of negotiations.* For purposes of determining the formula for computing the replacement housing assistance to be provided to a residential tenant displaced as a direct result of privately undertaken rehabilitation, demolition, or acquisition of the real property, the term "initiation of negotiations" means the execution of the agreement between the recipient and HUD.

(h) *Definition of project.* For purposes of this section, the term "project" means an undertaking paid for in whole or in part with assistance under this part. Two or more activities that are integrally related, each essential to the others, are considered a single project, whether or not all component activities receive assistance under this part.

11. In § 583.315, paragraph (a)(1) is revised to read as follows:

§ 583.315 Resident rent.

(a) *Site control.* (1) 30 percent of the family's monthly adjusted income (adjustment factors include the number of people in the family, age of family members, medical expenses, and child care expenses);

* * * * *

Dated: July 6, 1994.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 94–17496 Filed 7–18–94; 8:45 am]

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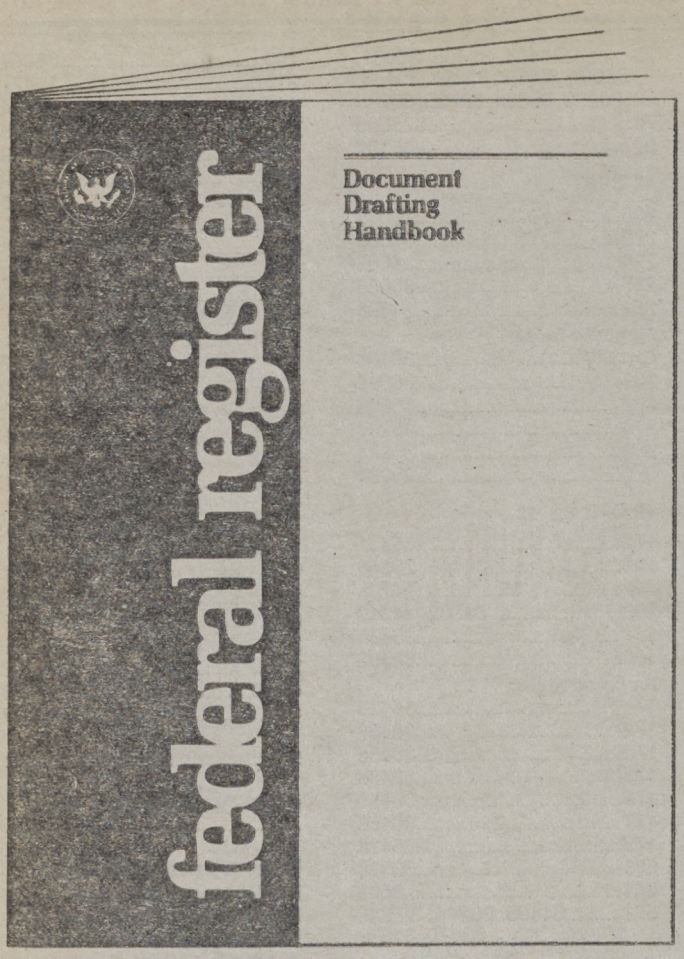

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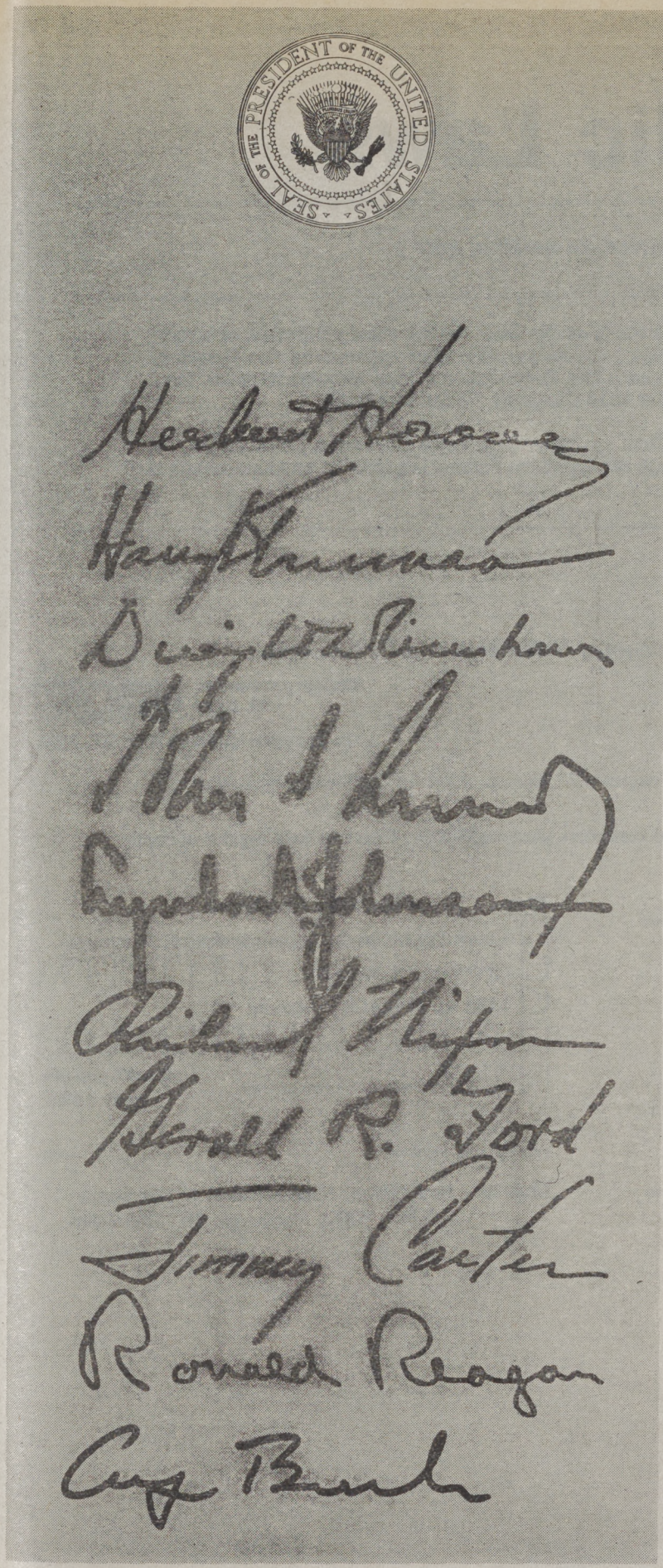

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